

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "Agreement") is made and entered into effective as of the ___ day of _____, 2017 (the "Effective Date") by and between Headwaters, Inc., with its corporate office having an address of P.O. Box 2836, Ridgeland, MS 39158, ("Consultant") and Madison County Board of Supervisors ("Client"), having an address at P.O. Box 608, Canton, Mississippi 39046-0608. Consultant and Client are sometimes referred to herein individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, Consultant is an independent contractor responsible for the means and methods used in performing the services under this Agreement and is neither a partner, joint venturer, employee, or agent of Client; and

WHEREAS, Consultant is in the business of providing environmental consulting, natural resource management, permitting and related services; and

WHEREAS, Client desires that Consultant provide one or more of these services for Client;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants, promises and agreements herein contained, and other good and valuable consideration, the Parties agree as follows:

AGREEMENT

SECTION 1. Scope of Services and Compensation.

(a) Scope of Services. Subject to the terms of this Agreement, Client agrees to engage Consultant for the performance of the services more particularly described in the "Scope of Services and Compensation attached hereto as Exhibit A. This Agreement only applies to services identified in the Scope of Services and Compensation. Any additional services or work product may be provided by Consultant to Client only upon mutually agreed terms set forth in a separate agreement or an amendment to this Agreement by the Parties.

(b) Fees; Reimbursement of Expenses. Client shall compensate Consultant as provided in Exhibit A. The compensation shall be the only payments made by the Client to Consultant under this Agreement. Unless otherwise indicated in Exhibit A, Consultant shall issue a monthly invoice to Client for the work performed under the terms of this Agreement. Payment in full for work shall be due within thirty (30) days of the Client's receipt, and after obtaining any necessary approvals, of the applicable invoice.

SECTION 2. Relationship Between Consultant and Client.

(a) Independent Contractor Status. Consultant shall serve as Client's professional environmental consultant in providing those services detailed in Exhibit A. Consultant shall, at all times, be regarded as an independent contractor and nothing contained herein shall be deemed

or construed by Consultant, Client, or any third party as creating the relationship of principal and agent, master and servant, partner, joint ventures, employer and employee, or any other similar such relationship between Consultant and Client. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the Consultant or Client hereunder creates, or shall be deemed to create a relationship other than an independent relationship of the Consultant and Client. Consultant shall not be considered to be the agent of the Client except in matters dealing with the U.S. Army Corps of Engineers (USACE) Section 404 Wetlands Permit process.

SECTION 3. Term & Termination.

(a) Term. The term of this Agreement shall commence on the Effective Date and shall continue December 31, 2018, unless earlier terminated pursuant to Section 3(b) below.

(b) Termination. This Agreement may be terminated by either Party only as follows:

(i) Effective upon twenty (20) days advance written notice to the other Party stating that such other Party is in breach of any of the provisions of this Agreement, provided that such breach (if able to be cured) is not cured within ten (10) days after the notice is received;

(ii) Effective upon thirty (30) days advance written notice to the other Party given with or without reason; or

(iii) By mutual written agreement of the Parties.

(c) Rights Upon Termination.

(i) Upon the termination of this Agreement, Client shall pay to Consultant, in accordance with the payment terms set forth in this Agreement, any compensation owed under this Agreement for services performed by Consultant for Client prior to such termination. Consultant shall incur no further obligations and will stop work on the date set in the notice of termination. Consultant shall also terminate outstanding subcontracts as they relate to the terminated work. Once payment in full for all serviced rendered has been received by Consultant, no other amount shall be due from Client.

(ii) Upon termination of the Agreement, all of the rights and obligations of the Parties shall terminate, except that termination of this Agreement shall not relieve Client from any liabilities resulting from a breach of this Agreement which occurs prior to the termination.

(d) Force Majeure; Excuse for Nonperformance or Delayed Performance. Consultant shall not be in default by reason of any failure of performance of this Agreement if the failure arises out of causes of: acts of God, including but not limited to, fires, floods, droughts, earthquakes, or acts of war, whether or not war has been declared, riots, strikes, or other labor disputes or acts of the State or any other governmental entity in its sovereign or contractual capacity. Additionally, if the failure to perform is caused by subcontractor's failure to perform due to the causes set forth above, Consultant shall not be deemed to be in default. In such an instance, the term of the

Agreement shall be extended by a period of time that is equal to the delay caused by the Force Majeure event.

SECTION 4. Ownership of Work Product.

(a) Work Product. The term "Work Product" as used in this Agreement, means any final deliverable created by Consultant, either alone or jointly with others, in furtherance of the objective of performing the work as described in this Agreement. Work Product does not include any materials developed by Consultant (i) prior to Client's project, (ii) for Consultant's own use or (iii) for its other clients. In addition, Work Product specifically excludes (i) the general processes and procedures used by consultants in Consultant's field, (ii) general design, aesthetic, or organizational principles and (iii) all materials, ideas, and concepts that are not protectable under general principles of intellectual property law.

(b) Ownership of Work Product. Consultant agrees that any and all Work Product written or created for performance of services under this Agreement shall be the property of the Client. However, transfer of ownership of Work Product is contingent upon full payment of the compensation required under this Agreement. The Consultant shall have the right to retain copies of all documents and mapping for its files.

(c) Reuse of Work Product. All Work Product, including mapping furnished by Consultant pursuant to this Agreement, are intended for use on the project that is the subject of this Agreement only. The Work Product should not be used by Client or any third party on extensions of the project or on any other project.

SECTION 5. Client's Responsibilities.

(a) Client will grant or obtain access to the site for all equipment and personnel for Consultant to perform the services set for in this Agreement. Client will notify any and all possessors of the project site that Client has granted Consultant access to the site. Consultant will take reasonable precautions to limit damage to the site, but it is understood by Client that in the normal course of work some damage (rutting, soil borings, etc.) may occur and the correction of such damage is not part of this Agreement unless so specified.

(b) Client will make available any such reasonable information as required and deemed appropriate for Consultant to conduct its services. This includes, but is not limited to, prior knowledge of hazardous materials associated with the site and any and all easements/restrictions associated with the site. Such data will be made available as promptly as possible.

SECTION 6. Warranty. Client acknowledges and agrees that in the event that a project involves investigations of chemicals, hazardous, or toxic materials, there are inherent uncertainties involved (limitations on laboratory analytical methods, ordinary surficial characteristics). These uncertainties are beyond the scope of due diligence and therefore shall not be warranted by Consultant.

SECTION 7. Subcontracted Services. Consultant shall, at times, select and utilize reputable subcontractors for specialty services. Consultant shall not be constrained to competitive bidding processes for subcontracted services.

SECTION 8. Indemnification.

(a) Consultant shall indemnify and hold harmless Client from and against any and all claims, damages, or liability arising from the negligent performance of services under this Agreement by Consultant. Consultant 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 Consultant.

(b) Client shall not be liable to Consultant and Consultant shall not be liable to 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 Client or Consultant or their employees, agents or subcontractors, by reason of services rendered under this Agreement.

SECTION 9. Legal Proceedings. Notwithstanding any language in this Agreement to the contrary, in the event Consultant's employees are, at any time, required to provide testimony, answer interrogatories or otherwise provide information ("testimony") in preparation for or at a trial, hearing, proceeding on inquiry ("proceeding") arising out of the services that are the subject of this Agreement, where Consultant is not a party to such proceeding, Client will reimburse Consultant for its services and reimburse Consultant for all related direct costs incurred in connection with providing such testimony at a rate determined by Consultant. 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 Consultant to provide expert testimony or litigation support, which services shall be the subject of a separate agreement.

SECTION 10. Insurance. Within the context of prudent business practices, Consultant shall endeavor to maintain workmen's compensation of an amount of \$1,000,000 and unemployment compensation in an amount as required by state law; comprehensive general liability of \$1,000,000 per occurrence and \$2,000,000 aggregate; automotive liability with maximum limits of \$1,000,000; and professional liability insurance with an annual limit of \$2,000,000. Consultant shall maintain umbrella liability in an amount of \$4,000,000.

SECTION 11. Entire Agreement. This Agreement constitutes the essential agreement between the Parties for the purposes stated herein, and no other offers, agreements, understandings, warranties, or representations exist between Consultant and Client.

SECTION 12. Severability. If any clause, provision or paragraph of this Agreement is held to be illegal or invalid by any court, or improper, or untenable, the illegality or invalidity of such clause, provision or paragraph shall not affect any remaining clauses, provisions or paragraphs hereof, and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or paragraph had not been contained herein.

SECTION 13. Amendments. Any amendments, revisions or other modifications to this Agreement shall be in writing and signed by all parties.

SECTION 14. Waiver. No delay or omission to exercise any right or power by any party shall be construed to be a waiver thereof. In the event any provision contained herein shall be waived by any Party hereto, such waiver shall apply to that Party only and shall not be deemed to waive any other provision hereunder. To the extent that any Party's performance is subject to any regulatory or governing body approvals, that Party shall have no obligation to perform and shall not be liable for non-performance, unless and until such regulatory or governing body approves or authorizes such performance; provided, however, the Parties shall use their best reasonable efforts to secure such approval or authorization.

SECTION 15. Governing Law. This Agreement shall be governed by the laws of the State of Mississippi.

SECTION 16. Notices. All communications and notices expressly provided for herein shall be sent, by registered first class mail, postage prepaid, or by nationally recognized courier for delivery on the next business day, or by telecopy (with such telecopy to be promptly confirmed in writing sent by mail or overnight courier as aforesaid) as follows:

MADISON COUNTY BOARD OF SUPERVISORS: Shelton Vance
County Administrator
P.O. Box 608
Canton, Mississippi 39046-0608

HEADWATERS, INC. Michael Goff
President
Post Office Box 2836
Ridgeland, Mississippi 39158

SECTION 19. Counterparts. This Agreement may be executed in counterparts all of which shall be regarded for all purposes as original and shall constitute and be but one and the same instrument.

IN WITNESS WHEREOF, THIS Agreement has been executed by parties on this the ____ day of _____, 20__.

Madison County Board of Supervisors Headwaters, Inc.

(Signature)

(Signature)

(Print name and title)

(Print name and title)

EXHIBIT "A"
SCOPE OF SERVICES AND COMPENSATION

Scope of Services:

Consultant will perform the following services in fulfillment of the purposes of this Agreement:

1. Consultant will coordinate all communications with Client through Shelton Vance, County Administrator.
2. Consultant will coordinate with the Client and the Mississippi Department of Environmental Quality (MDEQ) to develop the initial plan of action to meet the requirements of the previous Madison County Solid Waste Plan and to address the required updates.
3. Consultant will coordinate with the Client to develop all of the required Madison County Solid Waste Plan updates as required by MDEQ and coordinate the review and approval with the MDEQ.

Compensation:

As consideration for the performance of services, Client agrees to compensate Consultant as follows:

Headwaters, Inc. proposes to complete all of the required services on an hourly basis with a not to exceed budget of \$32,000.00 and utilizing the following fee schedule.

Rate Sheet	
Description	Fee
Principal	\$135.00/Hr.
Project Manager	\$115.00/Hr.
Environmental Specialist	\$90.00/Hr.
GIS Technician	\$80.00/Hr.
Administrative	\$70.00/Hr.
ATV Expense	100.00/day
Vehicle Mileage Expense	\$0.54/mile
Printing Charges (black & white/color)	\$0.49/\$1.00 per copy
Environmental Supplies (tapes, batteries, etc.)	\$23.50/project

Consultant shall provide invoices on a monthly basis. The final invoice shall be provided within 30 days after the term of the Agreement. All invoices must be paid in full within 30 days of receipt.