CITY OF GAUTIER
MEMORANDUM

To:	Samantha Abell, City Manager
From:	Patty Huffman, Grants & Projects Manager
Through:	Chandra Nicholson, Director of Economic Development and Planning Dept.
Date:	November 22, 2013
Subject:	Proposal for Phase I Environmental Site Assessment for Dolphin Drive Property Donation

REQUEST:
The Economic Development and Planning Department requests City Council authorization to accept a proposal from BMI Environmental Services, LLC to perform a Phase I Environmental Site Assessment (ESA) for a parcel of land on Dolphin Drive that has been offered to the City as a donation.

BACKGROUND:
The Economic Development and Planning Department has received an offer from a property owner to donate to the City approximately 1.64 acres of commercial property located just south of Highway 90 on Dolphin Drive. The property adjoins the Suburban Lodge and has approximately 138 feet of road frontage on Dolphin Drive. The property owner has requested that this transfer be completed before year-end.

DISCUSSION:
According to the Office of the State Attorney General, "a municipality may accept a donation of real property, provided that it has made the requisite factual findings and has documented its formal acceptance in its minutes." It is in the best interest of the City to accept this property, contingent on clearance from an Environmental Assessment of future risk or liability to the City. While the City has not identified an immediate use for the property, it is in the best interest of the City to accept the donation based on the property value alone. BMI Environmental Services, LLC has submitted a proposal to perform a Phase I Environmental Site Assessment (ESA) on the parcel for an amount not to exceed $2,000.00 and will complete the project within 14 days of receipt of a signed copy of the proposal.

RECOMMENDATION:
The Economic Development and Planning Department recommends that City Council authorize the acceptance of the BMI Environmental Services, LLC proposal to perform a Phase I Environmental Site Assessment on the parcel of land proposed for donation as described above.

The City Council may:

1. Authorize acceptance of the attached Environmental Services proposal; or
2. Authorize acceptance of the attached Environmental Services proposal with changes; or
3. Decline acceptance of the attached Environmental Services proposal.

ATTACHMENT(S):
BMI Environmental Services, LLC Proposal

BMI Environmental Services, LLC

Environmental Consultants

November 6, 2013

Transmitted via email: cnicholson@gautier-ms.gov

Ms. Chandra Nicholson
City of Gautier
Director of Economic Development
3330 Highway 90
Gautier, MS 39553

RE: Phase I Environmental Site Assessment
Dolphin Street Site
Gautier, Mississippi

Dear Ms. Nicholson:

BMI Environmental Services, LLC (BMI/ES) is pleased to submit this proposal to perform a Phase I Environmental Site Assessment (ESA) for the above referenced property.

PURPOSE AND SCOPE OF WORK

The purpose of the ESA is to identify, to the extent feasible pursuant to the processes prescribed in ASTM Standard E-1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Assessment Process", recognized environmental conditions in connection with the property.

The scope of work BMI/ES will perform for this project consists of the following items:

1. **Manage environmental site assessment activities for the project;**
2. **Review and summarize standard environmental records;**
3. **Review and summarize historical use information;**
4. **Review and summarize physical setting information;**
5. **Conduct a site reconnaissance and summarize information and observations;**
6. **Conduct interviews with site owner, site manager, occupants, and local officials;**
7. **Prepare findings, conclusions, and opinions relative to recognized environmental conditions and their impacts to the subject property; and**
8. **Compile a written environmental profile report that includes information collected in the course of this ESA.**

The present scope of BMI/ES's services for this project does not include

1. **An opinion as to the advisability of transferring or acquiring an interest in the properties or;**
2. **An examination of title records to identify environmental liens, if any, that are currently recorded against the properties;**
3. **Any testing or sampling of materials;**
4. **Assessment of issues or conditions that are outside the scope of the standard practice unless specifically identified by the user and agreed upon by BMI/ES; and**
5. **A recommendation as to how to address or remediate any recognized environmental conditions identified in the course of this assessment at the subject property.**

METHODOLOGY

In general, the assessment will be a qualitative evaluation of real property based on review of standard environmental records, historical records, physical setting information, public information, on-site reconnaissance, and interviews as described below. The methodology will follow the ASTM Standard E-1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Assessment Process". BMI/ES will review record sources that are reasonably ascertainable, publicly available, obtainable within reasonable time and cost constraints, and practically reviewable.

Standard Environmental Records Review

BMI/ES will review and summarize standard environmental records in order to obtain and review records that will help identify recognized environmental conditions in connection with the property. The records will be evaluated for on-site, adjacent, and upgradient land use.

Historical Use Information Review

BMI/ES will review and summarize historical use information in order to identify obvious uses of the property from the present, back to the property's obvious first developed use, or back to 1940, whichever is earlier. Some of the historical sources that may be reviewed include:

- Aerial photographs, fire insurance maps, property tax files, recorded land title records, street directories, topographic maps, building department records, zoning/land use records, newspaper archives, and personal knowledge of the property owner and/or occupants
- Prior site assessments, and historic and/or current BMI/ES file information

Physical Setting Information Review

BMI/ES will review and summarize physical setting information sources in order to provide information about the geologic, hydrogeologic, hydrologic, or topographic characteristics of a site. A current USGS 7.5 Minute Topographic Map (or equivalent) showing the area on which the property is located shall be reviewed. Additional physical setting information sources that may be reviewed include:

- Groundwater maps, bedrock geology maps, surficial geology maps, soil maps
- Other physical setting sources that are reasonable credible

Site Reconnaissance

BMI/ES will conduct a site reconnaissance of the subject property and summarize the site observations in order to obtain information indicating the likelihood of identifying recognized environmental conditions in connection with the subject property. Some of the uses and conditions that may be identified and evaluated include the following:

- Past and present physical features; indications of leaks, spills, stains, corrosion, and/or disposal of material; conditions of interior and exterior site improvements; type of sewage disposal system
- Presence or likely presence of hazardous substances and/or petroleum products; barrels/drums or other containers; potential routes of entry to the subsurface

Interviews with Owners and Occupants

BMI/ES will conduct interviews with owners, occupants, and local government officials in order to obtain information indicating recognized environmental conditions in connection with the subject property. Some of the persons that may be interviewed include the following:

- Current and past site owners, current and past occupants, current and past owners of adjoining and/or nearby property, current and past occupants of adjoining and/or nearby property, site manager
- Local government officials, local agency officials

Reporting

BMI/ES will prepare and deliver two (2) copies of the written environmental profile report to include the following information for the subject property:

- Results of the environmental and historical records review
- Summary of the physical setting information review
- Results of the site reconnaissance and interviews
- Opinions and summary of all recognized environmental conditions identified in connection with the subject property and the impact of these recognized environmental conditions on the subject property

USER'S RESPONSIBILITIES

It is the user's responsibility to communicate any specialized knowledge or experience that is material to recognized environmental conditions in connection with the property to BMI/ES before BMI/ES conducts the site reconnaissance. In a transaction involving the purchase of a parcel of commercial real estate, if a user has actual knowledge that the purchase price of the property is significantly less than the purchase price of comparable properties, the user should try to identify an explanation for the lower price and to make a written record of such explanation. The user of the assessment to be conducted by BMI/ES should check title records for the subject property to identify environmental liens or activity and land use limitations, if any, that are currently recorded against the property. Any environmental liens or activity and use limitations so identified shall be reported to BMI/ES during the course of the assessment. The user shall make known to BMI/ES the reason why the user wants to have the assessment preformed or, if the user does not identify the purpose of the assessment, BMI/ES shall assume that the purpose is to qualify for the innocent landowner defense to CERCLA liability and state this in the report.

FEE

Based on the proposed scope of work, BMI/ES proposes to provide Phase I ESA services for the above referenced property on a time and materials basis using the billing rate of $155.00 per hour for a Senior Environmental Scientist and $67.50 per hour for an Environmental Technician with a cost not to exceed $2,000.00.

SCHEDULE

BMI/ES will complete the project within 14 days of receipt of a signed copy of this proposal.

If this proposal and the General Conditions for Environmental Services attached as pages 5-6 are acceptable, please sign in the space below and return to this office. We look forward to working with you on this project.

Sincerely,

Larry Lewis
Senior Environmental Scientist

Accepted this the _____ day of _____, 2013.

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City of Gautier

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ATTACHMENT A
BMI ENVIRONMENTAL SERVICES, LLC
GENERAL CONDITIONS FOR
ENVIRONMENTAL SERVICES

1. PARTIES AND SCOPE OF WORK: BMI Environmental Services, LLC ("BMI/ES") shall include said company, or its particular division, subsidiary or affiliate performing the work. "WORK" means the service(s) performed by BMI/ES for Client or at Client's direction. "This agreement" consists of BMI/ES's proposal, BMI/ES's Schedule of Fees and Services, Client's written acceptance thereof if accepted by BMI/ES, and these General Conditions. "Client" refers to the person or business entity ordering the work to be done by BMI/ES. If the Client is ordering work on behalf of another, Client represents and warrants that Client is the duly authorized agent of said party for the purpose of ordering and directing said work and in such case the term "Client" also includes the principal for whom the work is being performed. Prices quoted and charged by BMI/ES for its work are predicated upon the conditions and the allocations of risks and obligations expressed in this agreement. Unless this agreement specifically provides that BMI/ES is to perform its work pursuant to specified Federal, State or local regulations, Client assumes sole responsibility for determining whether the quantity and the nature of the work ordered by Client is adequate and sufficient for Client's intended purpose. Client shall communicate these General Conditions to each and every third party to whom Client transmits any part of BMI/ES's work. BMI/ES shall have no duty or obligation to any party other than those duties and obligations expressly set forth in this agreement. Ordering work from BMI/ES shall constitute acceptance of the terms of this agreement. MINIMUM CHARGE FOR ANY ENVIRONMENTAL SERVICES IS $400.00.

2. SCHEDULING OF WORK: The services set forth in BMI/ES's proposal and Client's acceptance will be accomplished in a timely and workmanlike manner by BMI/ES personnel. If BMI/ES is required to delay any part of its work to accommodate the requests or requirements of Client, regulatory agencies, or third parties or due to any causes beyond the direct reasonable control of BMI/ES, additional charges may be applicable, which Client agrees to pay.

3. ACCESS TO SITE: Client will arrange and provide access to each site upon which it will be necessary for BMI/ES to perform its work. In the event work is required on any site not owned by Client, Client represents and warrants to BMI/ES that Client has obtained all necessary permissions for BMI/ES to enter upon the site and conduct its work. Client shall, upon request, provide BMI/ES with evidence of such permission as well as acceptance of the other terms and conditions set forth herein by the owner(s) and tenant(s), if applicable, of such site(s) in form acceptable to BMI/ES. Any work performed by BMI/ES with respect to obtaining permission to enter upon and do work on the lands of others as well as any work performed by BMI/ES pursuant to this agreement shall be deemed as being done on behalf of Client and Client agrees to assume all risks thereof. BMI/ES shall take reasonable measures and precautions to minimize damage to each site and any improvements located thereon as the result of its work and the use of its equipment; however, BMI/ES has not included in its fee the cost of restoration of damage which may occur. If Client or the possessor of any interest in any site desires or requires BMI/ES to restore site to its former conditions, upon written request of Client, BMI/ES will perform such additional work as is necessary to do and Client agrees to pay to BMI/ES the cost thereof.

4. CLIENT'S DUTY TO NOTIFY: Client represents and warrants that he has advised BMI/ES of any known or suspected hazardous materials, utility lines, and pollutants at any site at which BMI/ES is to do work hereunder, and unless BMI/ES has assumed in writing the responsibility of locating subsurface objects, structures, lines or conduits, Client agrees to defend, indemnify and save BMI/ES harmless from all claims, suits, losses, costs and expenses, including reasonable attorneys fees as a result of personal injury, death or property damage occurring with respect to BMI/ES's performance of its work and resulting to or caused by contact with subsurface or latent objects, structures, lines or conduits where the actual or potential presence and location thereof was not revealed to BMI/ES by Client.

5. PUBLIC RESPONSIBILITY: Both the Client and BMI/ES owe a duty of care to the public and the environment that requires them to conform to applicable codes, standards, regulations and ordinances, principally to protect the public health and safety and the environment. The Client shall make no request of BMI/ES that, in BMI/ES's reasonable opinion, would be contrary to BMI/ES's professional responsibilities to protect the public and the environment. The Client shall take all actions and render all reports required of the Client in a timely manner. Should the Client fail to take any required actions or render any required notices to appropriate governmental authorities in a timely manner, the Client agrees that BMI/ES has the right to exercise its professional judgement in reporting to appropriate public officials or taking other necessary action. The Client agrees to take no action against or attempt to hold BMI/ES liable in any way for carrying out what BMI/ES reasonably believes to be its public responsibility. In addition, the Client agrees that BMI/ES shall not be held liable in any respect for reporting said conditions. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless BMI/ES, its officers, directors, employees and sub-consultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with BMI/ES's notifying or failing to notify appropriate public officials.

6. LIMIT OF LIABILITY CLAUSE: In recognition of the relative risks and benefits of the Project to both the Client and BMI/ES, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of BMI/ES to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of BMI/ES to the Client shall not exceed $50,000, or BMI/ES's total fee for services rendered on this Project, whichever is less. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

7. INDEMNITY: In the event that the Client or the Client's principal shall bring any suit, cause of action or counterclaim against BMI/ES, to the extent that BMI/ES shall prevail, the party initiating such action shall pay to BMI/ES the costs and expenses incurred to answer and or defend such action, including reasonable attorney's fees and court costs. In no event shall BMI/ES indemnify any other party for the consequences of the party's negligence, including failure to follow BMI/ES's recommendations.

8. PAYMENT: Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. Client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause in writing within said thirty (30) day period at the maximum interest rate permitted under applicable law, until paid. Client agrees to pay BMI/ES's cost of collection of all amounts due and unpaid after thirty (30) days, including court costs and reasonable attorney's fees. BMI/ES shall not be bound by any provision or agreement requiring or providing for arbitration of disputes or controversies arising out of this agreement, any provision wherein BMI/ES waives any rights to a mechanics' lien, or any provision conditioning BMI/ES's right to receive payment for its work upon payment to Client by any third party. These general conditions are notice, where required, that BMI/ES shall file a lien whenever necessary to collect past due amounts.

9. TERMINATION: This agreement may be terminated by either party upon seven day's prior written notice. In the event of termination, BMI/ES shall be compensated by Client for all services performed up to and including the termination date, including reimbursable expenses.

10. WITNESS FEES: BMI/ES's employees shall not be retained as expert witnesses except by separate, written agreement. Client agrees to pay BMI/ES pursuant to BMI/ES's then current fee schedule for any BMI/ES employee subpoenaed by any party as an occurrence witness as a result of BMI/ES's work.

11. HAZARDOUS MATERIALS: Environmental work shall include visual observation, laboratory analyses and physical testing of sample subsurface materials for the purpose of detection, quantification or identification of the extent, if any, of contamination of subsurface, soils or ground water by hazardous materials, which shall include materials defined as such by the Resource Conservation and Recovery Act, 42 USCA, Sec. 6901, seq., as amended ("RCRA"), or the Federal Environmental Protection Agency ("E.P.A."). Nothing contained within this agreement shall be construed or interpreted as requiring BMI/ES to assume the status of a generator, storer, transporter, treater or disposal facility as those terms appear within RCRA or within any Federal or State statute or regulation governing the generation, transportation, treatment, storage and disposal of pollutants. Client assumes full responsibility for compliance with the provisions of RCRA and any other Federal or State statue or regulation governing the handling, treatment, storage and disposal of pollutants.

12. LIMITATIONS OF PROCEDURES, EQUIPMENT AND TESTS: Information obtained from field observations, analysis and testing of sample materials shall be accurately reported on boring logs. Such information is considered evidence with respect to the detection, quantification and identification of pollutants, but any inference or conclusion based thereon is necessarily an opinion also based upon scientific judgement and shall not be construed as a representation of fact. Groundwater levels and composition may vary due to seasonal and climatical changes and extrinsic conditions and, unless samples and testing are conducted over an extended period of time pollutants contained therein may escape detection. A site at which pollutants are not found to exist or at the time of the field observation do not, in fact, exist, may later, due to intervening causes such as natural ground water flows or human intervention, become contaminated. There is a risk that sampling techniques may themselves result in contamination of certain subsurface areas such as when a probe or boring device moves through a contaminated area linking it to an aquifer, underground stream or other hydrous body not previously contaminated and capable of transporting pollutants. Because the risks set forth in this paragraph are unavoidable and because the sampling techniques to be employed are a necessary aspect of BMI/ES's work on Client's behalf, Client agrees to assume these risks.

13. DISCOVERY OF UNANTICIPATED ENVIRONMENTAL CONDITIONS: The discovery of certain environmental conditions may make it necessary for BMI/ES to take immediate measures to protect health and safety and the environment. BMI/ES agrees to notify Client as soon as practically possible should such environmental conditions be suspected or discovered. Client agrees to reimburse BMI/ES for the reasonable cost of implementing such measures under the circumstances.

14. SOIL AND SAMPLE DISPOSAL: Unless otherwise agreed in writing, soils known at the time to be contaminated will be placed in containers, labeled and left on the site for proper disposition by Client; and samples removed by BMI/ES to a testing laboratory will, upon completion of testing, be disposed of by the testing laboratory in an approved manner.

15. DELIVERY OF ELECTRONIC FILES: In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by BMI/ES, the Client agrees that all such electronic files are instruments of service of BMI/ES, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights. The Client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project and agrees not to transfer these electronic files to others without the prior written consent of BMI/ES. The Client further agrees to waive all claims against BMI/ES resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than BMI/ES. The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by BMI/ES and electronic files, the signed or sealed hard-copy construction documents shall govern. In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless BMI/ES, its officers, directors, employees and sub-consultants against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising from any changes made by anyone other than BMI/ES or from any reuse of the electronic files without prior written consent of BMI/ES. Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by BMI/ES, and BMI/ES makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall BMI/ES be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

16. ENTIRE AGREEMENT: This agreement contains the entire understanding between the parties. Client acknowledges that no representations, warranties, undertakings or promises have been made other than and except those expressly contained herein. This agreement may be amended, modified or terminated only by a written instrument signed by each of the parties hereto.