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October 14, 2021

VIA ELECTRONIC FILING

ATTN: FEMA Arbitration Administrator
Civilian Board of Contract Appeals
1800 M Street, N.W., Room 6006
Washington, D.C. 20036

Re: **Request for Arbitration**
In Re: FEMA Project Worksheet Number 44 V1 Determination
Memorandum, its First Appeal Decision, and Related Matters
Subrecipient: City of Hattiesburg
FIPS: 035-31020-00
Declaration No.: FEMA-MS-DR 4295 (Severe Storms, Tornadoes,
Straight-line Winds, and flooding, January 20-21, 2017)

Dear FEMA Arbitration Administrator:

Our office represents the City of Hattiesburg, Mississippi. Please accept this letter and attached Memorandum as the formal Request for Arbitration on behalf of the Subrecipient, the City of Hattiesburg, Mississippi, pursuant to the provisions of the Disaster Recovery Reform Act Section 1219, which amended Section 423(d) of the Stafford Act (42 U.S.C. 5189a).


Enclosed with this correspondence are an original and two copies of the "*City of Hattiesburg Request for Arbitration of DR 4295 Project Worksheet 44 V1 Determination Memorandum, its First Appeal Decision, and Related Matters*" along with the arbitration exhibits submitted in support of this Request for Arbitration.

A copy of this request and the exhibits are being simultaneously sent to both FEMA and the Mississippi Emergency Management Agency ("MEMA").

We respectfully request that the hearing be held by Zoom in the City of Hattiesburg, Mississippi or in the City of New Orleans, Louisiana.

Thank you in advance for your consideration of this Request for Arbitration.

If you should have any questions that require any additional information or documentation, please do not hesitate to contact our office.

Very truly yours,

Michael G. Gaffney

cc: Mississippi Emergency Management Agency, Mike Siler; msiler@mema.ms.gov
Mississippi Emergency Management Agency, Andy Hood; ahood@mema.ms.gov
Mississippi Emergency Management Agency, Clayton French; cfrence@mema.ms.gov
Gracia B. Szech, FEMA Regional Administrator, 3005 Chamblee Tucker Road, Atlanta, Georgia 30341; GarciaSzczech@FEMA.dhs.gov
FEMA, Terry Quarles; Terryquarles@FEMA.dhs.gov
FEMA, John Robuck; John.Robuck@FEMA.dhs.gov
City of Hattiesburg, Kermas Eaton; Keaton@hattiesburgms.com
City of Hattiesburg, Ann Jones; ajones@hattiesburgms.com

REQUEST FOR ARBITRATION

IN RE: FEMA PROJECT WORKSHEET NUMBER 44 V1, ITS FIRST APPEAL DECISION, AND RELATED MATTERS

SUBRECIPIENT: City of Hattiesburg, Mississippi
FACILITY: Timberton Softball Field Complex
FIPS: #035-31020-00
FEMA PW NO.: DR 4295- MS- PW 44 V1 Determination Memorandum, and its First
Appeal Decision dated August 16, 2021

CITY OF HATTIESBURG, MISSISSIPPI REQUEST FOR ARBITRATION OF PROJECT WORKSHEET NUMBER 44 V1 DETERMINATION MEMORANDUM, ITS FIRST APPEAL DECISION, AND RELATED MATTERS

MAY IT PLEASE THIS HONORABLE ARBITRATION PANEL:

I. STATEMENT OF SUBJECT MATTER JURISDICTION:

This honorable arbitration panel is granted subject matter jurisdiction over this dispute pursuant to the provisions of the Disaster Recovery Reform Act of 2018 (DRRA) Section 1219 which amended Section 423(d) of the Stafford Act (42 U.S. C. 5189(a)).¹ This arbitration is filed in compliance with the CBCA promulgated rules and the proposed regulations at 48 CFR part 6106.

The dispute arises from DR 4295 (Severe Storms, Tornadoes, Straight-line Winds, and flooding, January 20-21, 2017, a disaster declared after January 1, 2016. The amount in dispute in this matter exceeds Five Hundred Thousand Dollars (\$500,000.00). A First Appeal pursuant to the requirements of 44 CFR 206.206 was timely submitted. A negative First Appeal decision dated August 16, 2021, which was first received by the City of Hattiesburg, Mississippi on August 16, 2021.

A Request for Arbitration "must contain a written statement and all documentation supporting the position of the Subrecipient . . . (206.209(e))." "The Subrecipient/subgrantee may provide supporting documentation not previously included in the project." (Rule 6106.608) The

¹ Please see arbitration rules, 44 CFR, Part 206, subpart G.

respondent/FEMA has different jurisdictional requirements to simultaneously submit a response in support of its position, a copy of the project worksheet(s), and any supporting documentation to the arbitration administrator, the Recipient, and the Subrecipient (206.209(e)(4)).

In light of the grant of subject matter jurisdiction to this panel, the City of Hattiesburg, Mississippi (hereinafter sometimes referred to as “Subrecipient”, “Hattiesburg”, or “City”) files this Request for Arbitration, pursuant to Disaster Recovery Reform Act of 2018 (DRRA) Section 1219 which amended Section 423(d) of the Stafford Act (42 U.S.C. 5189(a)) in lieu of taking a Second Administrative Appeal of Project Worksheet No. 44 V1 Determination Memorandum and the First Appeal Decision rendered in this matter.

We respectfully request that the hearing be held by Zoom in the City of Hattiesburg, Mississippi or in New Orleans, Louisiana.

II. INTRODUCTION:

Pursuant to the provisions of 44 CFR Part 206, the City of Hattiesburg hereby submits this *Request for Arbitration (“RFA”)* in connection with the Determination Memorandum issued with regard to Project Worksheet (“PW”) No. 44 V1 which was prepared by the Federal Emergency Management Agency (“FEMA”) and the First Appeal decision dated August 16, 2021, of which notice was provided by FEMA directly.²

This Request for Arbitration is made on the following basis:

Hattiesburg respectfully requests that the panel determine that the City of Hattiesburg is entitled to the relief requested based upon:

- (1) the entire administrative record herein, including the City’s response to the Request for Information, which administrative record was before FEMA when it drafted this Project Worksheet and the First Appeal Decision; **Plus** those FEMA reports, assessments, photographs, CEFs, and other documents used by FEMA in making its initial eligibility determination to properly fund the \$2,456,078.48 in PW 44 Version 1 which was reversed in the Determination Memorandum, which reversal is now the subject of this arbitration request;
- (2) the additional documentation in the form of the exhibits attached hereto;
- (3) the additional documentation in the form of the exhibits to be filed herein; and

² Please see exhibit 2.

(4) the testimony to be provided at the hearing of this matter.

Accordingly, the City of Hattiesburg requests that this Honorable Panel review the record provided herewith, the exhibits to be provided, along with the testimony to be presented at the oral presentation, and determine that the City of Hattiesburg is entitled to funding necessary to repair the tornado damages to the Timberton Softball Field Complex.

III. ARBITRATION ISSUES:

This Request for Arbitration raises three issues for the panel's consideration.

1. Is the damage to the various listed facilities and their components, damage which is a direct result of the tornado? ³
2. Is the estimated cost of the scope of work necessary to repair the damages from the tornado reasonable?
3. Should FEMA include in its cost estimate the CEF soft cost factors B-H?

IV. FACTUAL BACKGROUND:

The FEMA Project Specialist prepared PW 44 V0 which included an initial assessment of the disaster damage to the Timberton Softball Field Complex based upon their site visits and an insurance adjusters report. This initial assessment included a CEF with a scope of work producing an associated total project cost of \$565,572.⁴ This CEF was prepared by Jack Wycoff at FEMA Headquarters and is dated May 1, 2017 with a Part A cost of \$442,607.83. The only non-construction factors from factors B-H which were included in the PW 44 V0 were minimal soft cost factors B1, C1, C2, and H3 in the total amount of \$122,964.17.

After receipt of the PW 44 V0, the City of Hattiesburg engaged the local independent professional design firm of Neel-Schaffer to review the initial damage assessment and associated costs indicated by FEMA in PW 44 V0. A copy of the detailed damage assessment report prepared by Neel-Schaffer was presented to FEMA and MEMA for their consideration.⁵

After careful consideration, FEMA reviewed, approved, and obligated Project Worksheet

3 Please see exhibits 7 & 8.

4 Please see PW 44 V0, exhibit 5.

5 Please see Neel-Schaffer Report dated March 2018, exhibit 3.

44 V1 based upon the CEF Specialist at the Consolidated Resource Center (CRC) in Denton, Texas's validation of the independent local Design Team firm's report with a project cost of \$2,455,418.⁶

FEMA inspected and approved the Eligibility of the disaster damages in PW 44 V1

This Arbitration concerns an improper reversal in the Determination Memorandum which occurred only four months after FEMA properly funded disaster damages in the amount of \$2,456,078.48.

FEMA funded \$2,456,078.48 in Project Worksheet 44 V1 to repair the damages from a tornado to the Timberton Softball Fields.

FEMA's funding of \$2,456,078.48 in Project Worksheet 44 V1 was based upon the unanimous factual determinations developed over a three-year period by:

1. The City of Hattiesburg's employees who worked at the softball complex before, during, and after the tornado,
2. The City of Hattiesburg's local Design Team architects and engineers,
3. The City of Hattiesburg's project managers,
4. The State of Mississippi's State Applicant Liaison ("SAL"),
5. The FEMA project officers who visited the damaged site and developed the Project Worksheet,
6. The FEMA project specialists who worked with the FEMA Project Officers to develop the Project Worksheet,
7. The FEMA cost estimators who worked with the FEMA Project Officers and Project Specialists to develop the Project Worksheet,
8. The FEMA review teams who worked with the project officers, project specialists, and cost estimators to develop the Project Worksheet, and
9. The Office of Management and Budget ("OMB"), Congress's review team, FEMA's public relations division ⁷, members of congress ⁸, and the press who all reviewed and reported on the extent of the tornado damage and FEMA's funding of the disaster damage in PW 44 V1 in the amount of \$2,456,078.48.

6 Please see PW 44 V1, exhibit 4.

7 Please see exhibit 6.

8 Please see exhibit 6.

FEMA erred in the Determination Memorandum and First Appeal:

Robert Walter's Determination Memorandum has numerous errors.

Only four months earlier, the Neel-Schaffer report in PW 44V1 was validated by a **CEF Specialist at the Consolidated Resource Center (CRC) in Denton, Texas!** ⁹ His CEF is an attachment to PW 44 V1 and is referred to as V.1 FEMA CEF.

Only four months before the Determination Memorandum, FEMA stated: "A FEMA CEF specialist completed a new cost estimating format (CEF) based upon the additional costs of \$1,243,620 to check for reasonableness. The end result was additional costs in the amount of \$1,888,182, a difference of (\$1,664) compared to the Neel Schaffer report. Version 1 was therefore written for additional costs in the amount of \$1,888,182 as the costs provided by the applicant are reasonable." See PW 44 V1.

After two (2) prior FEMA obligations of Project Worksheet 44, and 3 years after the 2017 tornado, a new cost estimator (Robert Walter) prepared a *Determination Memorandum* wherein he erroneously concluded that there is less disaster damage, less scope of work to repair the disaster damage, less cost to complete the scope of work, and little to no soft costs to restore the tornado's damages to the Timberton Softball Field Complex. He also improperly omitted all hazard mitigation proposals.

V. LAW AND DISCUSSION OF THE ARBITRATION ISSUES:



Applicable Law and Argument

The February 13, 2020 *Determination Memorandum* ¹⁰ is incorrect and erroneous as to the disaster damages, scope of work, associated CEF Part A costs, and associated CEF factors B-H and hazard mitigation measures for the disaster damaged Timberton Softball Field Complex for the following reasons:

⁹ See attached PW V1, exhibit 4.

¹⁰ Please see exhibit 1.

Robert Walter's Determination Memorandum is wrong

As discussed above, the City of Hattiesburg requested that FEMA review the non-construction soft cost factors in its CEF which was attached to PW 44 Version 1 which funded \$2,456,078.48.

In response to this request, Robert Walter, improperly issued a Determination Memorandum which reduced the funding in PW 44 V1 from \$2,456,078.48 to \$738,653.00.¹¹

Robert Walter reversed the unanimous factual determinations as to the direct damages developed by all of the above professionals without making a simple phone call or Email to the City of Hattiesburg, to Hattiesburg's architects and engineers, or to Hattiesburg's project managers.

Robert Walter reversed the factual determinations in PW 44 Version 1 without making a simple phone call or Email to MEMA.

Robert Walter apparently did so without discussing this with the FEMA's project officers, FEMA's project specialists, FEMA's cost estimators, FEMA's review teams, the Office of Management and Budget, or Congress, which had just approved this project.¹²

In short, in response to the City's simple request to review the non-construction CEF Factors in the PW 44 V1, three (3) years after the disaster and after a great deal of work by FEMA, the State of Mississippi, the City of Hattiesburg, and its experts, Robert Walter issued a Determination Memorandum without a discussion with anyone wherein he improperly determined that the damages from the tornado were not caused by the tornado.

He then reduced the disaster damages to a project cost of \$738,653.00, i.e., a reduction of \$1,717,425.48.¹³

As more fully set forth below, the Determination Memorandum is wrong because it is based upon Robert Walter's:

- Apparent inability to obtain FEMA's records,
- Decision not to collaborate with the City, its independent professionals, and the State of Mississippi,
- Lack of familiarity with the public bid law in Mississippi,
- Improper use of the FEMA CEF including its Instructional Guide and its Operating

11 Please see exhibit 1.

12 This statement is based upon the fact that there is no reference by Robert Walter to anything but his review of the file. The City has no record of a site visit by Robert Walter.

13 Please see exhibit 1.

Procedure,

- Failure to understand that the existing V1 of Project Worksheet 44 includes previously discussed hazard mitigation measures as required by law and FEMA guidance, and
- Failure to compare the local independent professional's detailed cost estimate on a comparable "apples to apples" basis.¹⁴

Disaster Damage from the Tornado

The Disaster Damage at Timberton Softball Complex from the Tornado

During the incident period of January 20, 2017 through January 21, 2017, the Timberton Softball Field Complex sustained significant damage from a tornado. The damage from the tornado affected four major areas:

1. The 6 softball fields;
2. The 3 building structures (Press boxes);
3. The miscellaneous park structures; and
4. The walking trail which is widely used by the community.¹⁵

1. The Six Softball Fields

The damage to the softball fields was caused by the tornado:

The Timberton Softball Field Complex has six softball fields. Four of these fields are laid out in the quadrants of a circle.

The EF3 tornado damaged all six softball fields.¹⁶ The surface of the fields (both infield and outfield) was rendered unusable due to broken glass and metal pieces both on the surface and dangerously below the surface. This contamination presents an immediate threat of harm which

14 The City's local independent professionals prepared a detailed report which included local prices to perform the scope of work identified in the report. These local prices included all of FEMA's CEF factors to do the work (Parts A-H). The new cost estimator used *RMeans* Part A costs only. Thus, there was no "apples to apples" cost comparison.

15 The Neel-Schaffer report at exhibit 3 and updated probable cost of Construction at exhibit 9 identify all of the necessary scopes of work required to complete the repairs of the tornado damage at the Timberton Softball Complex. The provisions of the Request for Arbitration discuss the major damage. These costs were updated in exhibit 9 to reflect the current construction costs which have changed since March 2018 due to Covid-19 and associated impacts on the construction industry.

16 The wind speeds of an EF3 tornado are 136-165 MPH.

prevents playing softball on these fields.¹⁷

FEMA agrees and acknowledges that the softball fields are contaminated with glass and debris which damage is a direct result of the tornado. This fact is not in dispute.

FEMA agreed in the First Appeal with the City's calculation that the surface area of the ball fields is 34,377 SY rather than the 29,274 SY which was used in the Determination Memorandum.

The City's engineers, city's park managers, and FEMA recommended removal and replacement of the turf and the infield areas due to the widespread contamination by glass and other materials.

The scope of work in the Neel-Schaffer estimate includes the removal and disposal of the top 1" of topsoil.¹⁸ The cost includes the disposal of the topsoil which cannot be reused due to the glass and metal debris contained therein. The disposal includes the hauling and the tipping fees for disposal. The survey reflects a combined grassed area for the six (6) fields of 309,400 square feet or 34,377 square yards. At a 1" depth, this equals to 955 cubic yards of topsoil.

The scope of work in the Neel-Schaffer estimate also includes careful removal and disposal of the top 2" of clay infield material.¹⁹

The local professional's cost estimate includes the fine grading and the use of new Bermuda sod. Fine grading is called for due to the fact that these are sporting fields. These softball fields need to be fine graded to avoid injury and to provide a better playing field. These are softball fields where athletes will be running while NOT focusing on the ground which they are running on. Furthermore, the fields should be level to avoid irregular field conditions which would affect the play.

The scope of work in the professional's estimate includes the placement of a new topsoil mix, laser graded to sheet water to appropriate areas.²⁰

However, in the First Appeal, FEMA **did not** follow the local engineer's recommended method of repair.²¹ FEMA appeals proposed **vacuuming** the fields, since it is cheaper.

17 It should be noted that softball infields are regularly tilled so that the surface is smooth but not firm. This tilling will cause contaminants to rise to the surface or remain dangerously just below the surface.

18 Please see Exhibit 3.

19 Please see Exhibit 3.

20 Please see Exhibit 3.

21 FEMA in its First Appeal, for the first time, without any discussion, funded what it called a "cost effective" method of repair which consisted of heavy raking and vacuuming of the turf in the outfield and scraping and reconditioning the infield areas. Then, FEMA proposed seeding the outfields.

The damage to the softball fields includes:

1. the playing fields themselves,
2. the lighting for the fields, and
3. the fences which create the backstop and surround the fields.

The tornado damage to the six softball fields includes damage to the infield and to the outfield.

The damage arose from the tornado destroying the numerous lighting structures in the fields and from the destruction and debris from the surrounding neighborhoods. The tornado deposited this wreckage and debris including glass and metal shreds onto the softball fields. This contamination created an immediate danger to any athlete attempting to use the softball fields. All six fields have been closed since the 2017 tornado and remain closed while FEMA has been processing this Project Worksheet. This arbitration seeks to obtain the necessary funding to repair the tornado damage to the six softball fields.

The estimated costs to repair the softball fields are reasonable:

The original estimated cost to repair the tornado damage to the six softball fields includes the following:²²

- Mobilization & Demobilization (\$58,500 for ballfields and \$27,500 for sitework),
- infield and outfield (\$585,100),
- the backstops and field fencing (\$171,000),
- the ballpark lighting systems for the fields (\$719,540),
- batting cages (\$9,000),
- the dug outs (\$94,000),

The City strongly disputes the method of repair which was funded by FEMA in the First Appeal. While it is unquestionably a cheaper method of repair, it is not safe! In playing softball, the athletes frequently slide and/or dive on the field. The presence of glass and debris presents an unreasonable immediate threat of harm. If FEMA's cost-effective restoration method is used, then much of the glass and debris will remain just under the surface. Indeed, FEMA's cost-effective method of repair will bury much of the glass and metal just under the surface. Certainly, no respectable engineer would suggest a repair which places the users in such an unsafe condition. As such, it presents an immediate threat to the athletes who use the softball fields. Further, this threat will remain for decades as the fields are often tilled to make them smooth. When this future field maintenance is performed, the glass and metal debris will again rise to the surface presenting dangers to the community. Please see exhibit 2.

²² For purposes of clarity, these are the original amounts requested by the City. These amounts have increased over the past years due to Covid-19, inflation, and increased costs of construction. The increased costs are reflected in Neel-Schaffer's updated Cost Estimate and referred to in each section of this Request for Arbitration.

- the scoreboards (\$63,900), and
- the public address/sound system (\$12,500).

Mobilization and Demobilization

Mobilization and demobilization are necessary for all large construction projects. Neel-Schaffer estimated the cost at \$58,500 for the ballfield and \$27,500 for the sitework. Both mobilizations and demobilizations are necessary to repair the six damaged softball fields.

FEMA improperly assumed that the work would be performed by the City without a general contractor. Thus, FEMA only estimated the cost of mobilization and demobilization for 4 large pieces of equipment.

FEMA's mobilization and demobilization of a piece of equipment is vastly different from that of mobilization and demobilization by a general contractor. The mobilization and demobilization by a general contractor includes the setup of the field office, office furnishings, office equipment, communications, water, electric power to office, fuel, sanitary facilities, storage area, power to jobsite, signage, workshop, laydown area, and the removal of these at the conclusion of the job.

The estimated cost to mobilize and demobilize has increased since the original estimate. The City requests that the CBCA award it the sum of \$127,000 for the field work mobilization and demobilization and \$39,000 for mobilization and demobilization for the sitework.²³

Outfield and Infield Playing Field Repairs

The proposed softball field repairs include:

1. removing and disposing of the contaminated surface material in both the outfield and infield;
2. the replacement and leveling of the outfield and infield; and
3. the sodding of grass in the outfield.

1. Removal and disposal of contaminated surface material on fields:

Removal of Outfield Turf and Topsoil (\$75,895):

The City's local independent Design Team estimated the cost of **removal** of outfield turf

²³ Please see exhibit 9.

and topsoil due to the glass and metal debris in the outfield as follows:

Turf Removal	\$35,110
Topsoil Removal (1 inch)	\$14,625
Temp Silt fence	\$25,200
Sandbags	\$ 360
Wattles 12"	\$ 600

The estimated cost to repair has increased since the original estimate. The City requests that the CBCA award it the following sums:

Turf Removal	\$35,110
Topsoil Removal (1 inch)	\$14,625
Temp Silt fence	\$25,200
Sandbags	\$ 864
Wattles 12"	\$ 3,000

Removal of Infield Material (\$7,350):

The City Design Team estimated removal of infield material to a 2" depth due to the glass and metal debris in the fields at a cost of \$7,350.

2. Replacement and leveling of outfield topsoil (\$99,470):

The City's local independent Design Team estimated replacement of 1 inch of topsoil, fine grading at a cost of \$70,220 for standard preparation and \$29,250 for topsoil 1" depth.

3. Grassing, sod, and turf:

Infield surface remediation (\$118,500):

The scope of work in the professional's estimate includes placement of clay infield mix with an infield conditioner topping laser graded to create a finished playing surface and sheet water to appropriate areas.²⁴ The City's Design Team estimated remediation of the infield surface for infield mix (1-3/4" depth) and infield conditioner (1/4" depth) over 6 fields as follows:

Fine Grading	\$16,800
Infield material	\$35,550
Infield Conditioner	\$64,800
Bases	\$ 1,350

²⁴ Please see exhibit 3.

FEMA agreed in PW 44 V1 and funded these repairs. The Determination Memorandum and First Appeal reversed this funding.

Outfield Surface Remediation (\$328,130):

The scope of work in the professional's estimate includes standard ground preparation, topsoil 1" depth, solid sodding, hybrid Bermuda, irrigation adjustments, and tuft establishment. The City's Design Team estimated remediation of the outfield surface over 6 fields as follows:

Standard ground preparation	\$70,220
Topsoil 1"	\$29,250
Solid sodding hybrid Bermuda	\$210,660
Irrigation adjustments	\$3,000
Turf establishment	\$15,000

The backstops and field fencing (\$154,950):

The damage to the backstops and fencing is a direct result of the tornado:

The City and FEMA agree that the damage to the backstops and field fencing is a direct result of the tornado.

The City and its Design Team also requested a hazard mitigation proposal of increasing the diameter of many of the fence posts from 2" to 3." FEMA approved this hazard mitigation measure in PW 44 V1.

The scope of work includes:

- the removal and disposal of the backstops, field fences, foul poles; and
- the replacement of the backstops, field fences, foul poles.

Removal of backstops, fences, and foul poles (\$18,650):

The scope of work in the professional's estimate includes the removal and disposal of the damaged and entwined fence fabric, support poles, and foul poles.²⁵

The City's Design Team estimated removal and disposal of backstops and fences over 6 softball fields as follows:

²⁵ Please see exhibit 3.

Fence removal	\$13,750
Backstop removal	\$4,000
Foul pole removal	\$ 600
Field name sign removal	\$ 300

Replacement of backstops, fences, and foul poles (\$136,300):

The original PW 44 V0 included \$129,0000 for 34 each 12-foot high, 30-foot wide prefabricated backstops and \$65,047.50 for 2,065 LF of 6-ft high fence.

In PW 44 V1, FEMA and the City's local professionals agreed to an estimated cost of \$150,000 for remove and replacement of the backstops, fencing, foul poles, and field signage.

The City's Design Team estimated replacement of backstops and fences over 6 softball fields as follows:

Perimeter fence	\$68,750
Safety fence topper	\$24,750
Backstop fence	\$20,000
Foul pole	\$18,000
Field name sign	\$ 1,500
Field distance sign	\$ 3,300

The estimated cost to repair has increased since the original estimate. The City requests that the CBCA award it:

Perimeter fence	\$98,750
Safety fence topper	\$24,750
Backstop fence	\$338,400
Foul pole	\$18,000
Field name sign	\$ 1,500
Field distance sign	\$ 3,300 ²⁶

The damage to the lighting system is a direct result of the tornado:

The City and FEMA agree that the damage to the lighting systems is a direct result of the tornado. The damaged lighting includes damaged lighting at the six softball fields and the parking lots for the six softball fields.

The City and its Design Team proposed, and FEMA agreed to a hazard mitigation proposal to replace the damaged light poles with concrete poles. FEMA appeals is incorrect in its statement

²⁶ Please see exhibit 9.

that the City did not submit a hazard mitigation measure for the change in materials for the light poles.

The scope of work includes:

- the removal and disposal of the lighting systems; and
- the replacement of the lighting systems with LED lighting.

Removal of field lights, parking light systems, and associated electrical equipment (\$48,000):

The City independent professionals estimated the removal and disposal for all six damaged field lighting systems and associated electrical equipment at a cost of \$48,000. The scope in the professional's estimate includes the removal of the associated electrical components throughout the softball field complex.

Replacement of damaged light poles with concrete poles, lighting assemblies, wiring, and conduit (\$746,140):

The City's independent local Design Team estimated the replacement for the damaged field lights, and associated electrical equipment with concrete poles, lighting assemblies, wiring, conduit.

The City's Design Team estimated replacement of the lighting systems over 6 softball fields and their parking areas as follows:

Concrete poles and remote mounted ballasts (Field 1-4)	\$419,700
Concrete poles and remote mounted ballasts (Field 5-6)	\$224,850
Field parking lot lighting (Field 1-4)	\$ 39,720
Field parking lot lighting (Field 5-6)	\$ 18,370
Walking Trail lighting	\$ 43,500

The estimated cost to repair has increased since the original estimate. The City requests that the CBCA award it \$1,539,230 for the replacement of the lighting plus \$152,020 for the parking lot lighting, plus \$231,000 for the walking trail lighting.

Batting Cages (\$9,000):

The batting cages were damaged by the Tornado:

The City and its Design Team submitted documentation to FEMA and made a site visit to

see the damage, and, in response, FEMA originally funded \$9,000 for the repair of the damaged batting cages.

The subsequent Determination Memorandum and First Appeal improperly stated that they were not provided photographs, drawings, or measurements to support the claimed damages for the batting cages. The First Appeal states that this damage was not mentioned in PW 44 V 0. The First Appeal fails to note that PW 44 V1 was written to address omitted damages.

The City submits that the evidence clearly supports the fact that the damage to the batting cages is a direct result of the tornado.

The estimated cost to repair is reasonable:

The estimated cost to repair the batting cages has increased since the original estimate. The City requests that the CBCA award it the sum of \$8,300 for the repair of the batting cages.

Dugouts (\$94,000):

The Dugouts were damaged by the Tornado:

FEMA has acknowledged the 10 wood framed dugouts were damaged by the tornado. Thus, there is no dispute as to this damage being directly related to the disaster.

The estimated cost to repair is reasonable:

The city and its local Design Team estimated the replacement for the ten (10) steel framed dugouts with a safety chain link fence at a cost of \$94,000. FEMA approved \$94,000 to accomplish a hazard mitigation proposal of modifying the replacement structure from structures comprised of a wooden roof and wooden walls to structures with metal posts with walls of fencing and a roof made of metal.

If the CBCA does not agree with the City's proposed hazard mitigation measures, then the estimated cost to repair the 10 dugouts "in kind" without hazard mitigation, but in compliance with FEMA's required minimum standards is \$59,000.00.

The scoreboards (\$63,900):

The City and its Design Team requested and FEMA approved funding in the amount of \$63,900.00 for six damaged scoreboards and 2,100 linear feet of electrical conductor for the scoreboards. The estimated cost included \$4,000 for each of the six scoreboards (\$24,000), \$3,500

for the installation of each of the six scoreboards (\$21,000), and conductors to the scoreboards from the panels (labor & material for 9 x 2100 LF, \$12,600 & \$6,300).

The Determination Memorandum funds only four scoreboards.

The City submits that the evidence supports the fact that the damage to the six scoreboards is a direct result of the tornado.

The estimated cost to repair the scoreboards has increased since the original estimate. The City requests that the CBCA award it:

Scoreboards	\$30,000
Installation	\$24,000
Conductors	\$ 8,400

The Two public address/sound systems (\$12,500):

The City and its Design Team requested and FEMA approved funding in the amount of \$12,500 for the two-public address /sound systems. This was one for the four fields which form a circle (1-4) and one for the other two fields (5 &6). This cost included the equipment (microphone, speakers, and sound drivers, cost \$3,000 & \$2,500) and the installation (labor, conduit, and trenching, cost \$4,000 & \$3,000).

The First Appeal provided \$2,410 for a single public address system. There is no funding for installation.

The City submits that the evidence supports the fact that the damage to the two public address systems is a direct result of the tornado.

The estimated cost to repair has increased since originally estimated. The City requests that the CBCA award it the sum of \$11,000 for equipment and \$13,000 for installation.

The Three Press Boxes

The 3 press boxes were damaged by the Tornado:

Architectural/structural damages to press boxes; main press box (\$38,500) Building 2 (\$2,600); Building 3 (\$1,500):

The City submits that the evidence supports the fact that the tornado damaged the large press box (with its concession stand and restrooms) and damaged the two smaller press boxes.

The scope of work in the professionals estimate includes (Building 1) removal of damaged metal roof and plywood roof deck, replacement of damaged 2x8 rafters (3), installation of new 5/8" cdx plywood roof deck with 15# felt, repair/replace approximately 20 lf. of overhang and soffit, installation of approximately 8 squares of metal roof panels to match existing with all caps and trim, removal and replacement of three, 8'x4' T1-11 panels and paint, 2 coats, removal and replacement of twelve, 22"x34" plexiglass windows, refasten ceiling sheeting at impact point, southeast corner, replace three, 4'x8'x1/4" plywood ceiling panels, paint, 2 coats, replace 6" bat insulation above ceiling panels replaced in item a.; (Building 2) replace one, 4'x4' plexiglass window, repair/replace roof flashing, replace one, 6'x2.5' dbl window; (Building 3) replace two, 4'x4' plexiglass windows, replace two, 3' fluorescent light fixtures, and remove and replace 100 S.F. VCT flooring.²⁷

FEMA properly approved and obligated this scope of work in PW 44 V1 due to the fact that the main press box sustained damage by the tornado including damage from a fallen tree. FEMA, MEMA, the City, and the licensed independent professionals all recognized that this damage was caused by the tornado.

In the interim period of time, while waiting for PW 44 V1 to be obligated, a fire occurred destroying the press box.

The *Determination Memorandum* improperly states that "supporting documentation has not been provided" and that his review of supporting documentation does not support the scope of work which was provided by the local expert independent licensed professional. The City does not understand how FEMA could not locate its documentation. The inability of the new cost estimator to locate the documentation does not provide justification to overwrite the work of all his predecessors who did personally view the disaster damage prior to the fire. If, in fact, supporting documentation was not provided, then there was no documentation which supports the decision to overturn the work of all his predecessors.

The estimated cost to repair is reasonable:

In PW 44 V1, the local professionals recommended, and FEMA originally funded \$38,500 for select architectural demolition and replacement of press box. This included replacement of the main roof at an estimated cost of \$35,000.

²⁷ Please see exhibit 3.

While the City is aware of the subsequent fire at one of the three press boxes, this fire occurred after the damage assessment was made by FEMA, the City, and its engineers.

Sheet glass for buildings 2 and 3:

In PW 44 V1, FEMA originally funded and the local professional's report included \$2,600 for building 2 and \$1,500 for building 3. The additional scope of work included plexiglass windows, roof flashing at building 2, one 2.5 ft double hung window at building 2, 2 each 3-foot fluorescent light fixtures at building 3 and 100 SF VCT flooring at building 3.

The Determination Memorandum states that: "Source documentation to support damage to a double-hung window and roof flashing due to the event has not been provided." The Determination Memorandum estimated 75 SF of plexiglass for buildings 1, 2, and 3, 100 SF of vinyl tile remove/replace, and 2 each fluorescent light fixtures remove/replace.

Mechanical Systems:

HVAC:

The scope of work in the professional's estimate includes removal and replacement of damaged outdoor and indoor HVAC unit and heat pump systems on elevated support structure along with all piping and ductwork. The City and its Design Team requested, and FEMA originally approved \$41,900 for the removal and replacement of two 3-ton heat pumps, including approximately \$22,000 for ductwork, testing, and balancing.

Robert Walter improperly only identified one heat pump and condensing unit plus a window unit. He funded only \$5,524.12 for replacement of a single heat pump with condenser and a window unit.

The City submits that the evidence supports the fact that the damage to the two six-ton HVAC systems is a direct result of the tornado. The City does not understand how FEMA could only identify one HVAC system. There are two damaged HVAC systems. Both HVAC systems were damaged.

Plumbing and drinking fountain:

The City submits that the evidence supports the fact that the damage to the water fountain is a direct result of the tornado. The scope of work in the City's estimate includes removal and

replacement of damaged drinking fountain along with new water and sanitary sewer connections.²⁸

The estimated cost of the drinking fountain is reasonable:

The City and its Design Team requested and FEMA originally approved funding for the disaster damaged water fountain in the amount \$6,400.

The First Appeal reversed this funding by stating that this damage was not identified in PW 44 V0. The First Appeal failed to acknowledge that PW 44 V1 noted that there was additional damage which was not captured in PW 44 V0.

The miscellaneous park structures

a. The Bleachers (\$15,596):

FEMA approved \$15,596 for the repair of the disaster damage to the bleachers. The City accepts this amount as the estimated repair cost.

b. Picnic tables (\$3,300):

The City and its Design Team requested and FEMA approved funding in the amount of \$3,300 for four picnic tables.

The First Appeal reversed this funding by stating that only one damaged picnic table was identified in PW 44 V0. The First Appeal failed to recognize that PW 44 V1 noted that damage was not fully described in PW 44 V0. FEMA validated this damage to the four picnic tables in PW 44 V1.

The City submits that the evidence supports the fact that the damage to the four picnic tables is a direct result of the tornado.

c. Flagpole (\$9,000):

The City and its Design Team requested and FEMA approved funding in the amount of \$9,000 for the repair of the flagpole and its foundation.

²⁸

Please see exhibit 3.

The First Appeal reversed this funding by stating that the flagpole should be repaired without repairing the foundation.

The City submits that the evidence supports the fact that the damage to the flagpole and the base are a direct result of the tornado.

Remove damaged flagpole base:

In PW 44 V1, FEMA originally funded, and the local professional's report included \$5,000 to remove the damaged flagpole base.

FEMA, MEMA, the City, and the local licensed independent professionals all recognized that the flagpole was damaged.

The Determination Memorandum omitted the scope to remove the flagpole foundations. The Design Team properly included in their scope of work the removal of the 3 foundations with a cost of \$5,000.

d. Fire hydrant and concrete headwall (\$8,500)

The fire hydrant, and the concrete headwall. FEMA, MEMA, the City, and the Professionals all agreed that the fire hydrant and concrete headwall were damaged by the tornado. FEMA acknowledged the disaster damage to the fire hydrant and concrete headwall, prior to the Determination Memorandum.

The scope of work in the professional's estimate includes the excavation, forming, pouring, pipe adjustment, curing, form removal, and minor earthwork to provide a completed headwall.²⁹

The City professionals and prior FEMA Project Specialists properly included in their scope of work the removal of these damaged items.

Walking Trail

Crushed stone for walking paths (\$166,000):

The walking path was damaged by the Tornado:

FEMA acknowledges the disaster damage to the crushed stone for the walking path.

²⁹ Please see exhibit 3.

The estimated cost to repair the walking path is reasonable:

The City's local independent Design Team estimated the replacement for the crushed stone for the walking path at a cost of \$166,000. The professional's estimate includes the subgrade compaction and preparation and placement and compaction of 5' wide crushed stone base.³⁰

The First Appeal allowed only \$3,021 for the cost of 106 tons of crushed stone. This did not include installation or preparation of the grade or subgrade.

a. Concrete pavement (\$23,200):

The concrete path was damaged by the tornado:

The City submits that the evidence supports the fact that the damage to the concrete pavement is a direct result of the tornado.

The First Appeal reversed this funding by stating that this damage was not shown as disaster related and FEMA appeals could not locate the damage, its description, or dimensions.

The estimated cost to repair the concrete path is reasonable:

The City and its Design Team requested, and FEMA originally approved funding in the amount of \$23,200 for the removal and replacement of 370 cubic yards of concrete pavement which was damaged by the tornado.

The estimated cost to repair has increased since the original estimate. The City requests that the CBCA award it the sum of \$24,420 for the repair of the concrete path, rather than the old estimated repair cost of \$23,200.

b. Asphalt Paving on walking Trail (\$43,000):

The asphalt paving was damaged by the tornado:

The City submits that the evidence supports the fact that the damage to the walking trail is a direct result of the tornado. The City does not understand how FEMA appeals could not locate this documentation which is clearly in the record.

The First Appeal reversed this funding by stating that the applicant did not provide photographs, drawings, or measurements to support repair quantities or eligibility.

³⁰ Please see exhibit 3.

The estimated cost to repair the asphalt paving is reasonable:

The City and its Design Team requested, and FEMA originally approved funding in the amount of \$43,000 for 270 square yards of asphalt paving and 250 yards of crushed stone for the repair of the walking trail.

The City requests that the CBCA award it the sum of \$4,860 to remove and \$34,100 to replace the asphalt.

c. Wooden Pedestrian Bridge (\$88,200):

The wooden pedestrian bridge was damaged by the tornado:

The City submits that the evidence supports the fact that the damage to the wooden pedestrian bridge is a direct result of the tornado.

The First Appeal reversed this funding by stating that the photographs and site observations indicate damage was limited to the bridge handrail. The Determination Memorandum's conclusion that the damaged wooden bridge and handrails is repairable is wrong.

The extent of the disaster damage to the wooden bridge's structural integrity is not discussed in the Determination Memorandum or First Appeal. Furthermore, after finding that the bridge is repairable, the Determination Memorandum provides no funding for the repair!

The estimated cost to repair the wooden pedestrian bridge is reasonable:

The City and its Design Team requested, and FEMA originally approved funding in the amount of \$88,200 for the restoration of the wooden pedestrian bridge.

The estimated cost to repair has increased since the original estimate. The City requests that the CBCA award it the sum of \$5,150 for the removal and \$138,600 for the replacement of the pedestrian bridge.

d. Debris removal from drainage alongside of the walking trail (\$29,000):

The drainage alongside the walking trail was damaged by the tornado:

The City submits that the evidence supports the fact that the damage to the drainage canals is a direct result of the tornado. FEMA confuses this with debris removal. The removal of this

debris is required for the walking trails to function properly.

The vegetative debris removal which is the subject of PW 44 V1 is the debris deposited in and preventing the proper functioning of the drainage canals which runs alongside and services the community walking trail. This debris was NOT included in another PW.

The City and its Design Team requested, and FEMA approved funding in the amount of \$29,000 for the removal of the debris from the drainage canals along the walking trail.

The First Appeal reversed this funding by stating that the First appeal has three photographs and two of the photographs do not show debris and it is not clear that this damage is a result of the disaster. The First Appeal allowed \$0 for this repair.

The estimated cost to repair has increased since the original estimate. The City requests that the CBCA award it the sum of \$35,000 for the repair of the drainage canals, rather than the old estimated repair cost of \$29,000.

The Determination Memorandum and First Appeal have numerous cost estimating errors in validating the independent local licensed professional's cost estimates.

The Determination Memorandum was prepared without working collaboratively with the City of Hattiesburg, its independent local licensed professionals, their project managers, or the Mississippi Emergency Management Agency ("MEMA"). The result of this failure to work together is significant errors which are delaying the project.

These errors are as follows:

1. In the Determination Memorandum, FEMA improperly compared his *RSMeans* **Part A** costs to the amounts in the local Professional's report. This is not an "apples to apples" comparison due to the fact that the local expert's costs are actual project costs which include the FEMA CEF Part B-H factors.³¹

³¹ This error is apparent in The Determination Memorandum's summary which listed columns for V0, Neel-Schaffer, V1, and his V2 recommendations. At the top of the Determination Memorandum's column of recommendations, in blue, is listed "soft costs" of almost \$300,000 for which there was no listing in either the Neel-Schaffer column or the V1 column. This error made all of the Determination Memorandum's cost comparisons useless.

2. The Determination Memorandum assumed, as is stated in the Memorandum, that the Applicant is not going to use a General Contractor and will use only subcontractors.³²
3. The new cost estimator apparently reviewed **a file** and determined that the records in that file which he reviewed were often “not available” or “not sufficient to support the disaster damage” described.³³
4. The new cost estimator failed to recognize that softball infields and outfields are not normal turf. The soil had dangerous contaminants. The softball infields require special construction for drainage and moisture management purposes, and special material for the infield including sand, silt, clay, conditioner, and top dressing. The softball outfield requires special leveling and irrigation.
5. The FEMA Public Assistance program requires that hazard mitigation measures be incorporated into the repair and replacement of damaged facilities. The City discussed three hazard mitigation proposals with FEMA. They are the use of concrete light poles to resist future wind damage to the lighting system, the use of larger outfield fence posts to reduce the risk of future wind damage to the fence, and the use of chain link fence dugouts to reduce the risk of future damage to the dugouts. These 3 hazard mitigation proposals were discussed in detail with FEMA and are incorporated in the

³² Additionally, the new cost estimator should have known that only months earlier the CEF Specialist at the Consolidated Resource Center in Denton Texas had already validated the Neel-Schaffer report. This language shows a misunderstanding as to how local governments perform construction and a misunderstanding of the procurement process under the Mississippi public bid law, the local government's procurement ordinances, and under FEMA's procurement regulations.

Mississippi state law requires that a contractor have a Certificate of Responsibility to act as a Prime Contractor.³² Thus, Mississippi state law, like many other state laws, prohibits a local government from acting as a prime contractor.

The City of Hattiesburg is not and cannot be licensed as a prime contractor. As such, the City cannot subcontract out work. Additionally, an attempt to break this work up into numerous contracts would constitute a violation of FEMA's own procurement regulations.

³³ The damage description in PW 44 V1 was developed by FEMA, the FEMA Million-Dollar Que, OMB, the State of Mississippi's Emergency Management Agency, the City of Hattiesburg, and the independent licensed professionals and their mechanical consultants. When the new cost estimator noticed that the records which he reviewed were not complete, rather than defer to the vast expertise, the detailed descriptions, and personal inspections made by his predecessors after the tornado, the new cost estimator omitted the disaster damages described in detail by his predecessors.

cost estimate prepared by the City's independent local professionals.³⁴


VI. REQUEST FOR ORAL ARGUMENT/HEARING:

The City of Hattiesburg respectfully requests that a hearing in connection with this arbitration proceeding be granted in accordance with the arbitration rules set forth in 44 CFR 206.209 (H) as a zoom hearing, or in the City of Hattiesburg, or in the City of New Orleans.

VII. RELIEF REQUESTED:

The City of Hattiesburg, Mississippi RESPECTFULLY REQUESTS that this Honorable Panel determine that FEMA should reinstate the original obligated funding, as adjusted current costs and for non-construction CEF factors, for the City of Hattiesburg that it can restore the 2017 tornado damage to the Timberton Soft Ball Fields.

ALTERNATIVELY, AND ADDITIONALLY, the City of Hattiesburg, Mississippi RESPECTFULLY REQUESTS all the relief to which it is entitled in law and equity.


MICHAEL G. GAFFNEY (La Bar #5868)
CHRISTOPHER M. GAFFNEY (La Bar # 34290)
3015 19th Street
Metairie, LA 70002
Phone: 504-299-7169
Fax: 504-335-1915

CHARLES V. CUSIMANO (La Bar # 28858)
3015 19th Street
Metairie, LA 70002
ATTORNEYS FOR THE CITY OF
HATTIESBURG,

Submitted this 14th day of October 2021.

³⁴ Two of the Hazard Mitigation Measures are described in the language of the PW. In addition, in the Special Considerations section item 5, FEMA acknowledges that the City is proposing Hazard Mitigation Measures.

**CITY OF HATTIESBURG
TIMBERTON SOFTBALL FIELD COMPLEX
REQUEST FOR ARBITRATION
EXHIBIT LIST**

1. February 13, 2020 Determination Memorandum
2. First Appeal decision dated August 16, 2021
3. Timberton Softball Complex Restoration Programming Stage Report prepared by Neel-Schaffer
4. FEMA PW 44 Version 1
5. FEMA PW 44 Version 0
6. Public Information Releases
7. Photographs before and after tornado
8. Event publications
9. Recent Updated Probable Cost of Construction

M:\client doc\City of Hattiesburg\Timberton Soft Ball Field #7691\Arbitration\Arbitration demand Hattiesburg Timberton.docx



FEMA

Region IV – Recovery

February 13, 2020

Mr. Clayton French
State Public Assistance Officer
Mississippi Emergency Management Agency
1 MEMA Drive,
Pearl, MS 39208

Mr. Kermas Eaton
City Clerk
City of Hattiesburg
Post Office Box 1898
Hattiesburg, MS 39403-1898

Re: FEMA Public Assistance Scope of Work Amendment Eligibility Determination – City of Hattiesburg, PA ID 035-31020-00, FEMA-4295-DR-MS, Project Worksheet (PW) 00044.

Dear Mr. French and Mr. Eaton:

The Department of Homeland Security's Federal Emergency Management Agency (FEMA) has determined that some of the work in the proposed scope of work change is not eligible for Public Assistance funding. Please see the enclosed FEMA Public Assistance Determination Memorandum for detailed information.

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and applicable regulations, the City of Hattiesburg (Applicant) is entitled to appeal this eligibility determination. The Applicant may appeal this determination to the FEMA Region IV Regional Administrator pursuant to 44 CFR § 206.206. The appeal must: (1) contain documented justification supporting the Applicant's position, (2) specify the monetary figure in dispute, and (3) cite the provisions in federal law, regulation, or policy with which the Applicant believes the initial action was inconsistent. The Applicant should also include a current email address to receive electronic correspondence. An appeal must be submitted to the Mississippi Emergency Management Agency (Recipient) by the Applicant within 60 days of the Applicant's receipt of this letter. The Pass-Through Entity transmittal of that appeal, with a written recommendation, is required to be submitted to Region IV within 60 days of receiving the Applicant's letter.

Lastly, as FEMA will not accept additional information after issuance of the Regional Administrator's first appeal decision, the Applicant must submit all relevant supporting information with its first appeal. For reference, a current index of documents relevant to this determination is enclosed.

Mr. French and Mr. Eaton
February 12, 2020
Page 2

If you have any questions, please contact Mr. Clayton French at 601-933-6886.

Sincerely,

SAIDAT O
THOMAS

Digitally signed by SAIDAT O
THOMAS
Date: 2020.02.13 14:46:10 -05'00'

Saidat Thomas
Public Assistance Branch Chief
Federal Emergency Management Agency
FEMA Region IV

Enclosures:
FEMA PA Eligibility Determination Memorandum
Index of Documents

ELIGIBILITY DETERMINATION MEMORANDUM

Hattiesburg, City of

FEMA-MS-DR-4295

PA ID 035-31020-00

Applicant Type		<input type="checkbox"/> State Agency <input checked="" type="checkbox"/> Local Government <input type="checkbox"/> Tribe <input type="checkbox"/> Private Nonprofit	
Grants Manager: Not Applicable		EMMIE: Only fill out this section if the project worksheet is in EMMIE.	
Project No.	EMMIE Project Worksheet No.	00044	
Version No.	Version No.	1	
Damage Inventory No.	EMMIE Project Cost	\$2,456,078.48	
	Total Amount Obligated (Fed Share)	\$1,842,058.86	
Project Title		Timberton Park	
Project Size	<input checked="" type="checkbox"/> Large <input type="checkbox"/> Small (Potentially subject to Net Small Project Overrun appeal)	Category of Work	G
Issue(s):			
Amount at Issue	\$2,456,078.48	Eligibility Issue Type(s)	<input type="checkbox"/> Applicant Eligibility <input type="checkbox"/> Facility Eligibility <input checked="" type="checkbox"/> Work Eligibility <input checked="" type="checkbox"/> Cost Eligibility
Amount Denied	\$1,717,425.48		
Issue Keyword(s)		General Work Eligibility, Permanent Work and Pre-disaster Design	

Project Description:

During the incident period of January 20, 2017 through January 21, 2017, a six-field softball park was impacted by tornado-force wind and rain. On May 02, 2017, a cost estimating format (CEF) was submitted in the amount of \$565,572.00 for the repair of the damaged facilities at Timberton Park. The Applicant procured an Engineer to analyze the scope of work. The Engineer provided a total cost renovation estimate of \$2,116,740.00. On June 20, 2018, the Applicant submitted a scope change request in the amount of \$2,455,418.00, an increase of \$1,889,846.00 from the initial CEF. On August 20, 2019, FEMA obligated the scope change requested. On September 26, 2019, FEMA re-inspected the damages associated with the event. FEMA cost estimator then reviewed all estimates, reports, and pictures and, utilizing RSM means. On November 7, 2019, the FEMA cost estimator provided a revised estimate of \$738,653.00, a decrease of \$1,716,765.00 from the proposed \$2,455,418.00 scope of work addition.

Issue(s):

Has the Applicant demonstrated that all of the requested work is necessary as a direct result of the disaster? Is the requested scope of work based on repairs to the pre-disaster design for each facility? Is there a duplication of funding for some of the debris removal costs? Are cost estimates proposed reasonable for the type of work being performed?

Applicable Statutes, Regulations, and Policies in Effect as of the Declaration of the Emergency or Disaster:

- The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Pub. L. No. 93-288.
Section 312, 42 U.S.C. 5155, *Duplication of Benefits*
Section 406, 42 U.S.C. 5172, *Repair, Restoration, and Replacement of Damaged Facilities*
Section 424, 42 U.S.C. 5189b, *Date of Eligibility; Expenses Incurred Before Date of Disaster*
- Title 44 of the Code of Federal Regulations (C.F.R.):
44 C.F.R. § 206.32(f) (2016), *Definitions, Incident period*
44 C.F.R. § 206.223(a) (2016), *General Work Eligibility*
44 C.F.R. § 206.226 (2016), *Restoration of Damaged Facilities*
44 C.F.R. § 206.250 (2016), *Public Assistance Insurance Requirements, General*
- Other Federal Regulations:
2 C.F.R. § 200.403 (2017), *Factors affecting allowability of costs*
2 C.F.R. § 200.404 (2017), *Reasonable costs*
- FEMA Policy:
FP 104-009-2, *Public Assistance Program and Policy Guide*, at 19, 21-22, 81-82, 86-90, 119-120, and 156 (Jan. 1, 2016) [hereinafter *PAPPG*].

Analysis:

Section 406 of the Stafford Act authorizes FEMA to provide financial assistance to local governments for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster. The estimated eligible cost of repairing, restoring, reconstructing, or replacing a public facility is on the basis of the design of such facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specifications, and standards applicable at the time of the disaster.¹

In addition, to be eligible for financial assistance an item of work must be required as the result of the emergency or major disaster event.² No federal assistance under the Public Assistance grant shall be approved unless the damage or hardship to be alleviated resulted from the disaster-causing incident that took place during the incident period or was in anticipation of that

¹ Stafford Act § 406(e). See also 44 C.F.R. § 206.226.

² 44 C.F.R. § 206.223 (a).

incident.³ As such, the applicant must demonstrate that the work is required to address damage caused by the declared incident.⁴ FEMA does not provide PA funding for repair of damage caused by: deterioration, deferred maintenance, the applicant's failure to take measures to protect a facility from further damage, and negligence.⁵

Once the eligible work to repair the facility back to pre-disaster design is determined, then FEMA will prepare an estimate of eligible costs. In addition to other administrative requirements, allowable costs are those which are necessary and reasonable to accomplish the work properly and efficiently.⁶ A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.⁷

For the proposed changes to PW 44, FEMA's cost estimator reviewed the report provided by the Applicant's engineer and determined that some of the work and/or costs were not eligible because the work was not necessary as a direct result of the disaster, exceeded what was necessary to bring the facility back to pre-disaster design in conformity with applicable codes, was previously funded on other PWs for the disaster, or the proposed costs for the eligible work were not reasonable.

Below is a more detailed comparison of the SOW and eligible costs identified in Version 0 (FEMA CEF), the SOW and costs proposed by the Applicant's engineer, and the eligible SOW work and costs as determined by FEMA's cost estimator for this determination. In preparing the updated CEF for this determination, the FEMA Cost Estimator used RSMeans 2019 Q4 data, Open Shop costs, location Laurel (394), including subcontractor overhead and profit in each unit line item

- The FEMA CEF included \$0 for removal of damaged asphalt walking path, concrete batting cage foundation, and flagpole base. The Engineers report provided an estimate of \$5,000 to complete the scope. During the re-inspection, foundations were not noted as damaged by the tornado and provided pictures did not support the claimed increased scope of work. Therefore, removal of damaged foundations is reduced to \$0.
- The FEMA CEF included \$1,798.99 for removal of the felled flagpole. The Engineers report included \$8,500.00 for removal of a fire hydrant, flag pole, wooden pedestrian bridges and guardrails, and a concrete headwall. Upon re-inspection, it was noted that the fire hydrant was hit by a fallen light pole, a wooden pedestrian bridge was damaged by a fallen tree, and a concrete headwall was damaged by fast moving floodwaters. Although the fire hydrant was hit by a felled light pole, there is no visible damage to the fire hydrant as shown in provided pictures. The railing was noted as damaged on the pedestrian bridge, the pedestrian bridge is in repairable

³ Stafford Act § 424; 44 C.F.R. § 206.32.

⁴ PAPP, at 19.

⁵ *Id.*

⁶ 2 C.F.R. § 200.403; PAPP, at 21.

⁷ 2 C.F.R. § 200.404.

condition. The concrete headwall was not captured in the initial estimate. Therefore, included costs for removal of the flagpole and 6.67 SY of concrete wall for the headwall is reduced from \$8,500.00 to \$1,883.77. Final disposal costs are captured in the roll-off container line item under utility pole demolition.

- The FEMA CEF included \$6,870.39 for architectural demolition and replacement of the main Pressbox. The Engineers report included \$38,500.00 for architectural demolition and replacement. The Engineers estimate includes the following additional scope of work: remove all metal roof and damaged sections of plywood deck, install approximately 1800 SF of metal roof panels (and damaged sections of plywood) to match other existing structures with caps and trim, replace batt insulation above ceiling panels, remove and replace three 8 ft x 4 ft T1-11 panels, remove and replace 12 ea 22 inch x 34 inch plexiglass windows, and refasten ceiling sheeting at the impact point (SE corner). During the re-inspection, it was noted that the facility had been severely damaged by fire, and that the fire(s) were not related to the tornado event. Supporting documentation to support full roof replacement has not been provided. In addition, post-disaster Joint Preliminary Damage Assessment photos show plexiglass windows intact. Source documentation to support 12 each plexiglass windows requiring replacement due to the event has not been provided. FEMA estimator added costs for an additional 225 SF of metal roof panels (1800/8 sections, 1 section potentially damaged as shown in picture), including insulation and three 8 ft x 4 ft T1-11 panels. Therefore, the total estimated cost for disaster-related architectural damages is reduced from \$38,500.00 to \$8,303.08.
- FEMA CEF included \$6,544.45 for mechanical, electrical, plumbing demolition and replacement at the main Pressbox. The Engineers report included \$49,900.00 for mechanical, electrical, plumbing demolition and replacement. The Engineers estimate includes the following additional scope of work: one drinking fountain, 10 air outlets, 10 dampers, and one additional 3-ton split A/C unit (initial CEF included 1 each 4-ton split air conditioning unit). During the FEMA reinspection, 1 each window A/C unit was identified as damaged by the tornado. The pictures provided did not indicate event-related damage to the second A/C window unit. The drinking fountain was also missing. The drinking fountain refrigerant lines were identified as damaged in the original CEF. Source documentation to support drinking fountain unit damage due to the event has not been provided. Utilizing RS Means for the A/C window unit and the original CEF for the refrigerant lines and thermostat, the total estimated cost to repair disaster-related mechanical, electrical, and plumbing damages is \$5,524.12. Therefore, the total estimated cost for disaster-related mechanical, electrical, and plumbing damages is reduced from \$49,900.00 to \$5,524.12.
- FEMA CEF included \$847.50 for 75 SF of sheet glass for buildings 2 and 3. Neel Schaffer provided an estimate of \$2,600 for building 2 and \$1,500 for building 3. The additional scope of work included plexiglass windows, roof flashing at building 2, one 2.5 ft double-hung window at building 2, 2 each 3-foot fluorescent light fixtures at building 3 and 100 SF VCT flooring at building 3. Source documentation to support damage to a double-hung window and roof flashing due to the event has

not been provided. FEMA cost estimator utilized RSMeans to include 75 SF of plexiglass for buildings 1, 2, and 3, 100 SF of vinyl tile remove / replace, and 2 each fluorescent light fixtures remove / replace. Therefore, estimated building 2 and 3 repair cost has been reduced from \$4,100 to \$2,639.27.

- The FEMA CEF included \$0 for vegetative debris removal within the park. The Engineer provided an estimate of \$29,000 to remove vegetative debris (felled trees, stumps, hanging limbs) within the park. Upon a follow up site inspection, it was discovered that all vegetative debris was removed during City of Hattiesburg debris removal operations and funded under Project Worksheet 00036. Therefore, vegetative debris removal is reduced to \$0.
- The FEMA CEF did not include costs for mobilization. Neel Schaffer included a total of \$86,000 for mobilization including \$58,500 for lighting demolition mobilization, and \$27,500 for sitework mobilization. FEMA Cost Estimator used RSMeans 2019 Q4 to estimate for mobilization and demobilization of four large pieces of equipment such as a backhoe/loader, loader, dozer, grader and two smaller pieces of equipment such as a trackhoe and tractor with blade. The Engineers report did not show estimated costs within a reasonable range of RS Means unit costs. Therefore, estimated mobilization/de-mobilization cost is reduced from \$86,000.00 to \$6,339.52.
- The FEMA CEF included \$0 for the removal of field topsoil. The Engineer estimated \$84,000 for the removal of the topsoil. During the FEMA re-inspection, glass from fallen light poles and tiny metal debris were found embedded in the fields. FEMA completed an estimating take-off for 4,879 SY of sod removal per field, a total of 29,274 SY (6 fields). Utilizing RS Means, the unit cost to remove sod is \$0.39 per square yard. ($29,274 \text{ SY} \times \$0.39 = \$11,416.86$). The Engineers report did not show estimated costs within a reasonable range of RS Means unit costs. Therefore, estimated topsoil removal is reduced from \$84,000 to \$11,416.86.
- The FEMA CEF did not include costs for field replacement. The Engineer estimated \$361,000.00 for the replacement of 1 inch of topsoil, fine grading, new hybrid Bermuda sod, and adjustment of irrigation heads. During the FEMA reinspection, glass and metal debris were found embedded in the fields. Utilizing RSMeans, FEMA estimator added costs for replacing grass for 29,274 SY (6 fields). The Engineers report did not show estimated costs within a reasonable range of RSMeans unit costs. Therefore, estimated field replacement cost is reduced from \$361,000.00 to \$96,022.83.
- The FEMA CEF included \$0 for the establishment of grassing, sod, and turf. The Engineer provided a vague estimated cost of \$15,000 to establish grass, sod, and turf. Utilizing RSMeans, the Cost Estimator provided the unit cost of \$194.92 per acre to fertilize fields. The Engineers report did not show estimated costs within a reasonable range of RSMeans unit costs. Therefore, estimated costs to establish fields is reduced from \$15,000.00 to \$1,179.27.

- The FEMA CEF included \$0 for the removal of infield material. Neel Schaffer estimated \$8,100 for removal of the material. During the FEMA re-inspection, glass from fallen light poles and tiny metal debris were found embedded in the fields. FEMA completed an estimating take-off for 1,650 SY of infield material removal per field, a total of 8,088 SY (6 fields). Utilizing RS Means, the Cost Estimator provided unit cost to remove infield topsoil at \$0.39 per square yard. (8,088 SY x \$0.39 = \$3,435.12) The Engineers report did not show estimated costs within a reasonable range of RSMeans unit costs. Therefore, estimated costs to remove infield mix material is reduced from \$8,100 to \$3,154.32.
- The FEMA CEF did not include costs for infield surface remediation. The Engineer estimated of \$132,000.00 for the replacement of infield mix (1-3/4" depth) and infield conditioner (1/4" depth) over 6 fields. During the FEMA reinspection, glass and metal debris were found embedded in the infields. FEMA estimator added costs for replacing infield material for 8,088 SY (6 fields). The Engineers report did not show estimated costs within a reasonable range of RSMeans unit costs. Therefore, estimated costs to replace infield material is reduced from \$132,000.00 to \$22,741.63.
- The FEMA CEF included \$0 for the removal of fencing, backstops, and foul poles. The Engineers report included \$21,000 for removal of fencing, backstops, and foul poles. During the FEMA re-inspection, it was noted that 4 each backstops were damaged measuring 56 LF each. Backstops were composed of 2 each 6-foot tall fence panels and 12 ft tall mesh above. Total backstop inspected included 448 LF of 6-foot chainlink fence and 224 LF of 12 ft tall mesh. FEMA Inspector noted an additional 1,100 LF of 5-foot tall perimeter fence damaged. Utilizing RS Means, the total estimated cost to remove 1,100 LF of 5-foot-tall chainlink fence, 224 LF of 12-foot-tall chainlink backstop, 224 LF of 12-foot-tall mesh, and 179 each fence posts is \$6,427.98. The Engineers report did not show estimated costs within a reasonable range of RS Means unit costs. Therefore, estimated costs to remove fencing and backstops is reduced from \$21,000 to \$6,427.98.
- The FEMA CEF included \$129,200.00 for 34 each 12-foot-high, 30-foot-wide prefabricated backstops, \$65,047.50 for 2065 LF of 6 ft high fence and \$18,300 for bleachers. The Engineer estimated \$150,000 for backstops, fencing, foul poles, and field signage and \$25,000 for bleachers, batting cage repair, dumpster enclosure repair, picnic table, trash receptacle, tree identification signs, and entrance sign. During the FEMA re-inspection, damage descriptions were clarified. The total backstops damaged include 4 each measuring 56 LF each, with 2 chain-link of fence 6 ft tall each and a 12 ft tall mesh attached above for a total 448 LF (at 6 FT) of fence and 224 LF (at 12 FT) of mesh. Inspector identified approximately 1,100 LF of perimeter field fence as damaged. Yellow foul pole structures were not visibly damaged in site inspection pictures. FEMA estimator revised the backstop estimate based on clarified damage inspection and added costs for signage, dumpster enclosure repair, picnic table, trash receptacle, and tree identification signs. The Engineers report did not show estimated costs within a reasonable range of RS Means unit costs.

Therefore, estimated costs to repair backstops, replace field signage, repair dumpster enclosure, replace picnic table, replace trash receptacle, and replace tree identification signs is reduced from \$175,000.00 to \$79,023.65.

- The FEMA CEF included \$3,221.00 for the removal of damaged field lights. The Engineers report included \$48,000 for the removal of field lighting, scoreboards, and associated electrical components. During the FEMA re-inspection, it was noted that 5 each 70 FT and 15 each 65 FT wood light poles were broken or had felled. In addition, 26 each field light assemblies were noted as damaged including the loss of 125 each ballast and lamps and 4 each 12 FT x 6 FT electronic scoreboards. Utilizing RS Means, the total estimated cost for the demolition and removal of damaged wood light poles, lighting assemblies, and scoreboards is \$9,828.96. The Engineers report did not show estimated costs within a reasonable range of RS Means unit costs. Therefore, estimated costs to remove damaged wood light poles, lighting assemblies, and scoreboards is reduced from \$48,000 to \$9,828.96.
- The FEMA CEF included \$174,747.00 for damaged field lighting and scoreboards including 28 wood poles, crossarms, lights, and 4 scoreboards. The Engineer provided an estimate of \$644,550.00 for all new concrete poles, lighting assemblies, wiring, conduit, and scoreboards. Cost was provided as one line item. During FEMA reinspection, it was noted that 5 each 70 ft and 15 each 65 ft wood light poles had felled or were broken, 26 each lighting assemblies and 4 scoreboards were damaged. FEMA Estimator revised the CEF scope to reflect the scope captured on the re-inspection. Utilizing RS Means, the total estimated cost for the replacement of the felled or broken wood light poles, lighting assemblies, and scoreboards is \$174,322.00. The Engineers report did not show estimated costs within a reasonable range of RS Means unit costs and replacement estimates exceed pre-disaster conditions. Therefore, estimated replacement costs of damaged wood light poles, lighting assemblies, and scoreboards is reduced from \$644,550.00 to \$174,322.00.
 - o Please note, the Applicant could potentially better damaged wood poles to concrete poles under 406 Hazard Mitigation. A cost analysis could be completed if Applicant were to submit a local cost estimate of concrete poles with costs broken out by pole size and quantity.
- The FEMA CEF included \$19,700.00 for 10 each wood-framed dugouts. The Engineer estimated \$94,000.00 for 10 chain-link dugouts, or \$86,000 for 10 wood-framed dugouts. During the FEMA re-inspection, it was noted that 10 wood-framed (20 ft L X 10 ft W) dugouts were destroyed, each had a safety chain-link fence (24 ft L X 10 ft H) on the field-facing side. The Cost Estimator added 240 LF of chain-link fence to the dugout estimate. The Engineers report did not show estimated costs within a reasonable range of RS Means unit costs. Therefore, the estimated replacement cost of 10 each wood-framed dugouts is reduced from \$94,000.00 to \$27,260.00.
- The FEMA CEF included \$3,021 for the replacement of crushed stone lost from walking paths. The Engineer estimated \$166,000.00 in one line item for the repair of

damaged walking paths including crushed stone base, asphalt paving, timber pedestrian bridge and guardrails, and path lighting. During the re-inspection, it was noted that 3 each 15 ft wooden light poles were felled in the gravel walking path. The Engineers report did not show estimated costs within a reasonable range of RS Means unit costs and repair exceeded pre-disaster conditions. Therefore, the estimated repair cost of the gravel path (\$3,021), replacement of 3 each light poles (\$1,880.16), and repair of the pedestrian bridge (\$233.88) is reduced from \$166,000.00 to \$5,135.04. Additional removal and demolition costs are included under the Result of a Declared Incident section.

- The FEMA CEF did not include costs for a concrete headwall. The Engineer estimated \$20,000.00 to repair a concrete headwall. During the FEMA reinspection, it was noted that a concrete headwall was damaged by fast moving flood waters associated with the event. The headwall consists of non-reinforced CMU block and concrete. The total length is approximately 20 feet. The Engineers report did not show estimated costs within a reasonable range of RS Means unit costs and repair exceeded pre-disaster conditions. Therefore, the estimated repair cost of the CMU block and concrete headwall is reduced from \$20,000.00 to \$2,425.39. Additional removal and demolition costs are included under the Result of a Declared Incident section.
- The FEMA CEF included \$2,950.00 for the replacement of a flagpole. Neel Schaffer estimated \$39,000.00 for the flagpole, fire hydrant replacement, headwall with rebar (potential duplication), flagpole concrete base, and concrete pavement. The Engineers report did not show estimated costs within a reasonable range of RS Means unit costs, headwall repair exceeded pre-disaster conditions, and documentation provided partially did not support damage as a result of the incident. Headwall replacement is included in above paragraph. Pictures and documentation provided did not identify storm-related damage to the fire hydrant, flagpole concrete base, or other concrete pavement. Therefore, the estimated replacement cost of the flagpole is reduced from \$39,000.00 to \$2,950.00. Additional removal and demolition costs are included under the Result of a Declared Incident section.

The updated CEF comparing the scope of work and cost estimates as described above is attached. The current PW will be amended accordingly to reflect the eligible scope of work to repair only those items that were damaged by the declared disaster back to their pre-disaster design and the estimate of eligible, reasonable costs for the updated eligible scope of work.

Eligibility Determination: ☒ Partially Approved ☐ Denied

As indicated in the above review of all submitted increased scope of work items, the total final eligible cost estimate for all items, including all contingencies, is \$738,653. The estimated cost includes the repair of damaged facilities related to the event. **Eligible costs do not include any potential mitigation, though the Applicant could submit a proposal for consideration.**

Final eligible project cost also pending insurance review and determination.

Preparation and Review:

Preparer: Robert Walter, CEF Specialist

Signature: ROBERT G WALTER Digitally signed by ROBERT G WALTER
Date: 2020.02.13 14:15:45 -05'00'

Date: _____

Approval:

PA Management: Saidat Thomas, PA Branch Chief

Signature: SAIDAT O THOMAS Digitally signed by SAIDAT O THOMAS
Date: 2020.02.13 14:45:27 -05'00'

Date: _____

Document Index:

Document Description	File Name
PDA Documentation	DM Docs 1 – PDA pictures and estimates
Initial FEMA CEF	DM Docs 2 - Initial V0 CEF – Timberton Park, Timberton Park Pictures - EMMIE
Engineers Report – Neel Schaffer – March 2018 (including detailed pictures)	DM Docs 3 - Timberton Park – Engineer Report Color
Two fires at Building 1 – Post Event	DM Docs 4 – Fires post event
Scope amendment/obligation request	DM Docs 5 – Change request 10-10-18
Site Re-inspection – 9-26-19	DM Docs 5 – Site Re-inspection 9-26-19
Final FEMA CEF	DM Docs 6 – Final Review Package – 4295 PW 44 – Timberton Park CEF

Attachment 1 – PDA Documentation









31.29939

- 89.30359

Timberlon Softball complex

(3) Loss William Perry Pkwy

File 10/5/56

31.30006

- 89.29625

Proposal

United Fence Co.

255 McLeod St.
Hattiesburg, MS 39401

•Wholesale/Retail Fence•
Mississippi Owned & Operated

Phone
(601) 582-0406
(601) 582-0404

PROPOSAL SUBMITTED TO	PHONE	DATE
City of Hattiesburg	Ann Jones 601-297-8903	01/26/17
STREET	JOB NAME	
	Storm Repairs	
CITY, STATE ZIP	JOB LOCATION	
	Timberton Ball Park	
ARCHITECT	DATE OF PLANS	JOB PHONE

We hereby submit specifications and estimates for:

Replace 24' High Backstops on Fields 1, 2, 3, & 4
Re-Set / Re-Level Backstop on Field 6

Replace Dugout Fence (6' high) and Dugout Screen Fence (8' high) on Fields 1, 2, 3, & 4

Replace Chain Link Fabric, Top Rails & Post As Required on Foul Line Fencing & Out Field Fencing (5' high) As Required on Fields 1, 2, 3, 4, 5, & 6

Re-Set / Re-Level Balance of Fence As Required, All Fields

Replace Damaged Gates & Gate Post As Required, All Fields

Total Including All Materials, Equipment & Labor

\$74,984.00

Thanks for Your Consideration.

We Propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:

dollars (**\$74,984.00**)

Payment to be made as follows:

per contract

All materials is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance: _____

Authorized Signature **Kevin L. Fant**

Note: This proposal may be withdrawn by us if not accepted within **ten (10)** days.

Signature _____

Signature _____



doleac electric co., inc.

January 26, 2017

City of Hattiesburg
Hattiesburg, Ms. 39401

Attn: Ann Jones
Re: Timberton Softball Complex

Ann,

Doleac Electric Co. proposes to furnish all labor, material and equipment necessary to install new poles, lights, underground wiring and layout of the ball fields that were hit by the tornado. This will be a complete electrical job using steel direct burial poles.

BUDGET PRICE PER FIELD: \$67,000.00 X 6 F: 605

X

\$1402,000

JERRY JOYCE

DOLEAC ELECTRIC CO., INC.

1120 finio drive * p. o. box 1936 * hattiesburg, ms 39403 * (601) 544-2052 * fax (601) 582-4121
12503 dedeaux road * gulfport, ms 39503 * (228) 831-9777 * fax (228) 831-4003

Preliminary Tornado Damage Assessment:

- **Mass Transit Facility**
- **Central Fuel Facility**
- **Timberton Recreational Facility**

City of Hattiesburg
Hattiesburg, Mississippi

January 25 , 2017

Neel-Schaffer, Inc.

1022 Highland Colony Parkway, Ste. 202
Ridgeland, MS 39157

NSI Project No. _____