

**BOARD OF SUPERVISORS**

**MADISON COUNTY, MISSISSIPPI**

Department of Engineering/Road Management  
Dan Gaillet, P.E., County Engineer/ Road Manager

3137 South Liberty Street, Canton, MS 39046  
Office (601) 855-5670 FAX (601) 859-5857

MEMORANDUM

November 17, 2016

To: Sheila Jones, Supervisor, District I  
Trey Baxter, Supervisor, District II  
Gerald Steen, Supervisor, District III  
David Bishop, Supervisor, District IV  
Paul Griffin, Supervisor, District V

From: Dan Gaillet, P.E. *de*  
County Engineer and Road Manager

Re: H1 Services, LLC  
Professional Services Agreement

With our continuing efforts to complete projects within the County, outside engineering expertise is sometimes required. As a result, the Engineering Department recommends that H1 Services, LLC be put under a General Engineering Services contract.

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SHEILA JONES  
District One

TREY BAXTER  
District Two

GERALD STEEN  
District Three

DAVID BISHOP  
District Four

PAUL GRIFFIN  
District Five

**GENERAL SERVICES AGREEMENT FOR PROFESSIONAL SERVICES  
BY AND BETWEEN  
THE MADISON COUNTY BOARD OF SUPERVISORS  
AND  
H1 SERVICES, LLC**

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This **AGREEMENT** made this \_\_\_\_\_ day of November, **2016**, by and between **MADISON COUNTY BOARD OF SUPERVISORS**, 146 W Center Street, Canton, MS, 39046, after this called "**OWNER**", and **H1 SERVICES, LLC**, having its place of business at 110 Bulldog Ridge, Madison, MS, 39110, after this called the "**ENGINEER**".

**I. DESCRIPTION OF SERVICES**

**OWNER** intends to engage the **ENGINEER** to provide professional engineering or other requested professional services. Services will be provided by **ENGINEER** upon receipt of executed individual task orders from the **OWNER** which will contain specific scope of project, project requirements, and schedules for the work. Under this agreement, work assignments can be issued by the Madison County Engineer, Madison County Road Manager, or the Madison County Board of Supervisors. **ENGINEER** will provide these services based on a lump sum or hourly basis, as stipulated by each respective Task Order. **ENGINEER** will submit monthly statements for services rendered.

It is anticipated that the engineering services performed by individual task orders may consist of the following general types of work:

1. General Consultation
2. Planning, Feasibility Analyses, and Evaluations
3. Design Phase Engineering & Survey Services Design
4. Construction Phase Engineering & Survey Services
5. Program Management
6. and Related Services

November 11, 2016

**II. ADDITIONAL SERVICES**

**ENGINEER** will provide services in accordance with the Exhibit A, "General Terms and Conditions" attached to and made a part of this **AGREEMENT**. The **OWNER** will pay **ENGINEER** for additional services not specified on the same basis. Performance of Additional Services will require prior written authorization from **OWNER**. **ENGINEER** will submit monthly statements for services rendered.

**III. PAYMENT FOR SERVICES**

**OWNER** will pay **ENGINEER** on an hourly basis in accordance with Exhibit B, "2016 Rate Schedule for Professional Services", plus Reimbursable Expenses or lump sum as stipulated in the Task Order.

**IV. TIME SCHEDULE**

This Agreement shall be effective by and between the parties on August 15, 2016. This **AGREEMENT** shall remain in effect for one year from the date of the contract being executed by both parties and will be automatically renewed annually or will terminate when a new contract is executed. The Rate Schedule for Professional Services will also be updated beginning January 1 of the year that the **AGREEMENT** is in effect to the latest rate schedule provided by the **ENGINEER** and agreed to by the **OWNER**.

**V. CHANGES TO AGREEMENT**

This **AGREEMENT**, along with Exhibit A, "General Terms and Conditions", and Exhibit B "2016 Rate Schedule for Professional Services", represent the complete **AGREEMENT** between **OWNER** and **ENGINEER** and may only be amended, supplemented, modified or canceled by a duly executed written instrument.

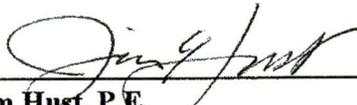
**VI. ACCEPTANCE**

**IN WITNESS WHEREOF**, the parties hereto have made and executed this **AGREEMENT** as of the day and year first above written.

**MADISON COUNTY BOARD OF SUPERVISORS**

**H1 SERVICES, LLC**

\_\_\_\_\_  
**Trey Baxter, President**  
**Madison County Board of Supervisors**

\_\_\_\_\_  
  
**Jim Hust, P.E.**  
**Manager**

DATE: \_\_\_\_\_

DATE: 11/14/16

Attachments: Exhibit A - General Terms and Conditions  
Exhibit B - 2016 Rate Schedule

**EXHIBIT A**  
**GENERAL TERMS AND CONDITIONS**

1. **Relationship between Engineer and Client.** Engineer shall serve as Client's professional engineering consultant in those phases of the Project to which this Agreement applies. The relationship is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client. To the extent that Client is a public entity or a person or entity obligated to repay some or all of an amount borrowed in a municipal securities offering, it is expressly understood and agreed that the Engineer is not acting as a municipal advisor to the Client, as that term applies to the Dodd-Frank Wall Street Reform and Consumer Protection Act and its supporting regulations, that Engineer's services will not include the provision of advice or recommendations regarding municipal financial products or the issuance of municipal securities, and that the Client is responsible for retaining an independent registered municipal advisor for such advice or recommendation.

2. **Responsibility of the Engineer.** Engineer will perform services under this Agreement in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any agreement between the Client and any other party concerning the Project, the Engineer shall not have control of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction; or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any contractor or subcontractor, or any other engineer, architect or consultant not under contract to the Engineer to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project.

Engineer shall determine the amounts owing to the construction contractor and recommend in writing payments to the contractor in such amounts. By recommending any payment, the Engineer will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made to check the quality or quantity of the contractor's work.

3. **Responsibility of the Client.** Client shall provide all criteria and full information as to his requirements for the Project, including budgetary limitations. Client shall arrange for Engineer to enter upon public and private property and obtain

all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project.

Client shall give prompt written notice to the Engineer whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Engineer's services, or any defect or nonconformance in the work of any construction contractor.

Client shall examine all documents presented by Engineer, obtain advice of an attorney or other consultant as Client deems appropriate for such examinations and provide decisions pertaining thereto within a reasonable time so as not to delay the services of the Engineer.

4. **Designation of Authorized Representatives.** Each party shall designate one or more persons to act with authority in its behalf with respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the party.

5. **Ownership of Documents.** Drawings, specifications, reports and any other documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be the property of Engineer. Engineer shall have the right to retain copies of all documents and drawings for its files.

6. **Reuse of Documents.** All documents, including drawings and specifications furnished by Engineer pursuant to this Agreement, are intended for use on the Project only. Client agrees they should not be used by Client or others on extensions of the Project or on any other project. Any reuse, without written verification or adaptation by Engineer, shall be at Client's sole risk.

7. **Opinions of Cost.** Since the Engineer has no control over the cost of labor, materials, equipment or services furnished by the contractor, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, the Engineer cannot and does not guarantee that proposals, bids or actual construction costs will not vary from his opinions or estimates of construction costs.

8. **Changes.** Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments; and Engineer and Client shall negotiate appropriate adjustments in fee and/or schedule acceptable to both parties to accommodate any changes or Additional Services.

9. **Delays.** If the Engineer's services are delayed by the Client, or for other reasons beyond the Engineer's control, for more than one year, the fee provided for in this Agreement shall be adjusted equitably.

10. **Subcontracts.** Engineer may subcontract portions of the services, but subcontractors may be subject to approval by Client in writing.
11. **Suspension of Services.** Client may, at any time, by written order to Engineer, require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the services covered by the order. Client, however, shall pay all costs associated with suspension including all costs necessary to maintain continuity and the staff required to resume the services upon expiration of the suspension of work order. Engineer will not be obligated to provide the same personnel employed prior to suspension when the services are resumed in the event the period of any suspension exceeds 30 days. Client will reimburse Engineer for the costs of such suspension and remobilization.
12. **Termination.** This Agreement may be terminated by either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.
13. **Notices.** Any notice or designation required to be given by either party hereto shall be in writing and, unless receipt of such notice is expressly required by the terms hereof, it shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereinafter furnish to the other party by written notice as herein provided.
14. **Indemnification.**  
To the extent not prohibited by law, and in any case to be construed in a fashion that does not waive governmental, sovereign, or official immunities where applicable, each party to this Agreement shall be, to that extent, responsible for all claims and losses, liability, penalties, damages, or other expenses of any kind whatsoever, resulting from any negligent performance or breach of that party's obligations under this Agreement committed by that party or any of its employees or agents for whom the party is legally responsible. Each party shall provide the legal defense for claims against that party or its agents or employees for whom the party is legally responsible.
15. **Legal Proceedings.** In the event Engineer's employees are at any time required by Client to provide testimony, answer interrogatories or otherwise provide information ("testimony") in preparation for or at a trial, hearing, proceeding on inquiry ("proceeding") arising out of the services that are the subject of this Agreement, where Engineer is not a party to such proceeding, Client will compensate Engineer for its services and reimburse Engineer for all related direct costs incurred in connection with providing such testimony. This provision shall be of no effect if the parties have agreed in a separate agreement or an amendment to this Agreement to terms which specifically supersede this provision, nor shall this provision apply in the event Client engages Engineer to provide expert testimony or litigation support, which services shall be the subject of a separate agreement or an amendment to this Agreement.
16. **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
17. **Insurance.** Within the context of prudent business practices, Engineer shall endeavor to maintain workmen's compensation and unemployment compensation of a form and in an amount as required by state law; comprehensive general liability with limits of at least \$500,000/ \$1,000,000; automotive liability; and professional liability insurance with an annual limit of at least \$500,000. Client recognizes that insurance market is erratic and Engineer cannot guarantee to maintain the coverages identified above.
18. **Information Provided by the Client.** The Engineer shall indicate to the Client the information needed for rendering of services hereunder. The Client may elect to provide this information (including services by others) to the Engineer. In this case, the Client recognizes that the Engineer cannot assure the sufficiency of such information. Accordingly, the Engineer shall not be liable for any claims for injury or loss arising from errors, omissions or inaccuracies in documents or other information provided by the Client. In addition, the Client agrees to compensate the Engineer for any time spent or expenses incurred in defending such claim or in making revisions to his work as a direct or indirect result of information provided by the Client which is insufficient.
19. **Subsurface Conditions and Utilities.** Client recognizes that a comprehensive sampling and testing program implemented by trained and experienced personnel of Engineer or Engineer's subconsultants with appropriate equipment may fail to detect certain hidden conditions. Client also recognizes that actual environmental, geological and geotechnical conditions that Engineer properly inferred to exist between sampling points may differ significantly from those that actually exist.  
  
Engineer will locate utilities which will affect the project from information provided by the Client and utility companies and from Engineer's surveys. In that these utility locations are based, at least in part, on information from others, Engineer cannot and does not warrant their completeness and accuracy.
20. **Hazardous Materials.** When hazardous materials are known, assumed or suspected to exist at a project site, Engineer is required to take appropriate precautions to protect the health and safety of his personnel, to comply with the applicable laws and regulations and to follow procedures deemed prudent to minimize physical risks to employees and the public. Client hereby warrants that, if he knows or has any reason to assume or suspect that hazardous materials may exist at the project site,

he will inform Engineer in writing prior to initiation of services under this Agreement.

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Client agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. Engineer agrees to notify Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered.

21. **Risk Allocation.** N/A

22. **Anticipated Change Orders.** Client recognizes and expects that a certain amount of imprecision and incompleteness is to be expected in construction contract documents; that contractors are expected to furnish and perform work, materials and equipment that may reasonably be inferred from the contract documents or from the prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for; and that a certain amount of change orders are to be expected. As long as Engineer provides services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions, client agrees not to make any claim against Engineer for cost of these change orders unless these costs become a significant part of the construction contract amount. In no case will Client make claim against Engineer for costs incurred if the change order work is a necessary part of the Project for which Client would have incurred cost if work had been included originally in the contract documents unless Client can demonstrate that such costs were higher through issuance of the change order than they would have been if originally included in the contract documents in which case any claim of Client against Engineer will be limited to the cost increase and not the entire cost of the change order.

23. **Payment.** Engineer shall submit monthly statements to Client. Payment in full shall be due upon receipt of the invoice. If payments are delinquent after 45 days from invoice date, the Client agrees to pay interest on the unpaid balance at the rate of one percent (1%) per month. Payment for Engineer's services is not contingent on any factor except Engineer's ability to provide services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

24. **Force Majeure.** Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control, including, but not limited to, acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.

25. **Compliance with Laws.** To the extent they apply to its employees or its services, the Engineer shall comply with all applicable United States, state, territorial and commonwealth laws, including ordinances of any political subdivisions or

agencies of the United States, any state, territory or commonwealth thereof.

26. **Separate Provisions.** If any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding.

27. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi.

28. **Dispute Resolution.** All disputes, controversies or claims, of whatever kind or character, between the Parties, their agents and/or principals, arising out of or in connection with the subject matter of this Agreement shall be litigated in no other venue other than the Circuit Court of Madison County, Mississippi, or the United States District Court which includes within its geographical Division, Madison County, Mississippi; and shall be litigated only before a judge hearing the matter alone, as both finder of fact and law, without a jury.

29. **Additional Services.** Services resulting from significant changes in the general scope, extent or character of the Project designed or specified by Engineer or its design including, but not limited to, changes in size, complexity, Client's schedule, construction schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond Engineer's control.

30. **Amendment.** This Agreement shall not be subject to amendment unless another instrument is executed by duly authorized representatives of each of the parties.

31. **Entire Understanding of Agreement.** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of this Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.

32. **Survival of Provisions.** The provisions of this Agreement shall continue to be binding upon the parties hereto notwithstanding termination of this Agreement for any reason.

33. **Nonwaiver.** No waiver by a party of any provision of this Agreement shall be deemed to have been made unless in writing and signed by such party.

34. **Identity of Project Owner.** Within ten (10) days of the entry of this Agreement, Client, if Client is not the Project Owner, shall provide to Engineer the following information relative to

the Project Owner: Project Owner's full legal name; Project Owner's physical address; Project Owner's mailing address; and the name, physical address and mailing address of the Client's point of contact with the Owner for the Project.

35. **Conflicting Terms.** In the event that there are multiple agreements with varying or conflicting terms and conditions between Client and Engineer, the Terms and Conditions contained in this Agreement shall supersede and have precedence over any other terms and conditions contained in any other written or oral agreement entered into between Client and Engineer that either actually do or appear to conflict with the Terms and Conditions contained in this Agreement, regardless of when, in relationship to these Terms and Conditions contained in this Agreement, such other written or oral agreement was actually entered into between Client and Engineer.
36. **Course of Dealing.** Client and Engineer agree that these General Terms and Conditions establish a course of dealing between them and shall apply to this and all other services, projects, agreements or dealings between the them, unless Client or Engineer gives the other written notice of objection to any term or condition before commencement of performance in connection with any other provision of services or projects involving the two of them.

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**EXHIBIT B**

**H1 SERVICES, LLC  
2016 RATE SCHEDULE FOR PROFESSIONAL SERVICES  
MADISON COUNTY, MISSISSIPPI**

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<b>EMPLOYEE CLASSIFICATION</b>	<b>HOURLY RATE</b>
Principal Engineer	\$170.00
Project Manager/Sr Project Engineer	\$150.00
Engineer	\$130.00
Engineering Assistant	\$70.00
Engineering Technician	\$105.00
Construction Manager	\$140.00
Construction Representative	\$90.00
CADD Equipment	\$20.00
Survey Party	\$170.00

Hourly rates shown are inclusive of all expenses associated with each employee classification including labor, overhead and profit.

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<b>REIMBURSABLE EXPENSE SCHEDULE</b>	
<b>EXPENSE</b>	<b>COST</b>
Vehicle Mileage	Current IRS Rate
Reimbursable Expenses	Actual Expense +10%