

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
MADISON COUNTY, MISSISSIPPI
AND
H1 SERVICES, LLC.
FOR
ROBINSON SPRINGS ROAD IMPROVEMENTS**

This Professional Services Agreement (this “Agreement”) is made by and between **Madison County, Mississippi** (“Madison County”), existing under the laws of the State of Mississippi, and **H1 Service, LLC**, a Mississippi Limited Liability (“Engineer”).

Witnesseth:

Whereas, Engineer desires to provide preliminary engineering phase services, construction phase services, and related services (“Services”) to Madison County on Robinson Springs Road Improvements from Coker Road to Mississippi Highway 463 (formerly project number STP-6979(1)B as programmed by the Office of State Aid Road Construction), and Madison County desires to retain the services of Engineer in accordance with the terms hereinafter set forth:

Now, therefore, in recognition of and in reliance on the foregoing recitals, and in consideration of the mutual promises and covenants hereinafter set forth, and in exchange for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, Madison County and Engineer agree as follows:

- I. **Services.** Engineer shall perform and provide to Madison County the services more fully described in the scope of work attached hereto as Exhibit “B”, and in accordance with the Terms and Conditions as further set forth in this Agreement.
- II. **Compensation and Payments.** Madison County shall pay Engineer for the Services in accordance with the compensation schedule attached hereto as Exhibit “B”.
- III. **Effective Date and Time**
 - A. This Agreement shall be effective by and between the parties as authorized by Madison County Board of Supervisors on January 17, 2017.
 - B. Engineer shall commence performance of the Services described in Exhibit “A” and shall faithfully, diligently, and completely perform such Services in accordance with this Agreement.

Terms and Conditions

Article I THE SERVICES

1-1 Services

- 1-1-1 Engineer shall perform the Services to be described in the Scope of Work attached as Exhibit “A”.
- 1-1-2 Any Subconsultant(s) or independent contractor(s) retained by Engineer to assist in the performance of the Services or any of Engineer’s other obligations under this Agreement shall, as a condition to performing any work associated with any Project, agree with and be bound by the terms and conditions of this Agreement, including, without limitation, the indemnification and insurance requirements of this Agreement.

1-2 Standards of Practice

- 1-2-1 Services performed by Engineer under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document or otherwise.

1-3 Changes in the Scope of Services

- 1-3-1 The scope of Services set forth in Exhibit “A” will be based on facts known at the time of execution, including, if applicable, information supplied by the Madison County. As the project progresses, facts discovered may indicate that scope must be redefined. Changes in scope may warrant Additional Services which are not a part of the agreed upon compensation described in the Task Order. Additional Services shall be paid for by Madison County in accordance with Engineer’s prevailing hourly rate schedule.
- 1-3-2 If complications or other unforeseen factors cause a change in the scope of work that cause Engineer to exceed the established scopes, schedules, or budgets, Engineer will notify Madison County and proceed on an agreed upon basis.
- 1-3-3 Madison County reserves the right to increase or decrease the scope of work performed by Engineer. In such an event and upon Madison County’s request, Engineer shall submit to Madison County a proposal in support of the subject increase or decrease in scope, which shall include cost and schedule, as appropriate, for each such respective change.
- 1-3-4 Engineer shall not perform Additional Services without prior, written approval by Madison County Board of Supervisors or its designated representative.

Article II REPRESENTATIONS

- 2-1 Engineer represents that it is knowledgeable of applicable federal, state and local laws, codes, rules, and regulations generally applicable to the Services performed or work produced by Engineer.

- 2-2 Engineer represents that it is, or will be at the time of execution, qualified to perform the Services set forth or otherwise contemplated, and Engineer is properly licensed, or will be at the time of execution, in accordance with applicable laws, codes, rules, and regulations to perform the Services.

Article III
SUBCONSULTANTS AND ASSIGNMENT

- 3-1 Engineer may enter into subcontracts with other consultants or professionals (collectively “Subconsultants”), whether acting as independent contractors or agents or employees of the Engineer for Services to be performed by Engineer pursuant to this Agreement.
- 3-2 Engineer shall verify that all Subconsultants and any other persons rendering Services are properly licensed to provide the Services proposed.
- 3-3 Notwithstanding any other provision of this Agreement, Engineer shall not assign this Agreement, in whole or in part, to any other person or entity, without the prior written consent of Madison County.
- 3-4 Nothing contained in this Agreement shall be construed to constitute any Subconsultant as the agent or employee of Madison County or shall be construed to create any privity between Madison County and any Subconsultant. Each Subconsultant shall be and remain the agent, employee or independent contractor, as the case may be, of Engineer.

Article IV
MADISON COUNTY’S RESPONSIBILITY

- 4-1 Madison County shall furnish Engineer with all applicable reports, studies, site characterizations, regulatory orders or similar information in its possession relating to the Services or Projects described in Exhibit “A”. Unless otherwise specified, Engineer may rely upon Madison County-furnished information without independent verification in performing the Services.
- 4-2 Madison County shall furnish information required from it as expeditiously as reasonably practicable for the orderly progress of the work associated with each particular Project.
- 4-3 Madison County shall designate a representative who shall have the authority to transmit instructions, receive information, interpret and define Madison County’s policies and make decisions with respect to the Services performed.
- 4-4 Madison County shall provide all criteria and full information as to Madison County’s requirements for each particular Project, obtain necessary approvals and permits, attend Project-related meetings, provide interim reviews on an agreed-upon schedule, make decisions on Project alternatives, and generally participate in the Project to the extent necessary to allow Engineer to perform the Services.

Article V
OWNERSHIP OF INSTRUMENTS OF SERVICE

- 5-1 Madison County acknowledges Engineer’s documents as instruments of professional service. Drawings, specifications, reports, and any other documents prepared by Engineer in connection with the services furnished hereunder shall be the property of Madison County. Engineer shall have the right to retain copies of documents and drawings for its files.
- 5-2 Madison County shall not reuse or make any modification to any reports, plans, specifications, and other documents without the prior written authorization of Engineer.
- 5-3 Engineer hereby recognizes and affirms that materials provided by Madison County to Engineer in connection with this Agreement shall be and remain the property of Madison County and shall be returned to Madison County at the completion of the Services or Projects to which the same may apply.

Article VI
COMPENSATION AND PAYMENTS

- 6-1 Engineer’s compensation for the Services shall be based on the rates of compensation set forth in Exhibit “B”, subject to the terms and conditions of this Agreement.
- 6-2 Engineer may adjust the rates set forth on Exhibit “B” as of January 1 of each year in accordance with changes to its standard rate schedule. Engineer shall provide Madison County a copy of its current rate schedule no later than the effective date of the new rate schedule. Any change in the rate schedule shall first be approved by Madison County.

- 6-3 Invoices will be issued at the end of each month, payable within thirty (30) days of receipt.
- 6-4 Engineer shall have the right to suspend performance of Services under this Agreement if Madison County is more than sixty (60) days delinquent in payment of any fees or expenses to Engineer.
- 6-5 Without limiting Engineer's rights under paragraph 6-4, any payment not made within the time allowed shall bear interest at the rate and in the manner provided by law. Any attorneys' fees or other costs of collection incurred by Engineer shall be paid by Madison County.

**Article VII
CONSEQUENTIAL DAMAGES**

- 7-1 Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by Madison County or Engineer, their employees, agents, subconsultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

**Article VIII
JOB SITE SAFETY**

- 8-1 Engineer specifically disclaims any authority or responsibility for general job site safety of persons other than Engineer's employees and shall not be responsible for job safety for any contractors or any representatives of Madison County at any jobsite.
- 8-2 Engineer shall have no responsibility for any contractor's means or methods of construction, all of which shall remain the sole responsibility of the contractor.

**Article IX
THIRD PARTY BENEFICIARIES**

- 9-1 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Madison County or Engineer. Engineer's services under this Agreement are being performed solely for Madison County's benefit, and no other entity, including Madison County's or any third party's contractors shall have any claim against Engineer because of this Agreement or the performance or nonperformance of services hereunder.

Article X
SUSPENSION OF WORK

- 10-1 Madison County may order Engineer, in writing, to suspend all or any part of the Services for such period of time as Madison County may determine to be appropriate for its convenience.
- 10-2 If the performance of all or any part of the Services is suspended or delayed by an act of Madison County in the administration of this Agreement, a reasonable adjustment shall be made for an equitable increase in cost of performance of the Services caused by the suspension or delay. However, no adjustment shall be made under this provision for any suspension or delay to the extent that performance would have been suspended or delayed as a result of the fault or negligence of Engineer.

Article XI
TERMINATION

- 11-1 Madison County may, by written notice to Engineer, terminate this Agreement in whole or in part at any time upon not less than ten (10) business days prior written notice, for the convenience of Madison County or for the failure of Engineer to fulfill its contractual obligations under this Agreement. Upon receipt of notice of termination, Engineer shall discontinue all Services affected (unless the notice directs otherwise), deliver to Madison County the products or all copies thereof, regardless of the form of the copies, and assign to Madison County any subcontracts, purchase orders, or other agreements which Madison County may request.
- 11-2 If the termination is for the convenience of Madison County, an equitable adjustment in the compensation of Engineer shall be made by Madison County. Madison County hereby expressly acknowledges that Engineer may be required to make capital investments or investments in labor to perform certain Services described in this Agreement, and that the investment may only be recovered by Engineer throughout completion of the Services for which Engineer made such investment. Madison County covenants to consider any such investment by Engineer in making an equitable adjustment in compensation to Engineer after termination for the convenience of Madison County.
- 11-3 If the termination is due to the failure of Engineer to fulfill its contractual obligations (i.e., for default), Madison County may take over the work and prosecute the same to completion by contract or otherwise.
- 11-4 If Engineer is terminated for default and it is determined for any reason that Engineer was not in default at the time of termination or that Madison County did not properly terminate Engineer for default, Engineer shall be entitled to the amount due under this Agreement as if the termination were for the convenience of Madison County.
- 11-5 Regardless of whether the termination is for default or for the convenience of Madison County, Engineer shall not be entitled to special, consequential, or exemplary damages, nor to anticipated profit on account of Madison County's termination or alleged breach of this Agreement.

- 11-6 Engineer may terminate this Agreement upon thirty (30) days prior written notice to Madison County for any of the following reasons:
- A. Madison County has breached any material term of this Agreement including, but not limited to, failure to pay any compensation due Engineer not the subject of bona fide dispute between Madison County and Engineer, which breach is then continuing and has not been cured within ten (10) business days of written notice of breach from Engineer to Madison County;
 - B. With respect to transfer of ownership of the Project covered by the Agreement to any other person or entity without the prior written consent of Engineer; or
 - C. Material changes have occurred to the conditions under which Madison County and Engineer entered into this Agreement which would cause severe economic loss or damage to Engineer, and Madison County and Engineer have failed, after negotiating in good faith, to agree to changes in compensation to reduce or eliminate such loss to Engineer.

Article XII INSURANCE

- 12-1 Engineer or its subcontractors shall maintain, at its own expense, the following insurance coverage, including Engineer, its employees, agents, designees, and any indemnities as required herein, which insurance shall be placed with an insurance company or companies reasonably acceptable to Madison County and shall incorporate a provision requiring the giving of written notice to Madison County at least thirty (30) days prior to cancellation, non-renewal, reduction in policy limits, or change in the scope or coverage under any such policy or policies evidenced by return receipt of United States certified mail:
- A. Professional liability insurance in an amount not less than \$250,000.00 (including blanket contractual liability coverage with all coverage retroactive to the earlier of the date of this Agreement or the commencement of Engineer's Services in relation to a Project).
 - B. Comprehensive general liability insurance.
 - C. Comprehensive automobile liability insurance.
- 12-2 If requested by Madison County, Engineer shall submit original, valid certificates in form and substance satisfactory to Madison County evidencing the effectiveness of the insurance policy or policies required herein along with original copies of the amendatory rider to any such policies to Madison County for County's approval.

Article XIII DISPUTE RESOLUTION

- 13-1 The Parties shall attempt to settle disputes arising under this Agreement by discussion between the parties' senior representatives of management.

- 13-2 If any dispute cannot be resolved in accordance with paragraph 13-1 within a reasonable length of time, the Parties agree to attempt non-binding mediation or any other method of alternative dispute resolution prior to filing any legal proceedings.
- 13-3 Madison County and Engineer intend and agree that the foregoing provisions are not separate from the remainder of this Agreement and such provisions are supported by the consideration and mutuality of the Agreement as a whole.

Article XIV

INDEMNIFICATION AND MUTUAL WAIVER

- 14-1 To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Madison County, and Madison County's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property, tangible or otherwise (including the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, agents or Consultants.

Article XV

Notices

15-1 Any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, faxed, emailed, or sent by overnight courier or United States mail and shall be deemed to have been given when delivered in person or received by fax or email (as evidenced by the sender’s fax or email confirmation report of receipt) or one (1) business day after delivery to the office of such overnight courier service or three (3) business days after depositing the notice in the United States mail with postage prepaid and properly addressed to the other party at the following respective addresses:

To County: Madison County Board of Supervisors, MS
125 West North Street
P. O. Box 608
Canton, MS 39046
Telephone number: (601) 855-5500
Attention: Trey Baxter, President

To Engineer: H1 Services, LLC
P. O. Box 2718
Madison, MS 39130
Telephone: (601) 942-1002
Attention: Jim Hust, P. E.
Email: JimHust@att.net

Or to such other address as the party being given such notice shall from time to time designate to the other by notice given in accordance herewith.

Article XVI

GENERAL PROVISIONS

16-1 Engineer shall, at all times, be regarded as an independent contractor and shall at no time act as agent for Madison County. Nothing contained herein shall be deemed or construed by Madison County, Engineer, or any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between Madison County and Engineer. Neither the method of computation or compensation or other charges, nor any other provision contained herein, nor any acts of Madison County or Engineer hereunder, creates, or shall be deemed to create, a relationship other than independent relationship of Madison County and Engineer.

16-2 The Madison County will furnish to Engineer information identifying the type and location of underground improvements. Engineer (or Engineer’s authorized Subconsultant) will prepare a plan that shows the locations intended for subsurface penetrations with respect to assumed locations of underground improvements. Madison County will approve of the locations of subsurface penetrations prior to their being made. Madison County agrees, to the fullest extent permitted by law, to waive all claims and

causes of action against Engineer and anyone for whom Engineer may be legally liable, for damages to underground improvements that result from subsurface penetration locations depicted by Engineer.

- 16-3 It is acknowledged by both parties that Engineer's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event Engineer or any other party encounters asbestos or hazardous or toxic materials at the jobsite, or should it become known in any way that such materials may be present at the jobsite or any adjacent areas that may affect the performance of Engineer's services, Engineer may, at Engineer's option and without liability for consequential or any other damages, suspend performance of services on the project until Madison County retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrant that the jobsite is in full compliance with applicable laws and regulations.
- 16-4 Any opinion of construction costs prepared by Engineer is supplied for the general guidance of Madison County only. Since Engineer has no control over competitive bidding or market conditions, Engineer cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to Madison County.
- 16-5 Engineer, in fulfillment of the Construction Phase Engineering Services, shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. Madison County has not retained Engineer to make detailed inspections or to provide exhaustive or continuous project review and observation services. Engineer does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the project. More extensive project observation or full-time project representation with respect to a particular project, if desired by Madison County, shall be specifically included in the Scope of Work, in accordance with the terms of this Agreement.
- 16-6 It is recognized that Engineer has been asked by Madison County to subcontract the performance of certain laboratory testing and engineering services. Madison County understands that Engineer is neither trained nor knowledgeable in the procedures of the testing laboratory's services and Madison County shall not rely upon Engineer to check the quality or accuracy of the testing laboratory's reports. Madison County understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Engineer's subcontractor will provide test results and opinions based on tests and field observations only for the work tested. Madison County understands that testing and observation are not continuous or exhaustive, and are conducted to reduce – not eliminate – project risk. Engineer's subcontractor has included the level of testing and observation that would be usual and customary for the scope of the project in the scope of Services. Madison County is responsible (even if delegated to contractor) for requesting any additional testing services required by Madison County or that Madison County deems appropriate for the scope of the project or as a result of any special considerations

with the project or project site. Further, Madison County is responsible notifying and scheduling with Engineer so that Engineer can perform these Services. Engineer is not responsible for damages caused by a failure of Madison County to request or schedule any testing or sampling Services. Engineer shall not be responsible for the quality and completeness of any contractor's work or its adherence to the project documents, and Engineer's performance of testing and observation services shall not relieve Madison County's contractor in any way from its responsibility for defects in its work, or create a warranty or guarantee by Engineer. Engineer will not supervise or direct the work performed by Madison County's contractor or its subcontractors, and neither any testing nor construction observation performed by Engineer shall result in Engineer being or becoming responsible for means and methods of construction.

- 16-7 The recitals at the beginning of this Agreement are intended to be covenants of Madison County and Engineer, are a material part of this Agreement, and shall be binding on Madison County and Engineer.
- 16-8 The headings contained in the Agreement are inserted for convenience of reference only, and shall not be construed as defining, limiting, extending, or describing the scope of this Agreement, any article or paragraph hereof, or the intent of any provision hereof.
- 16-9 For purposes of this Agreement, the following references shall, unless the context requires otherwise have the following meanings.
- A. The words "thereof", "herein", "herewith", "hereunder", and words of similar meaning shall refer to this Agreement as a whole and not to any particular provision of the Agreement.
 - B. Where the context requires, the use of singular numbers or pronouns shall include the plural and vice versa, and the use of pronouns of any gender shall include any other gender.
- 16-10 All exhibits and/or, attachments referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.
- 16-11 Madison County and Engineer incorporate herein by this reference all provisions lawfully required to be contained herein by governmental body or agency.
- 16-12 Except as provided for in 6-2, whenever this Agreement calls for the approval or consent of Madison County, such approval or consent shall be given in writing by Madison County representative or his designee, and unless specially stated to the contrary, such approval or consent shall be made in the reasonable discretion of Madison County.
- 16-13 All terms, covenants, and conditions of this Agreement shall be binding upon and inure to the respective benefit of Madison County and Engineer, their respective officers, employees agents, and representatives, all as the case may be.
- 16-14 This Agreement contains the entire agreement between Madison County and Engineer relating to the subject matter hereof and supersedes all oral statements and prior writings with respect hereto and may be altered, amended, or modified only by a written document executed by Madison County and Engineer.

- 16-15 Neither Madison County nor Engineer shall be deemed in violation of this Agreement if prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, acts of God, acts of public enemy, acts of superior government authority, riots, rebellion, sabotage, or any other similar circumstances of force majeure for which Madison County or Engineer is not responsible and which are not within Madison County's or Engineer's control.
- 16-16 This Agreement and the rights and obligations of Madison County and Engineer hereunder shall be construed in accordance with and governed by the laws of the State of Mississippi, without regard to the principles of conflict of law.
- 16-17 Madison County and Engineer acknowledge that they have thoroughly read this Agreement, all exhibits and attachments hereto, and have sought and received competent advice on council necessary for them to form a full and complete understanding of all rights and obligations herein.
- 16-18 This Agreement shall not be construed or interpreted in favor of or against Madison County or Engineer on the basis of draftsmanship or preparation hereof.
- 16-19 If any provision of this Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable under any applicable law, such invalid or unenforceability shall not affect any other provision of this Agreement that can be given effect without the invalid or unenforceable provision, or the application of such provision to other persons or circumstances, and, to this end, the provisions hereof are severable.

**Article XVII
OTHER CONDITIONS OR SERVICES**

- 17-1 See attached –
 - Exhibit “B” – Compensation Schedule
 - Exhibit “A” – Scope of Work

IN WITNESS WHEREOF, Madison County and H1S have executed this Agreement on the dates indicated below.

Board of Supervisors Madison County, MS

Date: _____

By: _____
Trey Baxter, President

Attested: _____

H1 Services, LLC

Date: _____

By: _____
Jim Hust, Manager

Attested: _____

Exhibit “B”

Schedule of Compensation

Engineer will perform the Services described in the Scope of Work of each Task Order on a lump sum or hourly basis, as stipulated hereinbelow. If hourly, services will be billed in accordance with the Engineer’s Schedule of Hourly Rates.

Services	Method of Compensation	Budget
Preliminary Engineering	Lump Sum	\$18,600
Construction Phase Engineering (based on 90 Work Day construction period)	Hourly	\$166,400
Testing & Reimbursable Expenses	Hourly & Direct	\$57,700
	Total	\$242,400

Engineer will invoice Madison County monthly based upon the work completed during the billing period. Madison County shall pay Engineer within 30 days after receipt of Engineer’s monthly billing. The payment shall not be contingent or dependent upon any action or undertaking of Madison County other than those conditions, if any, specifically set forth in this Agreement.

Engineer’s Schedule of Hourly Rates¹

<u>EMPLOYEE CATEGORY</u>	<u>RATES</u>	
Principal Engineer	\$ 170.00	Per Hour
Project Manager/Sr Project Engineer	\$ 150.00	Per Hour
Engineer	\$ 130.00	Per Hour
Engineer Assistant	\$ 70.00	Per Hour
Engineering Technician	\$ 105.00	Per Hour
Survey Team	\$ 170.00	Per Hour
Construction Manager	\$ 140.00	Per Hour
Construction Representative	\$ 90.00	Per Hour
CADD Equipment	\$ 20.00	Per Hour
IRS Current Standard Mileage Rate	Actual	
Reimbursable Expenses	Actual + 10%	

¹ Subject to change as of January 1 of each year.

Exhibit “A”

Scope of Work

On January 4, 2016, the Madison County Board of Supervisors selected Jim Hust, P. E. to serve as State Aid and LSBP Engineer. Following this selection, Madison County has been unable to negotiate a transition agreement with Rudy M. Warnock, Jr., P. E. of Warnock & Associates, LLC., due to Federal litigation by Warnock. This situation has allowed four (4) projects to be stranded in the Preliminary Engineering Phase and has prevented Madison County from implementing these projects.

Madison County negotiated and imposed deadlines, to no avail, for Warnock to complete the Preliminary Engineering Phase for STP 6979-(1)B – Robinson Springs Road. On August 15, 2016, the Madison County Board of Supervisors through it’s minutes directed Jim Hust, Madison County State Aid Engineer, to proceed with design services on Robinson Springs Road. Subsequently, Warnock submitted Preliminary Engineering documents for the project to the Office of State Aid Road Construction on September 19, 2016. After several re-submissions, Warnock’s plans for STP 6979-(1)B – Robinson Springs Road were accepted by the Office of State Aid Road Construction (OSARC) as completed.

On December 30, 2016, OSARC and Madison County executed the attached letter agreement, which directed Mr. Hust to assume responsibility for the Preliminary Engineering and Construction Engineering and other services normally defined in the state aid engineer’s contract. As a condition of the Settlement Agreement between Madison County and Warnock, Warnock has delivered and authorized over to Madison County any plans, specifications, design files, electronic files, AutoCad or other graphic format files, contract documents, construction files, etc. for the project. To the fullest extent permitted by law, Madison County and State Aid will release Jim Hust and H1 Services, LLC from liability with regard to said projects through the noted completion phase for any problems which are related to the services performed by or under the supervision of Warnock. Madison County has compensated Warnock for the work completed in the Preliminary Engineering phase in accordance with the State Aid Agreement and Settlement Agreement.

On January 17, 2017 the Board of Supervisors approved the Road Plan, which included \$2.5 million to implement the Robinson Springs Road project as a local project during a 15 month period. Further, the Board appointed and directed H1 Services, LLC to implement the Robinson Springs Road project. H1 Services, LLC will utilize the work product of Warnock to implement the improvements to Robinson Springs Road from Coker Road to Mississippi Highway 463.

PRELIMINARY ENGINEERING SERVICES

1.0 Bid Phase.

During the Bid Phase:

1.1 Acceptance of Design Phase. Engineer shall obtain copies of the Preliminary Engineering documents prepared by Warnock and delivered to Madison County and OSARC. Engineer shall

evaluate documents for modifications needed to implement the project as a local project rather than a State Aid project. Engineer shall review the modifications with Madison County Engineer for acceptance of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Madison County-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Madison County, Engineer shall:

Prepare and furnish bidding documents for review by Madison County, its legal counsel, and other advisors, and assist Madison County in the preparation of other related documents. Within 10 days of receipt, Madison County shall submit to Engineer any comments and revisions.

Engineer shall revise the bidding documents in accordance with comments and instructions from Madison County, as appropriate, and submit final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Madison County within 15 calendar days after receipt of Madison County's comments and instructions.

1.2 Bidding or Negotiating Phase. After acceptance by Madison County of the bidding documents and the most recent opinion of probable Construction Cost as determined in the Preliminary Engineering Phase, and upon written authorization by County to proceed, Engineer shall:

Assist Madison County in advertising for and obtaining bids or proposals for the Project and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.

Issue addenda as appropriate to clarify, correct, or change the bidding documents.

Provide information or assistance needed by Madison County in the course of any negotiations with prospective contractors.

Consult with Madison County as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Project as to which such acceptability is required by the bidding documents.

Attend the Bid opening, prepare Bid tabulation sheets, and assist Madison County in evaluating Bids or proposals and in assembling and awarding contracts for the Project.

The Bidding Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

CONSTRUCTION PHASE SERVICES

1.0 Construction Phase.

During the Construction Phase:

1.1 General Administration of Construction Contract. ENGINEER shall consult with and advise MADISON COUNTY and act as MADISON COUNTY's representative; shall issue all

instructions of MADISON COUNTY to Contractor(s); and shall act as initial interpreter of the Contract Documents and judge of the acceptability of the work thereunder.

1.2 Visits to Site and Observation of Construction. ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as he deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's work. Based on information obtained during such visits and on such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and shall keep MADISON COUNTY informed of the progress of the work. The purpose of ENGINEER's visits to the site will be to enable him to carry out the duties and responsibilities assigned to and undertaken by him during the Construction Phase, and, in addition, through his experience as a qualified design professional, to provide for MADISON COUNTY a greater degree of confidence that the completed work of Contractor will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor. On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress supervise, direct or have control over Contractor's work; nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor furnishing and performing his work. Accordingly, ENGINEER can neither guarantee the performance of the construction contracts by Contractor nor assume responsibility for Contractor's failure to furnish and perform his work in accordance with the Contract Documents.

1.3 Defective Work. During such site visits, ENGINEER may observe work which, in his opinion, does not conform generally with the Contract Documents or will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents. The ENGINEER may recommend to MADISON COUNTY rejection of this work. The Engineer shall inform the Madison County Engineer of any work that will prejudice the integrity on the Project.

1.4 Interpretations and Clarifications. ENGINEER shall issue necessary interpretations and clarifications of the Contract Documents and, in connection therewith, prepare change orders as required.

1.5 Shop Drawings. ENGINEER shall review and approve (or take other appropriate action with respect to) Shop Drawings, samples and other data which Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

1.6 Substitutes. ENGINEER shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor.

1.7 Inspections and Tests. ENGINEER shall have authority, as MADISON COUNTY's representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testing's and approvals required by laws, rules, regulations, ordinances,

codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).

1.8 Applications for Payment. Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules, ENGINEER shall determine the amounts owed to Contractor and recommend in writing payments to Contractor in such amounts. Such recommendations of payment will constitute a representation to MADISON COUNTY, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is generally in accordance with the Contract Documents. By recommending any payment, ENGINEER will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made by him to check the quality or quantity of Contractor's work as it is furnished and performed beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. ENGINEER's review of Contractor's work for the purposes of recommending payments will not impose on ENGINEER the responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes any Contractor has used the money paid on account of the contract price, or to determine that title to any of the work, materials or equipment has passed to MADISON COUNTY free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between MADISON COUNTY and Contractor that might affect the amount that should be paid.

1.9 Contractor's Completion Documents. ENGINEER shall receive and review maintenance and operating instructions, schedules, guarantees, bond and certificates of inspection, tests and approvals which are to be assembled by Contractor in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of the Contract Documents); and shall transmit them to MADISON COUNTY with written comments.

1.10 Inspections. ENGINEER shall review Contractor's progress to determine if the work is substantially complete and shall conduct a post-construction review to determine if the completed work is acceptable so that he may recommend, in writing, final payment to Contractor and may give written notice to MADISON COUNTY and the Contractor that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice will be subject to the limitations expressed in paragraph entitled Visits to Site and

Observations of Construction.

1.11 Record Documents. Upon completion of the work, the ENGINEER shall compile for and deliver to MADISON COUNTY a complete set of record documents conforming to information furnished to the ENGINEER by the Contractor. This set of documents shall consist of record specifications and record drawings showing the reported location of the work. In that record documents are based on information provided by others, the ENGINEER cannot and does not warrant their accuracy.

1.12 Limitation of Responsibilities. ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any Subcontractor or suppliers, or of any of the Contractor's or Subcontractor's supplier's agents or employees, or any other persons (except ENGINEER's own employees and agents) at the site or otherwise furnishing or performing any of the Contractor's work; however, nothing contained in paragraphs 2.1 through 3.11 inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties and responsibilities assumed by him in the Contract Documents.

1.13 Progress Meetings and Reports. During construction, the ENGINEER will schedule and conduct monthly progress meetings with MADISON COUNTY, Contractor and appropriate subcontractors, if any, to discuss progress, scheduling problems, conflicts and observations of all parties involved. ENGINEER shall also prepare minutes of the meeting. ENGINEER shall also prepare a construction progress report monthly which shall be submitted to MADISON COUNTY by the 10th day of each month for the preceding month's work. This report shall accompany the Contractor's and Engineer's monthly payment requests.

2.0 Construction Review Representative: ENGINEER shall furnish a Construction Review Representative (CRR), assistants and other field staff to assist ENGINEER in observing work performance of the Contractor. The Construction Review Representative shall make visits to the site at intervals appropriate to the various stages of construction as he deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's work.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the CRR and assistants, ENGINEER shall endeavor to provide further protection of MADISON COUNTY against defects and deficiencies in the work; but, the furnishing of such services will not make ENGINEER responsible for or give him control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for Contractor's failure to perform the work in accordance with the Contract Documents.

The duties and responsibilities of the CRR are limited to those of the ENGINEER in his agreement with MADISON COUNTY and in the construction Contract Documents, and are further limited and described as follows:

2.1 General: CRR is ENGINEER's agent at the site and will act as directed by and under the supervision of ENGINEER and will confer with ENGINEER regarding CRR's actions. CRR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and Contractor keeping MADISON COUNTY advised as necessary. CRR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. CRR shall generally communicate with MADISON COUNTY with the knowledge of and under the direction of ENGINEER.

2.2 Duties and Responsibilities of CRR.

2.2.1 Schedules. Review the progress schedule and schedule of Shop Drawing submittals prepared by Contractor and consult with ENGINEER concerning acceptability.

2.2.2 Conferences and Meetings. Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

2.2.3 Liaison.

2.2.3.1 Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Contract Documents; and assist ENGINEER in serving as MADISON COUNTY's liaison with Contractor when Contractor's operations affect MADISON COUNTY's on-site operations.

2.2.3.2 Assist in obtaining from MADISON COUNTY additional details or information, when required for proper execution of the Work.

2.2.4 Shop Drawings and Samples.

2.2.4.1 Record date of receipt of Shop Drawings and samples.

2.2.4.2 Receive samples, which are furnished at the site by Contractor, and notify ENGINEER of availability of samples for examination.

2.2.4.3 Advise ENGINEER and Contractor of the commencement of any work requiring a Shop Drawing or sample if the submittal has not been approved by ENGINEER.

2.2.5 Review of Work, Rejection of Defective Work, Inspections and Tests.

2.2.5.1 Conduct on-site observations of the work in progress to assist ENGINEER in determining if the work is in general proceeding in accordance with the Contract Documents.

2.2.5.2 Report to ENGINEER whenever CRR believes that any work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any review, test or approval required to be made; and advise ENGINEER of work that CRR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

2.2.5.3 Verify that test, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.

2.2.5.4 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report these results to ENGINEER.

2.2.6 Interpretation of Contract Documents. Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.

2.2.7 Records.

2.2.7.1 Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all addenda, change orders, additional Drawings issued subsequent to the execution of the contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.

2.2.7.2 Keep a diary or logbook, recording Contractor hours on the job site, weather conditions, data relative to questions of change orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.

2.2.7.3 Record names, addresses and telephone numbers of all Contractors, Subcontractors and major suppliers of materials and equipment.

2.2.8 Reports.

2.2.8.1 Furnish ENGINEER periodic reports as required of progress of the work and of Contractor's compliance with the progress schedule and schedule of Shop Drawings and sample submittals.

2.2.8.2 Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the work.

2.2.8.3 Draft and recommend to ENGINEER proposed change orders, obtaining backup material from Contractor.

2.2.8.4 Report immediately to ENGINEER and MADISON COUNTY the occurrences of any accident.

2.2.9 Payment Requests. Review applications for payment with Contractor for compliance with the established procedure for submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the work completed and materials and equipment delivered at the site but not incorporated in the work.

2.2.10 Certificates, Maintenance and Operation Manuals. During the course of the work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to MADISON COUNTY prior to final payment for the work.

2.2.11 Completion.

2.2.11.1 Prior to post-construction review, submit to Contractor a list of observed items requiring completion or correction.

2.2.11.2 Conduct post-construction review in the company of ENGINEER, MADISON COUNTY, and Contractor and prepare a final list of items to be completed or corrected.

2.2.11.3 Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

2.3 CRR Limitations of Authority.

2.3.1 Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.

2.3.2 Shall not exceed limitations of ENGINEER's authority as set forth in the Contract Documents and this Agreement.

2.3.3 Shall not undertake any of the responsibilities of Contractor, Subcontractors or Contractor's superintendent.

2.3.4 Shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.

2.3.5 Shall not advise on, issue directions regarding to, or assume control over safety precautions and programs in connection with the work.

2.3.6 Shall not accept Shop Drawings or sample submittals from anyone other than Contractor.

2.3.7 Shall not authorize MADISON COUNTY to occupy the Project in whole or in part.

2.3.8 Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

SPECIAL SERVICES

1.0 **Laboratory Testing.** After execution of the Agreement, the Laboratory Testing Services will be initiated and the ENGINEER shall:

1.1 Conduct a field investigation, recover samples on site.

1.2 Examine and classify samples.

1.3 Perform standard tests.

1.4 Perform laboratory analysis to evaluate the samples.

1.5 Prepare a report of all findings, analyses, conclusions and recommendations.

1.6 The purpose of the laboratory testing is to determine general conditions and parameters for compliance with the plans and specifications for construction of the Project. MADISON COUNTY recognizes that even a comprehensive sampling and testing program implemented by trained and experienced personnel with appropriate equipment may fail to detect certain hidden conditions. MADISON COUNTY 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.