

Department of Engineering
Dan Gaillet, P.E., County Engineer

3137 South Liberty Street, Canton, MS 39046
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MEMORANDUM

April 10, 2018

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.
County Engineer



Re: 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 TRC Engineers, Inc. be placed under a General Engineering Services contract.



Two United Plaza
8550 United Plaza Boulevard, Suite 502
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www.TRCSolutions.com

March 27, 2018

Dan Gaillet, P.E.
County Engineer
Madison County Board of Supervisors
Department of Road Management
3137 South Liberty Street
Canton, MS 39046

**Re: Madison County Board of Supervisors
Department of Road Management
Master Agreement for Professional Services**

Dear Mr. Gaillet:

We have reviewed your comments with regard to the Master Agreement for Professional Services, we accept them, and have modified the document accordingly.

Please review the attached document and if you concur, please sign the Master Agreement for Professional Services and enter your initials where indicated at the bottom of the sheets. Please return the signed document to the address above or via pdf format to dkrone@trcsolutions.com.

Please let us know if you have any questions and/or need additional information.

Very truly yours,
TRC Engineers, Inc.

A handwritten signature in cursive script that reads "Durk H. Krone".

Durk H. Krone, P.E.
Vice President

Encl. Master Agreement for Professional Services

TRC ENGINEERS, INC. MASTER AGREEMENT FOR PROFESSIONAL SERVICES
Madison County Board of Supervisors
Madison County, Mississippi

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES is made by and between the **MADISON COUNTY BOARD OF SUPERVISORS** of **Madison County, Mississippi** hereinafter referred to as "Owner," and **TRC Engineers, Inc.**, hereinafter referred to as "TRC".

TRC will provide professional services related to these improvements as described herein.

The Owner and TRC in consideration of the mutual covenants in this contract agree in respect of the performance of professional services by TRC and the payment for those services by the Owner as set forth below. Execution of the agreement by TRC and the Owner constitutes the Owner's written authorization to TRC to proceed on the date last written below with the services described herein.

SECTION 1 - EMPLOYMENT OF TRC

The Owner agrees to engage TRC, and TRC agrees to perform professional services in connection with the proposed improvements as stated in the sections to follow. These services will conform to the requirements and standards of the Owner and conform to the standards of practice ordinarily used by members of TRC's profession practicing under similar conditions. For having rendered such services, the Owner agrees to pay TRC compensation as stated in the sections to follow.

SECTION 2 - SCOPE OF SERVICES

TRC will perform professional services as requested by the Owner. The terms of each work assignment or project will be defined and agreed upon by the Owner and TRC and represented in the form of a written WorkOrder.

SECTION 3 - PAYMENT

For the work described under SECTION 2 - SCOPE OF SERVICES, the Owner will pay TRC on a lump sum basis. The Owner represents that funding sources are in place with the available funds necessary to pay TRC.

If any payment due TRC under this agreement is not received within 60 days from date of invoice, TRC may elect to suspend services under this agreement without penalty or liquidated damages assessed from the Owner.

The Owner will pay TRC on a monthly basis, based upon statements submitted by TRC to the Owner indicating the estimated proportion of the work accomplished. Payments not received within 60 days of invoice date will be subject to a one percent monthly simple interest charge.

Initial here: _____ (Client)

SECTION 4 - OWNER'S RESPONSIBILITIES

In connection with the project, the Owner's responsibilities shall include, but not be limited to, the following:

1. Giving thorough consideration to all documents presented by TRC and informing TRC of all decisions within a reasonable time so as not to delay the work of TRC.
2. Making provision for the employees of TRC to enter public and private lands as required for TRC to perform necessary preliminary surveys and other investigations.
3. Obtaining the necessary lands, easements and right-of-way for the construction of the work. All costs associated with securing the necessary land interests, including property acquisition and/or easement document preparation, surveys, appraisals, and abstract work, shall be borne by the Owner outside of this contract, except as otherwise described in Section 2 - Scope of Services.
4. Furnishing TRC such plans and records of construction and operation of existing facilities, available aerial photography, reports, surveys, or copies of the same, related to or bearing on the proposed work as may be in the possession of the Owner. Such documents or data will be returned upon completion of the work or at the request of the Owner.
5. Furnishing TRC a current boundary survey with easements of record plotted for the project property.
6. Paying all plan review and advertising costs in connection with the project.
7. Providing legal, accounting, and insurance counseling services necessary for the project and such auditing services as the Owner may require.
8. Furnishing permits, permit fees, and approvals from all governmental authorities having jurisdiction over the project and others as may be necessary for completion of the project.
9. Giving prompt written notice to TRC whenever the Owner observes or otherwise becomes aware of any defect in the project or other events which may substantially alter TRC's performance under this Agreement.
10. Owner will not hire any of TRC's employees during performance of this contract and for a period of one year beyond completion of this contract.
11. Furnishing TRC a current geotechnical report for the proposed site of construction. TRC will coordinate with the geotechnical consultant, the Owner has contracted with, on the Owner's behalf for the information that is needed for this project.

Initial here: _____ (Client)

SECTION 5 - MISCELLANEOUS

5.1 Instruments of Service

TRC's instruments of service provided by this agreement consist of the printed hard copy reports, drawings, and specifications issued for the Assignment or Project; whereas electronic media, including CADD files, are tools for their preparation. As a convenience to the Owner, TRC will furnish to the Owner both printed hard copies and electronic media. In the event of a conflict in their content, however, the printed hard copies shall take precedence over the electronic media.

TRC's electronic media are furnished without guarantee of compatibility with the Owner's software or hardware, and TRC's sole responsibility for the electronic media is to furnish a replacement for defective disks or USB devices within thirty (30) days after delivery to the Owner.

TRC retains ownership of the printed hard copy drawings and specifications and the electronic media. The Owner is granted a license for their use, but only in the operation and maintenance of the Project or Assignment for which they were provided. Use of these materials for modification, extension, or expansion of this Project or on any other project, unless under the direction of TRC, shall be without liability to TRC and TRC's consultants.

Because data stored in electronic media form can be altered, either intentionally or unintentionally, by transcription, machine error, environmental factors, or by operators, unauthorized use of these materials not under the direction of TRC shall also be without liability to TRC and TRC's consultants.

5.2 Opinions of Cost

Since TRC has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, TRC's Estimates of Project Costs and Construction Costs provided for herein are to be made on the basis of TRC's experience and qualifications and represent TRC's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but TRC cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from estimates prepared by TRC.

The Owner understands that the construction cost estimates developed by TRC do not establish a limit for the construction contract amount. If the actual amount of the low construction bid exceeds the construction budget established by the Owner, TRC will not be required to re-design the project without additional compensation.

5.3 Underground Utilities

TRC will not, unless defined within a Work Order, provide research regarding utilities and survey utilities located and marked by their owners as provided for in this agreement. Additionally, since many utility companies typically will not locate and mark their underground facilities prior to notice of excavation, TRC is not responsible for knowing whether underground utilities are present or knowing the exact location of utilities for design and cost estimating purposes. Additionally, TRC is not responsible for damage to underground utilities, unmarked or improperly marked, caused by geotechnical, potholing, construction, or other subconsultants working under a subcontract to this agreement.

Initial here: _____ (Client)

5.4 Insurance

TRC currently has in force, and agrees to maintain in force for the life of this Contract, the following minimum schedule of insurance:

Worker's Compensation	\$500,000.00
Automobile Liability (Combined Property Damage and Bodily Injury)	\$1,000,000.00
General Liability (Combined Property Damage and Bodily Injury) Professional Liability	\$2,000,000.00

5.1 Records

TRC will retain all pertinent records for a period of two years beyond completion of the project. Owner may have access to such records during normal business hours.

5.2 Indemnity Provision

Subject to the limitation on liability set forth in Section 5.8, TRC agrees to indemnify the Owner for damages, liabilities, or costs (including reasonable attorneys' fees) to the extent the damages and costs are caused by the negligent acts, errors, or omissions of TRC, its subconsultants, or any other party for whom TRC is legally liable, in the performance of their professional services under this contract.

In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of TRC and the Owner, they shall be borne by each party in proportion to its own negligence.

Owner agrees that any claim or suit for damages made or filed against TRC by Owner will be made or filed solely against TRC or its successors or assigns and that no member or employee of TRC shall be personally liable to Owner for damages under any circumstances.

5.3 Design without Construction Phase Services

Unless otherwise stipulated in Work Orders, it is understood and agreed that TRC's Scope of Services under this Agreement does not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided by the Owner. The Owner assumes all responsibility for interpretation of the Construction Contract Documents and for construction observation and supervision and waives any claims against TRC that may be in anyway connected thereto.

If the Owner requests in writing that TRC provide any specific construction phase services and if TRC agrees in writing to provide such services, then they shall be compensated for the work as Additional Services.

5.4 Limitation of Liability

In recognition of the relative risks and benefits of the project to both the Owner and TRC, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of TRC and its subconsultants to the Owner and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims for expenses from any cause or causes, so that the total aggregate liability of TRC and its subconsultants to all those named shall not exceed TRC's total fee for services rendered on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contractor warranty, and indemnity obligations.

Initial here: _____ (Client)

Notwithstanding any other provision to the contrary in this Agreement or a Work Authorization and to the fullest extent permitted by law, neither Owner nor TRC shall be liable, whether based on contract, tort, negligence, strict liability, warranty, indemnity, error and omission, or any other cause whatsoever, for any consequential, special, incidental, indirect, punitive, or exemplary damages, or damages arising from or in connection with loss of power, loss of use, loss of revenue or profit (actual or anticipated), loss by reason of shutdown or non-operation, increased cost of construction, cost of capital, cost of replacement power or customer claims, and Owner hereby releases TRC, and TRC releases Owner, from any such liability.

5.8.1 Hazardous Materials

Nothing in this agreement shall be construed or interpreted as requiring TRC to assume any role in the identification, evaluation, treatment, storage, disposal, or transportation of any hazardous substance or waste.

5.9 Mediation

The Owner and TRC agree that any and all discussions resulting from this clause are confidential. As they may apply to the presiding rules of evidence, negotiations pursuant to this clause shall not imply admission of responsibility or guilt for the aggravating action, but shall be regarded as compromise, resolution attempts, and settlement negotiations.

The Owner and TRC agree to, through good faith efforts, first attempt to resolve all conflicts that arise out of or related to this Agreement, through direct discussions involving senior and/or executive management representatives from their respective organizations. It is a requirement of this clause for this condition be attempted prior to the use of other dispute resolution processes. If the respective representatives are unable to develop a compromise resolving the dispute, such that it is satisfactory to both parties within thirty (30) calendar days after a party delivers a written notice of such dispute, then further mediation processes shall begin, as described herein.

If direct discussions fail to resolve the dispute, the Owner and TRC further agree to pursue non-binding mediation unless the parties mutually agree otherwise.

The Owner and TRC further agree to use their reasonable best efforts to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants and in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

5.9 Litigation Assistance

This Agreement does not include costs of TRC for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the Owner, unless Litigation Assistance has been expressly included as part of the work defined in Section 2 - Scope of Services. In the event the Owner requests such services of TRC, this Agreement shall be amended in writing by both the Owner and TRC or a separate written agreement will be negotiated between the parties.

Initial here: _____ (Client)

SECTION 6 - CONTROL OF SERVICES

This is a Mississippi Contract and in the event of a dispute concerning a question of fact in connection with the provisions of this contract which cannot be disposed of by mutual agreement between the Owner and TRC, the matter shall be resolved in accordance with the Laws of the State of Mississippi.

This Agreement may be terminated by either party by seven (7) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the one (1) party through no fault to the other party or for the convenience of the Owner upon delivery of written notice to TRC. If this Agreement is so terminated, TRC shall be paid for the time and materials expended to accomplish the services performed to date, as provided in SECTION 3 - PAYMENT; however, TRC may be required to furnish an accounting of all costs.

SECTION 7 - SUCCESSORS AND ASSIGNS

The Owner and TRC each bind themselves and their executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; neither the Owner nor TRC shall assign, sublet, or transfer their interest in this agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

SECTION 8 - APPENDICES AND EXHIBITS

- 8.1 The following Appendices and/or Exhibits are attached to and made a part of this Agreement:
8.1.1 Appendix A - Sample Work Order

Initial here: _____ (Client)

Acceptance of this proposed Agreement is indicated by an authorized agent of the Owner signing in the space provided below. Please return one signed original of this Agreement to TRC for our records.

IN WITNESS WHEREOF, Owner and TRC have executed this Agreement effective as of the date last written below.

Madison County Board of Supervisors

By: _____
Name: _____
Title: _____
Date: _____
Attest: _____

TRC Engineers, Inc.

Durk H. Krone

Durk H. Krone, P.E.

Vice-President

March 27, 2018
Michael Schuyf

Appendix A

WORK ORDER NO. 1
 Madison County Board of Supervisors
 Madison County, Mississippi Project No. 301208
 Sample Work Order

This WORK ORDER is made by and between the MADISON COUNTY BOARD OF SUPERVISORS of Madison County, Mississippi hereinafter referred to as "Client," and TRC, hereinafter referred to as "TRC", in accordance with the provisions of the MASTER AGREEMENT FOR PROFESSIONAL SERVICES executed on **XX/XX/XXXX** .

Under this Work Order, the Client intends to make the following improvements for **Sample Work Order**:

Insert project location.

TRC will provide professional services related to these improvements as described herein.

SECTION 1 - SCOPE OF SERVICES

Insert detailed scope of work text here.

SECTION 2 - PAYMENT

For the work described under SECTION 1 - SCOPE OF SERVICES, the Client will pay TRC on a lump sum basis. The Client represents that funding sources are in place with the available funds necessary to pay TRC.

The table below presents a summary of the fee amounts and fee types for this contract.

WORK DESCRIPTION	FEE AMOUNT	FEE TYPE
<i>PUT PHASE DESCRIPTIONS IN THIS COLUMN</i>		LUMP SUM, COST+FF, ETC.
Preliminary Work/Study		
Surveys		
Preliminary Design		
Final Design		
Bidding Services		
Construction Phase Services		
Services After Construction - Warranty Follow-Up; Start-Up; etc.		
Etc.		
TOTAL FEE		

The lump sum amount to be paid under this agreement is [Insert fee]. For informational purposes, a breakdown of TRC's estimated costs is included in Appendix B with approximate current hourly rates for each employee classification.

The Client will pay TRC on a monthly basis, based upon statements submitted by TRC to the Client indicating the estimated proportion of the work accomplished. Payments not received within 60 days of invoice date will be subject to a one percent monthly simple interest charge.

Additional Services (Extra Work). For work not described or included in Section 2 - Scope of Services but requested by the Client in writing, the Client will pay TRC, for time spent on the project, at the rates shown in Appendix B for each classification of TRC's personnel (may include contract staff classified at TRC's discretion) plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel. The rates shown in Appendix B will be increased annually with the first increase effective on or about [month day, year].

SECTION 3 -APPENDICES AND EXHIBITS

- 3.1 The following Appendices and/or Exhibits are attached to and made a part of this Agreement:
- 3.1.1 Appendix A - Scope of Services
 - 3.1.2 Appendix B (*fee spreadsheets*)

This Agreement may be executed in two (2) or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.