

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

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MEMORANDUM

June 25, 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. *dg*
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 Michael Baker International be placed under a General Engineering Services contract.

Master Services Agreement

THIS AGREEMENT entered into this _____ day of _____ 20__, by and between **Michael Baker International** (hereinafter "**BAKER**") with offices at 310 New Pointe Drive, Ridgeland, MS 39157, and **Madison County Board of Supervisors** (hereinafter, "**CLIENT**"), a County Government Agency with offices at 125 West North Street, Canton, MS 39046.

WHEREAS, the **CLIENT** is in the business of providing transportation infrastructure, and desires **BAKER** to perform certain technical services on an as-needed basis.

WHEREAS, **BAKER** is in the business of providing engineering and technical services and desires to perform such services as requested by **CLIENT**.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. **SCOPE OF WORK.** **BAKER** shall perform, as requested by **CLIENT** and accepted by **BAKER**, the services in Task Order(s) that **CLIENT** may elect to issue to **BAKER** and make a part hereof (the "Services"). **BAKER** shall furnish all necessary management, supervision, personnel, equipment, tools, materials, and supplies (except as may be otherwise stipulated in the Task Order) reasonably necessary to provide the Services. Upon acceptance of a Purchase Order, **BAKER** will provide the requested Services at such time or times and at such places as **CLIENT** may reasonably request upon reasonable notice to **BAKER**.
2. **STANDARD OF CARE.** The standard of care applicable to **BAKER's** Services is the degree of skill and diligence normally employed by engineers or providers of technical services performing the same or similar services.
3. **COMPENSATION AND PAYMENT.** **CLIENT** shall compensate **BAKER** for the Work in such manner as described in the applicable Task Order, including any additions or modifications mutually agreed upon and incorporated therein (hereinafter, the "Payment Terms"). Partial payments for the Work shall be made monthly by the **CLIENT** to **BAKER** based on invoices submitted by **BAKER**. The **CLIENT** shall also pay **BAKER** a late payment charge for any payments not made within thirty (30) days of the date of applicable invoices at the rate of one and one-half percent (1½ %) per month.
4. **ESTIMATES.** Any estimates provided for cost of construction, financing, and acquisition of land and right-of-ways shall be made in accordance with good engineering practice and procedure. It is understood, however, that **BAKER** has no control over construction costs, competitive bidding and market conditions, nor over costs of financing, acquisition of land or right-of-ways, and **BAKER** does not guarantee the accuracy of such cost estimates as compared to actual cost or contractors' bids.

5. **CONSTRUCTION MEANS AND METHODS.** BAKER shall not be responsible for construction means, methods, techniques, sequences or procedures of construction contractors, or the safety precautions and programs incident thereto, and shall not be responsible for such contractors' failure to perform work in accordance with the contract documents.
6. **COMPLIANCE WITH LAWS.** BAKER shall comply with all applicable provisions of the unemployment compensation, sickness and disability, Social Security laws, the Fair Standards Act and all other Federal, State, and local laws or regulations relating to employment.
7. **ASSIGNMENT BY COMPANY.** All the terms, provisions, covenants and conditions of this Agreement and any resulting Task Orders (including any modifications thereto) shall be binding upon, inure to the benefit of, and be enforceable by CLIENT, its successors and assigns; provided however, that no portion of this Agreement (including any Task Order) and the rights and obligations thereunder shall be assignable or delegable by CLIENT, by operation of law or otherwise, without the express prior written consent of BAKER which consent shall not be unreasonably withheld.
8. **ASSIGNMENT BY BAKER.** All the terms, provisions, covenants and conditions of this Agreement and any resulting Task Order (including any modifications thereto) shall be binding upon, inure to the benefit of, and be enforceable by BAKER, its successors and assigns; provided however, that no portion of this Agreement (including any Task Order) and the rights and obligations thereunder shall be assignable or delegable by BAKER, by operation of law or otherwise, without the express prior written consent of CLIENT which consent shall not be unreasonably withheld.
9. **INSPECTION OF THE WORK.** BAKER shall grant CLIENT access at all reasonable times to BAKER's facilities where the work under this Agreement is being performed.
10. **CHANGES.** The CLIENT may, at any time prior to the completion of the Work, direct, in writing, any changes to the Services, including but not limited to the revision of the scope, time period, or schedule of performance. BAKER shall perform such changes to the Services as directed by the CLIENT in writing and shall be paid for such Services as established by the change order.
11. **SUSPENSION OR TERMINATION.** In the event that any Task Order is terminated or suspended by the CLIENT prior to its completion, BAKER shall be paid an equitable amount proportional to the Services rendered to the date of termination or suspension, plus reasonable profit and termination costs.

12. **DEFAULT.** Should either party breach any provisions of this Agreement the non-breaching party shall have the rights and remedies provided by law or under these terms and conditions.
13. **INDEMNIFICATION.** Except as stated below, **BAKER** shall indemnify and save harmless the **CLIENT** from these claims, losses, lawsuits or expenses caused directly by **BAKER's** sole negligent acts, errors or omissions with performance of the Services hereunder. To the fullest extent permitted by law, with respect to claims, damages, losses and expenses which are related to hazardous waste or asbestos removal, disposal or cleanup or environmental liability, the **CLIENT** shall indemnify, save harmless and defend **BAKER** from and against all such claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from the performance of the Services, or claims against **BAKER** arising from work of others.
14. **LIMITATION OF LIABILITY.** To the fullest extent permitted by law, the **CLIENT** agrees to limit **BAKER's** liability to the **CLIENT** and to all other contractors or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to any Services or this Agreement from any cause or causes including but not limited to **BAKER's** negligent acts, errors, omissions, strict liability, breach of contract, or breach of warranty, such that the total aggregate of liability of **BAKER** to all those named shall not exceed \$50,000 or the total fee for the applicable Task Order, whichever is greater.
15. **WAIVER OF CONSEQUENTIAL DAMAGES.** Under no circumstances shall either party be liable to the other party for any consequential damages, including but not limited to loss of use or rental, loss of profit or cost of any financing, however caused, including either party's fault or negligence.
16. **INSURANCE.** Unless otherwise required in this Agreement, the **CLIENT** and **BAKER** shall, during the performance of the Services as provided herein, maintain insurance of the types and amounts specified, and with insurers satisfactory to the other party as follows:
- (a) **Comprehensive General Liability** including the following:
 - \$1,000,000 Each Occurrence for bodily injury and property damage
 - \$1,000,000 Products/ Completed Operations Aggregate
 - \$1,000,000 General Aggregate over all interests
 - (b) **Comprehensive Automobile Liability** including coverage for owned, non-owned and hired vehicles:
 - \$1,000,000 Bodily Injury
 - \$1,000,000 Property Damage

(c) **Umbrella/Excess Policy:**
\$4,000,000

(d) **BAKER** shall also maintain Workers' Compensation Insurance in statutorily required amounts, and Employers' Liability Insurance in the amount of \$1,000,000 for bodily injury and \$1,000,000 by disease with a policy limit of \$1,000,000.

17. **INDEPENDENT CONTRACTOR.** **BAKER** acknowledges that it is furnishing the Services contemplated by this Agreement hereto as an independent contractor, and not as an employee or agent of **CLIENT** or any of its affiliates.

18. **PUBLIC ANNOUNCEMENTS.** No publicity releases (including news releases and advertising) relating to this Agreement or the Services performed hereunder, shall be issued by either party without the prior written approval of the other party.

19. **PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

20. **HEADINGS.** Headings in this Agreement are for convenience only, and are not intended to be used in interpreting or construing the terms, covenants, and conditions of this Agreement.

21. **GOVERNING LAWS.** The validity or construction of this Agreement, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its choice of law provisions.

22. **SUPPLEMENTS TO AGREEMENT.** The following Exhibits are an integral part of this Agreement.

Exhibit "A" Sample Task Order

23. **ENTIRE AGREEMENT.** This Agreement and any resulting Task Orders constitute the whole agreement between the parties with respect to the subject matter contained herein, and there are no terms other than those contained herein. No modification or amendment of this Agreement shall be valid unless in writing and signed by the parties hereto.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this Agreement to be executed and delivered as of the day and year first above written.

WITNESS:

Michael Baker International, Inc.

Name: Ray Balentine, PE, PLS

Title: Vice President/Office Executive

WITNESS:

Name: _____

Title: _____

EXHIBIT A
Scope of Work

To be specified in each individual task order.