

Department of Engineering  
Tim Bryan, P.E., County Engineer

3137 South Liberty Street, Canton, MS 39046  
Office (601) 790-2525 FAX (601) 859-3430

**MEMORANDUM**

September 13, 2022

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

From: Tim Bryan, P.E.  
County Engineer

Re: Permission to Subcontract  
SAP-45(61) Heindl Road Bridge Subcontract Requests

The Engineering Department requests that the Board allow Fordice Construction Company to subcontract work to the following subcontractor:

- Clearpoint Consulting Engineers, P. A.

and to authorize the Board President to sign State Aid form (FAS-S.A.) SC-1 for the subcontract.

---

SHEILA JONES  
District One

TREY BAXTER  
District Two

GERALD STEEN  
District Three

KARL BANKS  
District Four

PAUL GRIFFIN  
District Five

Board of Supervisors  
Madison County  
 and  
 Office of State Aid Road Construction  
 Mississippi Department of Transportation

Request No. Six (6)  
 Project No. SAP-45(61)  
 Date September 12, 2022

Gentlemen:

I (we) (the prime contractor) ~~(a subcontractor)~~ propose to subcontract the following items to \_\_\_\_\_

Clearpoint Consulting Engineers, P.A.

in accordance with Special Provisions in our contract governing subletting a portion of the contract. In the event of your disapproval of this subcontracting or of your disapproval of performance of such subcontractor at any time, I (we) agree to perform such item or items of work with my (our) own organization in full compliance with all applicable terms of our contract. I (we) understand that this procedure does not relieve us of any of the responsibility under our contract.

I certify that said party is particularly experienced and equipped for such work and that the attached subcontract is the sole agreement for the work and that all pertinent provisions and requirements of the contract have been explained to this proposed subcontractor, and that when applicable, federally required contract provisions are physically incorporated into the agreement furnished to the subcontractor.

The prices shown below are the prime contract unit prices:

Spec. Pay Item No.	Item	Quantity	Unit	Prime Cont. Unit Price	Amount
S-607-A	Roadway Construction Surveying	1	Lump Sum	\$ 5,000.00	\$ 5,000.00
S-607-B	Bridge Construction Surveying	1	Lump Sum	\$ 5,000.00	\$ 5,000.00
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$

\* Only that portion subbed to subcontractor. See attached breakdown.

I (we) hereby certify that the persons or firms are designated hereon as subcontractors with the knowledge and consent of the persons or firms named.

Date September 12, 20 22

FORDICE CONSTRUCTION COMPANY

Prime Contractor

By: [Signature], President

Address: P.O. Box 1101, Vicksburg, MS 39181

Approval recommended: September 13, 20 22

County Engineer

Approved: Board of Supervisors Madison County

(By order of the Board, dated \_\_\_\_\_)

By \_\_\_\_\_, President

Approval recommended: \_\_\_\_\_, 20 22

State Aid District Engineer

Total this Request.... \$ 10,000.00 = 1.13 %  
 Previous Request..... \$ 143,640.50 = 16.16 %  
 Total to Date..... \$ 153,640.50 = 17.29 %

I (we) hereby certify that the use of our names as subcontractors on the above items was, and is, with our knowledge and consent.

Date ~~Sept 09, 2022~~, 20 ~~20~~ 22

Clearpoint Consulting Engineers, P.A.

(Sub) Subcontractor

By: [Signature]

Address: 6652 U.S. Highway 98, Hattiesburg, MS 39402

Approved: \_\_\_\_\_, 20 22

State Aid Engineer

Approved: \_\_\_\_\_, 20 22

Executive Director, Mississippi Department of Transportation

File

**SUBCONTRACT**

**THIS SUBCONTRACT AGREEMENT** is entered into this day between **Fordice Construction Company**, herein called the **Contractor**, and **Clearpoint Consulting Engineers, P.A.** herein called the **Subcontractor**, for the performance by the **Subcontractor** of certain work hereinafter specified as called for under the terms of a certain **Prime Contract** between the **Contractor** and **Office of State Aid Road Construction and Madison County Board of Supervisors**, herein called the **Owner**, relating to the project specifically identified as:

**State Aid Project No. SAP-45(61)  
Bridge Replacement on Heindle Road  
Madison County, MS**

**THE PARTIES AGREE AND BIND THEMSELVES**, their heirs, successors and assigns as follows:

**1. PERFORMANCE:**

The **Subcontractor** agrees to perform the work specified and actually required, to furnish all labor, materials, equipment, supplies and other items for the work and to pay promptly for all such, and to complete the work in strict compliance with the terms of the **Prime Contract** and to the satisfaction of and in compliance with the directions of the **Owner** and **Contractor**.

**2. PRIME CONTRACT:**

The terms, conditions, specifications, drawings, schedules and contract documents forming a part of the **Prime Contract** between the **Contractor** and the **Owner** for **State Aid Project No. SAP-45(61) Bridge Replacement on Heindle Road, Madison County, MS** are hereby made a part of this subcontract by reference as fully as if set out in detail. The **Subcontractor** shall be bound to the same extent that the **Contractor** is bound by each and every covenant, obligation and provision of said **Prime Contract** and all drawings and technical specifications that relate to the work of the **Subcontractor**.

**3. WORK:**

The **Subcontractor** shall perform all of the work necessary and actually required to complete the following items of the **Prime Contract** :

ITEM NO.	DESCRIPTION	QUANTITY	UNIT PRICE	AMOUNT
S-607-A	Roadway Construction Surveying	1 Lump Sum	\$ 4,000.00	\$ 4,000.00
S-607-B	Bridge Construction Surveying	1 Lump Sum	4,000.00	<u>4,000.00</u>
			<b>TOTAL =</b>	<b>\$ 8,000.00</b>

It is understood that all quantities set out above are approximate.

The **Subcontractor** shall perform all of the work actually required to complete said items for the Unit Prices set opposite each item and said prices shall constitute the sole consideration for all work performed hereunder.

**4. PROGRESS AND COMPLETION:**

Unless herein otherwise specifically provided, the **Subcontractor** shall commence work promptly or upon notice from the **Contractor**. The **Subcontractor** shall, in any event, prosecute the work diligently and so as to avoid delaying the progress of the **Contractor** or other subcontractors on other portions of the project work. The **Subcontractor** shall keep and maintain on the project a sufficient number of properly qualified workmen and a sufficient quantity of materials, equipment and supplies to efficiently perform the work as required without delay. Should the

Subcontractor cause delay in the progress or completion of the project, Contractor may recover from Subcontractor the damages resulting therefrom, including liquidated damages assessed by the Owner and attributable thereto.

The Subcontractor shall comply in all respects with the Contractor's schedule for the subcontract work. The Subcontractor acknowledges and agrees to the Contractor's right to schedule the subcontract work as the Contractor deems necessary to facilitate overall progress and performance of work required to be performed under this subcontract, and the Subcontractor shall proceed as directed with his work under this subcontract by the Contractor in all instances, including but not limited to the existence of a dispute, claim or other like controversy, and that any failure of the Subcontractor to comply herewith and to proceed with his work shall automatically be deemed a default under this subcontract entitling the Contractor to all remedies available in the extent of breach or default. Time is of the essence in this subcontract and the work specified herein. Contractor shall not be liable to Subcontractor for any delay resulting from the act, neglect or default of the Owner or from causes beyond Contractor's control or, in any case, beyond the granting of justifiable time extensions on written applications therefor made within three (3) days from the beginning of the claimed delay.

**5. PAYMENT:**

Subject to other provisions hereof, the Contractor agrees to pay the Subcontractor the stated consideration for said work on the basis of the quantities allowed and paid for by the Owner, and to make payment within fifteen (15) days from the time that the Contractor is paid by the Owner, less the same percentage retained by the Owner, which percentage may be retained until completion of the Prime Contract and final payment by the Owner, except that the payment of retainage upon satisfactory completion of the work hereunder shall not depend upon the receipt of final payment by the Owner in cases where there is undue delay which is occasioned by complaints or circumstances totally unrelated to the work hereunder or to the manner of performing this subcontract.

**6. ADVANCES:**

The Contractor may, but shall not be required to, advance sums to the Subcontractor for the purpose of financing the work and may offset such against any subcontract earnings, including final retainage, without the consent of and free of any claim of unauthorized prepayment by any Surety and such shall not release the Surety in whole or in part. The Contractor may, but shall not be required to, supply the Subcontractor with labor, materials, equipment and supplies and other items acceptable to the Subcontractor in the performance of the work and recover the value or price therefor against the Subcontractor and the Subcontractor surety, if any, without being required to offset the same or any part thereof against the earnings of the Subcontractor.

**7. INSURANCE:**

The Subcontractor shall obtain, before commencement of work, and maintain until final acceptance of the Prime Contract, full insurance coverage, including as a minimum the following types of insurance with the stated policy limits:

Worker's Compensation and Employers' Liability: Statutory & \$100,000 each accident; \$100,000 disease each employee; \$500,000 disease policy limit.

Commercial General Liability: \$1,000,000 any one occurrence  
\$1,000,000 any one person or organization  
\$1,000,000 products/completed operations aggregate  
\$1,000,000 general aggregate  
Automobile Liability: \$1,000,000 combined single limit.

In addition to the insurance listed, the Contractor may, at its sole discretion, require the Subcontractor to provide additional or different insurance coverage which applies to this project. Before commencing the subcontract work, the Subcontractor will submit to the Contractor Certificates of Insurance with number of copies and content as required by the Contractor, certifying the types and the amounts of coverage, certifying that said insurance

applies to all activities and liability of the Subcontractor pursuant to this subcontract and reduced during the period of construction, and the Subcontractor shall obtain an endorsement to its policies and insurance certificates providing substantially as follows:

Insurer may not cancel this policy or reduce coverage for a period of thirty (30) days after Contractor receives written notice of the insurer's intention to cancel or reduce the coverage.

Contractor shall be shown as an additional insured on Subcontractor's Commercial General Liability Policy.

The Subcontractor's failure to maintain complete insurance shall be a material breach authorizing the Contractor, at the Contractor's sole election, either to terminate this subcontract or to provide full insurance coverage at the Subcontractor's sole expense; however, in neither case shall the Subcontractor's liability be lessened.

#### **8. INDEMNITY:**

The Subcontractor covenants to defend, indemnify, save harmless, protect, and exonerate both the Contractor (its agents, employees, representatives, and sureties) and the Owner from any and all claims, liability, and damages, of any kind or nature, whether in contract, tort or otherwise, which arise out of or relate to the obligations assumed herein by the Subcontractor or the Subcontractor's (including its successors, agents and employees) actions, inactions or omissions in performing under this subcontract. Pursuant to this indemnity provision, the Subcontractor shall also be liable for all costs and expenses, including but not limited to attorneys fees, incurred by the Contractor or the Owner in prosecuting or defending any claim, suit or other action which arises out of or relates to the obligations assumed herein by the Subcontractor or the Subcontractor's (including its successors, agents and employees) actions, inactions or omissions in performing under this subcontract. The foregoing covenants and indemnity obligation shall apply to the fullest extent permitted by law.

#### **9. FAILURE TO PAY CLAIMS:**

The Subcontractor warrants that it has sufficient funds and credit to pay currently all bills incurred in the performance of the work hereunder without the necessity of resorting to earnings for work performed. The Subcontractor agrees that failure to pay such bills, when due, shall be a breach of this subcontract for which the Contractor may, but shall not be required to, withhold all sums otherwise payable hereunder for past and future earnings until the Subcontractor presents satisfactory evidence of payment of all bills, expenses, and obligations incurred by the Subcontractor relating to this subcontract and furnish, upon the Contractor's request, written releases in a form acceptable to the Contractor. In case any such bill or claim is disputed by the Subcontractor, the Contractor may consider the same to be valid until discharged and released or until satisfactory security is given for the Contractor's indemnification. At the Contractor's option, the Contractor may, but shall not be required to, pay any such bill or claim and recover the same from the Subcontractor or any surety or deduct the same from any payments (progress or retainage) otherwise due hereunder. Any and all payments made on good faith in the belief that the Contractor is liable, whether liable or not, shall be conclusive of the Contractor's right to reimbursement, and an itemized statement thereof or the checks or other evidence of payment shall be *prima facie* evidence of the fact and extent of the Subcontractor's liability.

#### **10. DEFAULT:**

Should the Subcontractor at any time fail to perform any one or more of the agreements herein contained, or fail to avoid bankruptcy, receivership or attachment, or abandon the work, any such failure or abandonment shall amount to a default hereunder and the Contractor may, at the Contractor's option, after 24 hours notice to the Subcontractor, provide the labor, materials, equipment and supplies and other items necessary to perform the work and discharge the other obligations assumed by the Subcontractor and recover the cost thereof from the Subcontractor, and may deduct such cost from any money then due or thereafter due under this subcontract or any other contract between the parties, or the Contractor, at the Contractor's option, may terminate the Subcontractor and take over the work and complete the same or re-let the subcontract, deducting in any case the cost thereof (including a reasonable allowance to the Contractor for use of the Contractor's equipment based on A.E.D. rental rates and a



reasonable allowance for overhead expense) from the payments that would otherwise be due hereunder. Should such cost of completing or re-letting the work exceed that remaining unpaid hereunder, then such excess shall be the liability of the Subcontractor, payable on demand. In case of any default hereunder, the Contractor may, but shall not be required to, take exclusive possession of any materials and equipment on the project belonging to the Subcontractor and use the same in completion of the work, free of all claims for the value of said materials and for the rental or use of said equipment, and free of all claims for depreciation and ordinary wear and tear.

Determination of default made by the Contractor on good faith under the belief that a default exists under the terms hereof shall be conclusive of the fact of such default and on the Contractor's right to proceed as herein provided. The liability of the Subcontractor hereunder shall extend to and include the full amount of any and all sums paid and obligations assumed by the Contractor on good faith under the belief that such payments or assumptions were necessary or required, whether actually necessary or required or not (1) in completing the work and providing labor, materials, equipment, supplies and other items therefor or re-letting the subcontract, and (2) in settlement, discharge or compromise of any claims, demands, suits and judgments pertaining to or arising out of the subcontract work. An itemized statement thereof or the checks or other evidence of payment shall be *prima facie* evidence of the fact and extent of the Subcontractor's liability.

Notwithstanding anything to the contrary in this subcontract and in addition to the Contractor's rights to terminate for breach or default, the Contractor may terminate any portion of this subcontract or the entire subcontract, regardless of fault, in the event the Owner exercises its right to terminate all or any portion of the Prime Contract. Upon such termination, the Subcontractor shall be entitled only to the amount due under the subcontract for subcontract work performed on the basis of the quantities allowed and paid for by the Owner as of the date of the termination, plus any additional amount Contractor actually recovers from Owner on Subcontractor's behalf, less any backcharges or amounts otherwise due the Contractor under the terms of this subcontract.

#### **11. ASSIGNMENT OF SUBCONTRACT:**

The Subcontractor shall not assign all or any part of this subcontract or sub-let all or any part of the work provided for hereunder, without the prior written consent of the Contractor; but in any event, and without regard to whether such consent is given or not, the Subcontractor and its assignees agree to indemnify and save the Contractor harmless, as set forth in Article 8, even if claims are based upon items supplied to an assignee or subcontractor of the undersigned Subcontractor or to any other party (no matter how remote or disconnected) performing or having any connection whatever with the performance of the subcontract work for which the Contractor may be liable on the Prime Contract, the bond, or otherwise. No assignment or sub-letting, with or without consent, shall relieve the undersigned Subcontractor or its assignee from any obligation herein assumed. The Subcontractor shall not sub-let nor subcontract any part of this subcontract without requiring from its subcontractors and suppliers insurance coverage as set forth in Article 7 of this subcontract.

#### **12. WORKMEN:**

Neither the Subcontractor nor any of the Subcontractor's assigns shall employ or keep any workman whose employment on the work covered by the subcontract is objected to by the Owner or by the Contractor.

#### **13. LICENSES, TAXES AND PERMITS:**

The Subcontractor agrees to comply with all public laws, codes, regulations and ordinances in effect where the work under this subcontract is to be performed, and to pay all fees, licenses, permits and expenses required by such compliance, and also, to the extent that the Contractor is or may be held liable therefor, to pay all taxes and contributions imposed or required by any law relating to the employees of the Subcontractor and to the performance of said work and completion of this subcontract.

#### **14. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS AND APPROVAL BY OWNER:**

The Subcontractor represents that it is fully familiar with all laws, ordinances, codes, executive orders, rules, and regulations that apply to the work, and that the Subcontractor will comply with them in performing the work. If there is a conflict between the contract documents and any applicable law, ordinance, code, executive order, rule, or regulation, the Subcontractor will comply with the law, ordinance, code, rule, or regulation at no increase in price.

The Subcontractor acknowledges that the Contractor relies on the Subcontractor's special expert knowledge of the laws, ordinances, codes, executive orders, rules and regulations that apply to its trade and the work to be performed under this subcontract. In the event the Owner has the right to approve Subcontractor, Subcontractor represents that it shall promptly obtain such approval and that no cause exists for Owner to disapprove Subcontractor.

**15. DEFECTIVE WORKMANSHIP OR MATERIALS:**

No payment made under this subcontract shall be construed as an acceptance of any defective work or improper materials, and the Subcontractor agrees to guarantee and does hereby guarantee the work under this subcontract against all defects of workmanship or materials to the same extent as liability may be imposed upon the Contractor under the terms of the Prime Contract.

**16. PERFORMANCE AND PAYMENT BONDS:**

If required by the Contractor prior to performance of this subcontract, the Subcontractor shall furnish to the Contractor, as obligee, a performance bond and a payment bond with a responsible surety, which is and remains acceptable to the Contractor, each in the full amount of this subcontract ensuring the Subcontractor's faithful performance of this subcontract and the Subcontractor's prompt payment for all labor, materials, equipment, machinery, supplies, services and other items furnished and supplied to the Subcontractor. The Subcontractor's failure to deliver satisfactory bonds within ten (10) days after demand shall be a material breach of this subcontract. Any obligation of the Subcontractor under this subcontract or under the Prime Contract incorporated by referenced herein shall be equally the obligation of the surety for the Subcontractor's performance bond as if all terms and conditions of this subcontract were set forth verbatim in the performance bond.

**17. NOTICE:**

Any notices provided for herein may be given in writing by United States Mail, telecopier or personal delivery. Notice by mail shall be considered as given when addressed to the last known post office address of the party to receive the same and deposited in the United States Mail, and shall be effective for all purposes, as of the time of such deposit, whether actually received by the addressee or not. Notice by any other means shall be effective when communicated to or received by the party involved.

**18. NON-WAIVER:**

The failure of either party to invoke any provision hereof or assert any right given hereunder on any one occasion or on any series of occasions shall not amount to or be interpreted as a waiver or release of any such provision or right.

**19. CHANGES:**

The Contractor may issue written change orders to this subcontract, without notice to the Subcontractor's sureties. The Subcontractor shall be obligated to perform such written change orders without delay. With respect to any change in the subcontract work, in whole or in part, the Subcontractor shall be entitled to an adjustment in the subcontract amount and an extension in the subcontract time, but only to the extent of adjustments and time extensions that the Contractor, on behalf of the Subcontractor, actually receives from the Owner for such changes, and the Subcontractor shall have no independent or separate claims against the Contractor for further adjustment in price or extension of time. The failure to agree to amount of contract adjustment owed due to the change order shall not relieve the Subcontractor of its duty to proceed with the work required under this subcontract

as well as any change orders issued by the **Contractor**. All changes must be in writing. Oral changes to work under this subcontract are not valid and will not be recognized. The **Subcontractor** shall have no claim or entitlement to payment for any addition to or change in subcontract work unless, prior to performance, the **Subcontractor** receives a written change order for such change or addition from an authorized representative of the **Contractor**.

**20. LEGAL EFFECT:**

All proposals, negotiations, and representations with respect to this subcontract, whether oral or written, are hereby superseded and merged into this subcontract. This subcontract cannot be changed, modified, altered, suspended, or terminated, except in writing signed by an authorized representative of the **Contractor**. No delay, waiver, forbearance, or failure by the **Contractor** to exercise rights or remedies under this subcontract or to insist upon strict compliance by the **Subcontractor** shall relieve the **Subcontractor** from strict compliance with all terms and conditions hereof or shall waive, restrict, or adversely affect any of the **Contractor's** rights and remedies as to any subsequent or continuing failure of the **Subcontractor** to comply strictly with all terms and conditions of this subcontract. The invalidity or unenforceability of any term or conditions of this subcontract shall not invalidate, render unenforceable, or adversely affect the remaining terms and conditions. The laws of the State of Mississippi shall govern this subcontract. The **Subcontractor** shall be liable for all damages, costs, and expenses, including attorneys' fees incurred by the **Contractor** in enforcing the terms and conditions of this subcontract. This subcontract shall be binding upon the successors-in-interest of the parties hereto, but otherwise nothing in this subcontract is intended nor shall be construed to give rights or to confer benefits to third parties.

**21. SPECIAL PROVISIONS:**

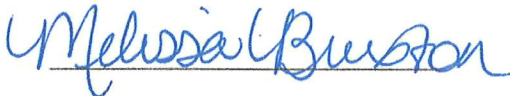
Price includes pro rata share of contract tax (0.0%) and bond premium (0.0%).

See attached quotation, which is incorporated into this subcontract agreement in its entirety.

WITNESS OUR SIGNATURES, on this the 9th day of September, 2022.

WITNESS:

**Subcontractor:** Clearpoint Consulting Engineers, P.A.  
6652 U.S. Highway 98  
Hattiesburg, MS 39402



BY:

TITLE:

Vice-President

WITNESS:

**Contractor:** Fordice Construction Company  
P.O. Box 1101  
Vicksburg, MS 39181



BY:

Hunter L. Fordice, President