

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

3137 South Liberty Street, Canton, MS 39046
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MEMORANDUM

September 13, 2023

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: Traffic Engineering Services Agreement
Kiser Traffic and Engineering
Yandell Road From Clarkdell Road Extension to Bainbridge Crossing

The Engineering Department is recommending approval of the attached agreement with Kiser Traffic and Engineering to provide professional services for a Traffic Analysis of a portion of Yandell Road in Madison County for a lump sum fee of \$19,000.00.



September 12, 2023

Mr. Tim Bryan, P.E.
County Engineer
Madison County Board of Supervisors
3137 S. Liberty Street
Canton, MS 39046

Re: Letter Agreement to provide Professional Services for Traffic Analysis in Madison County on Yandell Rd From Clarkdell Road Extension to Bainbridge Crossing

Dear Tim:

This letter will serve as an agreement between the **Madison County Board of Supervisors** and Kiser Traffic and Engineering, LLC to provide professional services for a *Traffic Analysis* of a portion of Yandell Road in Madison County. The *Traffic Analysis* will include a planning level study of traffic circulation to help identify potential infrastructure improvements along Yandell Road. This agreement is based on my discussions with you and the Madison County Board of Supervisors regarding this project.

Kiser Traffic and Engineering, LLC proposes to provide **Madison County Board of Supervisors** a study that identifies short term roadway improvements based on current traffic volumes and congestion levels. The study will be divided into four Tasks: 1) Documentation of existing conditions, 2) Evaluation of turning movements along Yandell Road, 3) Prioritization of geometric improvements, and 4) Report.

Task 1 – Documentation of Existing Conditions:

Upon receipt of an executed agreement, Kiser Traffic and Engineering, LLC will initiate the traffic study. Kiser Traffic and Engineering, LLC will collect existing geometric information on Yandell Road from Clarkdell Road Extension to Bainbridge Crossing, a distance of ± 3.9 miles. Traffic counts will be conducted at the study intersections during peak hours when school is in session. The proposed study intersections on Yandell Road are listed in Table 1.

Table 1-Yandell Road Study Intersections

1	Clarkdell Road Ext.	11	Magnolia Pointe Dr
2	Madison Crossing	12	Cedar Grove Lane (West)
3	Glenwild Trail	13	Harvey Crossing
4	Glenwild Drive	14	Deerfield Blvd
5	Germany Drive	15	Cedar Grove Lane (East)
6	Brigade Ave/Cedarstone	16	Cedar Green Drive
7	Smith Carr Rd	17	Chartleigh Circle
8	Coventry Ln	18	Bainbridge Pkwy
9	Hampton Hills Blvd	19	Bainbridge Crossing
10	Johnson Lane		



Task 2 – Evaluation of Turning Movements along Yandell Road

The existing traffic volumes will be evaluated at the study intersections with Yandell Road. The left/right turning volumes will be compared to the left/right turn lane warrants in the NCHRP Report 457 to evaluate if dedicated left turn lanes/right turn lanes are warranted at these residential access roadway intersections with Yandell Road.

Task 3 – Prioritization of Geometric Improvements

The auxiliary lanes that are recommended along Yandell Road will be evaluated to determine if a center turn lane or individual left turn lanes will provide the most benefit to traffic circulation. The conceptual left/right turn lanes on Yandell Road will be shown graphically in the recommended improvements.

The project related impacts will be evaluated using the Highway Capacity Manual to identify deficiencies in operation at the study intersections. Corresponding geometric improvements will be recommended to mitigate the failing levels of service identified in this analysis for the site driveways and study intersections.

Task 4 – Report

The traffic volumes and recommended improvements will be provided in a letter/report documenting the *Traffic Analysis* to you for review and approval. Recommendations will be included in the document identifying geometric improvements at the proposed study intersections along Yandell Road. Comments from the County that identify additional intersections for study may be considered as additional services if modification to the *Traffic Analysis* is required.

Fee, Schedule & Billing

Kiser Traffic and Engineering proposes to provide these services for a lump sum fee of **\$19,000**. The *Traffic Analysis* will be completed within 12 **weeks** of receipt of a Notice to Proceed and receipt of an executed agreement. However, the traffic counts will not be collected before school starts on August 3.

Kiser Traffic and Engineering will bill you monthly as outlined in this agreement based on a percentage of completion of the study. Payment for our services will be due within 30 days of the invoice date and is not dependent on any factor except our ability to provide services in accordance with generally accepted standards of our profession.

If additional services outside this scope of services, as identified above, are required (and authorized by you in writing), the cost will be based on the attached *2023 Rate Schedule* as detailed in Exhibit A.

Additional Services

If other engineering services are requested by the Client, not included in **Tasks 1-4**, these services will be considered additional services and will be provided (if authorized by you, in writing) based on the attached *2023 Rate Schedule* as detailed in Exhibit A. Attending Public Meetings, meetings with MDOT or Planning & Zoning may be considered as additional services.



September 12, 2023

General Terms and Conditions

These services will be provided in accordance with Exhibit B, *General Terms and Conditions*. This proposal, the *2023 Rate Schedule* and *General Terms and Conditions* as provided in Exhibit B, represent the entire understanding between **Madison County Board of Supervisors**, and **Kiser Traffic and Engineering, LLC** with respect to the services to be provided and may only be modified in writing by both parties.

If the terms of this Letter Agreement are acceptable, please execute this agreement and return a copy to me. I appreciate the opportunity to provide these services for you and look forward to working with you.

Sincerely,

Kiser Traffic and Engineering, LLC

Jonathan A. Kiser, P.E., PTOE, PTP
President

Attachments: Exhibit A – 2023 Rate Schedule
Exhibit B – General Terms and Conditions

ACCEPTED: _____

DATE: _____

TITLE: _____

Exhibit A

2023 Rate Schedule

<u>Position</u>	<u>Hourly Rate</u>
Engineer	\$195.00
Technician/Drafting	\$110.00
Inspector	\$120.00
Clerical	\$ 50.00
<u>Expense Cost</u>	
Vehicle Mileage	\$0.65/mile

EXHIBIT B
GENERAL TERMS AND CONDITIONS
PROFESSIONAL SERVICES

1. **Relationship between Consultant and Client.** Kiser Traffic and Engineering, LLC. ("Consultant") shall serve as the Client's professional consultant in those phases of the Project to which this Agreement applies. The relationship is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other. Consultant shall not be considered to be the agent or fiduciary of the Client.
2. **Responsibility of Consultant.** Consultant will perform services under this Agreement in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions (the "Standard of Care"). No other representation, warranty or guarantee, express or implied, is included or intended in this Agreement or in any report, opinion, document, or otherwise.
3. **Responsibility of the Client.** Client shall provide all information and criteria as to its requirements for the Project, including budgetary limitations. Client shall arrange for Consultant to enter upon public and private property and obtain all necessary approvals required from all governmental authorities having jurisdiction over the Project. Client shall give prompt written notice to Consultant whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services.

The Client shall promptly report to the Consultant any defects or suspected defects in the Consultant's services of which the Client becomes aware, so that Consultant may take measures to minimize the consequences of such a defect. Should legal liability for the defects exist, failure by the Client to notify the Consultant shall relieve the Consultant of any liability for costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.
4. **Construction Phase Services.** If Consultant's scope of services includes the observation and monitoring of work performed by Client's separate contractors, Consultant shall provide personnel to observe and monitor the work in accordance with the Standard of Care in order to ascertain that it is being performed, in general, in accordance with the plans and specifications. Consultant shall not supervise, direct, or have control over the contractor's work. Consultant shall not have authority over or responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the contractor. Consultant does not guarantee the performance of the construction contract by the contractor and does not assume responsibility for the contractor's failure to furnish and perform its work in accordance with the plans and specifications.
5. **Designation of Authorized Representatives.** Each party shall designate one or more persons to act with authority on its behalf with respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the party.
6. **Ownership of Documents.** All reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form prepared by Consultant are instruments of Consultant's service that shall remain Consultant's property. The Client agrees not to use Consultant generated documents for projects other than the project for which the documents were prepared by Consultant, or for future modifications to the Project, without Consultant's express written permission. Any reuse or distribution to third parties without such express written permission or project-specific adaptation by Consultant will be at the Client's sole risk and without liability to Consultant or its employees, subsidiaries, and subconsultants.
7. **Opinion of Costs.** When required as a part of its scope of services, Consultant will furnish opinions or estimates of construction cost on the basis of Consultant's experience and qualifications, but Consultant does not guarantee the accuracy of such estimates. The parties recognize that Consultant has no control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices.
8. **Changes or Delays.** In the event new developments or circumstances beyond the control of Consultant require a change in the scope of services or schedule, Consultant shall be entitled to an equitable adjustment to the fee and/or schedule. Such events include, but are not limited to, unreasonable delays caused by Client's failure to provide specified direction or information, delays caused by Client's other contractors or consultants, or if Consultant's failure to perform is due to any act of God, labor shortage, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure, or interruption or any other cause beyond the reasonable control of Consultant.

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GENERAL TERMS AND CONDITIONS
PROFESSIONAL SERVICES

9. **Suspension of Services.** Client may, at any time, by written notice, suspend further services by Consultant. Upon receipt of such notice, Consultant shall take all reasonable steps to mitigate costs allocable to the suspended services. Client, however, shall pay all reasonable and necessary costs associated with such suspension including the cost of assembling documents, personnel and equipment, rescheduling or reassignment costs necessary to maintain continuity and the staff required to resume the services upon expiration of the suspension. Consultant will not be obligated to provide the same personnel in the event the period of any suspension exceeds 30 days.
10. **Termination.** This Agreement may be terminated by either party upon 30 days' written to the other party. Upon such termination, Client shall pay Consultant for all services performed up to the date of termination. If Client is the terminating party, Client shall pay Consultant all reasonable cost and expenses incurred by Consultant in effecting the termination, including but not limited to non-cancellable commitments and demobilization costs, if any.
11. **Indemnification.** Consultant shall indemnify and hold harmless Client from and against those damages and costs (including reasonable attorneys' fees) that Client incurs as a result of third party claims for personal injury or property damage to the extent caused by the negligent acts, errors or omissions of Consultant.
- ~~To the fullest extent permitted by law, Client shall indemnify and hold harmless Consultant from and against those damages and costs (including reasonable attorneys' fees) that Consultant incurs as a result of third party claims for personal injury or property damage to the extent caused by the negligent acts, errors or omissions of Client.~~
12. **Legal Proceedings.** In the event Consultant or its employees are required by Client to provide testimony, answer interrogatories, produce documents or otherwise provide information in relation to any litigation, arbitration, proceeding or other inquiry arising out of Consultant's services, where Consultant is not a party to such proceeding, Client will compensate Consultant for its services and reimburse Consultant for all related direct costs incurred in connection with providing such testimony or information. This provision shall not apply in the event Client engages Consultant to provide expert testimony or litigation support, which services shall be the subject of a separate agreement or an amendment to this Agreement.
13. **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided however, that neither party shall assign this Agreement in whole or in part without the prior written consent of the other party.
14. **Insurance.** Consultant agrees to maintain the following insurance coverage with the following limits of insurance during the performance of Consultant's work hereunder:
- (a) Commercial General Liability insurance with standard ISO coverage and available limits of \$1,000,000 per occurrence and \$1,000,000 general aggregate;
 - (b) Automobile Liability insurance with standard ISO coverage and available combined single limits of \$1,000,000 per accident;
 - (c) Professional Liability insurance covering Consultant's negligent acts, errors, or omissions in the performance of professional services with available limits of \$1,000,000 per claim and annual aggregate.
15. **Information Provided by the Client.** Consultant shall be entitled to rely upon, without liability, the accuracy and completeness of any and all information provided by Client, without the obligation of independent verification.
16. **Consequential Damages.** Neither Client nor Consultant shall be liable to the other or shall make any claim for any special, incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, loss of business or diminution of property value and shall apply regardless of legal theory such damages are alleged including negligence, strict liability, breach of contract and breach of warranty.
17. **Payment.** Unless agreed to otherwise, Consultant shall submit monthly invoices to the Client. Payment in full shall be due upon receipt of the invoice. Payment of any invoices by the Client shall be taken to mean that the Client is satisfied with the Consultant's services to the date of the payment and is not aware of any deficiencies in those services. If payments are delinquent after 30 days from invoice date, the Client agrees to pay interest on the unpaid balance at the rate of one percent (1%) per month. If the Client fails to make payments; then Consultant, after giving seven (7) days written notice to the Client, may suspend services until the Client has paid in full all amounts due for services, expenses, and other related charges without recourse to the Client for loss or damage caused by such suspension. The Client waives any and all claims against the Consultant for any

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such suspension. Payment for Consultant's services is not contingent on any factor, except the Consultant's ability to provide services in a manner consistent with that Standard of Care. Payment of invoices shall not be subject to any discounts, set-offs or back-charges unless agreed to in writing by both parties. If the Client contests an invoice, the Client may withhold only that portion so contested and shall pay the undisputed portion, after the Client has notified Consultant in writing within 30 days of receiving the invoice and shall identify the specific cause of the disagreement and the amount in dispute.

18. **Force Majeure.** Neither Client nor Consultant shall be liable for any fault or delay caused by any contingency beyond their control, including but not limited to, acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
19. **Compliance with Laws.** To the extent they apply to its employees or its services, Consultant shall exercise due professional care to comply with all applicable laws, including ordinances of any political subdivisions or governing agencies.
20. **Invalid Terms.** If any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding as if the unenforceable provisions were never included in the Agreement.
21. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state where the services are performed.
22. **Dispute Resolution.** All disputes, controversies or claims, of whatever kind or character, between the Parties, their agents and/or principals, arising out of or in connection with the subject matter of this Agreement shall be litigated in a court of competent jurisdiction.
23. **Additional Services.** Consultant shall be entitled to an equitable adjustment of its fee for services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, Client's schedule, construction schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or other documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond Consultant's control.
24. **Amendment.** This Agreement may only be amended in writing and where such amendment is executed by a duly authorized representatives of each party.
25. **Entire Understanding of Agreement.** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and Consultant hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of this Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.
26. **Survival of Provisions.** The provisions of this Agreement shall continue to be binding upon the parties hereto notwithstanding termination of this Agreement for any reason.
27. **Nonwaiver.** No waiver by a party of any provision of this Agreement shall be deemed to have been made unless in writing and signed by such party.
28. **Identity of Project Owner.** Within ten (10) days of the entry of this Agreement, Client, if Client is not the Project Owner, shall provide to Consultant the Project Owner's full legal name; Project Owner's physical address; Project Owner's mailing address; and the name, physical address and mailing address of the Client's point of contact with the Owner for the Project.
29. **Conflicting Terms.** In the event that there are multiple agreements with varying or conflicting terms and conditions between Client and Consultant, the terms and conditions contained in this Agreement shall supersede and have precedence over any other conflicting terms and conditions contained in any other written or oral agreement.
30. **Course of Dealing.** Client and Consultant agree that these General Terms and Conditions establish a course of dealing between them and shall apply to this and all other services, projects, agreements or dealings between the them, unless Client or Consultant gives the other written notice of objection to any term or condition before commencement of performance in connection with any other provision of services or projects involving the two of them.
31. **Contract Expiration.** This contract must be executed within 30 days of the date on page 1 of the letter agreement, for the Professional fees and schedule listed in this agreement to remain valid. In the event that this contract is not executed within this time period by the Client, the project pricing and/or schedule may not be valid, at the sole discretion of the Engineer.