

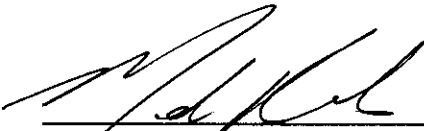
**ORDER: ACCEPT ENGINEERING AGREEMENT FOR EMERGENCY ROAD AND
BRIDGE REPAIR PROJECT NUMBER ERBR-36(01)**

Motion was made by Larry Gillespie, duly seconded by Brent Larson, to accept Engineering Agreement for Emergency Road and Bridge Repair Project #ERBR-36(01).

The vote on the motion was as follows:

Supervisor Brent Larson, voted yes
Supervisor Larry Gillespie, voted yes
Supervisor David Rikard, voted yes
Supervisor Chad McLarty, voted yes
Supervisor Mike Roberts, voted yes

After the vote, President Roberts, declared the motion carried, this the 6th day of November, 2023.



**Mike Roberts, President
Board of Supervisors**

Sherry Wall, Chancery Clerk

**AGREEMENT FOR ENGINEERING SERVICES
PROJECT NO. ERBR-36(01)
LAFAYETTE COUNTY, MS**

This Agreement, made this the _____ day of _____, 2023, by and between the Lafayette County Board of Supervisors, Lafayette County, Mississippi, hereinafter called the **OWNER** and Elliott & Britt Engineering, P.A. Oxford, Mississippi, hereinafter called the **ENGINEER**, Larry L. Britt, PE, Mississippi Certificate Number 7193, will be the Engineer of Record under this agreement.

WHEREAS, the **OWNER** intends to replace Bridge No. SA3600000000101 in Lafayette County, Mississippi with funds provided under the Emergency Road and Bridge Repair Fund.

WHEREAS, the **ENGINEER** agrees to provide all professional engineering services, including Preliminary Engineering, Construction Engineering and Inspection, Environmental Report, ROW Survey Plats & Description, and Utility Staking for said work, known as Emergency Road and Bridge Repair Project No. ERBR-36(01) which part of the funds has been provided for this activity.

By execution of this Agreement, the **OWNER** authorizes the **ENGINEER** to provide professional services under this Agreement.

WITNESSETH:

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

**SECTION A
ENGINEERING SERVICES**

- a. The **ENGINEER** will provide engineering services as detailed and required in the Memorandum of Agreement between the Mississippi Transportation Commission and Lafayette County, Mississippi.
- b. The **ENGINEER** will provide general engineering construction observation. The Engineer does not guarantee the performance of the contractor(s) by the **ENGINEER's** performance of such general engineering construction observation. The **ENGINEER'S** undertaking for Engineering Services hereunder will not relieve the **CONTRACTOR** of his obligation to perform the work in conformity with the

plans and specifications and in a workmanlike manner; will not make the ENGINEER and insurer of the CONTRACTOR'S performance; and will not impose upon the ENGINEER the obligation to see to it that the work is performed in a safe manner. This will be the responsibility of the CONTRACTOR(S) as set out in the project contract documents.

- c. The ENGINEER will work closely with Project Administrator who is the OWNER'S representative for management of the project.
- d. The ENGINEER will cooperate and work closely with representatives of State agencies involved in the project.
- e. The ENGINEER will review and approve estimates for progress and final payments.
- f. The ENGINEER will make final inspection of all construction and a written certification of final inspection to the OWNER.
- g. The ENGINEER will provide the Project Administrator with a copy of the construction contractor's estimate for payment.
- h. The ENGINEER will provide the Project Administrator with a copy of the Certificate of Completion for the construction activities.

SECTION B COMPENSATION FOR ENGINEERING SERVICES

The OWNER will compensate the ENGINEER for Engineering Services based on the following percentage or as allowed by MDOT:

- | | |
|---|-----------------------------|
| • Preliminary Engineering | +/- 6% of Construction Cost |
| • Construction Engineering & Inspection | +/- 9% of Construction Cost |
| • Environmental Report | \$8,000.00 |

The compensation for engineering will be paid on a monthly basis as services are completed not to exceed the stated allowances. Construction Engineering & Inspection services will be paid on a monthly basis as a percentage of completion of construction.

SECTION C
ADDITIONAL ENGINEERING SERVICES

In addition to the foregoing services, the following services may be required upon authorization of the OWNER.

1. Appearance before courts or board on matters of litigation related to the project.
2. Any additional work authorized and approved by the OWNER.

Payment for the services specified in this Section C will be in accordance with the schedule set out in Section D hereof. The ENGINEER will render to OWNER for such services an itemized bill, separate from any other billing, for compensation for services performed hereunder.

SECTION D
SCHEDULE OF RATES AND CHARGES FOR ADDITIONAL ENGINEERING SERVICES

<u>SURVEY PARTY & EQUIPMENT</u>	<u>RATE PER HOUR</u>
Survey Crew	\$125.00
 <u>CONSTRUCTION OBSERVATION</u>	
Resident Construction Observer	\$ 65.00
 <u>ENGINEERING AND GENERAL SUPERVISOR</u>	
Principal or Officer of Firm (P.E.)	\$125.00
Engineering Technician	\$75.00
Office Employee	\$56.00

SECTION E
GENERAL TERMS AND CONDITIONS

Relationship Between Engineer and Owner. The Engineer will serve as Owner's professional engineering 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. The Engineer will not be considered to be the agent of the Owner.

Responsibility of the Engineer. The Engineer will strive to perform services under this Agreement in a manner consistent with that level of care and skill ordinarily exercised by other professionals currently practicing in the same locality under similar conditions. No other representative expressed or implied and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any agreement between the Owner and any other party concerning the Project, the Engineer will not have control or be in charge of and will not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions of programs of the Owner, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services of the Project. Nor will the Engineer be responsible for the acts or omissions of the Owner, or for the failure of the Owner, any contractor or subcontractor, or any other engineer, architect or consultant not under contract to the Engineer to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project.

The Engineer will determine the amounts owing to the construction contractor and recommend in writing payments to the contractor in such amounts. By recommending any payment, the Engineer will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made to check the quality or quantity of the contractor's work.

Responsibility of the Owner. The Owner will provide all criteria and full information as to Owner's requirements for the Project, including budgetary limitations. The Owner will arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. The Owner will give prompt written notice to the Engineer whenever Owner observes or otherwise becomes aware of any development that affects the scope or timing of Engineer's services, or any defect or nonconformance in the work of any construction contractor.

The Owner will examine all documents presented by Engineer, obtain advice of any attorney or other consultant as Owner deems appropriate for such examinations and provide decisions pertaining thereto within a reasonable time so as not to delay the services of the Engineer.

Acquire property for easements and right-of-ways required for construction of the project.

Give prompt written notice to Engineer whenever, Owner observes or otherwise becomes aware of any development that affects the scope of timing of Engineer's services, or any defect or nonconformance in the work of the Engineer or of any Contractor.

Designation of Authorized Representative. Each party will designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project. The persons designated will review and respond promptly to all communications received from the party.

Reuse of Documents. All documents, including drawings and specifications furnished by Engineer pursuant to this Agreement, are intended for use on the Project only. They should not be used by Owner or others on extensions of the Project or any other project. Any reuse, without written verification or adaptation by Engineer, will be at Owner's sole risk, and Owner will indemnify and hold harmless Engineer from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom.

Opinions of Cost. Since the Engineer has no control over the cost of labor, materials, equipment or services furnished by the contractor, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, the Engineer cannot and does not guarantee that proposals, bids or actual construction cost will not vary from his opinions or estimates of construction cost.

The Engineer will be permitted to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents and to make reasonable adjustments in the extend of the Project to bring it with the budget.

Charges. Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Owner will negotiate appropriate Adjustments in fee and/or schedule acceptable to both parties to accommodate any changes.

Subcontracts. The Engineer may subcontract portions of the service, but each subcontractor must be approved by Owner in writing.

Suspension of Services. The Owner may, at any time, by written order to Engineer, require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order Engineer will immediately comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the services covered by the order. Owner, however, will pay all costs associated with suspension including all costs necessary to maintain

continuity and the staff required to resume the services upon expiration of the suspension of work order. The Engineer will not be obligated to provide the same personnel employed prior to suspension when the services are resumed, in the event the period of any suspension exceeds thirty (30) days. The Owner will reimburse Engineer for the costs of such suspension and re-mobilization.

Termination. This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Owner under the same terms, whenever Owner will determine the termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date will be reimbursed by Owner.

Notices. Any notice or designation required to be given by either party hereto will be in writing and unless receipt of such notice is expressly required by the terms hereof, will be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party will hereinafter furnish to the other party by written notice as herein provided.

Indemnification. The Engineer will indemnify and hold harmless Owner from Owner's loss or expense including reasonable attorney's fees for claims for personal injury (including death) or property damage arising out of the sole negligent act, error or omission of Engineer.

The Owner will indemnify and hold harmless Engineer from Engineer's loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) on property damage arising out of the sole negligent act, error or omission of Owner.

In the event of joint or concurrent negligence of Engineer and Owner, each will bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties) which caused the personal injury or property damage.

The Engineer will not be liable for special, incidental or consequential damage, including, but not limited to; loss of profits, revenue, use of capital, claims of customers, cost of purchased or replacement power, or for any other loss of any nature, whether based on contract, tort, negligence, strict liability or otherwise, by reason of the services rendered under this Agreement.

Legal Proceedings. In the event Engineer's employees are at any time required by Owner to provide testimony, answer interrogatories or otherwise provide information ("testimony") in preparation for or at a trial, hearing, proceeding on inquiry ("proceeding") arising out of the services that are the subject of this Agreement, where Engineer is not a party to such proceeding, Owner will compensate Engineer for its services and reimburse Engineer for all related direct costs incurred in connection with providing such testimony. This provision will be of no effect if the parties have agreed in a separate agreement or an amendment to this Agreement to terms which specifically superseded this provision, nor will this provision apply in the event Owner engages Engineer to provide expert testimony or litigation support, which services will be the subject of a separate agreement or an amendment to this Agreement.

Successors and Assigns. The terms of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assign; provided however, that neither party will assign this Agreement in whole nor in part without the prior written approval of the other.

Insurance. Within the context of prudent business practices, Engineer will endeavor to maintain workmen's compensation and unemployment compensation of a form and in an amount as required by state law; comprehensive general liability with maximum limits of \$1,000,000/\$1,000,000; automotive liability with maximum limits of \$1,000,000/\$1,000,000. The Owner recognizes that insurance market is erratic and Engineer cannot guarantee to maintain the coverages identified above.

Period of Repose. Any applicable statute of limitations will commence to run and any alleged course of action will be deemed to have accrued not later than the completion of services to be performed by Engineer.

Conflicts. In the event of a conflict between the main text of the Agreement and any appendix thereof, provisions of the main text will govern.

Third Party Exclusion. This Agreement will not create any rights or benefits to parties other than the Owner and Engineer except either such rights as may be specifically called for herein.

Hazardous Materials. When hazardous materials are known, assumed or suspected to exist at a project site, Engineer is required to take appropriate precautions to protect the health and safety of his personnel, to comply with the applicable laws and regulations and to follow procedures deemed prudent to minimize physical risks to employees and the public. The

Owner hereby warrants that, if he knows or has any reason to assume or suspect that hazardous materials may exist at the project site, he will inform Engineer in writing prior to initiation of services under this Agreement.

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. The Owner agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. The Engineer agrees to notify Owner as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. The Owner waives any claim against Engineer and agrees to indemnify, defend and hold Engineer harmless from any claim or liability for injury or loss arising from Engineer's encountering unanticipated hazardous materials or suspected hazardous materials. The Owner also agrees to compensate Engineer for any time spent and expenses incurred by Engineer in defense of any such claim.

Force Majeure. Neither Owner nor Engineer will be liable for any fault or delay caused by a 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.

Compliance with laws. To the extent they apply to its employees or its services, the Engineer will comply with all applicable United States, state, territorial and commonwealth laws, including ordinances of any political subdivisions or agencies of the United States, any state, territory or commonwealth thereof.

Severability of Invalid Provisions. If any provisions of the Agreement will be held to contravene or be invalid under the laws of any particular state, country or jurisdiction where used, such contravention will not invalidate the entire Agreement, but it will be construed as of not containing the particular provisions or provisions held to be invalid in the particular state, country, jurisdiction and the rights or obligations of the parties hereto will be construed and enforced accordingly.

Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Mississippi.

Amendment. This Agreement will not be subject to amendment unless another instrument is executed by duly authorized representative of each of the parties.

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, representatives, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein., Owner and Engineer hereby agree that any purchase orders, invoices, conformation, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of this Agreement will be null, void and without effect to the extent they conflict with the terms of this Agreement.

Subsurface Conditions and Utilities. The Owner recognizes that a comprehensive sampling and testing program implemented by trained and experienced personnel of Engineer or Engineer's sub-consultants with appropriate equipment may fail to detect certain hidden conditions. The Owner also recognizes that actual environmental, geologic and geotechnical conditions that Engineer properly inferred to exist between sampling points may differ significantly from those that actually exist.

The Engineer will locate utilities which will affect the project from information provided by the Owner and utility companies and from Engineer's surveys. In that these utility locations are based, at least in part, on information from others, Engineer cannot and does not warrant their completeness and accuracy.

SECTION F

1. It is further agreed that, the Owner will by appropriate resolution, adopt, and ratify this Agreement and enter upon their minute book.
2. The Engineer warrants that he has not employed or retained any company or person, other than a bona fide employee working for the Engineer, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Owner will have the right to annul this Agreement without liability, or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fees, commission, percentage, brokerage fee, gift or contingent fee.

3. In keeping with Special Conditions Number 4, third party contracts, the Engineer accepts the following conditions:

Right to Audit. Access to Project as a participating party, the Engineer Assures the Owner that it will keep and maintain books, records and other documents relating directly to the receipt and disbursement of these grant funds: and (ii, any duly representation of the Governor's Office of Federal-State Programs, Department of Community Development, the U.S. Department of Housing and Urban Development (HUD) and/or the Controller General of the United States) will, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records and other documents as well as granting access to any portion of this project, your firm, as a Participating Party until the completion of all close out procedures respecting the above referenced grant and the final settlement and conclusion of all issues arising out of this grant.

IN WITNESS THEREOF, the parties hereto, have executed or caused to be executed by their authorized officials, this AGREEMENT, in duplicate on the respective dates indicated below.

(SEAL)

LAFAYETTE COUNTY BOARD
OF SUPERVISORS

BY: _____

Sherry Wall, Chancery Clerk

Date: _____

BY: _____

Mike Roberts, Board President

Date: _____

ATTEST:

ELLIOTT & BRITT ENGINEERING, P.A.

BY: _____

Angela Dorris, Office Manager

Date: _____

BY: _____

Larry L. Britt, PE, PS, President

Date: _____