

MINUTES, LIMESTONE COUNTY COMMISSION, MAY 11, 2016

The Limestone County Commission reconvened the meeting from May 2, 2016 at 10:00 a.m. today at the Washington Street Courthouse Annex, 310 West Washington Street, Athens, AL.

Present: Stanley Hill, Steve Turner, Jason Black, and Ben Harrison. Absent: Mark Yarbrough, Chairman. Steve Turner presided.

MOTION was made by Jason Black and seconded by Stanley Hill to suspend the Rules of Order to approve two agreements.

The Commission Clerk called the roll. Jason Black, aye; Stanley Hill, aye; Steve Turner, aye; and Ben Harrison, aye. Motion carries unanimously.

MOTION was made by Jason Black and seconded by Steve Turner to authorize the Chairman to execute the following agreements.

- Agreement with the Alabama Department of Transportation covering the financing of preliminary engineering costs for the approaches and bridge replacement on Old Highway 20.
- Agreement with Morell Engineering for Preliminary Engineering, Surveying and Plan Development for the bridge replacement and approach work on Old Highway 20.

**AGREEMENT FOR
PRELIMINARY ENGINEERING ON A
FEDERAL EMERGENCY RELIEF PROJECT
BETWEEN THE STATE OF ALABAMA
AND
LIMESTONE COUNTY, ALABAMA**

This agreement is made and entered into by and between the State of Alabama, (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and LIMESTONE COUNTY; FEIN 63-6001607, hereinafter referred to as the COUNTY; in cooperation with the United State Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA:

WITNESSETH

WHEREAS, the STATE and the COUNTY desire to cooperate in the preliminary engineering for the approaches and bridge replacement of BIN 2544 on Old Highway 20 (CR-12) over slough of Limestone Creek. FHWA Disaster #AL2016-01 (DDIR Report #Limestone-2). Project #ERPR-9010(), LCP 42-166-16P, CPMS Ref #100065627.

NOW THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

MINUTES, LIMESTONE COUNTY COMMISSION, MAY 11, 2016

- (1) This agreement will cover only the preliminary design engineering aspect for the proposed improvements in accordance with plans approved by the STATE.
- (2) The preliminary design engineering phase is hereby defined as that work necessary to advance the development of the project through construction authorization by the FHWA. This phase will include all environmental studies and documentation required by the FHWA. The COUNTY will perform all preliminary design engineering with COUNTY forces, or with a consultant selected and approved by the STATE, as part of the project cost. Plans will be approved by the STATE.
- (3) The COUNTY will acquire any additional right-of-way, if needed, for the project at no cost to the STATE or this project.
- (4) The COUNTY agrees that in the event the FHWA determines, due to rules and/or regulations of FHWA (including but not limited to delay of the projects, or delay of projects contemplated to be developed and accomplished in sequence to the current projects) that Federal funds expended on this project must be refunded to the FHWA, the COUNTY will reimburse and pay to the STATE a sum of money equal to the amount of Federal funds expended under this Agreement.
- (5) Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization. The STATE will not be liable for Federal Aid Funds in any amount. All estimated cost will be financed, when eligible for Federal participation, on the basis of 80% Federal Emergency Relief funds and 20% State Public Road and Bridge funds. The estimated cost and participation by the various parties are as follows:

Federal Emergency Relief Funds	\$ 72,000.00
State Public Road and Bridge Funds	<u>\$ 18,000.00</u>
Total (Incl. E & I)	\$ 90,000.00
- (6) Any cost for work not eligible for Federal participation will be financed 100 percent by the COUNTY, which payment will be reflected in the final audit.
- (7) It is clearly understood by both parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein and that a separate Agreement will be required for the construction and construction engineering and inspection of the proposed improvement.
- (8) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.
- (9) The COUNTY will submit reimbursable invoices for work performed under the terms of this agreement to the STATE within six (6) months after the completion and acceptance of the project. Any invoices submitted after this six (6) month period will not be eligible for payment.

MINUTES, LIMESTONE COUNTY COMMISSION, MAY 11, 2016

- (10) This agreement is made and expressly executed in the names of the parties hereto by their respective officers, officials or other persons who are authorized to execute it, and it is deemed by the parties to be an agreement or contract under seal.
- (11) A final audit will be made of all project records after completion of the project and a copy will be furnished to the Alabama Department of Examiners of Public Accounts, in accordance with Act. 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the final audit and this agreement.
- (12) Each party will provide without cost to the other, information available from its records that will facilitate the performance of the work.
- (13) Nothing will be construed under the terms of this agreement by the STATE or the COUNTY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24th law).
- (14) The COUNTY shall be responsible at all times for all of the work performed under this agreement and, as provided in Ala. Code § 11-93-2 (1975), the COUNTY shall indemnify and hold harmless the State of Alabama, The Alabama Department of Transportation, its officers, officials, agents, servants, and employees.

For all claims not subject to Ala. Code § 11-93-2 (1975), the COUNTY shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against any and all damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of, connected with, or related to the (1) work performed under this Agreement, (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the COUNTY pursuant to the terms of this agreement, or (3) misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the COUNTY, its officers, officials, agents, servants, and employees.

- (15) The COUNTY will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the COUNTY, its agents, servants, employees or facilities.
- (16) By entering into this agreement, the COUNTY is not an agent of the STATE, its officers, employees, agents or assigns. The COUNTY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
- (17) By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

MINUTES, LIMESTONE COUNTY COMMISSION, MAY 11, 2016

- (18) Exhibits M and N are attached and hereby made a part of this agreement.
- (19) This agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.

RESOLUTION

BE IT RESOLVED, by the County Commission of Limestone County, Alabama, that the County enters into an agreement with the State of Alabama; acting by and through the Alabama Department of Transportation for:

The preliminary engineering for the approaches and bridge replacement of BIN 2544 on Old Highway 20 (CR-12) over slough of Limestone Creek. FHWA Disaster #AL2016-01 (DDIR Report #Limestone-2). Project #ERPR-9010(), LCP 42-166-16P, CPMS Ref #100065627;

which agreement is before this Commission, and that the agreement be executed in the name of the County, by the Chairman of the Commission for and on its behalf and that it be attested by the County Clerk and the seal of the County affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept of record by the County Clerk.

Passed, adopted, and approved this 11th day of May, 2016.

ATTESTED:

County Clerk

Chairman, County Commission

I, the undersigned qualified and acting clerk of Limestone County, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the County Commission of the County named therein, at a regular meeting of such Commission held on the 11th day of May, 2016, and that such resolution is of record in the Minute Book of the County.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the County on this 11th day of May, 2016.

County Clerk

SEAL

MINUTES, LIMESTONE COUNTY COMMISSION, MAY 11, 2016

EXHIBIT M

CERTIFICATION FOR FEDERAL-AID CONTRACTS

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$ 100,000 and that all such subrecipients shall certify and disclose accordingly.

MINUTES, LIMESTONE COUNTY COMMISSION, MAY 11, 2016

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

MINUTES, LIMESTONE COUNTY COMMISSION, MAY 11, 2016

THIS IS AN AGREEMENT effective as of May 11, 2016 between Limestone County and Morell Engineering Inc.

Engineer agrees to provide the services described below to Owner for Old Highway 20.

Description of Engineer's Services: Perform preliminary engineering, surveying and plan development to include the bridge replacement and approach work.

Owner and Engineer further agree as follows:

1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

A. *Preparation of invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly in the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

b. By Engineer

1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional;

MINUTES, LIMESTONE COUNTY COMMISSION, MAY 11, 2016

or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A. 1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to die extent permitted by paragraph 6.01.B die assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others,

MINUTES, LIMESTONE COUNTY COMMISSION, MAY 11, 2016

including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to finish and perform its work in accordance with the contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

MINUTES, LIMESTONE COUNTY COMMISSION, MAY 11, 2016

9.01 Payment (Direct Labor Costs Times Factor; Plus Reimbursables)

- A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:
 - 1. An amount equal to Engineer's Direct Labor Costs times a Factor of 157.24 for services of Engineer's Employees engaged on the Project, plus reimbursable expenses, and Engineer's consultants' charges, if any.
 - 2. The total compensation for services and reimbursable expenses is estimated to be \$ 44,601
- B. The Engineer's compensation is conditioned on the time to complete construction not exceeding 6 months. Should the time to complete construction be extended beyond this period, total compensation to Engineer shall be appropriately adjusted.

Commissioner Turner asked if there was any discussion. There was no discussion. The Commission Clerk called the roll. Jason Black, aye; Steve Turner, aye; Stanley Hill, aye; and Ben Harrison, aye. Motion carries unanimously.

County Engineer Bryant Moss offered the idea of the County Commission purchasing standardized signs for residents to post on "no spray" areas. County Attorney Mark Maclin said that signs might have to be bid out like office supplies, depending on the cost. Commissioner Hill suggested the residents might need to purchase the signs themselves. Commissioner Harrison said it would be helpful if residents had a sign at the beginning and the ending of their "no spray" location. He would like to have a policy concerning the signs. He suggested it would help to have a moving map navigation system that would display those areas. Commissioner Black stated he is against the County Commission purchasing the signs. Commissioner Turner said for safety reasons his crew has to bush hog the areas that are not sprayed. He is not in favor of the County Commission purchasing signs.

Dana Hickman from the Spirit of Athens requested an \$2,500.00 appropriation for the Athens Grease Festival that will be held June 11th.

Amy Golden, Athens Utilities Customer Relations Manager, began to address the Commission about water lines on Dugger Road, but was informed by Commissioner Hill the situation had been discussed with Janette Kyle previous to the work session and was resolved. Approval to install private water lines on Dugger Road is on the agenda for the next Commission meeting.

Kelly Howard, from Martin & Cobey Construction briefed the Commission on each Change Order for the Courthouse renovation in detail.

Items were discussed for the May 16, 2016 agenda.

Adjourned at 10:46 a.m.