


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

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MEMORANDUM

June 12, 2019

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

From: Dan Gaillet, P.E. 
County Engineer

Re: CE&I Contract
Gluckstadt Road Improvements

The Engineering Department recommends that the Board approve Neel-Schaffer's contract for construction engineering and inspection services for Gluckstadt Road Improvements project.

AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN

Madison County

AND

NEEL-SCHAFFER, INC.

This is an Agreement made on _____, 2019, between the Madison County Board of Supervisors, Madison County, Mississippi, the **OWNER**, and **NEEL-SCHAFFER, INC.**, the **ENGINEER**.

The **OWNER** intends to improve the Gluckstadt Road from the intersection of Bozeman Road to the intersection of Distribution Drive, which is described in more detail in **Exhibit A, Project Description**, and hereinafter called the **“Project.”**

Exhibit B contains the **“Scope of Bidding, Contracting and Construction Phase Services”**. **Exhibit C** contains the **“Project Schedule”**, and compensation is detailed in **Exhibit D, “Payment to Engineer”**.

The **OWNER** and the **ENGINEER**, in consideration of the mutual covenants herein, agree with respect to the performance of professional engineering services by the **ENGINEER** with respect to the **Project** and the payment for these services by the **OWNER** as set forth herein.

SECTION 1 — BASIC SERVICES OF ENGINEER

1.1 **ENGINEER** shall provide for **OWNER** professional engineering services for all phases of the **Project** to which this **Agreement** applies as hereinafter provided. These services will include serving as **OWNER's** professional engineering representative for the **Project**, providing consultation and advice and furnishing customary engineering services.

1.2 By execution of this **Agreement**, **OWNER** authorizes **ENGINEER** to provide Basic Services for the Bidding, Contracting and Construction Phases of the **Project** in accordance with **Exhibit B**, "**Scope of Bidding, Contracting and Construction Phase Services.**"

SECTION 2 — ADDITIONAL SERVICES OF ENGINEER

If authorized in writing by **OWNER**, **ENGINEER** shall provide, or obtain from other qualified persons or firms, Additional Services which are not included as part of the Basic Services specified in Section 1. Additional Services shall include, but are not limited to, the following:

2.1. Services resulting from material changes in the general scope, extent or character of the **Project**

designed or specified by **ENGINEER** or its design including, but not limited to, changes in size, complexity, **OWNER's** schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract 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 **ENGINEER's** control.

2.2. Preparing documents for alternate bids requested by **OWNER** for Contractor's work which is not executed or documents for out-of-sequence work.

2.3. Services resulting from the award of more than one separate prime contract for construction, materials or equipment for the **Project** unless multiple awards were contemplated and included as part of Basic Services in Section 1.

2.4. Assistance in connection with rebidding or renegotiating contracts for construction which involve modifying the Contract Documents to revise the **Project's** general scope, extent or character as necessary to reduce or increase the Construction Cost to bring it within the cost limit.

2.5. Preparing to serve or serving as a consultant or witness for **OWNER** in any litigation, arbitration or other legal or administrative proceeding involving the **Project**.

2.6. Services in making revisions to Contract Documents occasioned by the acceptance of substitutions proposed by Contractor; and services after the award of the construction contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.

2.7. Services resulting from significant delays in Project schedule which occurred through no fault of **ENGINEER**.

2.8. Additional or extended services during construction made necessary by (a) work damaged by fire or other cause during construction; (b) a significant amount of defective, neglected or delayed work of Contractor or supplier; (c) protracted or extensive assistance in the startup or utilization of any equipment or system; (d) acceleration of the progress schedule involving services beyond normal working hours; and (e) default or bankruptcy by Contractor.

2.9. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the **Project**.

2.10. Services during out-of-town travel required of **ENGINEER** other than visits to the **Project** site or **OWNER's** office.

2.11. Additional Services in connection with the **Project**, including services which are to be furnished by **OWNER** in accordance with Section 3 and services not otherwise provided for in Basic Services as specified in Section 1 of this **Agreement**.

SECTION 3 — OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of **ENGINEER** and bear all costs incident thereto:

3.1. Designate in writing a person to act as **OWNER's** representative with respect to the services to be rendered under this **Agreement**. Such person shall have complete authority to transmit instructions, receive information, and interpret and define **OWNER's** policies and decisions with respect to **ENGINEER's** services for the **Project**.

3.2. Provide all criteria and full information as to **OWNER's** requirements for the **Project**, including design objectives and constraints; space, capacity and performance requirements; and flexibility, expendability, and any budgetary limitations. Also furnish copies of design and construction standards

which **OWNER** will require to be included in the Contract Documents.

3.3. Assist **ENGINEER** by placing at **ENGINEER's** disposal available information pertinent to the **Project** including previous reports; geotechnical information; utility locations; property descriptions, zoning, deed and other land use restrictions; and any other data relative to design or construction of the **Project**. **ENGINEER** shall not be liable for any claims for injury or loss arising from errors, omissions or inaccuracies in documents or other information provided by the **OWNER**.

3.4. Arrange for access to and make all provisions for **ENGINEER** to enter upon public and private property as required for **ENGINEER** to perform services under this **Agreement**.

3.5. Examine studies, reports, sketches, drawings, specifications, proposals and other documents presented by **ENGINEER** and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of **ENGINEER**.

3.6. Acquire property for easements and rights-of-way required for construction of the **Project**.

3.7. Give prompt written notice to **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 the **ENGINEER** or of any Contractor.

3.8. The **OWNER** shall promptly report to the **ENGINEER** any defects or suspected defects in the **ENGINEER's** services of which the **OWNER** becomes aware, so that the **ENGINEER** may take measures to minimize the consequences of such a defect. The **OWNER** further agrees to impose a similar notification requirement on all contractors in its **OWNER/Contractor** contract and shall require all subcontracts at any level to contain a like requirement. Should legal liability for the defects exist, failure by the **OWNER** and the **OWNERS'** contractors or subcontractors to notify the **ENGINEER** shall relieve the **ENGINEER** 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.

SECTION 4 — PERIOD OF SERVICE

4.1. The provisions of this Section 4 and the various rates of compensation for **ENGINEER's** services provided for elsewhere in this **Agreement** have been agreed to in anticipation of the orderly and continuous progress of the **Project** through completion

of all phases to which this **Agreement** applies. Specific periods of time and/or completion dates for rendering services are set forth in **Exhibit C, "Project Schedule."**

4.2. If **OWNER** requests modifications or changes in the scope, extent or character of the **Project**, or if periods of time and/or completion dates are exceeded through no fault of **ENGINEER**, the period of service and amount of compensation for **ENGINEER's** services shall be adjusted equitably.

4.3. In the event that the work designed or specified by **ENGINEER** is to be performed under more than one prime construction contract, the period of service and/or amount of compensation for **ENGINEER's** services shall be adjusted equitably unless multiple awards were contemplated and included as part of Basic Services in Section 1.

SECTION 5 — PAYMENTS TO ENGINEER

5.1. **Methods of Payment.** **OWNER** shall pay **ENGINEER** for Basic Services rendered under Section 1 and Additional Services rendered under Section 2 in accordance with the provisions of **Exhibit D, "Payments to Engineer."**

5.2. **Times of Payment.** **ENGINEER** shall submit monthly statements for Basic and Additional Services rendered. For lump sum and percentage methods of payment, statements will be based upon **ENGINEER's** estimate of the proportion of the total services actually completed at the time of billing. For cost-plus-fixed-fee method of payment, the amount of fixed fee billed will be based on the proportion of the costs incurred at the time of billing to the maximum allowable costs established for this **Agreement.** **OWNER** shall make prompt monthly payments in response to **ENGINEER's** monthly statements. Payment of any invoices by the **OWNER** shall be taken to mean that the **OWNER** is satisfied with the Engineer's services to the date of the payment and is not aware of any deficiencies in those services.

5.3. **Delinquent Payments.** The **OWNER** recognizes time is critical with respect to payment of the **ENGINEER's** statements, and that timely payment is a material part of the consideration of this **Agreement.** **ENGINEER's** statements shall be due and payable within 30 calendar days of statement date. If the **OWNER** fails to make payments; the **ENGINEER**, after giving seven days written notice to the **OWNER**, may suspend services until the **OWNER** has paid in full all amounts due for

services, expenses, and other related charges without recourse to the OWNER for loss or damage caused by such suspension. The OWNER waives any and all claims against the ENGINEER for any such suspension. Payment of invoices shall not be subject to any discounts, set-offs or back-charges unless agreed to in writing by both parties. If OWNER objects to all or any portion of an invoice, OWNER shall notify the ENGINEER within 30 calendar days of the invoice date, identify the cause of the disagreement and pay when due that portion of the statement not in dispute. If OWNER fails to make any payment due ENGINEER for services and expenses, excepting any portion of the statement in dispute, within 30 calendar days after receipt of ENGINEER's statement, the amounts due ENGINEER shall include a charge at the rate of one percent (1%) per month from the 30th day unless special arrangements have been previously made and agreed to by both parties in writing. Payment will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. If ENGINEER brings any action at law or in equity to enforce or interpret the terms of this Agreement, or if ENGINEER must either prosecute

or defend any action related to the subject matter of the Agreement, and prevails in such action, then ENGINEER shall be entitled to reasonable attorney's fees, expenses and costs, including expert witness fees, if applicable.

5.4. **Termination Payment.** In the event of termination by OWNER or ENGINEER under Paragraph 6.2, OWNER shall pay ENGINEER for services and expenses provided to date of termination in accordance with the methods of payment specified in Paragraph 5.1. In addition, Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by OWNER.

5.5. **Records of Costs.** Records of costs pertinent to ENGINEER's compensation will be kept in accordance with generally accepted accounting principals. ENGINEER is only obligated to maintain these records for a period of three years following date of final payment for services rendered under this Agreement.

SECTION 6 — GENERAL TERMS AND CONDITIONS

6.1. **Construction Cost.**

6.1.1. **Opinions of Cost.** Since **ENGINEER** has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, **ENGINEER's** opinions of probable construction cost provided for herein are to be made on the basis of experience and qualifications and represent **ENGINEER's** best judgment as an experienced and qualified professional, generally familiar with the construction industry; but **ENGINEER** cannot and does not guarantee that proposals, bids or actual construction cost will not vary from opinions of probable cost prepared by **ENGINEER**.

6.1.2. **Construction Cost Budget.** If a construction cost budget is established by written agreement between **OWNER** and **ENGINEER** and specifically set forth in this **Agreement** as a condition thereto, the following will apply:

6.1.2.1. The acceptance by **OWNER** at any time during the provision of services under this **Agreement** of a revised opinion of probable construction cost in excess of the then established budget will constitute a corresponding revision in the construction cost budget to the extent indicated in such revised opinion.

6.1.2.2. Any construction cost budget so established will include a contingency of 10 percent unless another amount is agreed upon in writing.

6.1.2.3. **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 extent of the **Project** to bring it within the budget.

6.1.2.4. If proposals or bids have not been obtained within six months after completion of the design phase, the established construction cost budget will not be binding on **ENGINEER**, and **OWNER** shall consent to an adjustment in such cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the design phase and the date on which proposals or bids are sought.

6.1.2.5. Use of an estimated or actual construction cost of the project as a basis of payment to the **ENGINEER** shall not be construed to mean that a construction cost budget has been established for the **Project**.

6.2. **Termination.** The obligation to provide further services under this **Agreement** may be

terminated by either party upon 30 calendar 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** shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by **ENGINEER** either before or after the termination date shall be reimbursed by **OWNER**.

6.3. **Suspension.** Upon written notice to the **ENGINEER**, the **OWNER** may suspend all or any part of the **ENGINEER's** work. Suspension for any reason exceeding 60 calendar days shall, at the **ENGINEER's** option, make this **Agreement** subject to re-negotiation or termination as provided for elsewhere in this **Agreement**. Any suspension shall extend the period of service in a manner that is satisfactory to both the **OWNER** and the **ENGINEER**.

6.4. **Ownership and Reuse of Documents.**

6.4.1. Contract Documents and reports prepared by **ENGINEER** pursuant to this **Agreement** shall be the property of the **ENGINEER**.

6.4.2. Contract Documents prepared or furnished by **ENGINEER** and **ENGINEER's** independent professional associates and consultants, pursuant to this **Agreement** are instruments of service with respect to the **Project**. These documents are not intended or represented to be suitable for reuse by **OWNER** or others on extensions of the **Project** or on any other project. Any reuse without written verification or adaptation by **ENGINEER** for the specific purpose intended will be at **OWNER's** sole risk and without liability or legal exposure to **ENGINEER**, or to **ENGINEER's** independent professional associates or consultants. **OWNER** shall indemnify and hold harmless **ENGINEER** and **ENGINEER's** independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting there from. Any such verification or adaptation will entitle **ENGINEER** to further compensation at rates to be agreed upon by **OWNER** and **ENGINEER**.

6.5. **Insurance.**

6.5.1. **ENGINEER** agrees to maintain the following insurance coverages with the following

available limits of insurance during the performance of ENGINEER's work hereunder:

6.5.1.1. Commercial General Liability insurance with standard ISO coverage and available limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate;

6.5.1.2. Automobile Liability insurance with standard ISO coverage and available combined single limits of \$1,000,000 per accident;

6.5.1.3. Worker's Compensation insurance with limits as required by statute and Employer's Liability insurance with limits of \$1,000,000 per employee for bodily injury by accident/\$1,000,000 per employee for bodily injury by disease/\$1,000,000 policy limit for disease; and

6.5.1.4. Professional Liability insurance covering ENGINEER's negligent acts, errors, or omissions in the performance of professional services with available limits of \$1,000,000 per claim and annual aggregate.

6.6. ENGINEER shall provide evidence of procuring the above insurance coverages by delivering a certificate of insurance to OWNER prior to the start of ENGINEER's work and annually upon renewal of coverage. ENGINEER shall cause OWNER to be named as an additional insured on ENGINEER's commercial general liability policy, which shall be primary and

noncontributory. **Personnel and Facilities.** The ENGINEER has, or will secure at his own expense, personnel, equipment and other materials and supplies required to perform the services under this **Agreement** within the period of service set forth in Section 4. ENGINEER may subcontract a portion of these services, but these Subcontractors shall be subject to written approval by the OWNER. Such personnel shall not be employees of nor have contractual relationship with the OWNER.

6.7. **Accounting System.** The ENGINEER shall maintain an accounting system which accounts for costs in accordance with generally accepted accounting principles. The OWNER reserves the right to audit the ENGINEER's accounts which relate to services provided under this **Agreement**.

6.8. **Successors and Assigns.** Neither OWNER nor ENGINEER shall assign any interest in this **Agreement** without the prior written consent of the other and in no case shall assignment relieve assignor from liability under this **Agreement**. This **Agreement** shall bind the successors and legal representatives of both parties. Nothing in this **Agreement** shall give any rights or benefits to anyone other than OWNER and ENGINEER.

6.9. **Relationship.** The **OWNER** has retained **ENGINEER** to provide professional services. 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, nor is the relationship a fiduciary relationship between **ENGINEER** and **OWNER**. The **ENGINEER** shall not be considered to be the agent of the **OWNER**. To the extent that **OWNER** is a public entity or a person or entity obligated to repay some or all of an amount borrowed in a municipal securities offering, it is expressly understood and agreed that the **ENGINEER** is not acting as a municipal advisor to the **OWNER**, as that term applies to the Dodd-Frank Wall Street Reform and Consumer Protection Act and its supporting regulations, that **ENGINEER's** services will not include the provision of advice or recommendations regarding municipal financial products or the issuance of municipal securities, and that the **OWNER** is responsible for retaining an independent registered municipal advisor for such advice or recommendation.

6.10. **Standard of Care.** The **ENGINEER** will strive to perform services under this Agreement in a manner consistent with that level of care and skill

ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement or in any report, opinion, document or otherwise.

6.11. **Indemnification.**

6.11.1. To the fullest extent permitted by law, the **ENGINEER** agrees to hold harmless and indemnify **OWNER** from and against liability arising out of **ENGINEER's** negligent act, error, or omission in the performance of professional services under this **Agreement**. It is specifically understood and agreed that in no case shall the **ENGINEER** be required to pay an amount disproportional to **ENGINEER's** adjudicated culpability, or any share of any amount levied to recognize more than actual economic damages.

6.11.2. To the fullest extent provided by law, the **OWNER** agrees to hold harmless and indemnify **ENGINEER** from and against liability arising out of **OWNER's** negligence. It is specifically understood and agreed that in no case shall the **OWNER** be required to pay an amount disproportional to **OWNER's** culpability, or any share of any amount

levied to recognize more than actual economic damages.

6.11.3. In the event of joint or concurrent negligence of **ENGINEER** and **OWNER**, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence, error or omission, as the case may be, bears to the total negligence, error or omission, as the case may be (including that of third parties), which caused the personal injury or property damage.

6.11.4. The **OWNER** shall not be liable to the **ENGINEER** and the **ENGINEER** shall not be liable to the **OWNER** for any special, incidental or consequential damages, including, but not limited to, loss of use and loss of profit, incurred by either party due to the fault of the other, regardless of the nature of this fault, or whether it was committed by the **OWNER**, or the **ENGINEER** or their employees, agents or subcontractors.

6.11.5 **ENGINEER's** indemnification obligation as set forth herein is expressly subject to and limited by the limitation of liability provision agreed upon by the **OWNER** and **ENGINEER** as set forth in Section 6.16 Risk Allocation of this Agreement.

6.12. **Compliance with Codes and Standards.** The **ENGINEER's** professional services shall exercise due professional care to incorporate those publicly announced federal, state and local laws, regulations, codes and standards that are applicable at the time the services are rendered. In the event of a change in a law, regulation, et al., the **ENGINEER** shall assess its impact. If, in the **ENGINEER's** professional opinion, the impact is such to significantly affect the **ENGINEER's** compensation or the period of service, then the compensation and/or period of service can be renegotiated.

6.13. **Force Majeure.** Neither **OWNER** nor **ENGINEER** shall be liable for faults or delays caused by any contingency beyond his control, including, but not limited to, acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.

6.14. **Separate Provisions.** If any provisions of this **Agreement** are held to be invalid or unenforceable, the remaining provisions shall be valid and binding.

6.15. **Risk Allocation.** In light of the relative risks and rewards of the parties, **OWNER** and **ENGINEER** have allocated the risks such that the

OWNER agrees to limit the **ENGINEER's** liability to the **OWNER** and all contractors arising from this Agreement such that the total aggregate liability of the **ENGINEER** shall not exceed \$50,000 or the **ENGINEER's** total fee for services rendered on this project, whichever is greater.

6.16. **Waiver of Subrogation.** **OWNER** waives any rights or claims for damage to persons or property that it or any of its successors in interest or insurers may have against **ENGINEER** for any claim or action arising out of **ENGINEER's** operations related to the Project or this Agreement, but only to the extent that such rights or claims for damages are covered by a policy of liability, casualty, property or other insurance, regardless of who procures such insurance

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

6.18. **Hazardous Materials.**

6.18.1. 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.

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**.

6.18.2. Hazardous materials may exist at a site where there is no reason to believe they could or should be present. **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. **ENGINEER** agrees to notify **OWNER** as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. **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. **OWNER** also agrees to compensate **ENGINEER** for any time spent and expenses incurred by **ENGINEER** in defense of any such claim.

6.19. **Subsurface Conditions and Utilities.**

6.19.1. The **OWNER** recognizes that a comprehensive sampling and testing program implemented by trained and experienced personnel of **ENGINEER**, or **ENGINEER's** subconsultants, with appropriate equipment may fail to detect certain hidden conditions. The **OWNER** also recognizes that actual environmental, geological and geotechnical conditions that **ENGINEER** properly inferred to exist between sampling points may differ significantly from those that actually exist.

6.19.2. **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.

6.19.3. **OWNER** waives any claim against **ENGINEER** and agrees to indemnify, defend and hold **ENGINEER** harmless from any and all damage, liability or cost for any property damage, injury or economic loss arising from errors or inaccuracies of information related to subsurface investigations or underground utilities in Contract Documents prepared

by **ENGINEER** or **ENGINEER's** subconsultants, except for damage caused by sole negligence of **ENGINEER**.

6.20. **Anticipated Change Orders.** **OWNER** recognizes and expects that a certain amount of imprecision and incompleteness is to be expected in Contract Documents; that all details of a completed project are not intended to be covered in the Contract Documents; that a certain amount of errors, omissions, ambiguities and inconsistencies are to be expected in Contract Documents; that contractors are expected to furnish and perform work, materials and equipment that may reasonably be inferred from the Contract Documents or from the prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for; and that a certain amount of Change Orders are to be expected. As long as **ENGINEER** provides services within professional standards and the standard of care of **ENGINEER's** profession in accordance with paragraph 6.10, **OWNER** agrees not to make any claim against **ENGINEER** for cost of these Change Orders unless these costs become a significant part of the construction contract amount. In no case will **OWNER** make claim against **ENGINEER** for costs incurred if the Change Order work is a necessary part of the **Project** for which

OWNER would have incurred costs if work had been included originally in the Contract Documents unless **OWNER** can demonstrate that such costs were higher through issuance of the Change Order than they would have been if originally included in the Contract Documents in which case any claim of **OWNER** against **ENGINEER** will be limited to the cost increase and not the entire cost of the Change Order.

6.21. **Value Engineering.** If the **OWNER** retains the services of a **VALUE ENGINEER (VE)** to review the Contract Documents prepared by the **ENGINEER**, it shall be at the **OWNER's** sole expense and shall be performed in a timely manner so as not to delay the orderly progress of the **ENGINEER's** services. The **OWNER** shall promptly notify the **ENGINEER** of the identity of the **VE** and shall define the **VE's** scope of services and responsibilities for the **ENGINEER**. All recommendations of the **VE** shall be given to the **ENGINEER** for review, and adequate time will be provided to the **ENGINEER** to respond to these recommendations. If the **ENGINEER** objects to any recommendations made by the **VE**, it shall so state in writing to the **OWNER**, along with the reasons for objecting. If the **OWNER** requires the incorporation of changes in the Contract Documents to which the

ENGINEER has objected, the **OWNER** agrees, to the fullest extent permitted by law, to waive all claims against the **ENGINEER** and to indemnify and hold harmless the **ENGINEER** from any damages, liabilities or costs, including reasonable attorneys' fees and costs of defense, which arise in connection with or as result of the incorporation of such changes required by the **OWNER**. In addition, the **ENGINEER** shall be compensated for services necessary to incorporate recommended **VE** changes into reports, drawings, specifications, bidding or other documents. The **ENGINEER** shall be compensated as Additional Services for all time spent to prepare for, review and respond to the recommendations of the **VE**. The **ENGINEER's** time for performance of its services shall be equitably adjusted.

6.22. **Affirmative Action.** During the performance of this **Agreement**, the **ENGINEER** agrees to take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex or national origin.

6.23. **Conflicts.** In the event of a conflict between the main text of this **Agreement** and any

appendix thereof, provisions of the main text shall govern.

6.24. **Governing Law.** The laws of the State of Mississippi will govern the validity of this **Agreement**, its interpretations and performance, and remedies for any claims related to this **Agreement**.

6.25. **Dispute resolution.** All disputes, controversies or claims, or 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 no other venue other than the Circuit Court of Madison County, Mississippi or the United States District Court which includes within its geographical division Madison County, Mississippi; and shall be litigated only before a judge hearing the matter alone, as both finder of fact and law, without a jury. By entering into this **Agreement**, the parties knowingly, purposefully and intelligently agree to waive their individual rights to have any dispute, controversy or claim amongst them, to include the **OWNER's** individual shareholders, directors, and officers, decided, heard or adjudged by a trial by jury.

6.26. **Amendment.** This Agreement shall not be subject to amendment unless another instrument is

executed by duly authorized representatives of each of the parties.

6.27. **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. **OWNER** and **ENGINEER** 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**.

6.28. **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.

6.29. **Course of Dealing.** **OWNER** and **ENGINEER** 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 **OWNER** or **ENGINEER** 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

6.30. **Separate Provisions.** If any provisions of this **Agreement** are held to be invalid or unenforceable, the remaining provisions shall be valid and binding.

6.31. The **ENGINEER** authorizes Mark J. Beyea, P.E., Registered Professional Engineer No. 12599, in the State of Mississippi, to act on his behalf for this **Project**.

SECTION 7 — DEFINITIONS

As used herein, the following words and phrases have the meanings indicated, unless otherwise specified in various sections of this Agreement:

7.1. **Addenda.** Written or graphic instruments issued prior to the opening of bids which clarify, correct or change the bidding documents or the Contract Documents.

7.2. **Agreement.** This contract including all exhibits and documents included by reference.

7.3. **Application for Payment.** The form accepted by **ENGINEER** which is to be used by Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

7.4. **Bid.** The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the construction work to be performed.

7.5. **Change Order.** A document recommended by **ENGINEER** which is signed by Contractor and **OWNER** and authorizes an addition, deletion or revision in the construction work, or an adjustment in the contract price or the contract time, issued on or after the effective date of the construction contract.

7.6. **Contract Documents.** The drawings and specifications, addenda, and other documents required to obtain bids from contractors for construction of the **Project**.

7.7. **Contractor.** The person, firm or corporation with whom **OWNER** has entered into a contract for construction of the **Project**.

7.8. **Construction Cost.** Total cost of entire **Project** to **OWNER** not including **ENGINEER's** compensation and expenses, cost of land and rights-of-way, or compensation for or damages to properties,

unless this **Agreement** so specifies; nor will it include **OWNER's** legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the **Project** or the cost of services to be provided by others to **OWNER** pursuant to Section 3 of this **Agreement**.

7.9. **Direct Labor Costs.** Salaries and wages paid to **ENGINEER's** personnel engaged directly on the **Project**, including engineers, draftsmen, technicians, designers, surveyors, resident project representatives and other technical and administrative personnel; but does not include indirect payroll related costs or fringe benefits.

7.10. **Drawings.** The drawings which show the character and scope of the **Project** and which have been prepared or approved by **ENGINEER** and are referred to in the Contract Documents.

7.11. **Reimbursable Expenses.** Actual expenses incurred by **ENGINEER** directly in connection with providing services for the **Project**. These include, but are not limited to, transportation and subsistence; reproduction and printing; communications; postage and express mail; equipment rental; and expense of computers and other specialized equipment.

7.12. **Resident Project Representative.** The authorized representative of **ENGINEER** who is assigned to the construction site or any part thereof for the purpose of observing the performance of the work of the Contractor.

7.13. **Shop Drawings.** All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for Contractor to illustrate some portion of the work and all illustrations, brochures, standard schedules and other information prepared by a Supplier and submitted by Contractor to illustrate material or equipment for some portion of the **Project**.

Specifications. Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the **Project** and certain administrative details applicable thereto.

7.14. **Subcontractor.** An individual, firm or corporation having a direct contract with Contractor or with any other subcontractor for the performance of a part of the **Project** at the site.

7.15. **Supplier** A manufacturer, fabricator, supplier, distributor, material man or vendor of

products or equipment used in construction of the project.

8.2. The following Exhibits are attached to and made a part of this **Agreement**.

8.2.1. Exhibit A, "Project Description."

8.2.2. Exhibit B, "Scope of Bidding, Contracting and Construction Phase Services."

8.2.3. Exhibit C, "Project Schedule."

8.2.4. Exhibit D, "Payments to Engineer."

8.3. This **Agreement**, consisting of Pages 1 to 19, inclusive, together with the Exhibits identified above, constitutes the entire agreement between **OWNER** and **ENGINEER** and supersedes all prior written and oral understandings. This **Agreement** and said Exhibits may only be amended, supplemented, modified or canceled through a duly executed written instrument.

SECTION 8 — SPECIAL PROVISIONS AND EXHIBITS

8.1. This **Agreement** is subject to the following Special Provisions. N/A

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

OWNER: _____

BY: _____

TITLE: _____

WITNESS: _____

ENGINEER: NEEL-SCHAFFER, INC.

BY: [Signature]

TITLE: Eng. Ryan

WITNESS: [Signature]

Sr Vice Pres.

EXHIBIT A
PROJECT DESCRIPTION

Madison County intends to improve Gluckstadt Road starting in the vicinity of its intersection with Bozeman Road and terminating in the vicinity of its intersection with Distribution Drive. The project will include roadway capacity improvements based on the “Madison County Gluckstadt Road Corridor Study – Dual Eastbound Lane Concept.” The project will include widening in specific areas, drainage modifications, utility relocation and coordination, and restriping.

EXHIBIT B

CONSTRUCTION PHASE SERVICES

1 CONSTRUCTION PHASE

General Administration of Construction Contract.

1.1 The **ENGINEER** shall consult with and advise **OWNER** and act as **OWNER'S** representative; shall issue all instructions of **OWNER** to Contractor; and shall act as initial interpreter of the Contract Documents and judge of the acceptability of the work thereunder.

1.2 Visits to Site and Observation of Construction.

1.2.1 The **ENGINEER** shall make visits to the site at intervals appropriate to the various stages of construction as he deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's work. Based on information obtained during such visits and on such observations, the **ENGINEER** shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and shall keep **OWNER** informed of the progress of the work. The purpose of the **ENGINEER'S** visits to the site will be to enable him to carry out the duties and responsibilities assigned to and undertaken by him during the Construction Phase, and, in addition, through his experience as a qualified design professional, to provide for **OWNER** a greater degree of confidence that the completed work of Contractor will conform generally to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, the **ENGINEER** shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work; nor shall the **ENGINEER** have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, the **ENGINEER** can neither guarantee the performance of the construction contract by Contractor nor assume responsibility for Contractor's failure to furnish and perform his work in accordance with the Contract Documents.

1.2.2 Defective Work. During such site visits and on the basis of such observations, the **ENGINEER** may recommend to the **OWNER** disapproval or rejection of Contractor's work if the **ENGINEER** believes that such work will not produce a completed Project which conforms generally with the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

1.2.3 Clarifications and Interpretations; Change Orders. The **ENGINEER** shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the

intent of and reasonably inferable from the Contract Documents. In connection therewith, if appropriate, the **ENGINEER** shall recommend Change Orders to **OWNER** and shall prepare Change Orders as required.

- 1.2.4 Shop Drawings. The **ENGINEER** shall review and approve (or take other appropriate action in respect of) Shop Drawings, samples and other data which Contractor is required to submit, but only for conformance with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.
- 1.2.5 Substitutes. The **ENGINEER** shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.
- 1.2.6 Inspections and Tests. The **ENGINEER** shall have authority, as **OWNER'S** representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testings and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).
- 1.2.7 Applications for Payment. Based on the **ENGINEER'S** on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules:
- 1.2.7.1 The **ENGINEER** shall determine the amounts owed to Contractor and recommend in writing payments to Contractor in such amounts. Such recommendations of payment will constitute a representation to **OWNER**, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of the **ENGINEER'S** knowledge, information and belief, the quality of such work is generally in accordance with the Contract Documents. In the case of unit price work, the **ENGINEER'S** recommendations of payment will include final determinations of quantities and classification of such work (subject to any subsequent adjustments allowed by the Contract Documents).
- 1.2.7.2 By recommending any payment, the **ENGINEER** shall not thereby be deemed to have represented that on-site observations made by the **ENGINEER** to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to the **ENGINEER** in this Agreement and the Contract Documents. The **ENGINEER'S** review of Contractor's work for the purposes of recommending payments will not impose on the **ENGINEER** responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on the **ENGINEER** to make any examination to ascertain how or for what purposes any Contractor has used the monies paid on account of the contract price, or to determine that title to any of the work, materials or equipment has passed to **OWNER** free and clear of any lien, claims, security interests or

encumbrances, or that there may not be other matters at issue between **OWNER** and Contractor that might affect the amount that should be paid.

- 1.2.8 Contractor's Completion Documents. The **ENGINEER** shall receive, review and transmit to **OWNER** with written comments maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of the Contract Documents); and shall transmit them to **OWNER** with written comments.
- 1.2.9 Substantial Completion. Following notice from Contractor that Contractor considers the entire work ready for its intended use, the **ENGINEER** and **OWNER**, accompanied by Contractor, shall conduct an inspection to determine if the work is substantially complete. If, after considering any objections of **OWNER**, the **ENGINEER** considers the work substantially complete, the **ENGINEER** shall deliver a certificate of substantial completion to **OWNER** and Contractor.
- 1.2.10 Final Notice of Acceptability of the Work. The **ENGINEER** shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that the **ENGINEER** may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, the **ENGINEER** shall also provide a notice that the work is acceptable to the best of the **ENGINEER's** knowledge, information and belief and based on the extent of the services performed and furnished by the **ENGINEER** under this Agreement.
- 1.2.11 Record Documents. Upon completion of the work, the **ENGINEER** shall compile for and deliver to the **OWNER** a complete set of record documents conforming to information furnished to the **ENGINEER** by the Contractor. This set of documents shall consist of record specifications and reproducible record drawings showing the reported location of the work. In that record documents are based on information provided by others, the **ENGINEER** cannot and does not warrant their accuracy.
- 1.2.12 Limitation of Responsibilities. The **ENGINEER** shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor, any supplier, or of any other person or organization at the site or otherwise furnishing or performing any of the work. The **ENGINEER** shall not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.
- 1.2.13 Progress Meetings and Reports. During construction, the **ENGINEER** will schedule and conduct monthly progress meetings with the **OWNER**, Contractor and appropriate subcontractors, if any, to discuss progress, scheduling problems, conflicts and observations of all parties involved. The **ENGINEER** shall also prepare minutes of the meeting. The **ENGINEER** shall also prepare a construction progress report monthly which shall be submitted to **OWNER** by the 10th day of each month for the preceding month's work. This report shall accompany the Contractor's and the **ENGINEER'S** monthly payment requests.
- 1.2.14 Duration of Construction Phase. The Construction Phase will commence with the execution of the construction contract for the Project or any part thereof and will terminate upon written

recommendation by the **ENGINEER** of final payment and submission of record documents to **OWNER**.

2 RESIDENT PROJECT REPRESENTATIVE

2.1 The **ENGINEER** shall furnish a Resident Project Representative (RPR) to assist the **ENGINEER** in observing progress and quality of the work of the Contractor.

2.2 Through more extensive, but not full-time, on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, the **ENGINEER** shall endeavor to provide further protection for **OWNER** against defects and deficiencies in the work of the Contractor; but, the furnishing of such services will not make the **ENGINEER** responsible for or give him control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for Contractor's failure to perform the work in accordance with the Contract Documents.

2.3 The duties and responsibilities of the RPR are limited to those of the **ENGINEER** in his agreement with the **OWNER** and in the construction Contract Documents, and are further limited and described as follows:

2.3.1 General Duties: RPR is the **ENGINEER'S** agent at the site and will act as directed by and under the supervision of the **ENGINEER** and will confer with the **ENGINEER** regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with the **ENGINEER** and Contractor keeping **OWNER** advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with **OWNER** with the knowledge of and under the direction of the **ENGINEER**.

2.3.2 Specific Duties and Responsibilities of RPR

2.3.2.1 Schedules. Review the progress schedule and schedule of Shop Drawing submittals prepared by Contractor and consult with the **ENGINEER** concerning acceptability.

2.3.2.2 Conferences and Meetings. Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

2.3.2.3 Liaison: Serve as the **ENGINEER'S** liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Contract Documents; and assist the **ENGINEER** in serving as **OWNER'S** liaison with Contractor when Contractor's operations affect **OWNER'S** on-site operations.

2.3.2.4 Assist in obtaining from **OWNER** additional details or information, when required for proper execution of the work.

2.3.2.5 Shop Drawings and Samples: Record date of receipt of Shop Drawings and samples.

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- 2.3.2.5.1 Receive samples which are furnished at the site by Contractor, and notify the **ENGINEER** of availability of samples for examination.
- 2.3.2.5.2 Advise the **ENGINEER** and Contractor of the commencement of any work requiring a Shop Drawing or sample if the submittal has not been approved by the **ENGINEER**.
- 2.3.2.6 Review of Work, Rejection of Defective Work, Inspections and Tests: Conduct on-site observations of the work in progress to assist the **ENGINEER** in determining if the work is in general proceeding in accordance with the Contract Documents.
- 2.3.2.6.1 Report to the **ENGINEER** whenever RPR believes that any work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise the **ENGINEER** of work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 2.3.2.6.2 Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to the **ENGINEER** appropriate details relative to the test procedures and startups.
- 2.3.2.6.3 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report these results to the **ENGINEER**.
- 2.3.2.7 Interpretation of Contract Documents. Report to the **ENGINEER** when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by the **ENGINEER**.
- 2.3.2.8 Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to the **ENGINEER**. Transmit to Contractor in writing decisions as issued by the **ENGINEER**.
- 2.3.2.9 Records: Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all addenda, Change Orders, additional Drawings issued subsequent to the execution of the contract, the **ENGINEER'S** clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing submittals received from and delivered to Contractor and other Project related documents.
- 2.3.2.9.1 Prepare a daily report or keep a diary or logbook, recording Contractor's hours on the job site, weather conditions, data relative to questions of Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to the **ENGINEER**.

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- 2.3.2.9.2 Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.
- 2.3.2.9.3 Reports: Furnish the **ENGINEER** periodic reports as required of progress of the work and of Contractor's compliance with the progress schedule and schedule of Shop Drawings and sample submittals.
- 2.3.2.10 Consult with the **ENGINEER** in advance of scheduled major tests, inspections or start of important phases of the work.
- 2.3.2.11 Draft and recommend to the **ENGINEER** proposed Change Orders, obtaining backup material from Contractor.
- 2.3.2.12 Report immediately to the **ENGINEER** and **OWNER** the occurrence of any accident.
- 2.3.2.13 Payment Requests. Review applications for payment with Contractor for compliance with the established procedure for submission and forward with recommendations to the **ENGINEER**, noting particularly the relationship of the payment requested to the work completed and materials and equipment delivered at the site but not incorporated in the work.
- 2.3.2.14 Certificates, Maintenance and Operation Manuals. During the course of the work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to the **ENGINEER** for review and forwarding to **OWNER** prior to final payment for the work.
- 2.3.2.15 Completion: Before the **ENGINEER** certifies substantial completion, submit to Contractor a list of observed items requiring completion or correction.
- 2.3.2.16 Observe whether Contractor has performed inspections required by laws, rules, regulations, ordinances, codes, or orders applicable to the work, including but not limited to those to be performed by public agencies having jurisdiction over the work.
- 2.3.2.17 Conduct a final inspection in the company of the **ENGINEER**, **OWNER**, and Contractor and prepare a final list of items to be completed or corrected.
- 2.3.2.18 Observe whether all items on final list have been completed or corrected and make recommendations to the **ENGINEER** concerning acceptance.
- 2.4 Limitations of Authority of the Resident Project Representative: Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by the **ENGINEER**.
- 2.4.1 Shall not exceed limitations of the **ENGINEER'S** authority as set forth in the Contract Documents and this Agreement.
- 2.4.2 Shall not undertake any of the responsibilities of Contractor, subcontractors, suppliers or Contractor's superintendent.

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- 2.4.3 Shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
 - 2.4.4 Shall not advise on, issue directions regarding to, or assume control over safety precautions and programs in connection with the work.
 - 2.4.5 Shall not accept Shop Drawings or sample submittals from anyone other than Contractor.
 - 2.4.6 Shall not authorize **OWNER** to occupy the Project in whole or in part.
 - 2.4.7 Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by the **ENGINEER**.

EXHIBIT D

PAYMENTS TO ENGINEER

1.1 Payments to Engineer

Owner will pay **ENGINEER** for Services rendered under Section 1, as supplemented by Exhibit B, "Scope of Design Phase Services", the following amounts:

1.1.1 For Basic Services a *Lump Sum fee of \$185,000*

1.1.2 For Additional Services. *OWNER shall pay ENGINEER for Additional Services rendered under Section 2 on the basis of ENGINEER's Direct Labor Costs times a factor of 2.61 plus a fee equal to 12% of the total labor amount and Reimbursable Expenses. Payments to ENGINEER for Additional Services shall be made in accordance with paragraph 5.2 of this Agreement.*

1.1.3 If contractor does not complete the project within the contract time, the **ENGINEER** will be required additional services Construction Phase Engineering requiring an amendment to this contract for additional fees. These fees will be based upon the terms detailed in paragraph 1.1.2 above.

1.1.4 Payments to **ENGINEER** by **OWNER** are not contingent on any factor except **ENGINEER's** ability to provide services 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.

Payments to **ENGINEER** by **OWNER** specifically are not contingent on **OWNER's** receipt of grants for the **Project** or **OWNER's** decision to suspend or cancel the **Project**.