

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

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

MEMORANDUM

June 25, 2020

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

From: Tim Bryan, P.E., PTOE
County Engineer

Re: Supplemental Agreement #1
Neel-Schaffer, Inc.
Gluckstadt Road Improvements

The Engineering Department is recommending approval of Supplemental Agreement #1 in the amount of \$23,000 to the contract of Neel-Schaffer, Inc. to compensate for the additional inspection time required when the contractor did not complete the construction within the designated contract period.

**SUPPLEMENTAL AGREEMENT NUMBER 1 TO
THE AGREEMENT FOR PROFESSIONAL SERVICES**

BETWEEN

Madison County

AND

NEEL-SCHAFFER, INC.

WHEREAS: The **Madison County Board of Supervisors, Madison County, Mississippi**, the **OWNER**, and **NEEL-SCHAFFER, INC.**, the **ENGINEER** entered into an **AGREEMENT** on June 17, 2019 for “general scope of work and location” for **Gluckstadt Road Improvements** and hereinafter called the “**Project**”,

WHEREAS: The **OWNER** has identified the need for additional services not included in the **AGREEMENT** ; and,

NOW THEREFORE: In accordance with Section 2 of the **AGREEMENT**, the **ENGINEER** will provide additional services “for scope of work and fee” as detailed in Exhibit B attached hereto and made a part of the **AGREEMENT** due to extended construction schedule as detailed in Exhibit C. This Supplemental Agreement in no way modifies or changes the **AGREEMENT** of which it becomes a part, except as specifically stated herein.

OWNER:

MADISON COUNTY BOARD OF SUPERVISORS

BY: _____

TITLE: _____

DATE: _____

ENGINEER:

NEEL-SCHAFFER, INC.

BY:  _____

TITLE: V.P / Emg. Mgr.

DATE: 6-24-20

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.
- 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.

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- 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**.
- 2.3.2.9.2 Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.

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- 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.
- 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.

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- 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 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 for a total of \$23,000. Payments to ENGINEER for Additional Services shall be made in accordance with paragraph 5.2 of this Agreement.*
- 1.1.2 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.
- 1.1.3 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**.