

AGREEMENT FOR PROFESSIONAL SERVICES

BY AND BETWEEN

MADISON COUNTY, MISSISSIPPI

AND

WARNOCK & ASSOCIATES, LLC

FOR

GENERAL ENGINEERING SERVICES

APPROVED
BY MADISON COUNTY
BOARD OF SUPERVISORS
Date 3/5/12
BY Arthur Johnston CHANCERY CLERK
Charles Sec/D.C.

THIS AGREEMENT, made effective this the 3rd day of January , 2012, by and between the MADISON COUNTY, MISSISSIPPI, hereafter called OWNER, and WARNOCK & ASSOCIATES, LLC, Consulting Engineers, having its principal place of business at 158 West Center Street, Canton, Mississippi 39046, hereinafter called the ENGINEER.

WITNESSETH:

WHEREAS, the OWNER desires to employ the services of the ENGINEER for the purpose of supporting, supplementing and advising the OWNER in matters of planning, zoning and construction by third party interests as such matters are governed by the OWNER's ordinances in effect at the time of review, and

WHEREAS, the OWNER further desires to employ the services of the ENGINEER for the purpose of supporting and supplementing the OWNER's mission to construct, re-construct, modify or improve its municipal system, sewer system, streets, roads, bridges, drainage facilities and such other matters that are the corporate responsibility of Madison County, MS, and

WHEREAS, the OWNER desires the ENGINEER to perform the necessary services on a case by case or project by project basis within the scope defined by the OWNER at the time of assignment of the work to the ENGINEER, and

WHEREAS, the ENGINEER desires to provide all necessary services that may be required by the OWNER.

NOW THEREFORE, BE IT MUTUALLY AGREED, by and between the OWNER and the ENGINEER that the ENGINEER shall perform all assignments in a timely and efficient manner.

OWNER and the ENGINEER further agree that compensation to the ENGINEER shall be on an hourly basis plus direct related expenses as set forth hereinafter and that the terms and conditions also set forth hereinafter shall govern the services provided by the ENGINEER.

Part I. ENGINEERING CHARGES

HOURLY RATE SCHEDULE

A. In accordance with the Terms and Conditions of this Agreement, the ENGINEER shall provide professional services for which the OWNER shall compensate the ENGINEER on the basis of the hourly rate schedule below. All time charges by the hour shall be detailed including all personnel and the engineer. The detail shall include date hours by classifications.

A.1 Principal's' time and employees' time rendered as Additional Services shall be charged at the respective hourly rate:

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal	150.00
Engineer	120.00
Project Manager	115.00
Program Specialist	110.00
Technical Coordinator	100.00
Engineering Technician I	70.00
Engineering Technician II	75.00
Engineering Technician III	80.00
Engineering Technician IV	85.00
Engineering Technician V	90.00
Licensed Surveyor (individual)	120.00
Survey Crew with Equipment	175.00
Computer Aided Design and Drafting	40.00
Clerical	30.00

A.2. Cost of specialized services (i.e., soil borings, testing, surveys, analyses, etc.) of other professional consultants employed by the ENGINEER to provide such specialized services shall be charged at the actual cost billed to the ENGINEER plus a fee of five percent (5%).

A.3 Additional or extended services provided by the ENGINEER during construction made necessary by (1) work damaged by fire or other cause during construction, (2) defective or incomplete work of the Contractor, (3) prolongation of the initial Construction Contract time beyond the contract time established in the executed construction contract documents, (4) acceleration of the work schedule involving services beyond established office working hours, and (5) the Contractor's default under Construction Contract due to delinquency or insolvency, shall be in addition to the stated ceiling if any, and shall be based on the hourly rates established in paragraph A.1, and all reimbursable expenses incurred as defined in paragraph A.4 below.

A.3.1 Professional Retainer

The ENGINEER agrees to perform the following items of work for a monthly retainer of \$5000.

- a) Provide technical assistant to the road manager as needed.
- b) Attend all board meetings.
- c) Attend all meetings with the Supervisors and Department Heads as needed.
- d) Coordinate all meetings with developers prior to submission of plats, plans, ect.
- e) Review all Preliminary Plats, Construction Drawings, and Final Plats.

A.4 **Reimbursable Expenses** - As defined herein, Reimbursable Expenses shall be paid for at the actual cost billed to the ENGINEER. Reimbursable Expenses are in addition to compensation to the ENGINEER for Basic and Additional Services and include expenditures made by the ENGINEER, his employees or his consultants in the interest of the assigned Projects. Reimbursable Expenses include but are not limited to:

A.4.1 Expense of transportation, subsistence and lodging when traveling in connection with the Project. Transportation via company owned or employee owned vehicles of the ENGINEER when used in connection with the performance of the work shall be billed to the OWNER at the rate of FORTY EIGHT AND ONE HALF CENTS ONLY (\$0.485) per mile.

A.4.2 Expense of long distance or toll telephone calls, telegrams, messenger service, field office expenses, and fees paid for securing approval of authorities having jurisdiction over the assigned Projects.

A.4.3 Expense of all reproduction, postage and handling of Drawings, Specifications, reports or other Project-related work product of the ENGINEER. Printing and reproduction charges for work performed in-house will be billed at the following rates:

Photocopies (letter and legal) - \$0.20 Each
Photocopies (11" x 17" drawings) - \$0.40 Each

Blue Printing (full scale plans) - \$2.00 Square Foot

A.4.4 Expense of computer time including charges for proprietary programs.

A.4.5 When authorized in advance by the OWNER in writing, expense of overtime work requiring higher than normal rates, and expense of preparing perspectives, renderings or models.

A.5 CONSTRUCTION INSPECTION - The Engineer will provide one or more resident project representatives to assist the Engineer in order to render more extensive representation at the project site during the construction phase.

Such resident construction review services shall be paid for by the Owner under the Schedule of Hourly Rates and Reimbursable Expenses stated above.

Part II. TERMS AND CONDITIONS

Article 1 ENGINEER'S SERVICES

1.1 Basic Services

The ENGINEER agrees to perform professional services in connection with the assigned Projects, including normal civil, structural, mechanical and electrical services and normal architectural services related thereto, as set forth below and contained within this Agreement.

1.1.1 Engineering Report Phase (If Applicable)

During the Engineering Report Phase the ENGINEER shall:

1.1.1.1 Consult with the OWNER and obtain written approval from the OWNER to ascertain the OWNER'S requirements for the Project.

1.1.1.2 Advise the OWNER as to the necessity of his obtaining additional services such as described within Article I, paragraph 1.2 "Additional Services" and if authorized by the OWNER, shall provide, or assist him in procuring such additional services.

1.1.1.3 Prepare a preliminary engineering study and report, which will consist of schematic design documents and reports of studies as necessary for review and written approval by the OWNER.

1.1.1.4 Prepare a statement of the ENGINEER'S Opinion of the Construction Cost including engineering fees based upon the preliminary designs developed under this Phase.

1.1.1.5 Furnish two (2) copies of the Preliminary Engineering Report for the OWNER'S review and approval.

1.1.2 Engineering Design Phase (If Applicable)

Upon receipt of the OWNER'S written authorization to proceed with the Engineering Design Phase, the ENGINEER shall:

1.1.2.1 Advise the OWNER as to the necessity of his obtaining further additional services and if authorized in writing by the OWNER, shall provide, or assist him in procuring such services.

1.1.2.2. Prepare a complete Design Survey of the Project site which shall include but not be limited to service and utilities locations with depths and invert grades , easements, rights-of-way, contours, grades, streets, alleys, pavements, adjoining property, encroachments, existing buildings, improvements and tree locations.

1.1.2.3 Prepare from the approved Preliminary Engineering Report and the Design Survey the Preliminary Design Documents consisting of design criteria, drawings and outline specifications to develop and establish the scope of the Project.

1.1.2.4 Prepare a statement of the ENGINEER'S Opinion of the Construction Cost for the Project based upon designs established to this point.

1.1.2.5 Furnish two (2) copies of the Preliminary Design Documents for the OWNER'S review and approval.

Upon receipt of the OWNER'S written approval of the Preliminary Design Documents, the ENGINEER shall:

1.1.2.6 Finalize all drawings in sufficient detail and consistent with industry standards for use as construction plans.

1.1.2.7 Prepare the required Contract Documents for construction including notice to bidders, proposal forms, contract forms, general conditions, technical specifications and other documents as required to complete the Engineering Design Phase.

1.1.2.8 Furnish engineering data and documents to all governmental authorities having jurisdiction over the Project for approval of the Project.

1.1.2.9 Advise the OWNER of any adjustment to previous ENGINEER'S Opinion of the Construction Cost when changes in requirements, general market conditions or other conditions so warrant.

1.1.2.10 At the OWNER'S request, assist the OWNER'S legal counsel in connection with his review of the Construction Contract Documents for their legally related aspects.

1.1.2.11 Furnish two (2) copies of the Construction Contract Documents and Construction Plans for the OWNER'S review and approval.

1.1.3 Bidding or Negotiating Phase (If Applicable)

Upon receipt of the OWNER'S written approval of the Construction Contract Documents and latest Opinion of the Construction Cost including engineering fees, and written authorization to proceed with the Bidding or Negotiating Phase, the ENGINEER shall:

1.1.3.1 Assist the OWNER in obtaining bids or negotiating bid proposals, in analyzing bids and proposals, and in awarding the Construction Contract.

1.1.4 Construction Phase (If Applicable)

Upon award of any Construction Contract based upon the Construction Contract Documents compiled by the ENGINEER, the Construction Phase of this Agreement shall commence and the ENGINEER shall:

1.1.4.1 Act as the OWNER'S representative with duties and responsibilities and limitations of authority as described in the General Conditions to the Construction Contract. The OWNER shall not modify the Construction Contract Documents without consultation with the ENGINEER.

1.1.4.2 Advise and consult with the OWNER during the Construction Phase and the ENGINEER shall issue the OWNER'S authorized instructions to the Contractor.

1.1.4.3 Make periodic visits to the site of the construction to observe the progress and quality of the construction work and to determine, in general, if the results of the construction work are in accordance with the Drawings and the Specifications. On the basis of his on-site observations as an ENGINEER, he shall endeavor to guard the OWNER against apparent defects and deficiencies in the permanent work constructed by the Contractor. The ENGINEER shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the construction work. The ENGINEER is not responsible for construction means, methods, techniques, sequences or procedures, time of performance, programs, or for any safety precautions in connection with the construction work. The ENGINEER is not responsible for the Contractor's failure to execute the work in accordance with the Construction Contract.

1.1.4.4 Review the Contractor's request for progressive payment, and based upon said on-site observation, advise the OWNER as to the ENGINEER'S opinion of the extent of the work completed in accordance with the terms of the Construction Contract as of the date of the Contractor's payment request and issue, for processing by the OWNER, a Certificate for Payment in the amount owed the Contractor. The issuance of Certificates for Payment shall constitute a declaration by the ENGINEER to the OWNER, based upon said on-site observations, review and data accompanying the request for payment, that the Contractor's

work has progressed to the point indicated; that to the best of the ENGINEER'S knowledge, information and belief, the quality of the Contractor's work is in accordance with the Construction Contract Documents (subject to subsequent tests and review required by the Construction Contract Documents, to correction of minor deviations from the Construction Contract Documents and to qualifications stated in the Certificate for Payment); and that the Contractor is entitled to the amount stated. The issuing of the Certificate for Payment by the ENGINEER shall not represent that he has made any investigation to determine the uses made by the Contractor of sums paid to the Contractor.

1.1.4.5 Make recommendations to the OWNER on all claims relating to the execution and progress of the construction work. The ENGINEER'S decisions in matters relating to the ENGINEER'S design shall be final.

1.1.4.6 Notify the OWNER of permanent work which does not conform to the result required in the Construction Contract, prepare a written report describing any apparent non-conforming permanent work and make recommendations to the OWNER for its correction and, at the request of the OWNER, have recommendations implemented by the Contractor.

1.1.4.7 Review shop drawings, samples, and other submittals of the Contractor only for general conformance to the design concept of the Project and for general compliance with the Construction Contract.

1.1.4.8 Prepare Change Orders for the OWNER'S approval.

1.1.4.9 Conduct a construction progress review related to the Contractor's date of completion; receive written guarantees and related data assembled by the Contractor; and issue to the OWNER a Certificate of Final Payment.

1.1.4.10 Provide periodic Resident Project Representative services in support of the OWNER'S full-time Resident Project Representative in order to assist the ENGINEER to render more extensive representation at the Project site during the Construction Phase. The limits of the authority, duties and responsibilities of both Resident Project Representatives are described by written instrument labeled Exhibit "A", attached to, and made a part of this Agreement. By means of the more extensive on-site observations of the work in progress, the ENGINEER will endeavor to provide further protection for the OWNER against defects and deficiencies in the Contractor's work, but the furnishing of such services shall not include construction review of the Contractor's construction means, methods, techniques, sequences or procedures, or of any safety precautions and programs in connection with the work, and the ENGINEER shall not be responsible for the Contractor's failure to carry out the work in accordance with the Construction Contract.

1.1.4.11 Prepare a record set of as-built drawings conforming to construction records provided to the ENGINEER, made by the Contractor during the construction process.

1.1.4.12 The ENGINEER shall not be responsible for the defects or omissions in the work result of the Contractors, or any Subcontractors, or any of the Contractor's or Subcontractor's

employees, or that of any other persons or entities responsible for performing any of the work result as contained in the Construction Contract.

1.2 Additional Services

If authorized in writing by the OWNER, the ENGINEER agrees to furnish or obtain from others, additional professional services in connection with the Project, as set forth below and contained within this Agreement:

1.2.1 Furnish soils data including but not limited to reports, test borings, test pits, probings, subsurface exploration, soil bearing values, percolation tests, ground corrosion and resistivity tests, all with appropriate professional interpretation.

1.2.2 Furnish construction materials testing by staff or commercial laboratories to check materials incorporated into the work for compliance with the Project Specifications.

1.2.3 Preparation of applications and supporting documents for government grants, loans or advances.

1.2.4 Making drawings from field measurements of existing construction when required for planning additions or alterations thereto.

1.2.5 Services due to changes in the scope of the Project or its design, including but not limited to, changes in size, complexity, schedule or character of construction.

1.2.6 Revising studies, reports, design documents, drawings or specifications which have previously been approved by the OWNER, or when such revisions are due to causes beyond the control of the ENGINEER.

1.2.7 Preparation of design documents for alternate bids or for out-of-sequence work requested by the OWNER.

1.2.8 Preparation of detailed renderings, exhibits or scale models for the Project.

1.2.9 Providing special analysis of the OWNER'S needs such as owning and operating analysis, OWNER'S operating and maintenance manuals, OWNER'S special operating drawings or charts, and any other similar analysis.

1.2.10 Furnishing additional copies of reports and additional prints of Drawings and Specifications in excess of those stipulated in the Agreement.

1.2.11 Investigations involving detailed consideration of operations, maintenance and overhead expenses; the preparation of rate schedules, earnings and expenses statements,

feasibility studies, appraisals and valuations; detailed quantity surveys of materials and labor; and material audits or inventories required by the OWNER.

1.2.12 Additional services when the Project involves more than one Construction Contract, or separate equipment contracts.

1.2.13 Preparing special Change Orders when requested by the OWNER which are not within the scope of Article 1, "ENGINEER'S SERVICES," Paragraph 1.1.4.8.

1.2.14 Making a review of the Project prior to expiration of the guarantee period and reporting observed discrepancies under guarantees provided by the Construction Contract.

1.2.15 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) defective or incomplete work of the Contractor, (3) prolongation of the initial Construction Contract time beyond the contract time, (4) acceleration of the work schedule involving services beyond established office working hours, and (5) the Contractor's default under Construction Contract due to delinquency or insolvency.

1.2.16 Providing assistance in the initial start-up, testing, adjusting or balancing, or operation of equipment or systems, or training personnel for operation or maintenance of equipment or system.

1.2.17 Providing design services relating to future facilities, systems and equipment that are not intended to be constructed or operated as a part of the Project.

1.2.18 Providing services as an expert witness for the OWNER in connection with litigation or other proceedings involving the Project.

1.2.19 Providing other services not otherwise provided for in this Agreement, including services normally furnished by the OWNER as described in Article 2, "OWNER'S RESPONSIBILITIES."

Article 2 OWNER'S RESPONSIBILITIES

The OWNER shall:

2.1 Provide to the ENGINEER all criteria, design and construction standards and full information as to the OWNER'S requirements for the Project.

2.2 Designate in writing a person authorized to act as the County Administrator. The OWNER or his representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER'S policies and render decisions and authorizations in writing promptly to prevent unreasonable delay in the progress of the ENGINEER'S services.

2.3 Furnish laboratory tests, air and water pollution tests, reports and inspections of samples, materials or other items required by law or by governmental authorities having jurisdiction over this Project.

2.4 Provide legal, accounting, and insurance counseling services necessary for the Project, legal review of the Construction Contract Documents, and such auditing services as the OWNER may require to account for expenditures of sums paid to the Contractor.

2.5 Furnish permits and approvals from all governmental authorities having jurisdiction over this Project and from others as may be necessary for completion of the Project.

2.6 Furnish above services at the OWNER'S expense and in such manner that the ENGINEER may rely upon them in the performance of his services under this Agreement.

2.7 Obtain bids or proposals from contractors for work relating to this Project and bear all costs relating thereto.

2.8 Protect and preserve all survey stakes and markers placed at the Project site prior to the assumption of this responsibility by the Contractor and bear all costs of replacing stakes or markers damaged or removed during said time interval.

2.9 Guarantee full and free access for the ENGINEER to enter upon all property required for the performance of the ENGINEER'S services under this Agreement.

2.10 Give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project or other event which may substantially affect the ENGINEER'S performance of services under this Agreement.

2.11 Compensate the ENGINEER for services rendered under this Agreement.

Article 3 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct labor costs incurred by the ENGINEER directly attributable to the Project by the payment of the actual salaries and wages to the employees of the ENGINEER, but not including indirect payroll connected costs and other non-Project related costs.

Article 4 PAYMENTS TO THE ENGINEER

4.1 Progress payments shall be made on an hourly basis for the services rendered and as indicated within this Agreement and shall be due and owing within thirty days of the ENGINEER'S submittal of his monthly statement. Past due amounts owed shall include a charge at the maximum legal rate of interest from the thirtieth day.

4.2 If the OWNER fails to make monthly payments due the ENGINEER, the ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.

4.3 No deductions shall be made from the ENGINEER'S compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors.

4.4 If the Project is delayed or if the ENGINEER'S services for the Project are delayed or suspended for more than three months for reasons beyond the ENGINEER'S control, the ENGINEER may, after giving seven days written notice to the OWNER, terminate this Agreement and the OWNER shall compensate the ENGINEER in accordance with the termination provision contained hereafter in this Agreement.

Article 5 GENERAL PROVISIONS

5.1 Ownership of Documents

All Drawings, Specifications and other work product of the ENGINEER for this Project are instruments of service for this Project only and shall become the property of the OWNER upon full payment for services as agreed upon. Reuse of any of the instruments of service of the ENGINEER by the OWNER on extensions of this Project or on any other project shall be at the OWNER'S risk and the OWNER agrees to defend, indemnify and hold harmless the ENGINEER from all claims, damages, and expenses including attorney's fees arising out of such unauthorized reuse of the ENGINEER'S instruments of service by the OWNER OR BY OTHERS ACTING THROUGH THE OWNER. Any reuse or adaptation of the ENGINEER'S instruments of service occurring after the written agreement of the ENGINEER shall entitle the ENGINEER to further compensation in amounts to be agreed upon by the OWNER and the ENGINEER.

5.2 Delegation of Duties

Neither the OWNER nor the ENGINEER shall delegate his duties under this Agreement without the written consent of the other.

5.3 Termination

This Agreement may be terminated by either party by seven days written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party. If this Agreement is terminated, the ENGINEER shall be paid for services performed to the termination notice date including Reimbursable Expenses due.

5.4 Extent of Agreement

This Agreement represents the entire and integrated agreement between the OWNER and the ENGINEER and supersedes all prior negotiations, representations or agreements, either written

or oral. This Agreement may be amended only by written instrument signed by both the OWNER and the ENGINEER.

5.5 Governing Law

Unless otherwise specified within this Agreement, this Agreement shall be governed by the law of the State of Mississippi.

5.6 General

5.6.1 Should litigation or arbitration occur between the two parties relating to the provisions of this Agreement, all litigation or arbitration expenses, collection expenses, witness fees, court costs and attorneys' fees incurred by the prevailing party shall be paid by the non-prevailing party to the prevailing party.

5.6.2 Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

5.6.3 In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

5.6.4 The ENGINEER has not been retained or compensated to provide design and construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences, or procedures required for the Contractor to perform his work but not relating to the final or completed structure; omitted services include but are not limited to shoring, scaffolding, underpinning, temporary retainment of excavations and any erection methods and temporary bracing.

5.6.5 The ENGINEER intends to render his services under this Agreement in accordance with generally accepted professional practices for the intended use of the Project and makes no warranty either express or implied.

5.6.6 Any Opinion of the Construction Cost prepared by the ENGINEER represents his judgement as a design professional and is supplied for the general guidance of the OWNER. Since the ENGINEER has no control over the cost of labor and material, or over competitive bidding or market conditions, the ENGINEER does not guarantee the accuracy of such Opinions as compared to Contractor bids or actual cost to the OWNER.

Article 6. SPECIAL PROVISIONS

6.1. Insurance and Indemnity

6.1. Engineer's Insurance - The ENGINEER shall acquire and maintain statutory worker's compensation insurance coverage, employer's liability and comprehensive general liability insurance coverage of not less than \$1,000,000.00. The limits and deductive applicable to both employer's liability and comprehensive general liability shall be established by the ENGINEER.

6.1.2 Contractor's Insurance - Prior to the commencement of the work, the OWNER shall require the Contractor and any Subcontractors to submit evidence that he (they) have obtained for the period of the Construction Contract and the guarantee period comprehensive general liability insurance coverage (including completed operations coverage). This coverage shall provide for bodily injury and property damage arising directly or indirectly out of, or in connection with, the performance of the work under the Construction Contract, and have a limit of not less than \$500,000.00 for all damages arising out of bodily injury, sickness or death of one person and an aggregate of \$500,000.00 for damages arising out of bodily injury and sickness and death of two or more persons in any one occurrence. The property damage portion will provide for a limit of not less than \$500,000.00 for all damages arising out of injury to or destruction of property of others arising directly or indirectly out of or in connection with the performance of the work under the Construction Contract and in any one occurrence including explosion, collapse and underground exposures.

Included in such coverage will be contractual coverage sufficiently broad to insure the provision of paragraph 6.1.4 "Indemnity". The comprehensive general liability insurance will include as additional named insured: the OWNER; the ENGINEER; and each of their officers, agents and employees.

6.1.3. Builder's Risk "All Risk" Insurance - Before commencement of the work, the OWNER will require that the Contractor and any Subcontractors submit written evidence that he (they) have obtained for the period of the Construction Contract, Builder's Risk "All Risk" Completed Value Insurance Coverage (including earthquake and flood) upon the entire Project which is the subject of the Construction Contract. Such insurance shall include as additional named insured; the OWNER; the ENGINEER; and each of their officers, agents, employees and any other persons with an insurable interest as may be designated by the OWNER.

Such insurance may have a deductible clause but not to exceed \$5,000.00, except that the earthquake deductible may be in accordance with generally accepted insurance practices in the locale where the coverage is issued.

6.1.4 Indemnity- the OWNER will require that any Contractor or Subcontractors performing work in connection with Drawings and Specifications produced under this Agreement to hold harmless, indemnify and defend, the OWNER and the ENGINEER, their consultants, and each of their officers, agents, and employees from any and all liability claims, losses or damage arising out of or alleged to arise from the Contractor's (or Subcontractor's) negligence in the performance of the work described in the Construction Contract Documents, but not including

liability that may be due to the sole negligence of the OWNER, the ENGINEER, their consultants or their officers, agents and employees.

6.2 Construction Cost

6.2.1 Construction Cost, when used as the basis for determining the ENGINEER'S compensation, shall be defined as the total cost to the OWNER or the ENGINEER'S Opinion of the Construction Cost for all construction designed or specified by the ENGINEER including the costs of labor, materials, equipment and specified furnishings, and cost of management of construction, but not including the ENGINEER'S or other consultant's compensation and expenses, the cost of land, rights-of-way or easements, nor the OWNER'S cost of legal, accounting, auditing or insurance counseling services, or interest and financing charges for the Project, nor other costs listed in Article 2 "OWNER'S RESPONSIBILITY." The Construction Cost shall be determined as follows with precedence in the order listed -

6.2.1.1 For completed construction costs to the OWNER of all construction work performed.

6.2.1.2 For construction work not constructed, the lowest bona fide bid received from a qualified bidder.

6.2.1.3 For work for which bids are not received, ENGINEER'S latest Opinion of the Construction Cost.

6.2.2 Labor furnished by the OWNER for the Project construction shall be included in the Construction Cost at current market rates including a reasonable allowance for overhead and profit. Material and equipment furnished by the OWNER for the Project shall be included in the Construction Cost at current market prices, F.O.B. Project site, except that used material and equipment shall be included as if purchased new for the Project.

6.2.3 When a fixed limit of Construction Cost is established as a condition of this Agreement, it shall be in writing signed by both OWNER and ENGINEER and shall include a ten percent bidding contingency, unless another amount is agreed upon in writing. When such fixed limit is established the ENGINEER shall be permitted to determine what materials, equipment, component systems, types of construction and alternative bid items are to be included in the Construction Contract Documents, and to make reasonable adjustments in the scope of the Project to bring it within the fixed limit. Acceptance by the OWNER of a revised Opinion of Construction Cost in excess of the fixed limit shall constitute a corresponding increase in the fixed limit of Construction Cost.

6.2.4 After completion of the Engineering Design Phase, if the Bidding or Negotiating Phase does not commence within six months, any fixed limit of the Construction Cost shall be adjusted to reflect general construction industry price level increases occurring between the


date of ENGINEER'S submittal to the OWNER of the final Construction Contract Document and the date on which bids or proposals are sought.

6.2.5 If the lowest bona fide bid or the ENGINEER'S Opinion of the Construction Cost exceeds such fixed limit of Construction Cost (including the bidding contingency) established as a condition of this Agreement, the OWNER shall (1) give written approval for an increase in such fixed limit, (2) authorize re-bidding within a reasonable time, or (3) cooperate in revising the Project scope and quality as required to reduce the Construction Cost. In the case of (3) the ENGINEER, without additional charge, shall modify the Construction Contract Documents, as the ENGINEER deems necessary, to bring the Construction Cost within the fixed limit. The providing of this service once shall be the limit of the ENGINEER'S responsibility in this regard, and having so performed this service the ENGINEER shall be entitled to his compensation in accordance with this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their duly authorized representatives on the day and year first above written.


MADISON COUNTY, MISSISSIPPI

WARNOCK & ASSOCIATES, LLC


~~JOHN BELL CROSBY~~ Gerald Steen
BOARD, PRESIDENT


RUDY M. WARNOCK, PRESIDENT

ATTEST:


~~CYNTHIA PARKER~~ Arthur Johnston
Chancery Clerk

(SEAL)



(SEAL)

**AGREEMENT
FOR
ENGINEERING SERVICES
EXHIBIT "A"**

This is Exhibit "A " consisting of 4 pages referred to in the Agreement between OWNER and ENGINEER for Professional Services.

**DUTIES, RESPONSIBILITIES
AND LIMITATIONS OF AUTHORITY
OF RESIDENT PROJECT REPRESENTATIVE**

ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants and other field staff to assist ENGINEER in observing progress and quality of the work of Contractor.

Through more extensive on-site observations of the of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for owner against defects and deficiencies in the work of Contractor. However, 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 ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by Contractor, for safety precautions and programs incident to the work of Contractor for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's performing and furnishing the work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. *In particular, the specific limitations set forth in paragraph 1.1.6 of the Agreement are applicable.*

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

1.0 General

1.1 The RPR is the ENGINEER'S agent at the site, 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 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 the OWNER with the knowledge of and under the direction of the ENGINEER.

2.0 Duties and Responsibilities of RPR

2.1 Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.

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 Liaison

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

2.3.2 Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

2.4 Shop Drawings and Samples:

2.4.1 Record date of receipt of Shop Drawings and Samples.

2.4.2 Received Samples which are furnished at the site by Contractor, and notify ENGINEER of availability of Samples for examination.

2.4.3 Advise ENGINEER and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by ENGINEER.

2.5 Review of Work, Rejection of Defective Work, Inspections and Tests:

2.5.1 Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.

2.5.2 Report to 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 ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

2.5.3 Verify that tests, equipment and systems start-ups 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 ENGINEER appropriate details relative to the test procedures and start-ups.

2.5.4 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.

2.6 Interpretation of Contract Documents: Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.

2.7 Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.

2.8 Records:

2.8.1 Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents including all Work Change Directives, Addenda, Change Orders, Field Orders, Additional Drawings issued subsequent to the execution of the Contract, 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.

2.8.2 Prepare a daily report or keep a diary or log book, recording Contractor's hours on the job site, weather conditions, data relative to questions of Work Change Directives, 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 ENGINEER.

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

2.9 Reports:

2.9.1 Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

2.9.2 Consult with ENGINEER in advance of schedules major tests, inspections or start of important phases of the Work.

2.9.3 Draft proposed Change Orders and Work Change Directives, obtaining backup material from Contractor and recommend to ENGINEER Change Orders, Work Change Directives, and Field Orders.

2.9.4 Report immediately to ENGINEER and OWNER the occurrence of any accident.

2.10 Payment Requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

2.11 Certificates, Maintenance and Operations 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 ENGINEER for review and forwarding to OWNER prior to final payment for the Work.

2.12 Completion:

2.12.1 Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.

2.12.2 Observe whether Contractor has had 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.

2.12.3 Conduct a final inspection in the company of ENGINEER, OWNER and Contractor and prepare a final list of items to be completed or corrected.

2.12.4 Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

3.0 Limitations of Authority by RPR

3.1 Resident Project Representative:

3.1.1 Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by ENGINEER.

3.1.2 Shall not exceed limitations of ENGINEER'S authority as set forth in the agreement or the Contract Documents.

3.1.3 Shall not undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.

3.1.4 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.

3.1.5 Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.

3.1.6 Shall not accept Shop Drawing or Sample submittals from anyone other than Contractor.

3.1.7 Shall not authorize OWNER to occupy the Project in whole or in part.

3.1.8 Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.