

AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN

CITY OF LAUREL

AND

NEEL-SCHAFFER, INC.

THIS IS AN AGREEMENT made on _____, 2026, between the **CITY OF LAUREL**, Post Office Box 647, Laurel, Mississippi 39440 (**OWNER**), and **NEEL-SCHAFFER, INC.**, 328 North Magnolia Street, Laurel, Mississippi 39440 (**ENGINEER**).

OWNER intends to construct improvements to the water system in the southern portion of the Pendorf area. These facilities are described in more detail in **Exhibit A, "Project Description,"** and hereinafter called the **Project**.

OWNER and **ENGINEER**, in consideration of the mutual covenants herein, agree with respect to the performance of professional engineering services by **ENGINEER** with respect to the **Project** and the payment for these services by **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 Design Phase of the **Project** in accordance with **Exhibit B, "Scope of Design Phase Services."**

1.3 When bids are accepted and Notice to Proceed issued by **OWNER**, **ENGINEER** shall provide Basic Services for the Construction Phase of the **Project** in accordance with **Exhibit C, "Scope of Construction Phase (Engineering) Services."**

SECTION 2 – ADDITIONAL SERVICES OF ENGINEER

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2.1 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 specific additional services outlined in Exhibits B and C and other requested services outside the defined scopes including but not limited to the following:

2.1.1 Services resulting from significant 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.

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

2.1.3 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.

2.1.4 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.

2.1.5 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**.

2.1.6 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.

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

2.1.8 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction; (2) a significant amount of defective, neglected or delayed work of Contractor or supplier; (3) protracted or extensive assistance in the startup or utilization of any equipment or system; (4) acceleration of the progress schedule involving services beyond normal working hours; and (5) default or bankruptcy by Contractor.

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

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

2.1.11 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**.

2.1.12 It is anticipated that the water improvements work anticipated by this Agreement will take place in existing ROW. Additional Services in connection with the **Project** related to ROW acquisition, legal work or appraisals are specifically excluded from this Contract and would constitute Additional Services.

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**.

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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.

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 D, “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 E, “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.

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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.

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 **OWNER** objects to all or any portion of an invoice, **OWNER** shall notify the **ENGINEER** within 14 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 60 calendar days after receipt of **ENGINEER's** statement, the amounts due **ENGINEER** shall include a charge at the rate of one percent per month from the 60th 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.

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.

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

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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.

6.3 **Suspension.** Upon 14 calendar days' written notice to the **ENGINEER**, the **OWNER** may suspend 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 **OWNER**. **ENGINEER** shall have the right to retain copies of all documents for his files.

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**

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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 therefrom. 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 The **ENGINEER** maintains workmen's compensation and unemployment compensation of a form and in an amount as required by state law; comprehensive general liability with maximum limits of \$500,000 / \$1,000,000; automotive liability with maximum limits of \$500,000 / \$500,000; and professional liability insurance with an annual limit of \$2,000,000.

6.5.2 **OWNER** recognizes that the insurance market can be erratic and **ENGINEER** cannot guarantee to maintain the coverages identified above. **ENGINEER** will endeavor to do so, within the context of prudent business practices, and will notify the **OWNER** of any change in coverage no later than 10 calendar days after **ENGINEER** becomes aware of such change. If coverage is withdrawn or if replacement policy will afford inadequate protection and/or will require a significantly increased premium when compared to prior coverage, the **ENGINEER** and the **OWNER** shall confer as to alternatives available, if any, and shall bargain in good faith in an attempt to achieve conditions acceptable to both.

6.6 **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**. **ENGINEER** agrees not to enter into subcontracts

with any sub-consultant and/or other parties who may be excluded or disqualified from participating in federal assistance programs.

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. These parties have not entered into any joint venture or partnership with the other. The **ENGINEER** is not to be considered the agent of the **OWNER**.

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 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** culpability, or any share of any amount levied to recognize more than actual economic damages.

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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 bears to the total negligency (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.

6.12 **Recovery of Dispute Resolution Costs.** In the event that legal action is brought by either party against the other, the prevailing party shall be reimbursed by the other for the prevailing party's legal costs, in addition to whatever other judgments or settlement amounts, if any, may be due.

6.13 **Compliance with Codes and Standards.** The **ENGINEER's** professional services shall 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.

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6.14 **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.

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

6.16 **Risk Allocation.** To the fullest extent allowed by law, the **OWNER** shall limit the **ENGINEER's** liability to the **OWNER** and all contractors arising from the **ENGINEER's** professional acts, errors or omissions, such that the total aggregate liability of the **ENGINEER** to all those named shall not exceed \$50,000 or the **ENGINEER's** total fee for services rendered on this project, whichever is greater.

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 **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.

6.19 **Third Party Exclusion.** This **Agreement** shall not create any rights or benefits to parties other than the **OWNER** and **ENGINEER** except other such rights as may be specifically called for herein.

6.20 **Hazardous Materials**

6.20.1 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.**

6.20.2 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.

6.21 **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

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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.

6.22 **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**.

6.23 **Access to Records.** The Mississippi Department of Environmental Quality, the Mississippi Department of Environmental Health and the U.S. Environmental Protection Agency have the authority to access and the right to audit, inspect, copy and examine books, financial records, and other documents relating directly to receipt and disbursement of funds.

6.24 The name and registration number of the professional engineer who will bear primary responsibility for the engineering work on this project is Kris Lightsey, P.E., Ph.D., MS Registration No. 19476.

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**.

7.14 **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.

7.15 **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.

7.16 **Supplier.** A manufacturer, fabricator, supplier, distributor, materialman or vendor of products or equipment used in construction of the project.

SECTION 8 – SPECIAL PROVISIONS AND EXHIBITS

8.1 This **Agreement** is subject to the following Special Provisions:

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 Design Phase Services."

8.2.3 Exhibit C, "Scope of Construction Phase (Engineering) Services."

8.2.5 Exhibit D, "Project Schedule."

8.2.6 Exhibit E, "Payments to Engineer."

8.3 This **Agreement**, consisting of Pages 1 to 17 inclusive, together with the Exhibits identified above, constitute the entire agreement between **OWNER** and **ENGINEER** and supersede 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.

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

OWNER: CITY OF LAUREL, MISSISSIPPI

ENGINEER: NEEL-SCHAFFER, INC.

WITNESS: _____

WITNESS: _____

EXHIBIT A

PROJECT DESCRIPTION

The proposed scope of the project is to provide water improvements along Palmer Road and Hwy 11 from Scoggins Road to Management Drive in the south Pendorf Area. The project will also upgrade the water system along Management Drive, Business Drive and Scoggins Road. The project will include open cut and directional drilled water main installation, fire hydrants, and water services. The project will also include exploring options for providing sewer to developing properties near I-59 at the end of Management Drive.

EXHIBIT B

SCOPE OF DESIGN PHASE SERVICES

- 1.1 **Preliminary Design Phase.** After execution of the **Agreement**, the Preliminary Design Phase will be initiated and the **ENGINEER** shall:
 - 1.1.1 Consult with the **OWNER** to clarify and define the **OWNER's** requirements for the **Project**.
 - 1.1.2 Assemble and review available data which may be pertinent to the **Project**.
 - 1.1.3 Make topographic surveys as needed for design of the **Project**, including locating utilities which are visually apparent. Establish horizontal control as necessary for construction of the **Project**.
 - 1.1.4 Locate telephone, electric power, gas, water, sewer and other 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 or accuracy.
 - 1.1.5 Identify and analyze requirements of governmental authorities having jurisdiction to approve the **Project** with whom consultation is to be undertaken in connection with the **Project**. If required, prepare and submit application to authorities/organizations for approval to construct the **Project**.
 - 1.1.6 Prepare preliminary design documents.
 - 1.1.7 Based on the information contained in the preliminary design documents, prepare an opinion of probable construction costs.
 - 1.1.8 Schedule progress meetings as required to effectively coordinate with the **OWNER**; prepare minutes of these progress meetings; and prepare a design progress report monthly for the preceding month's work which shall accompany **ENGINEER's** monthly statement.
 - 1.1.9 **ENGINEER's** services under the Preliminary Design Phase will be considered complete no later than 30 days after the date when preliminary design documents are delivered to the **OWNER** plus such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the preliminary design documents, if such approval is to be obtained during the Preliminary Design Phase.
- 1.2 **Final Design Phase.** After receiving written authorization to proceed with the Final Design Phase, the **ENGINEER** shall:
 - 1.2.1 Modify preliminary design documents as necessary to reflect **OWNER's** comments.
 - 1.2.2 Perform detailed design.

- 1.2.3 On the basis of approved preliminary design documents (including **OWNER's** comments) and detailed design, prepare final design documents to include final construction drawings, specifications and contract documents.
- 1.2.4 Conduct plan-in-hand inspection of the project site with **OWNER** and representatives of governmental agencies which may have jurisdiction over the **Project**.
- 1.2.5 Meet as necessary with representatives of utility companies to resolve utility issues.
- 1.2.6 Prepare a project notebook containing copies of all design calculations, equipment and component data sheets, manufacturer's catalog cuts, survey books/notes, correspondence and other information.
- 1.2.7 Based on information contained in the final design documents, prepare a revised opinion of probable construction costs.
- 1.2.8 Provide technical criteria, written descriptions and design data for **OWNER's** use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the **Project** and assist **OWNER** in consultations with appropriate authorities.
- 1.2.9 Schedule progress meetings as required to effectively coordinate with the **OWNER**; prepare minutes of these progress meetings; and prepare a design progress report monthly for the preceding month's work which shall accompany **ENGINEER's** monthly statement.
- 1.2.10 **ENGINEER's** services under the Final Design Phase will be considered complete at the earlier of (1) the date when the final design documents have been accepted by the **OWNER**, or (2) 30 days after the date when the final design documents are delivered to the **OWNER** for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the final design documents if such approval is to be obtained during the Final Design Phase.

EXHIBIT C

SCOPE OF CONSTRUCTION PHASE (ENGINEERING) SERVICES

1.0 **BIDDING AND CONTRACTING PHASE**

After the **OWNER** has authorized the project for bidding, the Bidding and Contracting Phases will be initiated and the **ENGINEER** shall:

- 1.1 Prepare and issue Contract Documents to prospective bidders, and maintain a record of their issuance.
- 1.2 Prepare and issue Addenda as appropriate to interpret, clarify, correct or expand Contract Documents to each known procurer of the Contract Documents.
- 1.3 Provide information on the general scope, unusual conditions and desired sequence of construction as requested by procurers of Contract Documents.
- 1.4 Conduct a pre-bid conference if requested by the **OWNER**.
- 1.5 Assist the **OWNER** in advertising for and obtaining bids for the contract for construction.
- 1.6 Consult with and advise the **OWNER** as to the acceptability of subcontractors, suppliers, and other persons or organizations proposed by the prime Contractor as required by the Contract Documents.
- 1.7 Consult with and advise the owner as to the acceptability of substitute materials and equipment proposed by the Contractor when substitution prior to the award of contracts is allowed by the Contract Documents.
- 1.8 Attend the bid opening, prepare bid tabulation sheets and assist owner in evaluating bids.
- 1.9 Assist the **OWNER** in the preparation of the documents necessary to complete the award.
- 1.10 Conduct a preconstruction conference.
- 1.11 The Bidding and Contracting Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

2.0 CONSTRUCTION PHASE

During the Construction Phase:

- 2.1 **General Administration of Construction Contract.** 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.
- 2.2 **Visits to Site and Observation of Construction.** 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, 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 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, 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 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, 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.
- 2.3 **Defective Work.** During such site visits and on the basis of such observations, ENGINEER may recommend to the OWNER disapproval or rejection of Contractor's work if 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.
- 2.4 **Clarifications and Interpretations; Change Orders.** 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, ENGINEER shall recommend Change Orders to OWNER and shall prepare Change Orders as required.
- 2.5 **Shop Drawings.** 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.

- 2.6 **Substitutes.** ENGINEER shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.
- 2.7 **Inspections and Tests.** 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).
- 2.8 **Applications for Payment.** Based on 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:
- 2.8.1 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 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, 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).
- 2.8.2 By recommending any payment, ENGINEER shall not thereby be deemed to have represented that on-site observations made by 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. ENGINEER'S review of Contractor's work for the purposes of recommending payments will not impose on 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 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.
- 2.9 **Contractor's Completion Documents.** 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.

- 2.10 **Substantial Completion.** Following notice from Contractor that Contractor considers the entire work ready for its intended use, **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**, **ENGINEER** considers the work substantially complete, **ENGINEER** shall deliver a certificate of substantial completion to **OWNER** and Contractor.
- 2.11 **Final Notice of Acceptability of the Work.** **ENGINEER** shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that **ENGINEER** may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, **ENGINEER** shall also provide a notice that the work is acceptable to the best of **ENGINEER**'s knowledge, information and belief and based on the extent of the services performed and furnished by **ENGINEER** under this **Agreement**.
- 2.12 **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.
- 2.13 **Limitation of Responsibilities.** **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. **ENGINEER** shall not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.
- 2.14 **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. **ENGINEER** shall also prepare minutes of the meeting. **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 **ENGINEER**'S monthly payment requests.
- 2.15 **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 **ENGINEER** of final payment and submission of record documents to **OWNER**.

3.0 **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 the Contractor. **ENGINEER** anticipates full-time RPR services for the duration of the construction contract.

Through more extensive on-site observations 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 the Contractor; but, the furnishing of such services will not make **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.

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:

3.1 General

RPR is **ENGINEER'S** agent at the site and will act as directed by and under the supervision of **ENGINEER** and will confer with **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 **OWNER** with the knowledge of and under the direction of **ENGINEER**.

3.2 Duties and Responsibilities of RPR

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

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.

3.2.3 Liaison

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

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

3.2.4 Shop Drawings and Samples

3.2.4.1 Record date of receipt of Shop Drawings and samples.

3.2.4.2 Receive samples which are furnished at the site by Contractor, and notify **ENGINEER** of availability of samples for examination.

3.2.4.3 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**.

3.2.5 Review of Work, Rejection of Defective Work, Inspections and Tests

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- 3.2.5.1 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.
- 3.2.5.2 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.
- 3.2.5.3 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 **ENGINEER** appropriate details relative to the test procedures and startups.
- 3.2.5.4 Accompany visiting inspectors representing public or other agencies having jurisdiction over the **Project**, record the results of these inspections and report these results to **ENGINEER**.
- 3.2.6 **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**.
- 3.2.7 **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**.
- 3.2.8 **Records**
- 3.2.8.1 Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all addenda, Change 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.
- 3.2.8.2 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 **ENGINEER**.
- 3.2.8.3 Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.
- 3.2.9 **Reports**
- 3.2.9.1 Furnish **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.

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- 3.2.9.2 Consult with **ENGINEER** in advance of scheduled major tests, inspections or start of important phases of the work.
 - 3.2.9.3 Draft and recommend to **ENGINEER** proposed Change Orders, obtaining backup material from Contractor.
 - 3.2.9.4 Report immediately to **ENGINEER** and **OWNER** the occurrence of any accident.
 - 3.2.10 **Payment Requests.** Review applications for payment with Contractor for compliance with the established procedure for submission and forward with recommendations to **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.
 - 3.2.11 **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 **ENGINEER** for review and forwarding to **OWNER** prior to final payment for the work.
 - 3.2.12 **Completion**
 - 3.2.12.1 Before **ENGINEER** certifies substantial completion, submit to Contractor a list of observed items requiring completion or correction.
 - 3.2.12.2 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.
 - 3.2.12.3 Conduct a final inspection in the company of **ENGINEER**, **OWNER**, and Contractor and prepare a final list of items to be completed or corrected.
 - 3.2.12.4 Observe whether all items on final list have been completed or corrected and make recommendations to **ENGINEER** concerning acceptance.
 - 3.3 **Limitations of Authority**

Resident Project Representative:

 - 3.3.1 Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by **ENGINEER**.
 - 3.3.2 Shall not exceed limitations of **ENGINEER'S** authority as set forth in the Contract Documents and this **Agreement**.
 - 3.3.3 Shall not undertake any of the responsibilities of Contractor, subcontractors, suppliers or Contractor's superintendent.

- 3.3.4 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.
- 3.3.5 Shall not advise on, issue directions regarding to, or assume control over safety precautions and programs in connection with the work.
- 3.3.6 Shall not accept Shop Drawings or sample submittals from anyone other than Contractor.
- 3.3.7 Shall not authorize **OWNER** to occupy the **Project** in whole or in part.
- 3.3.8 Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by **ENGINEER**.

EXHIBIT D

PROJECT SCHEDULE

The time periods for performances of Basic Services specified in Section 1, **Exhibit B, “Scope of Design Phase Services”** and **Exhibit D, “Scope of Construction Phase (Engineering) Services”** are stipulated as indicated below:

- 1.1.1 Survey and Preliminary Design Phase services is expected to be completed within 90 days of notice to proceed.
- 1.1.2 Final Design Phase services is expected to take an additional 90 days following
- 1.1.3 Bidding and Contracting Phase services will begin with authorization to proceed from the **OWNER** and will end with holding of the preconstruction conference.
- 1.1.4 Construction and Resident Phase services will begin with issuance of notice to proceed to the **CONTRACTOR** and will extend for a period of time including the **CONTRACTOR’S** time for performance as specified in the Contract Documents. Construction Phase services shall extend an additional 30 days to prepare and process completion documents and record drawings.

EXHIBIT E

PAYMENTS TO ENGINEER

1.1 **Basic Services.** OWNER shall pay ENGINEER for Basic Services rendered under Section 1, as supplemented by Exhibit B, “Scope of Design Phase Services” and Exhibit C, “Scope of Construction Phase (Engineering) Services”, the following fees are listed below:

1.1.1 **DESIGN PHASE SERVICES:**

- a) **Preliminary Design:** As described in Exhibit B, Section 1.1
- b) **Final Design:** As described in Exhibit B, Section 1.2

The lump sum fee amount for Design Phase Services as outlined in Exhibit B shall be \$280,000.

1.1.2 **CONSTRUCTION PHASE SERVICES:**

The lump sum fee amount for Construction Phase services as outlined in Exhibit C shall be \$220,000.

1.2 **For Additional Services.** OWNER shall pay ENGINEER for Additional Services rendered under Section 2 on the basis of ENGINEER’S Direct Labor Cost plus an overhead factor of 1.68 plus a profit rate of twelve percent plus Reimbursable Expenses. Subconsultants will be billed at actual cost times a factor of 1.1. Additional Services shall not exceed \$100,000.00.