

# **AGREEMENT FOR PROFESSIONAL SERVICES**

**BETWEEN**

**CITY OF LAUREL**

**AND**

**NEEL-SCHAFFER, INC.**

This is an Agreement made on \_\_\_\_\_, 2018, between the **CITY OF LAUREL**, the **OWNER**, and **NEEL-SCHAFFER, INC.**, the **ENGINEER**.

The **OWNER** intends to initiate a project to construct improvements as part of the City of Laurel Water System Improvements CDBG Project, which is further identified as CDBG Project No. 1134-18-228-PF-01 and is described in more detail in **Exhibit A, *Project Description***, and hereinafter called the “**Project**.”

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

**SECTION 1 — BASIC SERVICES OF ENGINEER**

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

1.2 When authorized in writing by **OWNER**, **ENGINEER** shall provide Basic Services for the Construction Phase of the **Project** in accordance with **Exhibit C, "Scope of Construction Phase Services."**

**SECTION 2 — ADDITIONAL SERVICES OF ENGINEER**

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

2.1. Services resulting from 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.

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

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

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

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

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

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

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

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

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

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

### **SECTION 3 — OWNER's RESPONSIBILITIES**

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

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

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

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

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

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

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

3.7. Give prompt written notice to **ENGINEER** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **ENGINEER's** services,

or any defect or nonconformance in the work of the **ENGINEER** or of any Contractor.

#### **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 E, "Project Schedule."**

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

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

**SECTION 5 — PAYMENTS TO ENGINEER**

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

5.2. **Times of Payment.** ENGINEER shall submit monthly statements for Basic and Additional Services rendered. For lump sum and percentage methods of payment, statements will be based upon ENGINEER's estimate of the proportion of the total services actually completed at the time of billing. For cost-plus-fixed-fee method of payment, the amount of fixed fee billed will be based on the proportion of the costs incurred at the time of billing to the maximum allowable costs established for this **Agreement**. OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements.

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 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** 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 workers' compensation insurance coverage and unemployment compensation coverage in an amount as required by state law; comprehensive general liability insurance with maximum limits of \$500,000/\$1,000,000; automotive liability insurance 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**.

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.

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.

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.** Not Used.

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

6.18. **Hazardous Materials.**

6.18.1. When hazardous materials are known, assumed or suspected to exist at a project site, **ENGINEER** is required to take appropriate precautions to protect the health and safety of his personnel, to comply with the applicable laws and regulations and to follow procedures deemed prudent

to minimize physical risks to employees and the public.

**OWNER** hereby warrants that, if he knows or has any reason to assume or suspect that hazardous materials may exist at the project site, he will inform **ENGINEER** in writing prior to initiation of services under this **Agreement**.

6.18.2. Hazardous materials may exist at a site where there is no reason to believe they could or should be present. **OWNER** agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. **ENGINEER** agrees to notify **OWNER** as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. **OWNER** waives any claim against **ENGINEER** and agrees to indemnify, defend and hold **ENGINEER** harmless from any claim or liability for injury or loss arising from **ENGINEER's** encountering unanticipated hazardous materials or suspected hazardous materials. **OWNER** also agrees to compensate **ENGINEER** for any time spent and expenses incurred by **ENGINEER** in defense of any such claim.

6.19. **Subsurface Conditions and Utilities.**

6.19.1. The **OWNER** recognizes that a comprehensive sampling and testing program

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

6.19.2. **ENGINEER** will locate utilities which will affect the **Project** from information provided by the **OWNER** and utility companies and from **ENGINEER's** surveys. In that these utility locations are based, at least in part, on information from others, **ENGINEER** cannot and does not warrant their completeness and accuracy.

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

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

through issuance of the Change Order than they would have been if originally included in the Contract Documents in which case any claim of **OWNER** against **ENGINEER** will be limited to the cost increase and not the entire cost of the Change Order.

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

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

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

6.23. **Conflicts.** In the event of a conflict between the main text of this **Agreement** and any appendix thereof, provisions of the main text shall govern.

6.24. **Governing Law.** The laws of the State of Mississippi will govern the validity of this

**Agreement**, its interpretations and performance, and remedies for any claims related to this **Agreement**.

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

6.26. The **ENGINEER** authorizes Kristopher M. Lightsey, P.E., Ph.D., Registered Professional Engineer No. 19476 in the State of Mississippi, to act on his behalf for this **Project**.

## SECTION 7 — DEFINITIONS

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

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

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

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

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

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

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

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

7.8. **Construction Cost.** Total cost of entire **Project** to **OWNER** not including **ENGINEER's** compensation and expenses, cost of land and rights-of-way, or compensation for or damages to properties, unless this **Agreement** so specifies; nor will it include **OWNER's** legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the **Project** or the cost of

services to be provided by others to **OWNER** pursuant to Section 3 of this **Agreement**.

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

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

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

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

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

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, material man 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 Services."

8.2.4. Exhibit D, "Payments to Engineer."

8.2.5. Exhibit E, "Project Schedule."

8.2.6. Exhibit F, "Special Provisions and Regulations Stipulated by the U.S. Department of Housing and Urban Development."

8.3. This **Agreement**, consisting of Pages 1 to 16, inclusive, together with the Exhibits herein identified, 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.

BY: \_\_\_\_\_

BY: K M Egb

TITLE: \_\_\_\_\_

TITLE: Sr. Project Manager

WITNESS: \_\_\_\_\_

WITNESS: Maudy Heggard

\_\_\_\_\_

Vice President



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**EXHIBIT A**

**PROJECT DESCRIPTION**

**Description:**

The City of Laurel proposes to make repairs and recoat the ground storage tanks and to replace and upgrade the aerators at the city's water treatment plants #2 and #3. Temporary onsite water storage will be required during the repairs at Water Plant #2 to maintain the system's capacity.

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**EXHIBIT B**

**SCOPE OF DESIGN PHASE SERVICES**

**1 PRELIMINARY DESIGN PHASE**

After execution of the Agreement, the Preliminary Design Phase will be initiated and the **ENGINEER** shall:

- 1.1 Consult with the **OWNER** to clarify and define the **OWNER's** requirements for the Project.
- 1.2 Assemble and review available data which may be pertinent to the Project.
- 1.3 Make surveys needed for design of the Project, including locating utilities which are visually apparent. Establish horizontal and vertical control as necessary for construction of the Project.
- 1.4 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.
- 1.5 Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications.
- 1.6 Develop criteria for rights-of-way, working easements and permanent easements. Indicate preliminary rights-of-way and easement requirements on drawings. Determine apparent ownership of property where easements are required.
- 1.7 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 the **ENGINEER's** surveys. In that these utility locations are based, at least in part, on information from others, the **ENGINEER** cannot and does not warrant their completeness or accuracy.
- 1.8 Based on the information contained in the preliminary design documents, prepare an opinion of probable construction costs.
- 1.9 Furnish one copy of above opinion of probable construction costs to **OWNER** for review
- 1.10 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 the **ENGINEER's** monthly statement.
- 1.11 The **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.

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## **2 FINAL DESIGN PHASE**

After receiving written authorization to proceed with the Final Design Phase, the **ENGINEER** shall:

- 2.1 Modify preliminary design documents as necessary to reflect **OWNER's** comments.
- 2.2 Perform detailed design.
- 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.
- 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.
- 2.5 Meet as necessary with representatives of utility companies to resolve utility issues.
- 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.
- 2.7 Based on information contained in the final design documents, prepare a revised opinion of probable construction costs.
- 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.
- 2.9 Furnish access to the above final design documents to the **OWNER** for review.
- 2.10 Schedule progress meetings as required to effectively coordinate with the **OWNER** and prepare minutes of these progress meetings.
- 2.11 The **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.

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## EXHIBIT C

### SCOPE OF CONSTRUCTION PHASE SERVICES

#### **1 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 CONSTRUCTION PHASE**

General Administration of Construction Contract.

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

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2.2 Visits to Site and Observation of Construction.

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

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

2.2.3 Clarifications and Interpretations; Change Orders. The **ENGINEER** shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. In connection therewith, if appropriate, the **ENGINEER** shall recommend Change Orders to **OWNER** and shall prepare Change Orders as required.

2.2.4 Shop Drawings. The **ENGINEER** shall review and approve (or take other appropriate action in respect of) Shop Drawings, samples and other data which Contractor is required to submit, but only for conformance with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

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- 2.2.5 Substitutes. The **ENGINEER** shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.
- 2.2.6 Inspections and Tests. The **ENGINEER** shall have authority, as **OWNER'S** representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testing 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).
- 2.2.7 Applications for Payment. Based on the **ENGINEER'S** on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules:
- 2.2.7.1 The **ENGINEER** shall determine the amounts owed to Contractor and recommend in writing payments to Contractor in such amounts. Such recommendations of payment will constitute a representation to **OWNER**, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of the **ENGINEER'S** knowledge, information and belief, the quality of such work is generally in accordance with the Contract Documents. In the case of unit price work, the **ENGINEER'S** recommendations of payment will include final determinations of quantities and classification of such work (subject to any subsequent adjustments allowed by the Contract Documents).
- 2.2.7.2 By recommending any payment, the **ENGINEER** shall not thereby be deemed to have represented that on-site observations made by the **ENGINEER** to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to the **ENGINEER** in this Agreement and the Contract Documents. The **ENGINEER'S** review of Contractor's work for the purposes of recommending payments will not impose on the **ENGINEER** responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on the **ENGINEER** to make any examination to ascertain how or for what purposes any Contractor has used the monies paid on account of the contract price, or to determine that title to any of the work, materials or equipment has passed to **OWNER** free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between **OWNER** and Contractor that might affect the amount that should be paid.
- 2.2.8 Contractor's Completion Documents. The **ENGINEER** shall receive, review and transmit to **OWNER** with written comments maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of the Contract Documents); and shall transmit them to **OWNER** with written comments.

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

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**EXHIBIT D**

**PAYMENTS TO ENGINEER**

**1.1     For Design Phase Services**

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

1.1.1   Engineering Design Services:   A lump sum fee of \$84,500.00.

**1.2     For Construction Phase Services**

Owner will pay **ENGINEER** for Construction Services rendered under Section 1, as supplemented by Exhibit C, "Scope of Construction Phase Services", the following amount(s):

1.2.1   Construction Engineering Services: A lump sum fee of \$42,100.00.

**1.3     Additional Services:** **OWNER** shall pay **ENGINEER** for Additional Services rendered under Section 2 on the basis of **ENGINEER's** Direct Labor Costs times a factor of 2.9 plus Reimbursable Expenses. Payments to **ENGINEER** for Additional Services shall be made in accordance with paragraph 5.2 of this **Agreement**.

**1.4**Payments to **ENGINEER** by **OWNER** are not contingent on any factor except **ENGINEER's** ability to provide services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. Payments to **ENGINEER** by **OWNER** specifically are not contingent on **OWNER's** receipt of grants for the **Project** or **OWNER's** decision to suspend or cancel the **Project**.



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**EXHIBIT E**

**PROJECT SCHEDULE**

The time periods for performance of Basic Services specified in Section 1 and Exhibit B, "Scope of Design Phase Services" and Exhibit C, "Scope of Construction Phase Services", are stipulated as indicated below:

- 1.1 Design Phase services will begin with issuance of notice to proceed to the **Engineer** and will extend for a period of time not to exceed 120 calendar days from issuance of notice.
- 1.2 Construction Phase services will begin upon authorization from **Owner** for project bidding and will extend for a period of time necessary to include the Bidding and Contracting Phases and the **Contractor's** time for performance as specified in the Contract Documents and an additional 30 days to prepare and process completion documents and record drawings.

## EXHIBIT F

### **SPECIAL PROVISIONS AND REGULATIONS STIPULATED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM**

For the purpose of clarification, the Contracted Party shall refer to the firm providing professional or construction services to the Grantee as specified in the contract to which this document is attached.

**1. Access of Grantee, State of Mississippi, HUD and Others to CDBG Documents, Papers, and Books**

The Contracted Party agrees to allow the Grantee, State of Mississippi, HUD, the Comptroller General of the United States, and any of their duly authorized representatives, access to any books, documents, papers, and records of the Contracted Party which are directly pertinent to the CDBG Program for the purpose of making audits, examinations, excerpts, and transcriptions.

**2. Termination of Contract for Cause**

If, through any cause, the Contracted Party shall fail to fulfill in timely and proper manner, his obligations under this Contract, or if the Engineer shall violate any of the covenants, agreements, or stipulations of this Contract, the Grantee shall thereupon have the right to terminate this Contract by giving written notice to the Contracted Party of such termination and specifying the effective date of such termination. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contracted Party shall entitle the Contracted Party's receipt of just and equitable compensation for any satisfactory work completed on such documents.

Notwithstanding the above, the Contracted Party shall not be relieved of liability to the Grantee for damages sustained or the Grantee by virtue of any breach of the Contract by the Contracted Party. The Owner may withhold any payments to the Contracted Party for the purpose of set off until such time as the exact amount of damages due the Grantee from the Contracted Party is determined.

**3. Termination for Convenience of the Grantee**

The Grantee may terminate this Contract any time by a notice in writing from the Grantee to the Contracted Party. If the Contract is terminated by the Owner as provided herein, the Contracted Party will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contracted Party covered by this Contract, less payments of compensation previously made provided that if less than sixty percent of the services covered by this Contract have been performed upon the effective date of such termination, the Contracted Party shall be reimbursed (in addition to the above payment) for that portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contracted Party during the Contract period which are directly attributable to the incomplete portion of the services covered by this Contract.

**4. Record-Keeping**

All records required to be kept on the project shall be maintained for at least three years after final payments and until all other pending matters under the grant are closed.

**5. Health and Safety Standards**

All parties participating in this project agree to comply with Section 107 of the Contract Work Hours and Safety Standards Act. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

**6. Environmental Compliance**

Contracts, subcontracts, and sub grants of amounts in excess of \$100,000.00 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1957 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR, 15), which prohibit the use under nonexempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. The provisions shall require reporting of violations to the grantor agency and the U.S. EPA Assistant Administrator for Enforcement (EN-329).

**7. Energy Efficiency**

All participants in the projects shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

**8. Changes**

The Grantee may, from time to time, request changes in the scope of the services of the Contracted Party to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contracted Party's compensation which are mutually agreed upon by and between the Grantee and the Contracted Party, shall be incorporated in written amendments to this Contract.

**9. Personnel**

The Contracted Party represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Grantee.

All the services required hereunder will be performed by the Contracted Party or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

**10. Anti-Kickback Rules**

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Engineer and contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to insure compliance by the subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

**11. Withholding of Salaries**

If in the performance of this Contract, there is any underpayment of salaries by the Contracted Party or by any subcontracted thereunder, the Grantee shall withhold from the Contracted Party out of payment due to him an amount sufficient to pay to employees underpaid the difference between the salaries required thereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by the Grantee for and on account of the contracted party or subcontractor to the respective employees to whom they are due.

**12. Claims and Disputes Pertaining to Salary Rates**

Claims and disputes pertaining to salary rates or to classifications of professional staff or technicians performing work under this Contract shall be promptly reported in writing by the Contracted Party to the Grantee for the latter's decision which shall be final with respect thereto.

**13. Equal Employment Opportunity**

During the performance of this Contract, the Contracted Party agrees to comply with Executive Order 11246, and the regulations issued pursuant thereto (24 CFR 130 and 41 CFR Chapter 60), which provides that no person shall be discriminated against on the basis of race, color, religion, gender, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts, contractors and subcontractors on Federal and Federally assisted construction contracts shall take affirmative action to ensure fair treatment in employments, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates or pay or other forms of compensation and selection for training apprenticeship.

**14. Anti-Discrimination Clauses**

The Contracted Party will comply with the following clauses:

1. Title VI of the Civil Rights Act of 1964 (PL 88-352), and the regulations issued pursuant thereto (24 CFR 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;
2. Title VIII of the Civil Rights Act of 1968 (PL 90-284), as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and taking action to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services; and,
3. Executive Order 11063, as amended by Executive Order 12259, on equal opportunity in housing and nondiscrimination in the sale or rental of housing built with Federal assistance.

Section 109 of the Housing and Community Development Act of 1974, as amended which requires that no person in the United States shall on the grounds of race, color, national origin, or gender be excluded from participation in, be denied the benefits or be subjected to discrimination under, any program or activities funded in whole or in part with community development funds made available pursuant to the Act. Section 109 further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 796) shall also apply to any such program or activity.

**15. Section 3 Clause**

The Contracted Party will comply with section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 17010) requiring that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project area be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

**§ 135.38 Section 3 clause.**

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to insure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an application provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled, (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7 (b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to the Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

**16. Discrimination Because of Certain Labor Matters**

No person employed on the work covered by this Contract shall be discharged or in any way discriminated against because he has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable hereunder to his employer.

**17. Compliance with Local Laws**

The Contracted Party shall comply with all applicable laws, ordinances, and codes of the state and local governments, and shall commit no trespass on any public or private property in performing any of the work embraced by this Contract.

**18. Subcontracting**

None of the services covered by this Contract shall be subcontracted without prior written consent of the Grantee. The Contracted Party shall be as fully responsible to the Grantee for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by him. The Contracted Party shall insert in each subcontract appropriate provisions requiring compliance with the labor standards provisions of this Contract.

**19. Assignability**

The Contracted Party shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Grantee provided that claims for money due or to become due the Contracted Party from the Grantee under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

20. **Interest of Members of Local Public Agency and Others**  
The Contracted Party agrees to establish safeguards to prohibit employees from using positions for a purpose that is or give the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have a family, business, or other tie.
- The Contracted Party will comply with Section 25-4-105, Mississippi Code Annotated (1972), which prohibits any public servant from using his official position to obtain pecuniary benefit for himself other than compensation provided for by law or for any relative or business with which he is associated and which further provides that a public servant may not be interested, during the term for which he has been chosen, or within one (1) year thereafter, in any contract made or let by the governing authorities of such municipality for the construction or doing of any public work, or for the sale or purchase of any materials, supplies or property of any description, or for any other purpose whatsoever, or in any subcontract arising therefrom or connected therewith, or to receive, either directly or indirectly, any portion or share of any money or other thing paid for the construction or doing of any public work, or for the sale or purchase of any property, or upon any other contract made by the governing authorities of the municipality, or subcontract arising therefore or connected therewith.
- The Contracted Party will also be aware of and avoid any violation of Section 24-4-117 and 25-4-119, Mississippi Code Annotated (Supp. 1972), which prescribes a criminal penalty for any public servant convicted of a violation of this Ethics in Government section.
21. **Interest of Certain Federal Officers**  
No member of or delegate to the Congress of the United States and no Resident Commissioner, shall be admitted any share or part of this Contract or to any benefit to arise there from.
22. **Interest of Contractor**  
The Contracted Party covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contracted Party further covenants that in the performance of this Contract no person having any such interest shall be employed.
23. **Political Activity**  
The Contracted Party will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.
24. **Davis-Bacon Act Requirements**  
The Contracted Party will comply with Section 110 of the Housing and Community Development Act of 1974, as amended, which requires that all laborers and mechanics employed by contractors or subcontractors on construction work assisted under the Act shall be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended 40 U.S.C. 276a-276-a5), and it will comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.). However, these requirements apply to the rehabilitation of residential property only if such property is designed for residential use of eight or more families.
25. **Uniform Act Requirements**  
The Contracted Party will comply with all applicable requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) as specified in regulations issued by the Secretary of the Department of Housing and Urban Development and published in 24 CFR 570-1.
26. **Lead-Based Paint Requirements**  
The Contracted Party will comply with Title IV of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831) which prohibits the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance in any form.
27. **Compliance with Office of Management and Budget**  
The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars A-95, A-102, and A-54, as they relate to the use of Federal funds under this contract.
28. **Flood Insurance Purchase Requirements**  
Both parties agree to comply with the flood insurance purchase requirements of Section 102(2) of the Flood Disaster Protection Act of 1973, (PL 93-234, 87 Stat. 975) approved December 31, 1976. Section 102 (a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase, "Federal financial assistance," includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
29. **Historic Preservation**  
Both parties agree to assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1966 (16 USC 469a-l et seq.) by (a) consulting with the State Historic Preservation officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (CFR Part 600.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties,

and by (b) complying with all requirements established by the Federal grantor agency and the state grantor agency to avoid or mitigate adverse effects upon such properties.

**30. Program Monitoring**

Both parties agree to assist and cooperate with the Federal grantor agency and the state grantor agency or their duly designated representatives in the monitoring of the project or projects to which this grant relates, and to provide in form and manner approved by the state grantor agency such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

**31. Procurement**

The sub grantee must comply with all State and Federal laws dealing with purchasing and acquisition for goods, services and other allowable cost as specified in the application.

**32. Discrimination Due to Beliefs**

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

**33. Confidential Findings**

All of the reports, information, data, etc., prepared or assembled by the Contracted Party under this Contract are confidential, and the Contracted Party agrees that they shall not be made available to any individual or organization without prior written approval of the Grantee.

**34. Third-Party Contracts**

The Sub grantee shall include in all contracts with Participating Parties receiving grant funds provisions requiring the following:

1. Each such Participating Party keeps and maintains books, records, and other documents relating directly to the receipt and disbursement of such grant funds; and,
2. Any duly authorized representative of the Mississippi Development Authority, the U.S. Department of Housing and Urban Development, and the Comptroller General of the United States shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of such Participating Party until the completion of all close-out procedures respecting this grant and the final settlement and conclusion of all issues arising out of this grant.

The Sub grantee shall include in all contracts with Participating Parties a provision that each Participating Party agrees that any duly authorized representative of the Mississippi Development Authority, the U.S. Department of Housing and Urban Development, and the Comptroller General of the United States shall, at all reasonable times, have access to any portion of the Project in which such Participating Party is involved until the completion of all close-out procedures respecting this grant.

**35. Excessive Force**

The contracted parties will adopt and enforce a policy of prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

**36. Architectural Barriers Act and Americans with Disabilities**

The contracted parties will comply with the Architectural Barriers Act and the Americans with Disabilities as described in 24 CFR Sec 487 (e).

**37. Citizen Participation**

The Contractor must follow the Citizen Participation procedures in accordance with the requirements listed in Title 24 CRF 91.115 of the Housing and Community Development Act of 1974, as amended. The Act provides for and encourages, Citizen Participation and emphasized participation by persons of low and moderate income, particularly residents of predominantly low and moderate income neighborhoods, slum or blighted areas, and areas in which the State of Mississippi proposes to use federal funds.

**38. Mississippi Employment Protection Act of 2008**

The Contractor must comply with the Mississippi Employment Protection Act of 2008 (Senate Bill 2988 of the 2008 Regular Session of the Mississippi Legislature) and must register and participate in the "status verification system" to verify the federal employment authorization status of all newly hired workers. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program. Failure to comply with the Mississippi Employment Protection Act of 2008 may be subject the following: (1) termination of the Contract and ineligibility for any state or public contract in Mississippi for up to three (3) years; or (2) The loss of any license, permit, certification or other document granted to the Contractor by an agency, department or government entity for the right to do business in Mississippi for up to one (1) year; or (3) both of the above.