

January 25, 2017

Ms. Nancy Thomas
City Attorney
City of Vicksburg
P. O. Box 150
Vicksburg, MS 39181

REFERENCE: NEW ACCESS ROAD FROM I-20 NORTH FRONTAGE ROAD TO
WISCONSIN AVENUE
CITY OF VICKSBURG, MISSISSIPPI

Dear Ms. Thomas:

Neel-Schaffer, Inc. would like to request an amendment to our Letter Agreement dated May 23, 2014 to provide additional construction administration services for the referenced project. The project site is on the former Battlefield Village Shopping Center site previously owned by James "Brother" Blackburn. The site is located between Halls Ferry Road and Indiana Avenue in Vicksburg, Mississippi and bounded by the North Frontage Road of Interstate 20 to the south and Fairhill Subdivision to the north. A copy of the executed Letter Agreement is attached as Exhibit A.

Additional fees are necessary to provide the construction administrative services for the completion of the infrastructure improvements by Dirtworks, Inc. of Vicksburg. The original contract time of 120 consecutive calendar days with a completion date of September 3, 2106 was established at the start of the project. The contract time has been subsequently extended by change order to the current completion date of October 19, 2016. We anticipate that all work will be completed on the project by February 28, 2017. All other terms and conditions of our agreement dated May 23, 2014 will remain in effect.

Additional compensation for the construction phase services will be performed at the hourly rates established by the May 23, 2014 agreement and will not exceed \$15,000. We will bill you monthly based on the services completed at the time of billing. Payment for our services will be due within 30 days of the invoice date and is not dependent on any factor except our ability to provide services in accordance with generally accepted standards of the engineering profession.

This amendment consisting of two pages and Exhibit A represents the agreement between Neel-Schaffer, Inc. and the City of Vicksburg. The agreement and exhibits may be modified or amended only by a duly executed written document.

We appreciate the opportunity to work with you to complete the construction of this project. If this amendment to our Letter Agreement is acceptable, please execute both documents and return one to us.

Ms. Nancy Thomas
January 25, 2017
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Sincerely,

NEEL-SCHAFFER, INC.



Charles A. Lott, Jr., P.E.
Vice President
Manager, Civil/Site Engineering

Enclosure

ACCEPTED: CITY OF VICKSBURG

BY: _____

DATE: _____



GEORGE FLAGGS, JR.
MAYOR

WILLIS T. THOMPSON
ALDERMAN



MICHAEL A. MAYFIELD, SR.
ALDERMAN

City of Vicksburg

1401 WALNUT STREET • VICKSBURG, MS 39181 • (601) 636-3411

May 28, 2014

**Charles A. Lott, Jr., P.E.
Neel-Schaffer, Inc.
1022 Highland Colony Parkway, Suite 202
Ridgeland, MS 39157**

**RE: New Access Road from North Frontage Road
To Wisconsin Avenue**

Dear Mr. Lott:

Enclosed is one (1) original agreement to provide engineering services for the above referenced project. This was approved by the Mayor and Alderman in an Adjourned Regular Board Meeting held on Friday, May 23, 2014.

Sincerely,

A handwritten signature in blue ink, which appears to read "Walter W. Osborne, Jr.", is written over the word "Sincerely,".

**Walter W. Osborne, Jr.
City Clerk**

WWOJr/twj

May 21, 2014

Mr. Garnet Van Norman
Public Works Director
City of Vicksburg
P. O. Box 150
Vicksburg, MS 39181

REFERENCE: NEW ACCESS ROAD FROM NORTH FRONTAGE ROAD TO
WISCONSIN AVENUE
CITY OF VICKSBURG, MISSISSIPPI

Dear Mr. Van Norman:

Neel-Schaffer, Inc. is pleased to offer you this Letter Agreement to provide professional engineering services for the referenced project. The project site is on the former Battlefield Village Shopping Center site currently owned by James "Brother" Blackburn. The site is located between Halls Ferry Road and Indiana Avenue in Vicksburg, Mississippi and bounded by the North Frontage Road of Interstate 20 to the south and Fairhill Subdivision to the north. A copy of the proposed roadway alignment prepared by Mendrop Engineering Resources, LLC is attached as Exhibit A.

We will provide our services in accordance with Exhibit B, General Terms and Conditions, which is attached to and made a part of this Letter Agreement. The scope of services or tasks identified to perform the work is as follows:

1. Assistance with the property acquisition of a portion of six parcels along the southern boundary of Fairhill Subdivision Part III that will be dedicated as right-of-way for the new roadway. Preparation of the property plats and descriptions for the acquisition of additional right-of-way is the only service to be provided for the property acquisition. The City of Vicksburg will provide the title work and closings associated with the purchase of the additional right-of-way required for the project.
2. Preparation of construction plans in accordance with the city of Vicksburg and Mississippi Department of Transportation (MDOT) requirements. Plans will be based on the original schematic layout of the proposed roadway and the topographic survey prepared by Mendrop Engineering. Documents will include a clearing/demolition plan, a utility plan, plan/profile sheet for the street and drainage design, a pavement marking and signage plan, an erosion control plan, standard water, sewer, drainage and signage details and project specifications. An application for permit to construct improvements to the North Frontage Road as a part this project will be prepared and submitted to MDOT.
3. Attendance at meetings with the city of Vicksburg and MDOT and incorporation of comments.

4. Preparation of final contract plans and specifications.
5. Assistance with securing bids for the construction of the project. Neel-Schaffer will attend the bid opening and prepare a tabulation of bids received and a recommendation of award.
6. Review and approve shop drawings, submittals, samples or other data which the Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information in the Contract Documents.
7. Engineer or his representative will visit the site each week during construction of the improvements to observe the progress and quality of various aspects of the Contractor's work. Site visits will be made during the clearing/demolition of the site, the installation of the utility lines, during the subgrade construction of the roadway, and during the construction of the frontage road improvements and the curb and gutter roadway.
8. Respond to questions from the contractor.
9. Conduct a final inspection for the purpose of final acceptance of the work. A punch list of items requiring corrective action will be prepared and distributed.

We will bill you monthly based on the services completed at the time of billing in accordance with the following fee schedule:

Property Acquisition Services – Hourly in accordance with Exhibit C, 2014 Fee Schedule with a not-to-exceed fee of \$6,000.00

Construction Plans and Specifications including Bidding Services – Hourly in accordance with the attached Exhibit C, 2014 Rate Schedule for Professional Services with a not-to-exceed fee of \$79,000.00

Construction Phase Services - Hourly in accordance with the attached Exhibit C, 2014 Rate Schedule for Professional Services with a not-to-exceed fee of \$52,000.00.

Our services will not include the following unless requested by you:

1. environmental site assessment,
2. cultural resource study
3. archeological survey,
4. wetlands determination,
5. landscape, lighting and irrigation design,
6. structural design,
7. off-site design,
8. or record drawings.



Mr. Garnet Van Norman
May 21, 2014
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We will perform the above services or other additional services at your request. These additional services will be performed on an hourly basis with compensation based on the attached Exhibit C. Subconsultant expenses will be billed to you at their cost to us times a factor of 1.1. Payment for our services will be due within 30 days of the invoice date and is not dependent on any factor except our ability to provide services in accordance with generally accepted standards of the engineering profession.

This Letter Agreement consisting of eight pages including Exhibit A, consisting of one page, Exhibit B, consisting of three pages, and Exhibit C, consisting of one page represents the entire agreement between Neel-Schaffer, Inc. and the City of Vicksburg. The agreement and exhibits may be modified or amended only by a duly executed written document.

We appreciate the opportunity to work with you on this project. If this Letter Agreement is acceptable, please execute both documents and return one to us.

Sincerely,

NEEL-SCHAFFER, INC.



Charles A. Lott, Jr., P.E.
Vice President
Manager, Civil/Site Engineering

Enclosures

ACCEPTED: CITY OF VICKSBURG

BY: 

DATE: May 23, 2014



EXHIBIT A

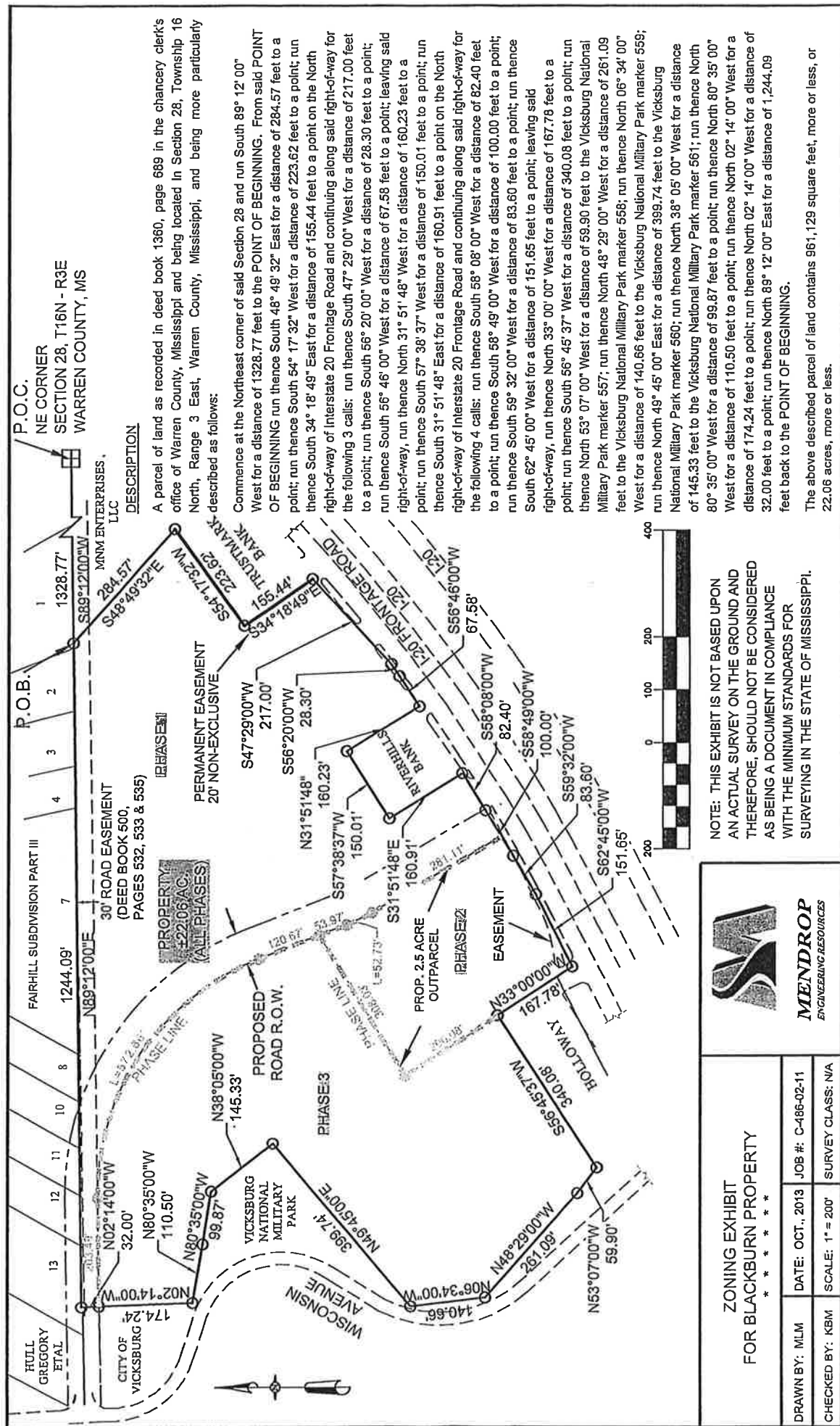


EXHIBIT B
NEEL-SCHAFFER, INC.
GENERAL TERMS AND CONDITIONS

1. **Relationship between Engineer and Client.** Engineer shall serve as Client's professional engineering consultant in those phases of the Project to which this Agreement applies. The relationship is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client.

2. **Responsibility of the Engineer.** Engineer will ~~strive to~~ perform services under this Agreement 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. 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.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any agreement between the Client and any other party concerning the Project, the Engineer shall not have control of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction; or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any contractor or subcontractor, or any other engineer, architect or consultant not under contract to the Engineer to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project.

Engineer shall determine the amounts owing to the construction contractor and recommend in writing payments to the contractor in such amounts. By recommending any payment, the Engineer will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made to check the quality or quantity of the contractor's work.

3. **Responsibility of the Client.** Client shall provide all criteria and full information as to his requirements for the Project, including budgetary limitations. Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project.

Client shall give prompt written notice to the Engineer whenever Client 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 any construction contractor.

Client shall examine all documents presented by Engineer, obtain advice of an attorney or other consultant as Client deems

appropriate for such examinations and provide decisions pertaining thereto within a reasonable time so as not to delay the services of the Engineer.

4. **Designation of Authorized Representatives.** Each party shall designate one or more persons to act with authority in its behalf with respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the party.

5. **Ownership of Documents.** ~~Drawings, specifications, reports and any other documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be the property of Engineer. Engineer shall have the right to retain copies of all documents and drawings for its files.~~

6. **Reuse of Documents.** All documents, including drawings and specifications furnished by Engineer pursuant to this Agreement, are intended for use on the Project only. Client agrees they should not be used by Client or others on extensions of the Project or on any other project. Any reuse, without written verification or adaption by Engineer, shall be at Client's sole risk. ~~and Client shall indemnify and hold harmless Engineer from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting therefrom.~~

7. **Opinions of Cost.** Since the Engineer has no control over the cost of labor, materials, equipment or services furnished by the contractor, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, the Engineer cannot and does not guarantee that proposals, bids or actual construction costs will not vary from his opinions or estimates of construction costs.

8. **Changes.** Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments; and Engineer and Client shall negotiate appropriate adjustments in fee and/or schedule acceptable to both parties to accommodate any changes.

9. **Delays.** If the Engineer's services are delayed by the Client, or for other reasons beyond the Engineer's control, for more than one year, the fee provided for in this Agreement shall be adjusted equitably.

10. **Subcontracts.** Engineer may subcontract portions of the services, but each subcontractor must be approved by Client in writing.

11. **Suspension of Services.** Client may, at any time, by written order to Engineer, require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms. Client shall compensate Engineer under the terms of this Agreement for costs incurred through the effective date of the order. ~~and take all reasonable steps to minimize the occurrence~~

~~of costs allocable to the services covered by the order. Client, however, shall pay all costs associated with suspension including all costs necessary to maintain continuity and the staff required to resume the services upon expiration of the suspension of work order. Engineer will not be obligated to provide the same personnel employed prior to suspension when the services are resumed in the event the period of any suspension exceeds 30 days. Client will reimburse Engineer for the costs of such suspension and remobilization.~~

12. **Termination.** This Agreement may be terminated by either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.

13. **Notices.** Any notice or designation required to be given by either party hereto shall be in writing and, unless receipt of such notice is expressly required by the terms hereof, it shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereinafter furnish to the other party by written notice as herein provided.

14. **Indemnification.** Engineer shall indemnify and hold harmless Client from Client's loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage to the extent caused by the sole negligent act, error or omission of Engineer.

~~Client shall indemnify and hold harmless Engineer from Engineer's loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage to the extent caused by the sole negligent act, error or omission of Client.~~

~~In the event of joint or concurrent negligence of Engineer and Client, 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.~~

~~Client shall not be liable to the Engineer, and the Engineer shall not be liable to the Client, 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 Client or the Engineer or their employees, agents or subcontractors, by reason of services rendered under this Agreement.~~

15. **Legal Proceedings.** The Scope of Services in this Agreement does not include testimony, interrogatories, or other information required by client in preparation for or at a trial, hearing, proceeding on inquiry ("proceeding") arising out of the

services that are the subject of this Agreement, where Engineer is not a party to such proceeding. In the event Engineer's employees are at any time required by Client to provide such services, these services shall be the subject of a separate agreement or an amendment to this Agreement.

16. **Successors and Assigns.** The terms of this Agreement shall be binding upon and insure to the benefit of the parties and their respective successors and assigns; provided however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.

17. **Insurance.** Within the context of prudent business practices, Engineer shall endeavor to maintain workmen's compensation and unemployment compensation of a form and in an amount as required by state law; comprehensive general liability with limits of at least \$500,000/ \$1,000,000; automotive liability with limits of at least \$500,000/ \$500,000; and professional liability insurance with an annual limit of at least \$500,000. Client recognizes that insurance market is erratic and Engineer cannot guarantee to maintain the coverages identified above.

18. **Information Provided by the Client.** The Engineer shall indicate to the Client the information needed for rendering of services hereunder. The Client may elect to provide this information (including services by others) to the Engineer. In this case, the Client recognizes that the Engineer cannot assure the sufficiency of such information. Accordingly, the 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 Client. In addition, the Client agrees to compensate the Engineer for any time spent or expenses incurred in defending such claim or in making revisions to his work as a direct or indirect result of information provided by the Client which is insufficient.

19. **Subsurface Conditions and Utilities.** Client 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. Client 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.

Engineer will locate utilities which will affect the project from information provided by the Client 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.

20. **Hazardous Materials.** 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. Client 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.

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

21. **Risk Allocation.** ~~The Client recognizes that Engineer's fee includes an allowance for funding a variety of risks which affect the Engineer by virtue of his agreeing to perform services on the Client's behalf. One of these risks stems from the Engineer's potential for human error. In order for the Client to obtain the benefits of a fee which includes a lesser allowance for risk funding, the Client agrees to limit the Engineer's liability to the Client and all construction 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 the services rendered on this project, whichever is greater.~~

22. **Anticipated Change Orders.** Client recognizes ~~and expects~~ that a certain amount of imprecision and incompleteness ~~is to be expected~~ occurs in construction 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 ~~may occur~~ ~~are to be expected~~. As long as Engineer provides 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, client 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 Client make claim against Engineer for costs incurred if the change order work is a necessary part of the Project for which Client would have incurred cost if work had been included originally in the contract documents unless Client 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 Client against Engineer will be limited to the cost increase and not the entire cost of the change order.

23. **Payment.** Engineer shall submit monthly statements to Client. Payment in full shall be due upon receipt of the invoice. If payments are delinquent after 45 days from invoice date, the Client agrees to pay interest on the unpaid balance at the rate of

one percent per month. Payment for Engineer's services is 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. If Engineer brings any action at law or in equity to enforce or interpret the terms of this Agreement, or if Engineer must either prosecute or defend any action related to the subject matter of the Agreement, and prevails in such action, then Engineer shall be entitled to reasonable attorney's fees, expenses and costs, including expert witness fees, if applicable. Client shall also be entitled to reasonable attorney's fees, expenses, and costs if client prevails in such action.

24. **Force Majeure.** Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control, including, but not limited to, acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.

25. **Compliance with Laws.** To the extent they apply to its employees or its services, the Engineer shall comply with all applicable United States, state, territorial and commonwealth laws, including ordinances of any political subdivisions or agencies of the United States, any state, territory or commonwealth thereof.

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

27. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the principal place of business of Client - Vicksburg, Mississippi, and venue is proper in Warren County, Mississippi.

28. **Amendment.** This Agreement shall not be subject to amendment unless another instrument is executed by duly authorized representatives of each of the parties.

29. **Entire Understanding of Agreement.** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of this Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.

EXHIBIT C
NEEL-SCHAFFER, INC.
2014 RATE SCHEDULE FOR PROFESSIONAL SERVICES

EMPLOYEE CLASSIFICATION	POSITION	HOURLY RATE
P-9	Senior Officer	\$205.00
P-8	Senior Manager	\$190.00
P-7	Engineer Manager/Professional IV/Survey Manager	\$180.00
P-6	Senior Project Manager/Assistant Engineer Manager/Professional III	\$165.00
P-5	Project Manager/Professional II	\$135.00
P-4	Professional I	\$120.00
P-1, P-2, P-3	Professional Intern	\$100.00
T-6	Senior Certified Engineering Technician	\$135.00
T-5	Certified Engineering Technician/Supervisory Technician	\$115.00
T-4	Technician IV/ Inspector IV/ Surveyor IV	\$100.00*
T-3	Technician III/Inspector III//Survey Crew Chief	\$90.00*
T-2	Technician II/Inspector II/Survey Instrument Person	\$75.00*
T-1	Technician I/Inspector I/Survey Assistant	\$60.00*
T-1	Student Intern	\$40.00*
A-4	Senior Administrative	\$75.00
A-2, A-3	Clerical	\$60.00*
A-1	Assistant Clerical	\$40.00*
	Four-Member Survey Party	\$185.00*
	Three-Member Survey Party	\$160.00*
	Two-Member Survey Party	\$140.00*
	One-Member Survey Party	\$85.00*

* Hourly rates indicated for these non-exempt classifications apply to regular time. If overtime work is required to meet client's schedule, Neel-Schaffer reserves the right to negotiate overtime rates.

"Professional" positions include engineer, architect, geologist, scientist, landscape architect, and planner.

"Technician" positions include engineering, soil, architecture, planning, GIS and information technology.

REIMBURSABLE EXPENSE SCHEDULE	
EXPENSE	COST
Vehicle Mileage	\$0.56/mile
Traffic Counter	\$10.00/day

All other expenses, including contract reproduction/printing, travel and subsistence, parking, communications, equipment rental, postage and overnight mail, and supplies will be reimbursed at actual cost.