NEEL-SCHAFFER
Solutions you can build upon

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July 19, 2012

Ms. Samantha Abell, City Manager
City of Gautier
3330 Hwy 90
Gautier MS, 39553

REFERENCE: LETTER AGREEMENT FOR TRAFFIC PROJECTION STUDY FOR SR 57 IN GAUTIER

Dear Ms. Abell:

Neel-Schaffer is pleased to offer you this Letter Agreement to provide professional services for a traffic projection study on SR 57 between US 90 and I 10 in Gautier. The services to be performed under this agreement will include:

- Obtaining most current traffic counts for SR 57 between US 90 and I 10.
- Reviewing the existing GRPC traffic model for SR 57 and identify inputs used.
- Comparing existing model inputs with the most recent counts along with current and proposed developments in the area.
- Updating the traffic model using known changes in inputs and proposed traffic generators.
- Providing updated SR 57 traffic projections for 2015, 2025 and 2035 along with supporting data.

Compensation will be a fixed fee of $1,200.00. Neel Schaffer will bill the city upon completion of the work. Payment for our services will be due within 45 days of the invoice date. This Letter Agreement along with the attached ***General Terms and Conditions*** (Exhibit A) represents the entire understanding between the City of Gautier and Neel-Schaffer with the respect to the services to be provided and may only be modified in writing by both parties. If this Letter Agreement is acceptable, please execute two originals and return one to us by regular mail.

We appreciate the opportunity to provide these services. If we can be of further assistance please contact me.

772 Howard Avenue, Biloxi, MS, 39530-3820, 228.374.1211, Fax 228.374.1216

Sincerely,

NEEL-SCHAFFER, INC.

James Davis Wilkinson
Planner III

Attachments

ACCEPTED:

BY: _____ **DATE:** _____

772 Howard Avenue, Biloxi, MS, 39530-3820, 228.374.1211, Fax 228.374.1216

EXHIBIT A
NEEL-SCHAFFER, INC.
GENERAL TERMS AND CONDITIONS
PLANNING SERVICES

1. **Relationship between NSI and Owner**. NSI shall serve as the Owner's professional 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. NSI shall not be considered to be the agent of the Owner.

2. **Responsibility of NSI**. NSI 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.

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

   Owner shall give prompt written notice to NSI whenever Owner observes or otherwise becomes aware of any development that affects the scope or timing of NSI's services.

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**. All documents prepared by NSI in connection with any or all of the services furnished hereunder shall be the property of NSI. NSI shall have the right to retain copies of all documents for its files.

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

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

8. **Suspension of Services**. Owner may, at any time, by written order to NSI to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, NSI shall immediately comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the services covered by the order. Owner, 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. NSI 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.

9. **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 Owner, under the same terms, whenever Owner shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by NSI either before or after the termination date shall be reimbursed by Owner.

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

11. **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.

12. **Indemnification**. NSI shall indemnify and hold harmless Owner from Owner'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 NSI.

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

    In the event of joint or concurrent negligence of NSI 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.

Owner shall not be liable to NSI, and NSI 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 NSI or their employees, agents or subcontractors, by reason of services rendered under this Agreement.

Engineer's indemnification obligation as set forth herein is expressly subject to and limited by the limitation of liability provision agreed upon by the Client and Engineer as set forth in Section 17 Risk Allocation of this Agreement.

13. **Legal Proceedings**. In the event NSI's employees are at any time required by Owner to provide testimony, answer interrogatories or otherwise provide information ("testimony") 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 NSI is not a party to such proceeding, Owner will compensate NSI for its services and reimburse NSI for all related direct costs incurred in connection with providing such testimony. This provision shall be of no effect if the parties have agreed in a separate agreement or an amendment to this Agreement to terms which specifically supersede this provision, nor shall this provision apply in the event Owner engages NSI to provide expert testimony or litigation support, which services shall be the subject of a separate agreement or an amendment to this Agreement.

14. **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.

15. **Insurance**. Within the context of prudent business practices, NSI 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. Owner recognizes that insurance market is erratic and NSI cannot guarantee to maintain the coverages identified above.

16. **Information Provided by the Owner.** NSI shall indicate to the Owner the information needed for rendering of services hereunder. The Owner may elect to provide this information (including services by others) to NSI. In this case, the Owner recognizes that NSI cannot assure the sufficiency of such information. Accordingly, NSI 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. In addition, the Owner agrees to compensate NSI 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 Owner which is insufficient.

17. **Risk Allocation.** The Owner recognizes that NSI's fee includes an allowance for funding a variety of risks which affect NSI by virtue of their agreeing to perform planning services on the Owner's behalf. One of these risks stems from the NSI's potential for human error. In order for the Owner to obtain the benefits of a fee which includes a lesser allowance for risk funding, the Owner agrees to limit NSI's liability to the Owner arising from NSI's professional acts, errors or omissions, such that the total aggregate liability of NSI to all those named shall not exceed $50,000 or NSI's total fee for the services rendered on this project, whichever is greater.

18. **Payment.** Engineer shall submit monthly invoices, or invoice submittal will be as noted in the agreement, to the Client. Payment in full shall be due upon receipt of the invoice. Payment of any invoices by the Client shall be taken to mean that the Client is satisfied with the Engineer's services to the date of the payment and is not aware of any deficiencies in those services. If payments are delinquent after 30 days from invoice date, the Client agrees to pay interest on the unpaid balance at the rate of one percent per month. Payment will be credited first to any interest owed then to principal. If the Client fails to make payments; the Engineer, after giving seven days written notice to the Client, may suspend services until the Client has paid in full all amounts due for services, expenses, and other related charges. The Client waives any and all claims against the Engineer for any such suspension. Payment for Engineer's services is not contingent on any factor, except the 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. Payment of invoices shall not be subject to any discounts, set-offs or back-charges unless agreed to in writing by both parties. If the Client contests an invoice, the Client may withhold only that portion so contested and pay the undisputed portion, after the Client has notified the Engineer in writing within 30 days of receiving the invoice and shall identify the specific cause of the disagreement and the amount in dispute.

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.

19. **Force Majeure.** Neither Owner nor NSI 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.

20. **Compliance with Laws**. To the extent they apply to its employees or its services, NSI 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.

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

22. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi.

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

24. **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. Owner and NSI 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.