

should be increased due to an unanticipated increase in the nature, scope or amount of work necessary to properly provide the SERVICES required on any particular phase or project begun hereunder.

Oral agreements or conversations with the LPA, any individual member of the LPA, officer, agent, or employee of the Mississippi Department of Transportation, either before or after execution of this CONTRACT, shall not affect or modify any of the terms or obligations contained in this CONTRACT. All modifications to this CONTRACT, amendments or addenda thereto must be submitted in writing and signed by the parties thereto before any work is commenced.

The CONSULTANT may not begin work on any modifications, amendments, or addenda prior to receiving a Notice to Proceed.

Minor changes in the proposal which do not involve changes in the compensation, extensions of time or changes in the goals and objectives of the CONTRACT may be made by written notification of such change by either the LPA or the CONSULTANT to the other party, and shall become effective upon written acceptance thereof (i.e. letter agreement).

ARTICLE XIV. SUBLETTING, ASSIGNMENT OR TRANSFER

It is understood by the parties to this CONTRACT that the work of the CONSULTANT is considered personal by the LPA. The CONSULTANT shall not assign, sublet or transfer any or all of its interest in this CONTRACT without prior written approval of the LPA. Under no circumstances will CONSULTANT be allowed to sublet more than 60% of the work required under this contract. It is clearly understood and agreed that specific projects or phases of the work may be sublet in their entirety provided that CONSULTANT performs at least 40% of the overall contract with its own forces. Consent by the LPA to any subcontract shall not relieve CONSULTANT from any of its obligations hereunder, and CONSULTANT is required to maintain final management responsibility with regard to any such subcontract.

The LPA reserves the right to review all subcontract documents prepared in connection with this CONTRACT, and the CONSULTANT agrees that it shall submit to the LPA any proposed subcontract document together with subcontractor cost estimates for review and written concurrence of the LPA in advance of their execution.

ARTICLE XV. OWNERSHIP OF PRODUCTS AND DOCUMENTS AND WORK MADE FOR HIRE

The CONSULTANT agrees that all reports, computer information and access, drawings, studies, notes, maps and other data, prepared by and for them under the terms of this CONTRACT shall be delivered to, become and remain in the property of the LPA upon creation and shall be delivered to the LPA upon termination or completion of work, or upon request of the LPA regardless of any claim or dispute between the parties. All such data shall be delivered within thirty (30) days of receipt of a written request by the LPA.

The CONSULTANT and the LPA intend and agree that this CONTRACT to be a contract for services and each party considers the products and results of the services to be rendered by the CONSULTANT hereunder, including any and all material produced and/or delivered under this CONTRACT (the "Work"), to be a "work made for hire" under U.S. copyright and all applicable laws. The CONSULTANT acknowledges and agrees that the LPA owns all right, title, and interest in and to the Work including, without limitation, the copyright thereto and all trademark, patent, and all intellectual property rights thereto.

If for any reason the Work would not be considered a work made for hire under applicable law, or in the event this CONTRACT is determined to be other than a contract or agreement for a work made for hire, the CONSULTANT does hereby transfer and assign to the LPA, and its successors and assigns, the entire right, title, and interest in and to any Work prepared hereunder including, without limitation, the following:

the copyright and all trademark, patent, and all intellectual property rights in the Work and any registrations and copyright, and/or all other intellectual property, applications relating thereto and any renewals and extensions thereof; all works based upon, derived from, or incorporating the Work; all income, royalties, damages, claims, and payments now or hereafter due or payable with respect thereto; all causes of action, either in law or in equity, for past, present, or future infringement based on the copyrights and/or all other intellectual property; all rights, including all rights to claim priority, corresponding to the foregoing in the United States and its territorial possessions and in all foreign countries. The CONSULTANT agrees to execute all papers and perform such other proper acts as the LPA may deem necessary to secure for the LPA or its designee the rights herein assigned.

The LPA may, without any notice or obligation of further compensation to the CONSULTANT, publish, re-publish, anthologize, use, disseminate, license, or sell the Work in any format or medium now known or hereafter invented or devised. The LPA'S rights shall include, without limitation, the rights to publish, re-publish, or license a third party to publish, re-publish, or sell the Work in print, on the World Wide Web, or in any other electronic or digital format or database now known or hereafter invented or devised, as a separate isolated work or as part of a compilation or other collective work, including a work different in form from the first publication, and to include or license a third party to include the Work in an electronic or digital database or any other medium or format now known or hereafter invented or devised.

The CONSULTANT shall obtain any and all right, title, and interest to all input and/or material from any third party subconsultant, or any other party, who may provide such input and/or material to any portion of the Work so that said right, title, and interest, and all such interest in and to the Work including, without limitation, the copyright thereto and all trademark, patent, and all intellectual property rights thereto, shall belong to the LPA.

For any intellectual property rights currently owned by third parties or by the CONSULTANT and not subject to the terms of this CONTRACT, the CONSULTANT agrees that it will obtain or grant royalty-free, nonexclusive, irrevocable license(s) for or to the LPA at no cost to the LPA to use all copyrighted or copyrightable work(s) and all other intellectual property which is incorporated in the material furnished under this CONTRACT. Further, the CONSULTANT warrants and represents to the LPA that it has obtained or granted any and all such licensing prior to presentation of any Work to the LPA under this CONTRACT. This obligation of the CONSULTANT does not apply to a situation involving a third party who enters a license agreement directly with the LPA.

The CONSULTANT warrants and represents that it has not previously licensed the Work in whole or in part to any third party and that use of the Work in whole or in part will not violate any rights of any kind or nature whatsoever of any third party. The CONSULTANT agrees to indemnify and hold harmless the LPA, its successors, assigns and assignees, and its respective officers, directors, agents and employees, from and against any and all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees), arising out of or in any way connected with any breach of any representation or warranty made by CONSULTANT herein.

ARTICLE XVI. PUBLICATION AND PUBLICITY

The CONSULTANT agrees that it shall not for any reason whatsoever communicate to any third party, with the exception of the MDOT and the FHWA, in any manner whatsoever concerning any of its CONTRACT work product, its conduct under the CONTRACT, the results or data gathered or processed under this CONTRACT, which includes, but is not limited to, reports, computer information and access, drawings, studies, notes, maps and other data prepared by and for the CONSULTANT under the terms of this CONTRACT, without prior written approval from the LPA, unless such release or disclosure is required by judicial proceeding. The CONSULTANT agrees that it shall immediately refer any third party who requests such information to the LPA and shall also report to the LPA any such third party inquiry, with the exception of the MDOT and/or the FHWA. This Article shall not apply to information in whatever form

that comes into the public domain, nor shall it restrict the CONSULTANT from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the CONSULTANT to defend itself from any suit or claim.

IT IS FURTHER AGREED, that all approved releases of information, findings, and recommendations shall include a disclaimer provision and that all published reports shall include that disclaimer on the cover and title page in the following form:

The opinions, findings, and conclusions in this publication are those of the author(s) and not necessarily those of the Local Public Agency, Mississippi Department of Transportation, Mississippi Transportation Commission, the State of Mississippi, or the Federal Highway Administration.

ARTICLE XVII. CONTRACT DISPUTES

This CONTRACT shall be deemed to have been executed in *insert County name here* County, Mississippi, and all questions including, but not limited to, questions of interpretation, construction and performance shall be governed by the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect to this CONTRACT shall be brought in a court of competent jurisdiction in *insert County name here*, State of Mississippi. The CONSULTANT expressly agrees that under no circumstances shall the LPA be obligated to or responsible for payment of an attorney's fee for the cost of legal action to or on behalf of the CONSULTANT.

ARTICLE XVIII. COMPLIANCE WITH APPLICABLE LAW

- A. The undersigned certify that to the best of their knowledge and belief, the foregoing is in compliance with all applicable laws.
- B. The CONSULTANT shall observe and comply with all applicable federal, state, and local laws, rules and regulations, policies and procedures, ordinances, and orders and decrees of bodies or tribunals of the United States of America or any agency thereof, the State of Mississippi or any agency thereof, and any local governments or political subdivisions, that are in effect at the time of the execution of this CONTRACT or that may later become effective.
- C. The CONSULTANT shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this CONTRACT because of race, creed, color, sex, national origin, age or disability.
- D. IT IS FURTHER SPECIFICALLY AGREED that the CONSULTANT shall comply and shall require its subcontractors to comply with the regulations for COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, as amended, and all other applicable federal regulations as stated in "Exhibit 5" which is incorporated herein by reference.
- E. It is agreed that the CONSULTANT will comply with the provisions set forth in Department of Transportation, 49 CFR, Section 18, Et Seq., regarding Uniform Administrative Requirements for Grants and Cooperative agreements in its administration of this CONTRACT or any subcontract resulting herefrom.
- F. The CONSULTANT agrees that it will abide by the provisions of 49 CFR Section 26 regarding disadvantaged business enterprises and include the certification made in "Exhibit 5" to this CONTRACT in any and all subcontracts which may result from this CONTRACTS.

- G. The CONSULTANT shall comply and shall require its subconsultants to comply with Code of Federal Regulations CFR 23 Part 634 - Worker Visibility – as stated in “Exhibit 5”.
- H. IMMIGRANT STATUS CERTIFICATION. The CONSULTANT represents that it is in compliance with the Immigration Reform and Control Act of 1986 (Public Law 99-603), as amended, in relation to all employees performing work in the State of Mississippi and does not knowingly employ persons in violation of the United States immigration laws. The CONSULTANT further represents that it is registered and participating in the Department of Homeland Security’s E-Verify™ employment eligibility verification program, or successor thereto, and will maintain records of compliance with the Mississippi Employment Protection Act including, but not limited to, requiring compliance certification from all subcontractors and vendors who will participate in the performance of this Agreement and maintaining such certifications for inspection if requested. The CONSULTANT acknowledges that violation may result in the following: (a) cancellation of any public contract and ineligibility for any public contract for up to three (3) years, or (b) the loss of any license, permit, certification or other document granted by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. The CONSULTANT also acknowledges liability for any additional costs incurred by the LPA due to such contract cancellation or loss of license or permit. The CONSULTANT is required to provide the certification on Exhibit 9 in this CONTRACT to the LPA verifying that the CONSULTANT and subconsultant(s) are registered and participating in E-Verify prior to execution of this CONTRACT
- I. The covenants herein shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

ARTICLE XIX. WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants, and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time, or of any other provision hereof, nor shall it be construed to be a modification of the terms of this CONTRACT.

ARTICLE XX. SEVERABILITY

If any terms or provisions of this CONTRACT are prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this CONTRACT shall not be affected thereby and each term and provision of this CONTRACT shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE XXI. ENTIRE AGREEMENT

This CONTRACT constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings, and agreements, written or oral, between the parties relating thereto.

ARTICLE XXII. CONFLICT OF INTEREST

The CONSULTANT covenants that no public or private interests exist and none shall be acquired directly or indirectly which would conflict in any manner with the performance of the CONSULTANT’S CONTRACT. The CONSULTANT further covenants that no employee of the CONSULTANT or of any subconsultant(s), regardless of his/her position, is to personally benefit directly or indirectly from the performance of the SERVICES or from any knowledge obtained during the CONSULTANT’S execution of this CONTRACT.

ARTICLE XXIII. AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the LPA to proceed under this CONTRACT is conditioned upon the availability of funds, the appropriation of funds by the Mississippi Legislature, and the receipt of state and/or federal funds. If, at any time, the funds anticipated for the fulfillment of this CONTRACT are not forthcoming or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the LPA for the performance of this CONTRACT, the LPA shall have the right, upon written notice to the CONSULTANT, to immediately terminate or stop work on this CONTRACT without damage, penalty, cost, or expense to the LPA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

ARTICLE XXIV. STOP WORK ORDER

- A. **Order to Stop Work.** The LPA may, by written order to the CONSULTANT at any time, and without notice to any surety, require the CONSULTANT to stop all or any part of the work called for by this CONTRACT. This order shall be for a specified period not exceeding twenty-four (24) months after the order is delivered to the CONSULTANT unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the CONSULTANT shall forthwith comply with its terms and take all steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the LPA shall either:
- (1) cancel the stop work order; or
 - (2) terminate the work covered by such order according to and as provided in Article III of this CONTRACT.

Prior to the LPA'S taking official action to stop work under this CONTRACT, the Executive Director of MDOT may notify the CONSULTANT, in writing, of MDOT'S intentions to ask the LPA to stop work under this CONTRACT. Upon notice from the Executive Director of MDOT, CONSULTANT shall suspend all activities under this CONTRACT, pending final action by the LPA.

- B. **Cancellation or Expiration of the Order.** If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONSULTANT shall have the right to resume work. If the LPA decides that it is justified, an appropriate adjustment may be made in the delivery schedule. If the stop work order results in an increase in the time required for or in the CONSULTANT'S cost properly allocable to the performance of any part of this CONTRACT and the CONSULTANT asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage, an equitable adjustment in this CONTRACT may be made by written modification of this CONTRACT as provided by the terms of this CONTRACT.
- C. **Termination of Stopped Work.** If a stop work order is not canceled and the work covered by such order is terminated, the CONSULTANT may be paid for services rendered prior to the Termination. In addition to payment for services rendered prior to the date of termination, the LPA shall be liable only for the costs, fees, and expenses for demobilization and close out of this CONTRACT, based on actual time and expenses incurred by the CONSULTANT in the packaging and shipment of all documents covered by this CONTRACT to the LPA. In no event shall the LPA be liable for lost profits or other consequential damages.

ARTICLE XXV. KEY PERSONNEL & DESIGNATED AGENTS

CONSULTANT agrees that Key Personnel identified as assigned to this PROJECT shall not be changed or reassigned without prior approval of the LPA or, if prior approval is impossible, and then notice to the LPA and subsequent review by the LPA which may approve or disapprove the action. For purposes of implementing this section and all other sections of this CONTRACT with regard to notice, the following individuals are herewith designated as agents for the respective parties unless otherwise identified in the addenda hereto:

LPA:

For Contractual Matters:

Samantha Abell
3330 Hwy 90
Gautier, MS 39553
(228) 497-8000
sabell@gautier-ms.gov

For Technical Matters:

Dennis Reeves
3330 Hwy 90
Gautier, MS 39553
(228) 497-4283
dreeves@gautier-ms.gov

CONSULTANT:

For Contractual Matters:

Steve Twedt
772 Howard Avenue
Biloxi, MS 39530
(228) 374-1211
steve.twedt@neel-schaffer.com

For Technical Matters:

Eric Page
707 Watts Ave., Suite C
Pascagoula, MS 39567
(228) 696-2649
eric.page@neel-schaffer.com

Licensure Number
from the Mississippi
Board of Licensure
for Professional
Engineers and Surveyors:

P.E. #11221

Licensure Number
from the Mississippi
Board of Licensure
for Professional
Engineers and Surveyors:

P.E. #15772

ARTICLE XXVI. AUTHORIZATION

Both parties hereto represent that they have authority to enter into this CONTRACT and that the individuals executing this CONTRACT are authorized to execute it and bind their respective parties and certified copies of the applicable LPA Order and the Resolution of the Corporate Board of Directors of the CONSULTANT are attached hereto as "Exhibit 1" and incorporated herein by reference and made a part hereof as if fully copied herein in words and figures.

WITNESS this my signature in execution hereof, this the ____ day of _____, 20__.

City of Gautier

Samantha Abell, Chief Administrative Official

WITNESS this my signature in execution hereof, this the ____ day of _____, 20__.

Neel-Schaffer, Inc.

BY: _____
Steve Twedt, South Mississippi Area Manager

ATTEST: _____

Exhibits attached hereto and incorporated by reference into this contract include those identified on the attached page entitled "List of Exhibits".