



COUNTY COMMISSION

BALDWIN COUNTY
312 Courthouse Square, Suite 12
BAY MINETTE, ALABAMA 36507
(251) 937-0264
Fax (251) 580-2500
www.baldwincountyal.gov

MEMBERS
DISTRICT 1. JAMES E. BALL
2. JOE DAVIS, III
3. BILLIE JO UNDERWOOD
4. CHARLES F. GRUBER

April 6, 2021

Neel-Schaffer, Inc.
851 E. I-65 Service Road South
Suite 1000
Mobile, AL 36606
ATTN: John E. Murphy, Jr.

REFERENCE: Contract for Engineering/Environmental Services for a Coastal Processes Study for the Lillian Park Beach Habitat and Shoreline for Protection for the Baldwin County Commission

Dear Mr. Murphy:

The Baldwin County Commission during their regularly held meeting on April 6, 2021, approved the Contract with your firm for the Engineering/Environmental Services for a Coastal Processes Study for the Lillian Park Beach Habitat and Shoreline Protection project in the amount of **\$116,614.00**.

Enclosed is your copy of the fully executed Contract. Please contact Seth Peterson, Baldwin County Highway Pre-Construction Manager to coordinate this project.

If you have any questions regarding this matter, please contact the Purchasing Director, Wanda Gautney at (251) 580-2520.

Sincerely,

JOE DAVIS, III, Chairman
Baldwin County Commission

JD:wg Item #BE13

Attachment

cc: Wanda Gautney, Purchasing Director
Joey Nunnally, County Engineer

**STATE OF ALABAMA
BALDWIN COUNTY**

CONTRACT

This AGREEMENT made and entered into this 10th day of April, 2021, by and between BALDWIN COUNTY, ALABAMA (hereinafter called the COUNTY), acting by and through its COUNTY COMMISSION, and **NEEL-SCHAFFER, INC.** (hereinafter called the "ENGINEER").

WITNESSETH, that in consideration of the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

I. DEFINITIONS

The following terms and their definitions shall apply:

ALDOT - State of Alabama Department of Transportation

COUNTY – Baldwin County, Alabama (Baldwin County Highway Department)

COUNTY COMMISSION – Baldwin County Commission, the governing body of Baldwin County, Alabama, the party of the first part of the Agreement.

COUNTY ENGINEER - That person designated by the COUNTY as COUNTY ENGINEER or his appointed assistants.

CONTRACT - Whenever the word "CONTRACT" is used it shall be held to mean the executed documents comprising the written agreement between the Baldwin County Highway Department and the Engineer setting forth the obligations of the parties hereunder for the performance of the prescribed work.

CONTRACTOR - An individual, corporation, partnership, or other entity selected to perform any or all construction services

ENGINEER - The engineering company assigned to perform engineering design and construction inspection services for this project. The engineering company so assigned to this project is **NEEL-SCHAFFER, INC.**

NOTICE TO PROCEED - A written notice to proceed issued by the County Engineer either for any phase set out in Section III or for requested additional services.

PRELIMINARY PROJECT COST ESTIMATE – The estimated construction cost of the Project as shall be determined by ENGINEER pursuant to Section III. A. herein.

PROJECT – **Coastal Processes Study for the Lillian Park Beach Habitat and Shoreline Protection, Baldwin County Project No. BCP 0206916.** This CONTRACT is for Engineering/Environmental Services for a Coastal Processes Study for the Lillian Park Beach Habitat and Shoreline Protection Project.

STANDARD SPECIFICATIONS - Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 edition, with all latest additions and modifications

by the Alabama Department of Transportation
(<https://www.dot.state.al.us/conweb/specifications.html>)

II. STANDARDS

The COUNTY hereby retains the ENGINEER and the ENGINEER agrees to perform for the COUNTY all necessary professional engineering services in connection with the PROJECT. Professional engineering services shall include all work necessary for the performance in proper sequence of the items of work as hereinafter set forth. The ENGINEER, in the preparation of plans and any other items pertaining to this project, will meet the requirements for conformance with the STANDARD SPECIFICATIONS and applicable local ordinances, and will ascertain the practices of the COUNTY prior to beginning any work on this project. All work required under this CONTRACT will be performed in accordance with these standards and practices and any special requirements hereinafter set forth. All work performed by the ENGINEER under this CONTRACT will be submitted to the COUNTY for review and administrative approval only.

Additional Conditions for the grant award and this CONTRACT are detailed in Exhibits D-H, which are attached hereto and incorporated herein.

This contract is subject to the terms and conditions of ADCNR Subaward Grant Agreement #S1P11-LHSP, County Resolution 20-1134 between ADCNR and the COUNTY, the terms and conditions of the Federal Award from the Gulf Coast Ecosystem Restoration Council (attached as Exhibit E), including any Special Award Conditions, the Standard Sub-Award Terms and Conditions (attached as Exhibit E), the Gulf Coast Ecosystem Restoration Council Financial Assistance Standard Terms and Condition and Program-Specific Terms and Conditions under the "Spill Impact Component," as amended, the RESTORE Act, 33 USC § 1321(t) et seq., the U.S. Department of Treasury Regulations governing the RESTORE Act, 31 CFR § 34 et seq., all applicable terms and conditions in 2 CFR Part 200 of the Office of Management and Budget ("OMB") Uniform Guidance for Grants and Cooperative Agreements, as amended, including Appendix II to 2 CFR Part 200 (attached as Exhibit H), and all other OMB circulars, executive orders or other federal laws or regulations applicable to the services provided under this contract. All of these terms and conditions apply to the ENGINEER, as well as any covered subcontractor(s) or vendor(s).

III. SCOPE OF WORK

The scope of work includes Coastal Engineering & Habitat Processes Study.

Services to be Rendered. PROVIDER is retained by the COUNTY as a professionally qualified contractor. The general scope of work for the services shall include all the terms and Conditions of "Request for Qualifications," the same being expressly incorporated herein by reference, and without limitation will encompass:

"All provision and conditions and/or specifications listed/stated in the Request for Qualifications (RFQ) for Professional Services for Engineering/Environmental Services"

Should the COUNTY ENGINEER request, the ENGINEER shall schedule and conduct monthly meetings with the COUNTY ENGINEER to provide a status report and progress at each meeting. These meetings shall continue until all contracted obligations are met and the COUNTY is satisfied all work is complete.

The ENGINEER shall submit, in writing, for the COUNTY ENGINEER's approval, any project technical staff substitution or reassignment, throughout the duration of the CONTRACT. The COUNTY ENGINEER shall approve technical staff substitution or reassignment prior to appointment by the ENGINEER. The COUNTY ENGINEER maintains the right to suspend the work wholly or in part due to any inadequacies in the ENGINEER's project technical staffing.

A. COASTAL PROCESSES STUDY PHASE

1. General

Should the COUNTY ENGINEER request, the ENGINEER shall schedule and conduct regularly scheduled meetings with the COUNTY ENGINEER to provide a status report and progress at each meeting. These meetings shall continue until all obligations are met and the COUNTY is satisfied all work is complete.

The COUNTY will provide all existing data available from the County will also be compiled, including, if available, maintenance dredging activity, as-built drawings of the existing project features, information on any other maintenance activities associated with the waterfront and nearshore features, existing permits for the project site features, as well as any supporting engineering documents for original construction, maintenance, or permitting.

The Coastal Engineering Analysis must be developed under the direct supervision of a Registered Professional Engineer licensed in the State of Alabama. The Professional Engineer's signature shall be placed on the Title Sheet of the study and on the cover of any applicable design calculations.

2. Coastal Processes Study

A Coastal Engineering Analysis will be conducted to develop an understanding of the coastal processes that occur at the project site in order to support the development of project alternatives. Coastal processes along the project shoreline will be identified based on review of data collected, analysis of relevant physical data and coastal processes, and analysis conducted under this task. Project Area shall be in accordance with Exhibit A, Project Vicinity Map. The detailed Coastal Processes Study Scope of Work shall be in accordance with Exhibit B, Coastal Processes Study Scope of Work Agreement.

IV. MUTUAL AGREEMENT

It is mutually agreed by the parties hereto as follows:

- A. The ENGINEER agrees to start work on the professional services outlined herein within ten (10) days after issuance of and in accordance with a NOTICE TO PROCEED. The COUNTY and the ENGINEER shall mutually agree upon the schedule and completion time for Professional Services under this CONTRACT.
- B. The COUNTY may terminate this CONTRACT for any reason, with or without cause, by providing thirty (30) days written notice to the ENGINEER. In the event of termination, all finished and unfinished documents, data, studies, surveys, drawings, maps, models, photographs, perspectives, and reports prepared by the ENGINEER shall become the property of the COUNTY. In the event of termination, the ENGINEER shall be compensated for services performed prior to termination. Such compensation shall be negotiated at the time of termination and as based on Item V.A.1., "Basis of Payment". The COUNTY may

notify the ENGINEER, in writing, to suspend, delay, or interrupt all or any part of the work for the COUNTY's convenience, due to events beyond the control of the COUNTY, or for any other reasons. After the COUNTY suspends the project for more than ninety (90) consecutive days, the ENGINEER may terminate this CONTRACT by giving thirty (30) days written notice.

- C. The COUNTY and the ENGINEER each binds itself, its successors, and assigns, to the other party of this CONTRACT, in respect to all covenants of this CONTRACT. Except as above, neither the COUNTY nor the ENGINEER shall assign, sublet, or transfer his or its interest in this CONTRACT without written consent of the other party hereto.
- D. All covenants, agreements, and stipulations of this CONTRACT shall remain in full force starting April 1, 2021 and shall follow the subaward agreement until completion of the project period, which is April 30, 2022 unless otherwise amended. If the project period in the subaward agreement is extended, and the COUNTY deems necessary, the CONTRACT time may be extended by mutual agreement between the COUNTY and the ENGINEER, provided that nothing contained in this CONTRACT will be deemed to limit or to reduce the ENGINEER's duties and responsibilities for providing professional engineering services, nor to limit or reduce ENGINEER's liability for any breach thereof.
- E. The ENGINEER shall reimburse the COUNTY for attorney's fees incurred due to any breach by ENGINEER of its obligations under the terms of this CONTRACT.

The parties acknowledge and agree that this CONTRACT, for all purposes including without limitation its formation, interpretation and enforcement, shall be governed by the laws of the State of Alabama, without regard to Alabama conflict of laws rules, and that the Circuit Court of Baldwin County, Alabama shall be the exclusive venue for any and all claims or suits arising under this CONTRACT.

V. BASIS OF PAYMENT

Any language to the contrary in this CONTRACT notwithstanding, all payments to the ENGINEER for professional engineering services as identified in Section V shall be made *only* in return for work actually performed in completion of the PROJECT and properly documented to the COUNTY. All payments to the ENGINEER for such work performed shall be compensated at the amounts stated in the Fee Schedule which is incorporated into this CONTRACT as Exhibit C. In all instances where compensation amounts are based upon or associated with a percentage of completion calculation, that percentage of completion calculation shall be determined by the COUNTY ENGINEER. For services rendered under this agreement, the COUNTY agrees to make periodic payments to the ENGINEER attributable to the services rendered.

A. CONTRACTED SERVICES

Subject to the provisions below and upon receipt by COUNTY of the deliverables listed in Section III, COUNTY agrees to pay the ENGINEER on a Lump Sum basis, as compensation for such professional engineering services, as shown in the Fee Schedule in Exhibit C and as authorized by the COUNTY as follows:

1. It is mutually agreed that compensation to the ENGINEER will be as follows:
 - a. ENGINEER shall perform Engineering Study Phase services through Coastal Engineering & Habitat Processes Study, in accordance with the schedule and

appropriate portion of Section III.A of this CONTRACT. Payment for work performed in Section III.A through Coastal Engineering & Habitat Processes Study of this CONTRACT shall be on a Lump Sum Basis not to exceed \$116,614.00 (One Hundred Sixteen Thousand Six Hundred Fourteen Dollars and Zero Cents). All payments will be upon successful completion of Engineering Study Milestones provided in the Fee Schedule in Exhibit C.

- b. Failure to perform any service identified in a NOTICE TO PROCEED shall result in an equitable deduction from ENGINEER's compensation, without limitation or waiver of any other remedy available to COUNTY for such failure. In the event of termination of this CONTRACT due to failure by the ENGINEER to perform any and/or all of the ENGINEER's obligations in the prompt and efficient manner satisfactory to the COUNTY, the COUNTY will have the right to employ one or more other engineers of its choice to complete the PROJECT. The ENGINEER will reimburse the COUNTY all costs, fees and expenses which may result from such termination and employment of other engineers.

B. LIMITATION OF ENGINEERING COMPENSATION

Notwithstanding any other provision of this CONTRACT or any NOTICE TO PROCEED to the contrary, total and inclusive compensation and fees to be paid the ENGINEER associated with the above mentioned PROJECT Coastal Engineering & Habitat Processes Study shall not exceed \$116,614.00 (One Hundred Sixteen Thousand Six Hundred Fourteen Dollars and Zero Cents).

COUNTY or ENGINEER may request modifications or changes in the scope of work as described in Section III. To the extent that the scope of work to be performed by ENGINEER has been affected by such change properly approved, ENGINEER's Compensation and Project Schedule shall be equitably adjusted. All changes shall be set forth in a written Change Order and executed by both parties.

VI. INDEMNITY AND INSURANCE REQUIREMENTS

- A. INDEMNIFICATION: Contractor shall indemnify, defend and hold harmless COUNTY and its officers, elected officials, agents, representatives, and employees in respect of any and all claims, injuries, losses, diminution in value, damages, liabilities, whether or not currently due, and related expenses (including without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions) to the extent arising from or in connection with CONTRACTOR's negligent performance under this CONTRACT, including but not limited to, environmental laws, regulations, orders and decrees of whatever character or nature and damage or injury to persons or property.
- B. INSURANCE: For the duration of this CONTRACT, ENGINEER shall maintain the following minimum amounts for each Project:

ENGINEER shall name Baldwin County as an additional insured.

- 1. Professional Liability Insurance:

Professional Liability Insurance including design with the limits not less than \$1,000,000 per occurrence.

2. Workers' Compensation/Employer's Liability:

a. Workers' Compensation insurance in the amounts required by all applicable laws, rules, or regulations of the state of Alabama.

b. Employer's Liability with limits of not less than:

Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 policy limit
Bodily Injury by Disease	\$1,000,000 each employee

c. Borrowed Servant/Alternate Employer endorsement in favor of Baldwin County.

3. Comprehensive General Liability Insurance:

a. Comprehensive General Liability (occurrence form) including coverage for products/completed operations, independent contractors, blanket contractual liability specifically covering the obligations assumed by Contractor.

b. Limit of Liability: \$1,000,000 combined single limit of liability each occurrence bodily injury or property damage.

c. General Aggregate Limit shall apply on a "Per Project" Basis.

4. Automobile Liability Insurance:

a. Automobile Liability Insurance to cover any auto, including all owned, non-owned, and hired vehicles, with a \$1,000,000 combined single limit of liability each accident for bodily injury and/or property damage.

5. Excess/Umbrella Liability Insurance

a. Providing following form coverage for Employer's Liability, Comprehensive General Liability, and Automobile Liability.

b. Limit of Liability: \$2,000,000 combined single limit of liability each occurrence for bodily injury and/or property damage.

C. CERTIFICATE OF LIABILITY INSURANCE ENDORSEMENT PAGE

The policy endorsements listed below are required and must be listed in the "Descriptions of Operations" box on the Certificate of Liability Insurance or listed separately on an attachment to the certificate of insurance (ACORD 101, Additional Remarks Schedule).

1. Waiver of Subrogation - All policies of insurance shall be endorsed to waive rights of subrogation in favor of Baldwin County.

2. Additional Insured - All policies of insurance, except those referenced under paragraph A, shall be endorsed to name Baldwin County as an Additional Insured

3. Primary Insurance - All policies of insurance, except those referenced under paragraph A, shall be endorsed to provide that all such insurances are primary and non-contributing with any other insurance maintained by Baldwin County.
4. Notice of Cancellation - Certificates of Insurance shall provide that such insurance shall not be subject to cancellation, non-renewal nor material change without 30 days or more (except 10 days for non-payment) prior written notice thereof to Baldwin County.
5. Certificates of Insurance - General - Within ten (10) calendar days from the date of issuance of Contract forms for execution, Contractor shall deliver to Baldwin County, certificates of insurance (standard ACORD format) certifying the existence and limits of the insurance coverages along with separate policy endorsements as described above. Contractor shall also be responsible for delivering policy renewal certificates to Baldwin County.

VII. E-VERIFY

By signing this CONTRACT, the contracting parties affirm, for the duration of the agreement, that they will not violate Federal Immigration Law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the CONTRACT and shall be responsible for all damages resulting therefrom.

VIII. SOURCE OF FUNDS FOR PAYMENT

The source of funds for payment by City under this contract is ADCNR Subaward Grant Agreement #S1P11-LHSP, County Resolution 20-1134.

IX. PROHIBITION OF BOYCOTTING

By signing this CONTRACT, the ENGINEER represents and agrees that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.

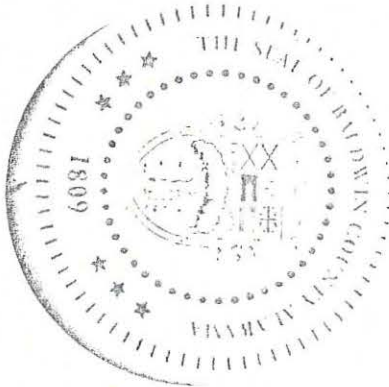
X. ANTI-DISCRIMINATION

ENGINEER shall comply with all Federal, State and local laws concerning nondiscrimination, including but not limited to Baldwin County Commission policies, which requires, inter alia, that all contractors performing work for Baldwin County not discriminate on the basis of race, color, religion, age, gender, pregnancy, national origin, genetic information, veteran status, or disability in its hiring or employment practices nor in admission to, access to, or operations of its programs, services, or activities.

IN WITNESS WHERE OF, NEEL-SCHAFFER, INC., a corporation,
has caused its name to be signed hereto by JOHN E. MURPHY, JR., its SENIOR PROJECT MANAGER
VICE PRESIDENT, and by KIRBY LATHAM, its Secretary, both duly
authorized in full to bind the corporation, and the Baldwin County Commission, a municipal corporation,
has caused this instrument to be executed by its Commissioner and attested by its Commissioner on the
day and year first above written.

Baldwin County Commission
By: [Signature]

ATTEST:
By: [Signature]



NEEL-SCHAFFER, INC.

By: [Signature]
Its: Vice President

Address: 851 E I-65 Service Road South
Suite 1000
Mobile, AL 36606

Telephone: 251-471-2000

ATTEST:
By: [Signature]
Kirby Latham
Its: Senior Project Manager

