

AGREEMENT

THIS AGREEMENT made as of the 5th day of Sept, 2006, by and between the **CITY OF JONESBORO, ARKANSAS**, hereinafter called the OWNER, and **MILLER-NEWELL ENGINEERS, INC.**, 510 Third Street, P.O. Box 705, Newport, Arkansas 72112, hereinafter called the ENGINEER;

WITNESSETH, that whereas the Owner intends to **Construct Storm Drainage Improvements in the Farm Creek Drainage Basin**, hereinafter called the PROJECT;

NOW, THEREFORE, the Owner and the Engineer for the consideration hereinafter set forth, agree as follows:

1. THE ENGINEER AGREES to perform the following Engineering services for the Project:

A. General: The Engineer shall serve as the Owner's professional representative in the planning and the periodic observation of construction of the Project (if authorized by Owner in writing), and shall give consultation and advice to the Owner during the performance of his services.

(1) Insurance: The Engineer shall secure and maintain such insurance as will protect him from claims under the Worker's Compensation Acts and from claims for bodily injury, death or property damage which may arise from the performance of his services under this Agreement.

B. Basic Services of the Engineer:

(1) Diagrammatics: The Engineer shall prepare all required schematic drawings, layouts, flow diagrams, studies, reports and a statement of probable construction cost based upon the diagrammatics.

(2) Preliminaries: The Engineer shall make the necessary topographical surveys for design purposes; and shall prepare preliminary drawings, outline specifications and a statement of probable construction cost based upon the preliminaries. The preliminary layouts shall be reviewed and approved by the Owner before proceeding to the contract drawings.

(3) Contract Documents: From the approved preliminaries, the Engineer shall prepare working drawings, specifications and other Contract Documents completely describing the material and workmanship required and procedures to be followed for the construction of the Project, and he shall adjust the preliminary project probable cost. Prior to bidding the Owner shall approve the final drawings.

(4) Receipt of Proposals: The Engineer shall furnish at cost the number of sets of drawings and specifications for the use of Bidders in submitting proposals. He shall assist the Owner

in securing proposals from Bidders, in analyzing such proposals and in preparing the agreement for execution by the Contractor.

- (5) During Construction: The Engineer shall check the contractor's work for general compliance with the drawings and specifications and shall endeavor to protect the Owner against defects and deficiencies in the work of the Contractor, but he does not guarantee the Contractor's performance. The Engineer's periodic observation shall include the following services:
- (a) Additional Instructions: The Engineer shall issue such additional instructions to the Contractor as may be necessary to interpret the drawings and specifications or to illustrate changes required in the Contractor's work.
 - (b) Contractor's Submittals: The Engineer shall check shop drawings, samples, equipment, approval data and other data submitted by the Contractor for compliance with the drawings and specifications.
 - (c) Contractor's Requests for Payment: The Engineer shall act upon the Contractor's requests for payment in accordance with the provisions of the General Conditions of the Contract.
 - (d) Visits to the Site: The Engineer shall make observations at the site to check the Contractor's work for general compliance with the Contract Documents and to determine the extent of work completed for checking of Contractor's requests for payment. It is anticipated that two (2) trips per month will be made. One to verify work completed for payment and the second to verify construction or to answer questions.
 - (e) Special Performance Tests: The Engineer shall witness and fully report the results of all special performance tests made by others that are required for the Project.
 - (f) Final Acceptance: The Engineer shall prepare completion lists when 90% completion of the project is claimed by the Contractor, and again when 100% completion is claimed. When the Contractor shall have completed the work in accordance with the terms of the Contract Documents, the Engineer shall confirm his acceptance to the Owner and his approval of the Contractor's final request for payment.
 - (g) Instructions to the Owner: The Engineer shall arrange for detailed instructions by the Contractor and manufacturer's representatives to the Owner or his delegated representative in the proper operation and maintenance of the equipment furnished and installed for the Project.

- (h) Record Drawings: The Engineer shall prepare record drawings showing changes in the work authorized during construction and shall submit a set of reproducible to the Owner.
 - (i) Services During Contractor's One Year Warranty Service: The Engineer will be available to furnish engineering services and consultation necessary to correct unforeseen project operation difficulties for a period of one year after the date of substantial completion of the facility. This service will include instruction of the Owner in initial project operation and maintenance, but will not include supervision of normal operation of the project. Such consultation and advice shall be furnished without additional charge except for travel and subsistence costs. The Engineer will assist the Owner in performing a review of the project during the 11th month after the date of the certificate of substantial completion.
 - (j) Establishing Baselines: The Engineer will establish baselines for locating the work together with a suitable number of benchmarks adjacent to the work as shown in the contract documents.
- (6) Construction Observation: If authorized by the Owner in writing, the Engineer shall provide construction observation for work done by the contractor. The Engineer undertaking same hereunder shall not relieve the contractor of the contractor's obligation to perform the work in conformity with the drawings and specifications and in a workmanlike manner; shall not make the Engineer an insurer of the contractor's performance; and shall not impose upon the Engineer any obligation to see that work is performed in a safe manner.

Resident Project Representative: The resident project representative shall have field experience in the type of work to be performed, be fully qualified to make interpretations, decisions, field computations, etc., and have knowledge of testing requirements and procedures. The resident inspector shall have the authority to reject both unsatisfactory workmanship and materials. Primary duties are as follows:

- (a) Check construction activities for compliance with the plans and specifications. Inform the Contractor of any work that is in noncompliance.
- (b) Ensure that all testing required by the specifications is performed. All commercially produced products, such as pipe and reinforcing steel, that are used on the project should be accompanied by numerical test results or a certification from the manufacturer that the material meets the applicable standards.

- (c) Ensure that tests are performed at the frequency stated in the specifications. Determine when and where tests will be taken and witness tests. If not indicated in the specifications, a sufficient number of tests should be taken to verify that the construction is acceptable.
- (d) Inform the Contractor of deficiencies in order that corrections can be made and retesting performed prior to covering any substandard work with additional material.
- (e) Document quantities of materials used on the project by actual measurements and computations in a field notebook or computer printouts retained in a folder. For materials paid for on a weight basis, a summary of the material placed each day should be kept in the field notebook. The notebook and/or computer printouts, supported by the original set of weigh tickets, is the basis for payment.
- (f) Maintain a set of working drawings, on the job site, which can be used to prepare "record drawings".
- (g) Review payment requests from the Contractor.
- (h) Maintain a diary which should contain daily entries made and signed by the resident project representative. Each entry should include the following, plus any additional pertinent data:
 - (i) Date and weather conditions,
 - (ii) Names of important visitors,
 - (iii) Construction work in progress and location,
 - (iv) Size of Contractor's work force and equipment in use,
 - (v) Number of hours worked per day for Contractor and subcontractor,
 - (vi) The substance of important conversations with the Contractor concerning conduct, progress, changes, test results, interpretation of specifications or other details.

C. Extra Services of the Engineer Shall Include the Following When Authorized in Writing by the Owner:

- (1) During Construction Services: Advising in the replacement of all or such parts of the Project as may be damaged by fire or other cause during construction; assisting the Owner in arranging for continuation of the work should the Contractor default for any reason; and providing observation of construction over an extended period should the construction contract time be exceeded by more than 25% not occasioned by fault of the Engineer.

- (2) Revision of Drawings Due to Bids Being Over Budget: The Owner agrees to pay the A/E on an hourly basis a fee based upon actual cost plus a multiplier that includes labor overhead, general overhead and profit for time spent in re-drawing the plans to reduce the scope of work in order to bring the cost within budget. Said extra cost shall not exceed a sum of two percent (2%) of the construction cost.
 - (3) Additional services for cost incurred by Subcontractors or outside consultants will be billed at the actual cost of work plus a multiplier of 15% that includes labor overhead, general overhead, and profit for time spent reviewing the results and coordination of work.
2. THE OWNER AGREES to provide the Engineer with complete information concerning the requirements of the Project and to perform the following services:
- A. Access to the Work: The Owner shall guarantee access to and make all provisions for the Engineer to enter upon public and private lands as required for the Engineer to perform such services as surveys and observation in the development of the Project.
 - B. Consideration of the Engineer's Services: The Owner shall give thorough consideration to all reports, sketches, estimates, drawings, specifications, proposals and other documents presented by the Engineer, and shall inform the Engineer of all decisions within a reasonable time so as not to delay the services provided by the Engineer.
 - C. Legal Requirements: The Owner shall hold promptly all required special meetings, serve all required public and private notices, receive and act upon all protest and fulfill all requirements necessary in the development of the Project and pay all costs incident thereto.
 - D. Proposals: The Owner shall advertise for proposals from Bidders, open the proposals at the appointed time and place and pay all costs incident thereto.
 - E. Protection of Markers: The Owner shall protect to the best of his ability all stakes and other markers set by the Engineer prior to the assumption of such responsibility of the Contractor. Replacement of markers or stakes which have been damaged, moved or removed shall be paid for by the Owner as extra services of the Engineer.
 - F. Standards: At the execution of this agreement, the Owner shall furnish the Engineer with a copy of any design and construction standards he shall require the Engineer to follow in the preparation of Contract Documents for the Project.
 - G. Owner's Representative: The Owner shall designate in writing, by appendix to this Agreement, a single person to act as Owner's Representative with respect to the services to be performed under

this Agreement. The person designated as Owner's Representative shall have complete authority to transmit instructions, receive information, interpret and define Owner's policy and decisions, with respect to the materials, equipment, elements and systems pertinent to the services covered by this Agreement.

3. COMPENSATION FOR BASIC ENGINEERING SERVICES (ARTICLE 1.B):

- A. The Owner shall compensate the Engineer for the basic services described in Article 1.B. of this agreement a basic lump sum fee of \$20,600.00 for the design of the drainage system improvements, with progress payments as provided herein.
- B. The compensation for preliminary engineering services, design and contract administration services shall be payable as follows:
 - (1) A sum which equals seventy-five percent (75%) for design development phase. This phase includes plans being 95% complete for Owner's review, plus cost estimate.
 - (2) A sum which equals ninety-seven percent (97%) of the total compensation payable under Article 3.A, after completion and submission of the construction drawings, specifications, statement of probable construction cost, and contract documents, and the acceptance of the same by Owner.
 - (3) A sum which, together with the compensation provided in Article 3.B.(1 & 2) above, equals one hundred percent (100%) of the compensation for handling the bidding, negotiation and award of contract payable immediately after the construction contracts are awarded.
- C. General:
 - (1) Payments Withheld from Contractor: No deduction shall be made from the Engineer's compensation on account of penalty, liquidated damages or other amounts withheld from payments to contractors.
 - (2) Abandoned or Suspended Services: If any services performed by the Engineer are abandoned or suspended in whole or in part, the Engineer shall be paid for services performed on account of it prior to receipt of written notice from the Owner of such abandonment or suspension, together with any terminal expense resulting therefrom and.

4. COMPENSATION FOR RESIDENT PROJECT OBSERVATION AS SET FORTH IN ARTICLE 1.B.(6) (If authorized by the Owner in writing):

The Owner agrees to pay the Engineer for such resident project observation services the sum of N/A. The Engineer will render to Owner for such services an itemized bill, once each month, for compensation for such services performed hereunder during such period, the same to be due and payable by the Owner to the Engineer on or before the 10th day of the following period.

5. REIMBURSABLE SERVICES OF THE ENGINEER SHALL INCLUDE THE FOLLOWING ITEMS WHEN AUTHORIZED IN WRITING BY THE OWNER:

- A. Transportation and subsistence of principals and employees on special trips to the project or to other locations.
- B. Long distance telephone and facsimile calls as required to expedite the work of the contractor.
- C. Reproduction of drawings and specifications for bidding purposes and for Contract Documents in excess of twelve (12) sets.
- D. All fees required by State agencies for approval of the plans and specifications.
- E. Services of special consultants when required by the complex nature of the project.

6. ADDITIONAL ENGINEERING SERVICES

- A. In addition to the foregoing being performed, the following services may be provided upon prior written authorization of the Owner:

- (1) Site surveys for the site may be required.
- (2) Laboratory tests, well tests, borings, specialized geological, soils, hydraulic, or other studies recommended by the Engineer.
- (3) Property surveys, detailed description of sites, maps, drawings or estimates related thereto; assistance in negotiating for land and easement rights.
- (4) Necessary data and filing maps for water rights, water adjudication and litigation.
- (5) Redesigns and change orders ordered by the Owner after final plans have been accepted by the Owner.
- (6) Appearances before courts or boards on matters of litigation or hearings related to the project.
- (7) Preparation of environmental impact assessments or environmental impact statements.
- (8) Performance of detailed staking necessary for construction of the project in excess of the control staking set forth in Article 1.B.(5)(j).
- (9) Geotechnical testing of Detention Basin Site and levee locations as required for design of the Basin and evaluation of on site soil conditions.

- B. Payment for the services specified in Articles 5 and 6 shall be as agreed in writing prior to the commencement of work. The Engineer will render the Owner an itemized bill for such services, separate from any other billing, once each month, for compensation for services performed hereunder during such period, the same to be due and payable by Owner to the Engineer on or before the 10th day of the following period.

7. INTEREST ON UNPAID SUMS

If Owner fails to make any payment due Engineer within sixty (60) days for services and expenses, the Engineer shall be entitled to interest at the rate of 10 percent per annum from said 60th day, not to exceed an annual rate of 10 percent.

8. OWNER AND ENGINEER FURTHER AGREE TO THE FOLLOWING CONDITIONS:

- A. Termination: This Agreement may be terminated by either party by seven (7) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the one party through no fault of the other party. If terminated due to the fault of others than the Engineer, the Engineer shall be paid for services performed to the date of termination, including reimbursements then due, plus terminal expense.
- B. Arbitration: Arbitration of all questions in dispute under this Agreement shall be at the choice of either party and shall be in accordance with the rules of the American Arbitration Association. This Agreement shall be specifically enforceable under the prevailing arbitration law and judgment upon the award rendered may be entered in the court of the forum, state or federal, having jurisdiction. The decision of the arbitrators shall be a condition precedent to the right of any legal action.
- C. Ownership of Documents: Reproducibles of original documents, such as tracings, plans, specifications and maps prepared or obtained under the terms of the contract shall remain the property of the Engineer; and basic survey notes and sketches, charts, computations and other data shall be available upon request to the Owner with restrictions and limitations as to their use. The above documents are for the sole purpose of this project. Use of these documents for other projects without the express permission of the Engineer will be an infringement of the copyrights of the Engineer. Further, the Engineer will assume no liability beyond this project. The Engineer will retain the drawings with the provision that they will be made available at the cost of printing upon written request.

After completion of the Project, and prior to final payment, the Engineer shall deliver to the Owner two (2) prints of the "Record Drawing" construction plans updated to reflect the changes.

9. SUCCESSORS AND ASSIGNS

This Agreement and all covenants hereof shall inure to the benefit of and be binding upon the Owner and the Engineer, respectively, and the partners, successors, assigns, and legal representatives of each. Neither the Owner nor the Engineer shall have the right to assign, transfer or sublet his interest or obligations hereunder without written consent of the other party.

10. SPECIAL PROVISIONS

The Owner and the Engineer mutually agree that this Agreement shall be subject to the following Special Provisions which shall supersede other conflicting provisions of this Agreement:

The period of service of the engineering services contract shall coincide with completion of the construction of the project.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement the day and year first above written.

(SEAL)

MILLER-NEWELL ENGINEERS, INC., Engineer

Wayne Menley
Wayne Menley, President

(SEAL)

ATTEST
Robert W. Chatman
Robert W. Chatman, P.E., Vice-President

ATTACHMENT 1
SCHEDULE OF RATES AND CHARGES FOR ADDITIONAL ENGINEERING
SERVICES AND CONSTRUCTION OBSERVATION

Schedule of Rates and Charges for Additional Services as referred to in the Agreement for Engineering Services.

<u>PERSONNEL</u>	<u>RATE PER HOUR</u>
Survey:	
Four-man Party	\$ 141.00
Three-man Party	107.00
Two-man Party	76.00
Construction Observation:	
Resident Engineer	\$ 105.88
Resident Inspector	44.47
Engineering & General Supervision:	
Principal or Architect	\$ 105.88
Project Engineer	105.88
Field or Design Engineer	59.51
Field or Office Assistant	44.47
Land Surveyor	39.96
Draftsman	55.17
Stenographic	38.80