



## COUNCIL AGENDA ITEM COVER SHEET

**Meeting Type:** Council - Regular

**Meeting Date:** August 15, 2024

**Agenda Item Type:** New Business

**Staff Contact:** Scott Langford

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### STAFF REPORT

#### AGENDA ITEM:

Consideration to award professional design and construction administration services for the 2024 Handley Dam Improvements project PW-2024-12 to Schnabel Engineering, LLC for a fee not to exceed \$113,500.00.

#### BACKGROUND:

On March 21, 2024, the citizens of Fayette County voted and approved the 2024 SPLOST referendum. As part of the approved SPLOST 2024 projects, the Town contracted with Schnabel Engineering for professional services to perform a detailed evaluation of Handley Dam. As a result of the evaluation, items were identified as needing improvement. Some of these items require assistance with engineering design, permitting, construction plans, technical specifications and construction inspections. Therefore, these professional services offered under this contract include design, permitting, plans, and specifications along with bidding and construction administration. The professional services are estimated to not to exceed a fee of \$113,500.00.

#### FUNDING:

2023 SPLOST - Fund 322-49-52.2213

#### STAFF RECOMMENDATION:

Staff requests that Council authorize the Mayor to execute and Award the professional engineering services for the 2024 Handley Dam Improvements, project number PW-2024-12, to Schnabel Engineering, LLC for a fee not to exceed \$113,500.00.

#### ATTACHMENTS:

Schnabel Engineering proposal – Note: Contract Ammendment section is a draft that is under Legal Counsel Review.

#### PREVIOUS DISCUSSIONS:

September 7, 2023 Council Meeting, Council Planning Workshop in 2024, and Budget Request meetings in 2024.



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6445 Shiloh Road, Suite A / Alpharetta, GA 30005

[schnabel-eng.com](http://schnabel-eng.com)

April 5, 2024  
Revised July 30, 2024

Scott Langford  
Town of Tyrone  
Public Works Director/Town Engineer  
950 Senoia Road  
Tyrone, Georgia 30290

(via email: [slangford@tyrone.org](mailto:slangford@tyrone.org))

**Subject: Proposal for Engineering Services, Handley Park Dam, Town of Tyrone, Georgia  
(Schnabel Reference 24170042.00P)**

Dear Mr. Langford:

**SCHNABEL ENGINEERING, LLC** (Schnabel) is pleased to present this proposal to the Town of Tyrone (Town) for engineering services associated with the existing earthen embankment dam, known as Handley Park Dam. This proposal presents the background information, outlines the scope of services and specifies the fees for our work.

### **PROJECT BACKGROUND**

Handley Park Dam is located about ½ mile northeast of the intersection of Tyrone Road and Joel Cowan Parkway. More specifically, the dam is located at Latitude North 33° 28' 58.0" and Longitude West 84° 34' 37.8". The dam is ¼ mile upstream of Lake Pendleton, is generally oriented in a north-south direction on the east side of the pond, and impounds an unnamed tributary of Flat Creek. Due to the dam height and impoundment volume, this dam is not included on the dam inventory list maintained by the Georgia Safe Dams Program (SDP).

Schnabel recently provided engineering services related to the dam, including the performance of a visual evaluation, hydrologic and hydraulic analyses, and a field-run topographic survey. A Preliminary Engineering Evaluation Report dated February 22, 2024, (referred to as the 2024 Report herein) was prepared by Schnabel that presented the observed and analyzed deficiencies of the existing structure and spillway system.

You have requested a proposal from Schnabel to design remediation/modification measures to the dam, prepare construction plans and technical specifications, and permit the proposed work. The following sections of this proposal define Schnabel's Scope of Services and fees.

## **SCOPE OF SERVICES**

Our scope of services will involve the following tasks:

- Remediation Design
- Preparation of Construction Plans and Technical Specifications
- Permitting Services
- Bid Phase Services
- Construction Phase Services

The following sections present the intended work to be performed by Schnabel.

### **Remediation Design**

According to the results of the hydrologic and hydraulic analyses in the 2024 Report, the existing structure is hydraulically deficit and overtops during a ¼ Probable Maximum Precipitation (PMP) storm event. While the dam is not regulated at the state level, Schnabel recommends that the dam be rehabilitated in accordance with the standard of care for dams in Georgia, as defined by the SDP. Based on the size of the dam, the minimum design storm based on the standard of care would be the ¼ PMP storm event. Based on a review of original design information and the recent topographic survey, the structure was not constructed as intended. Some key discrepancies from the design information include that the normal pool is approximately 1.5 feet higher than designed and no defined auxiliary spillway was constructed in the right abutment.

The proposed remediation measures will likely include construction of an earthen auxiliary spillway and raising the crest of the dam. We assume that the normal pool elevation of the lake will remain unchanged from the current level; however, if the Town desires Schnabel to evaluate an additional alternative remediation design with a lowered normal pool elevation, Schnabel could perform such an analysis for an additional fee. The elevation of the auxiliary spillway control section will be established so to not activate prior to the 50-year, 6-hour storm event. We note that design of the auxiliary spillway channel will generally follow the SDP engineering guidelines for auxiliary spillway attack evaluations; however, performance of an analysis to evaluate the integrity of the auxiliary spillway channel is excluded from this scope of work.

The crest elevation of the dam will be increased by means of compacted backfill such that an appropriate freeboard will be provided during the 1/4 PMP design storm event. In addition, the downstream slope, particularly in the vicinity of the current location of the principal spillway outlet headwall, will be flattened to improve stability and maintenance of the dam. To facilitate the regrading efforts, the principal spillway conduit will likely need to be extended and the outlet headwall will be removed and re-attached or replaced (depending on post-removal condition of the precast headwall) to the proposed outlet. A scour apron will be designed to improve energy dissipation downstream of the relocated outlet headwall.

A design report will be prepared with the construction plans and technical specifications. This report will provide a project background, outline the design methodology, and summarize the proposed design. Design calculations will be included as appendices to the report.



### **Preparation of Construction Plans and Technical Specifications**

Utilizing the previously performed topographic survey as a base sheet, Schnabel will develop construction drawings for the remediation measures of the dam. In addition, measures for the removal of trees on the embankment and in the vicinity of the proposed earthen auxiliary spillway and riprap-lined scour apron will be shown on the construction plans along with the establishment of permanent turf grass coverage. The Construction Plans will also include preparation of an Erosion, Sedimentation, and Pollution Control (ES&PC) plans. These plans will reflect three phases for erosion and sedimentation control at the site. The ES&PC plans are required to apply for a Stream Buffer Variance as described in subsequent sections of this proposal. In addition to the plans, Technical Specifications will be prepared for the work. The Technical Specifications will indicate/detail the work to be performed by the contractor and supplement the construction plans.

### **Permitting Services**

Based on conversations with the Town, Schnabel understands that a SBV will be required. Utilizing the ES&PC plan, Schnabel will prepare and submit an application to the Georgia Environmental Protection Division (EPD) for an SBV. The EPD does not require a fee for the SBV; however, effort will be required by Schnabel to prepare the application and coordinate with the EPD to obtain approval. In our experience, the review and approval process for similar projects can require on the order of three to six months.

In that the construction work involves an existing dam, coordination with the U.S. Army Corps of Engineers (USACE) will be required. Based on our past experiences, the repair work may be accomplished under a Nationwide Permit (NWP) 3, which is a general permit to authorize specific construction activities within a stream channel or other waters of the United States. Coordination with the USACE may involve preparation and submittal of a Pre-Construction Notification (PCN) for concurrence by USACE. For this coordination work, we intend to use the services of an environmental consultant with whom we have worked with in the past as a subconsultant to coordinate USACE permitting. The work performed by our subconsultant will include a site visit to identify jurisdictional waters, preparation of the required documentation, and coordination with the USACE.

Schnabel understands that a Land Disturbance Permit (LDP) will be required. Schnabel will prepare and submit an LDP application along with the design documents (remediation plans and specifications) to the Town, who is identified as the Local Issuing Authority (LIA). Schnabel will anticipate addressing up to one (1) round of comments under this task. We note that if the total disturbed area exceeds one (1) acre, an NPDES (National Pollutant Elimination System) permit will be required. We assume the contractor will be responsible for obtaining all permits required to initiate the work prior to construction.

### **Bid Phase Services**

Upon completion of the permitting services, the Town will prepare, advertise, and distribute bid documents to interested contractors. Schnabel assumes that the Town will receive, compile, and organize questions received from contractors for the proposed work. Under this task, Schnabel will assist in the preparation of responses to questions from contractors.

In addition to preparing responses, Schnabel will develop a bid schedule and an engineer's opinion of construction costs for the remediation measures. The opinion of construction cost will be based on

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**Handley Park Dam Design Phase Services**

estimated quantities for significant items of work described by the construction plans and specifications, and unit rates based on Schnabel's experience and understanding of current dam construction labor and material price trends. Schnabel notes that a pre-bid meeting and the preparation of bid documents are excluded from our scope of work.

**Construction Phase Services**

Services rendered by Schnabel under this portion of the proposed agreement will consist of observation and testing, and professional opinions and recommendations made in accordance with generally accepted dam engineering practices. Under no circumstance is it the intent for Schnabel to directly control the physical activities of the Contractor or the Contractor's workmen in accomplishment of their work on this project. The presence of our field representatives at the site is to provide the Town with a continuing source of professional advice, opinions and recommendations based upon our field representatives' observations and test results. We cannot be responsible for job safety except for our own personnel. Safe access to all areas requiring observations or tests shall be provided by the contractor at no cost to us.

In dam construction, engineering and testing services are important for numerous reasons, to include the following:

- To observe site conditions with respect to design assumptions. If site conditions vary from those assumed during the design process, modifications to the design in the field may be required.
- To observe construction activities with respect to the construction documents. If construction activities negatively impact design, the contractor and the owner will be notified.
- To provide written documentation to the Town at the completion of the project stating that the project was completed in general conformance with the project documents.

Our field engineering and construction testing services will include the following:

- Participation in a pre-construction meeting with the Town and the selected Contractor.
- Review of Contractor submittals for compliance with project specifications.
  - This service will include review and approval of the selected Contractor's control of water plan and materials intended for use on the subject project.
- Review and response to Requests for Information (RFI) and submittal documents prepared by the contractor.
- Observation of any soil fill placement and performance of compaction tests within embankment fill.
- Preparation of daily reports to document construction activities. Construction observation reports will be reviewed by Schnabel's design staff and forwarded to the Town. Under this task, Schnabel assumes the daily on-site presence of our engineer technician for 15 days.
- Performance of up to four (4) periodic site reconnaissance by a Professional Engineer over the course of the installation of proposed remediation measures.
- Based on the results of a post-construction topographic survey, to be performed by the contractor's approved surveyor, Schnabel will prepare a set of "as-built" (record) drawings. The record drawings will be used to evaluate whether the "as-built" construction layout (constructed



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grade surface) of the dam is in general accordance with the construction drawings and design intent.

- Assist in the performance of final inspections of the projects, and inform the contractor of items that need attention.

Schnabel' scope of services during the construction phase of this project are limited to the items summarized above; however, for clarity, the following services will not be provided by our firm:

- Surveying for line and grade
- Coordinating access with property owners
- Monitoring of erosion/sedimentation control devices
- Monitoring for compliance with NPDES permit
- Traffic control design and/or coordination
- Professional services not detailed herein

**EXCLUSIONS**

Schnabel Scope of Work associated with this proposal does not include any of the following activities:

- Subsurface Exploration
- Stability and Integrity Analysis of Earthen Auxiliary Spillway
- Permit Fees and Permitting Mitigation
- Services not specifically described herein.

**COMPENSATION**

Schnabel will perform the Scope of Services described herein for the for the fees listed below. For clarity, a breakdown of the fees is presented at the task level.

- Final Design and Preparation of a Design Report \$ 7,500 (lump sum)
- Preparation of Construction Plans and Technical Specifications \$ 13,500 (lump sum)
- Permitting Services
  - Stream Buffer Variance Application \$ 3,500 (lump sum)
  - USACE Coordination \$ 7,000 (unit rate)\*
  - Address Town Comments \$ 3,000 (unit rate)\*
- Bid Phase Services \$ 6,000 (unit rate)\*
- Construction Phase Services \$70,000 (unit rate)\*\*

\*These tasks will be performed on a unit rate basis and the extent of Schnabel and our subconsultants' services for these tasks will be dependent upon the actual level of effort and involvement necessary to complete the scope associated with these tasks.

\*\*This task is highly dependent on the schedule and efficiency of the contractor, as well as other items that are beyond our control. Our budget does not account for contractor inefficiencies or schedule overruns. We strongly recommend that the Town establish means within their contract with the Contractor to recuperate additional costs due to contractor inefficiencies and schedule overruns.

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Work performed outside the specified scope, to include meetings, will be billed at the unit rate specified in the Schedule of Fees. We recommend establishing a budget of \$3,000 for additional services to include meetings and consultations requested by the Town.

Our invoices will be submitted monthly or at intervals when considerable time charges have accrued, with a final invoice submitted after completion of the services outlined herein. Payment will be due on receipt of our invoices and will be considered past due 30 days after the invoice date. Interest at 1.5 percent a month will be charged on all overdue amounts. The attached Schedule of Fees and Standard Contract Terms and Conditions will apply to services to be provided under this proposed agreement. The rates on the Schedule of Fees and all remaining budgets will be maintained throughout the duration of the work described and authorized herein, with the remaining terms unchanged.

**AUTHORIZATION**

To formalize our agreement, we request that you sign and return one copy of this proposal and attachments for our files. Please note that the attached Schedule of Fees and Terms and Conditions are a part of this agreement.

We appreciate the opportunity to present this proposal and look forward to continue working with you on this project.

Sincerely,

**SCHNABEL ENGINEERING, LLC**



Michael C. Gee, EIT  
Senior Staff Engineer



J. Tyler Coats, PE  
Senior Associate

MCG:JTC

**Enclosures:** Schedule of Personnel Fees 17-24.03 Dams  
Standard Terms and Conditions (two sheets)  
Addendum to Standard Terms and Conditions (five sheets)

The terms and conditions of this proposal, including the attached Standard Contract Terms and Conditions are:

**ACCEPTED BY:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**PRINTED NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_



**SCHEDULE OF PERSONNEL FEES – SCHNABEL ALPHARETTA**  
**Effective until December 31, 2024**

Senior Consultant	\$322.00/hr
Principal	\$318.00/hr
Senior Associate	\$289.00/hr
Associate	\$256.00/hr
Senior Engineer/Technologist/Scientist	\$215.00/hr
Project Engineer/Technologist/Scientist	\$186.00/hr
Construction Resident Engineer/Resident Project Representative	\$186.00/hr
Senior Staff Engineer/Technologist/Scientist	\$165.00/hr
Staff Engineer/Technologist/Scientist	\$143.00/hr
Senior Technician II/Construction Resident Technician	\$135.00/hr
Senior Technician I	\$114.00/hr
Technician III	\$ 100.00/hr
Technician II	\$ 83.00/hr
Technician I	\$ 74.00/hr
Senior CAD Designer	\$165.00/hr
CAD Tech III	\$152.00/hr
CAD Tech II	\$138.00/hr
CAD Tech I	\$116.00/hr
Administrative	\$ 88.00/hr

**NOTES:**

1. Engineering fees will be based upon the actual hours charged for personnel multiplied by the appropriate hourly rate.
2. Travel by auto to and from jobs will be charged at the current IRS prevailing rate. All travel expenses, including mileage, will be marked up 15% to cover the cost of handling, insurance, and overhead.
3. Special pickup and delivery expenses will be billed at cost plus 15%, or our prevailing hourly and mileage rates for our own personnel.
4. Overtime for Technicians is time for work on Saturday, Sunday, and Federal holidays, time in excess of 8 hours per day and time between the hours of 7:00 P.M. and 7:00 A.M. A surcharge of \$15/hr. is added to the above rate for overtime.
5. Subcontracts for subsurface exploration, bulldozers, surveys, etc. are marked up 15% to cover the cost of handling, insurance and overhead.
6. Preparation time for deposition and trial testimony, as well as actual time for deposition and trial testimony will be charged at the hourly rate multiplied by 1.5.
7. Per Diem Rates for out-of-town or overnight travel will be in accordance with U.S. General Services Administration rates published on website [www.GSA.gov](http://www.GSA.gov) for the area in which the project is located, unless otherwise stated in the proposal.
8. Schedule of Fees will increase on January 1, 2025 and not less frequently than annually thereafter based on the Consumer Price Index as provided by the U.S. Department of Labor, Bureau of Labor Statistics but not less than 3 percent per year.



**SCHNABEL ENGINEERING, LLC**  
**STANDARD CONTRACT TERMS AND CONDITIONS**

1. DEFINITIONS
  - 1.1 Schnabel Engineering, LLC, the "Engineer," agrees to provide Professional Services, as delineated in the attached Proposal. "Engineer" means Engineer and its employees, and subcontractors.
  - 1.2 The "Client" is the other party to this "Agreement."
  - 1.3 The "Contractor" is the responsible party providing construction for the subject Project.
2. ENTIRE AGREEMENT, SCOPE OF WORK
  - 2.1 The Agreement between Engineer and Client consists of the Proposal, these Standard Contract Terms and Conditions, and any other exhibits or attachments referenced in the Proposal. Together these elements will constitute the entire Agreement, superseding all prior written or oral negotiations, statements, representations, correspondence, and/or agreements. The Services to be provided by Engineer pursuant to this Agreement are described in the attached Proposal and include the Scope of Work. Both Client and Engineer must mutually acknowledge any changes to this Agreement in writing. All work performed by Engineer on or relating to the Project is subject to the terms and limitations of this Agreement.
  - 2.2 If work is performed, but the parties do not reach agreement concerning modifications to the Scope of Work or compensation, then the terms and conditions of this Agreement apply to such work. Disputes concerning modifications to Scope of Work or compensation shall be resolved pursuant to Article 12, "Dispute Resolution."
3. STANDARD OF CARE, DISCLAIMER OF WARRANTIES
  - 3.1 Engineer will strive to perform Services under this Agreement in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation and no warranty or guarantee, either express or implied, is included or intended by this Agreement.
4. SITE ACCESS, SITE CONDITIONS, SAMPLES.
  - 4.1 Client will provide rights of entry and access for Engineer to perform its Services.
  - 4.2 Engineer will take reasonable precautions to avoid damage or injury to subterranean structures or utilities in the prosecution of his work. Client agrees to advise Engineer of known or suspected underground features in the area of the work, and Engineer will not be responsible for damage to below grade features not brought to its attention, or incorrectly shown on plans provided.
  - 4.3 Client shall promptly pay and be responsible for the removal and lawful disposal of contaminated samples and cuttings, and hazardous substances, unless other arrangements are mutually agreed in writing.
5. OWNERSHIP OF DOCUMENTS, RESTRICTIONS ON REUSE
  - 5.1 All documents, including opinions, conclusions, certificates, reports, drawings and specifications and other documents, prepared or furnished by Engineer and Engineer's independent professional consultants pursuant to this Agreement (collectively "Documents") are instruments of Service. Engineer retains all ownership and property interests in the Documents, including all common law, statutory and other reserved rights, including copyrights, whether or not the Project is completed. Client may make and retain copies of them for information and reference in connection with the use and occupancy of the Project; however, such copies are not intended or represented to be suitable for reuse by others, and may not be used on other projects or for additions to this Project outside the Scope of the Work.
  - 5.2 At Client's request, client may negotiate with Engineer to acquire ownership of Documents for a mutually agreed amount. If Client acquires ownership of Documents prepared by Engineer, Client agrees: a) that any subsequent reuse or modification of them by Client or any party obtaining them through Client will be at Client's sole risk and without liability to Engineer, and b) client will defend, indemnify and hold harmless Engineer from and against any claims, damages, and liabilities arising from or related to any use, reuse or modification of Documents by Client or any party obtaining them through Client. Client agrees that Engineer may retain copies of all documents for its files.
  - 5.3 Electronic communications and CADD data transferred by Email, websites or computer disks (collectively "E-Data") are provided only as an accommodation by Engineer for the benefit of Client. Signed paper prints of documents constitute the contract deliverables. Client assumes the risk that E-Data may differ from the paper deliverables. Client agrees to indemnify and hold harmless Engineer from and against claims, damages, and liabilities for defects or inappropriate use of E-Data created or transmitted by Engineer.
6. THIRD PARTY RELIANCE UPON DOCUMENTS
  - 6.1 Engineer's performance of the Services, as set forth in this Agreement, is intended solely and exclusively for the Client's benefit and use. No party may claim under this Agreement as a third party beneficiary. Client agrees not to distribute, publish or otherwise disseminate Engineer's Documents, without first obtaining Engineer's prior written consent.
  - 6.2 No third party may rely upon Engineer's Documents including, but not limited to, opinions, conclusions, certificates, reports, drawings and specifications unless Engineer has agreed to such reliance in advance and in writing.



**SCHNABEL ENGINEERING, LLC**  
**STANDARD CONTRACT TERMS AND CONDITIONS**

7. ASSIGNMENT, SUBCONTRACTING

7.1 Neither Client nor Engineer may delegate, assign, sublet, or transfer all or any part of this Agreement, including its duties or interest in this Agreement without the written consent of the other party.

7.2 Notwithstanding Section 7.1, Engineer may subcontract subsurface exploration, testing, and other supplemental services and assign accounts receivable as security for financial obligations without notification or consent of Client.

8. TERMINATION, SUSPENSION

8.1 Either party upon 7 days' written notice may terminate this Agreement for convenience or material breach of Agreement. In the event of termination for convenience or material breach of Agreement, Engineer shall be paid for Services performed to the termination date, plus reasonable termination expenses.

9. ALLOCATION OF RISK

9.1 Engineer's total cumulative liability to Client (including, but not limited to, attorneys' fees and costs awarded under this Agreement) irrespective of the form of action in which such liability is asserted by Client or others, shall not exceed the total compensation received by Engineer under this Agreement or \$25,000, whichever is less. Upon Client's written request, Engineer may negotiate an increase to this limitation in exchange for an additional agreed consideration for the increased limit.

9.2 Client and Engineer agree to limit each's liability to the other in the following respects: Neither party will have liability to the other for any special, consequential, incidental, exemplary, or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of the other party's property or facility, shutdowns or service interruptions, loss of use, lost profits or revenue, inventory or use, charges or cost of capital or claims of the other party's customer.

9.3 The limitations of liability of this Agreement shall survive the expiration or termination of this Agreement.

10. INDEMNIFICATION

10.1 Indemnification of Client. Subject to the provisions and limitations of this Agreement, Engineer agrees to indemnify and hold harmless Client, its shareholders, officers, directors, employees, and agents from and against any and all claims, suits, liabilities, damages, expenses (including without limitation reasonable attorney's fees and costs of defense) or other losses (collectively "Losses") to the extent caused by Engineer's negligent performance of its Services under this Agreement.

10.2 Indemnification of Engineer. Subject to the provisions and limitations of this Agreement, Client agrees to indemnify and hold harmless Engineer from and against any and all Losses to the extent caused by the negligence of Client, its employees, agents and contractors. In addition, except to the extent caused by Engineer's sole negligence, Client expressly agrees to defend, indemnify and hold harmless Engineer Entities from and against any and all Losses arising from or related to the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials, or the exposure of any person to Hazardous Materials, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to Hazardous Material.

11. INVOICES, PAYMENTS

11.1 Payment is due without retainage upon presentation of invoice and is past due thirty (30) days from invoice date, and will not be contingent upon receipt of funds from third parties. Client agrees to pay a service charge of one and one-half percent (1-1/2%) per month or fraction thereof on past due payments under this Agreement.

11.2 It is further agreed that in the event a lien or suit is filed to enforce overdue payments under this Agreement, Engineer will be reimbursed by Client for all costs of such lien or suit and reasonable Attorney's fees in addition to accrued service charges, where the court of appropriate jurisdiction enters a finding in favor of Engineer.

12. DISPUTE RESOLUTION

12.1 Claims, disputes, and other matters in controversy between Engineer and Client caused by or any way related to this Agreement will be submitted to non-binding mediation as a condition precedent to litigation. The cost for mediation including the mediator's fees, reproduction of documents, and miscellaneous out-of-pocket expenses will be borne equally by each party to this Agreement.

12.2 The law of the Commonwealth of Virginia will govern the validity of these terms, their interpretation and performance. Client and Engineer agree that venue for any litigation will be in the courts of the Commonwealth of Virginia and Engineer and Client both hereby waive any right to initiate any action in, or remove any action to, any other jurisdiction.

13. SEVERABILITY

13.1 This Agreement reflects the entire agreement of the parties with respect to its terms and supersedes all prior agreements, whether written or oral. If any portion of this Agreement is void or voidable, such portion will be deemed stricken and the Agreement reformed to as closely approximate the stricken portions as the law allows.



STATE OF GEORGIA

DRAFT - UNDER LEGAL COUNSEL REVIEW

FAYETTE COUNTY

**AGREEMENT FOR PROFESSIONAL SERVICES  
ADDENDUM**

This addendum to the “Standard Contract Terms and Conditions”, hereinafter the “Agreement” is entered into this 1<sup>st</sup> day of September, 2023, by and between the Town of Tyrone, Georgia, hereinafter called “Client”, and Schnabel Engineering, LLC, hereinafter called “Engineer”, for the purpose of revising certain provisions contained in said Agreement.

**WITNESSETH:**

1. Section 5, pertaining to “Ownership of Documents, Restrictions on Reuse”, of said Agreement is hereby revised by adding a new Paragraph 5.4, to be read as follows:

“5.4 Nothing contained in this Section 5 is intended to affect Client’s obligations under the Open Records Act of Georgia, O.C.G.A. § 50-18-70 et seq. Both parties understand that documents provided to Client pursuant to this Agreement may be subject to disclosure under said Open Records Act. Furthermore, any disclosure of documents by Client pursuant to said Open Records Act shall not constitute breach of any of the terms of this Section 5.”

2. Paragraph 5.2 of Section 5, pertaining to “Ownership of Documents, Restrictions on Reuse”, of said Agreement is hereby revised by removing the second sentence of said Paragraph and by replacing it with the following:

“If Client acquires ownership of Documents prepared by Engineer, Client agrees;

a) that any subsequent reuse or modification of them by Client or any party obtaining them through Client will be at Client’s sole risk and without liability to Engineer; and b) to the extent permitted by law, Client will defend, indemnify and hold harmless Engineer from and against any claims, damages, and liabilities arising from or related to any use, reuse or modification of Documents by Client.”

3. Paragraph 5.3 of Section 5, pertaining to “Ownership of Documents, Restrictions on Reuse”, of said Agreement is hereby revised by removing the fourth sentence of said Paragraph and by replacing it with the following:

“To the extent permitted by law, Client agrees to indemnify and hold harmless Engineer from and against any claims, damages, and liabilities for defects or inappropriate use of E-Data created or transmitted by Engineer.”

4. Paragraph 6.1 of Section 6, pertaining to “Third Party Reliance Upon Documents”, of said Agreement is hereby revised by removing the third sentence of said Paragraph and by replacing it with the following:

“The parties understand that the Open Records Act of Georgia, O.C.G.A. § 50-18-70 et seq., places certain obligations on Client regarding the disclosure of documents and that Client may be required to distribute or disseminate Engineer’s Documents in order to comply with these obligations.”



5. Paragraph 8.1 of Section 8, pertaining to "Termination, Suspension", of said Agreement is hereby revised by removing the second sentence of said Paragraph and by replacing it with the following:

"In the event of termination for convenience or material breach of Agreement, Engineer shall be paid for Services performed to the termination date."

6. Paragraphs 9.1 and 9.3 of Section 9, pertaining to "Allocation of Risk", of said Agreement are hereby removed in their entirety.

7. Paragraph 10.2 of Section 10, pertaining to "Indemnification", of said Agreement is hereby removed in its entirety and replaced with the following:

"10.2 Indemnification of Engineer. To the extent permitted by law and subject to the provisions and limitations of this Agreement, Client agrees to indemnify and hold harmless Engineer from and against any and all Losses to the extent caused by the negligence of Client, its employees, agents and contractors. In addition, to the extent permitted by law, and except to the extent caused by Engineer's sole negligence, Client expressly agrees to defend, indemnify and hold harmless Engineer from and against any and loss Losses arising from or related to the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials, or the exposure of any person to Hazardous Materials, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to Hazardous Material."

8. Paragraph 12.1 of Section 12, pertaining to "Dispute Resolution", of said Agreement is hereby removed in its entirety.

9. Paragraph 12.2 of Section 12, pertaining to "Dispute Resolution", of said Agreement is hereby removed in its entirety and replaced with the following:

"12.2 The laws of the State of Georgia will govern the validity of these terms, their interpretation and performance. Client and Engineer agree that venue for any litigation will be in the courts of Fayette County, Georgia, and Engineer and Client hereby waive any right to initiate any action in, or remove any action to, any other jurisdiction."

Except as expressly modified above, the Standard Contract Terms and Conditions continue in full force and effect.


[SIGNATURES FOLLOW ON THE NEXT PAGE]



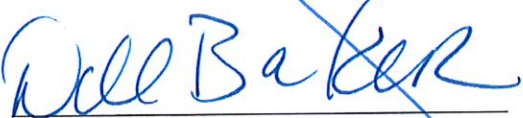
DRAFT

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized official, this Addendum to the Agreement, which shall be deemed an original on the date first above written.

TOWN OF TYRONE, GEORGIA

By:   
ERIC DIAL, Mayor

ATTEST:



ENGINEER:

SCHNABEL ENGINEERING, LLC


BY:   
(Authorized Signature)

NAME/TITLE:

J. Tyler Coats, PE, Vice President  
(Please Print)

Address: 6445 Shiloh Road, Suite A  
Alpharetta, GA 30005

ATTEST:

  
Michael Gee, EIT