

**NORTH CAROLINA
BRUNSWICK COUNTY**

**PROFESSIONAL SERVICES AGREEMENT
FOR ARCHITECTURAL, ENGINEERING
AND/OR SURVEYING SERVICES
(Mini-Brooks Act/Qualification Based Selection)**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as “County” or “Owner”), party of the first part and MHAworks, P.A., (hereinafter referred to as “Provider” or “Architect”), party of the second part.

WITNESSETH:

1. SERVICES; FEES

Provider agrees to perform the services (hereinafter referred to as the “Services”) in connection with the project (hereinafter referred to as the “Project”), as more fully set forth in the Request for Qualifications entitled: “Utility Operation Center Building Expansion,” as published by Brunswick County on July 13, 2021, and any addenda thereto, and on Exhibit “A” and Exhibit “B” attached hereto, all of which are hereby incorporated by reference.

Any exhibits or attachments referenced herein are hereby incorporated by reference and made a part of this Agreement. Any conflict between the language in an exhibit or attachment and the main body of this Agreement shall be resolved in favor of the main body of this Agreement.

2. TERM OF AGREEMENT; TIME OF COMPLETION

The term of this Agreement begins one (1) business day after approval by the Brunswick County Board of Commissioners (the “Effective Date”) and continues in effect until 04/30/2024, unless extended or sooner terminated as provided for herein or in the General Conditions of the Contract. Notwithstanding the foregoing, Provider shall complete the Services in accordance with the schedule set forth on Exhibit “B” (the “Time of Completion”), unless extended as provided for in the General Conditions of the Contract.

3. TERMINATION

The County may terminate this Agreement at any time without cause by giving written notice to Provider. The County may set the effective date of termination at a time up to thirty (30) days following notice to Provider to allow Provider ample time to complete tasks for which value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks and/or to assemble Project materials in orderly files. As soon as practicable after receipt of a written notice of termination without cause, Provider shall submit a statement to County showing in detail the work performed under this Agreement through the effective date of termination. County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. Provider shall have fifteen (15) days to cure the breach following receipt of the

notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, County may terminate this Agreement immediately and without notice to Provider if Provider becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Provider, or has a receiver or trustee appointed for substantially all of its property, or if Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

4. BRUNSWICK COUNTY GENERAL CONDITIONS OF THE CONTRACT

This Agreement, in addition to any construction documents prepared hereunder, shall be subject to the Brunswick County, North Carolina General Conditions of the Contract (for construction contracts), unless the County directs otherwise. In the event of a conflict between the General Conditions of the Contract and this Agreement, this Agreement shall prevail.

5. NONAPPROPRIATION

If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Provider of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

6. COMPENSATION

The County agrees to pay Provider as specified in the Exhibits attached hereto or as set out above for the Services satisfactorily performed in accordance with this Agreement. Unless otherwise specified, Provider shall submit monthly invoices to County and include detail of all Services delivered or performed under the terms of this Agreement. County shall pay all undisputed and properly completed invoices within forty-five (45) days of receipt. Notwithstanding the foregoing, County will not pay late fees on any charges under this Agreement. If County disputes any portion of the charges on any invoice received from Provider, the County shall inform Provider in writing of the disputed charges. Once the dispute has been resolved, Provider shall re-invoice County for the previously disputed charges, and, per any resolution between County and Provider, the County shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by Provider under this Agreement.

7. INDEPENDENT CONTRACTOR

Both County and Provider agree that Provider shall act as an independent contractor and shall not represent itself as an agent or employee of the County for any purpose in the performance of its duties under this Agreement. Provider represents that it has or will secure, at its own expense, all personnel required in performing the Services under this Agreement. Accordingly, Provider shall be responsible for payment of all federal, state and local taxes arising out of its activities in accordance

with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. Provider shall not be entitled to participate in any plans, arrangements or distributions by the County pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to County employees.

In the event the Internal Revenue Service should determine that Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then Provider hereby acknowledges that all payments hereunder are gross payments, and the Provider is responsible for all income taxes and social security payments thereon.

8. OPINIONS OF COST

If applicable, Provider shall provide opinions of probable construction costs, including but not limited to, designer fees, costs of construction, costs of equipment, furnishings, signage, permit fees and appropriate contingencies, at Project intervals determined by County. Such opinions of costs shall be representative of Provider's best judgment as an experienced and qualified professional generally familiar with the construction industry. The parties acknowledge that actual bids, proposals and costs may vary from Provider's opinions of costs based on the cost of labor, materials, equipment or services furnished by others, differing methods for determining prices, competitive bidding or other market conditions. When requested by County, Provider shall participate in rebidding, renegotiation and design adjustments to the extent such are necessary to reduce Project costs. Such services shall be performed by Provider without additional compensation.

9. ACCOUNTING RECORDS

Provider shall maintain accounting records in accordance with generally accepted accounting practices and shall make such records available for inspection by County upon reasonable request and during normal business hours for a period of three (3) years following completion of the Services.

10. PERMITS AND APPROVALS

Provider shall provide County with a schedule of all required approvals and the dates by which application for such approvals must be made in order to avoid any risk of delay to the Project. Provider shall prepare the necessary application forms, present documents requiring approval by County and submit documents with County approval to appropriate federal, state and local government or other agencies in a timely manner.

11. ENVIRONMENTAL CONDITIONS

County shall disclose to Provider the existence of all known and suspected hazardous substances, including, without limitation: asbestos; polychlorinated biphenyls (PCBs); petroleum; hazardous waste; or radioactive material located at or near the site where the Services are to be performed. If Provider discovers any undisclosed hazardous substances, or if investigative or

remedial action or other professional services are necessary, Provider may, at its option and without liability for damages, suspend performance of the Services hereunder until County: (1) retains an appropriate specialist consultant or contractor to identify and, as appropriate, abate, remediate or remove the hazardous substances; and (2) warrants that the site where the Services are to be performed are in full compliance with applicable laws and regulations. Notwithstanding the foregoing, if the presence of any hazardous materials adversely affects the performance of Provider's duties under this Agreement, then Provider shall have the option of: (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause upon thirty (30) days' written notice to County.

12. PROVIDER REPRESENTATIONS

- a. Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- b. Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- c. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Provider to enter into and perform its obligations under this Agreement;
- d. In connection with Provider's obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses;
- e. Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;
- f. Provider has not engaged in corrupt, fraudulent or coercive practices in competing for or executing this Agreement;
- g. Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- h. The Services provided by Provider under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including, without limitation, non-compete agreements);
- i. Provider shall exercise reasonable care and diligence when performing the Services hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said Services;
- j. Provider shall be responsible for all errors, omissions or deficiencies in technical accuracy in any drawings, specifications or other documents prepared or services

rendered by Provider, its subcontractors or consultants and shall correct, at no additional cost to County, any and all errors, omissions, discrepancies, ambiguities, mistakes, deficiencies or conflicts;

- k. Provider acknowledges that if any specific licenses, certifications or related credentials are required in its performance of the Services, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and
- l. Provider shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by the County with respect to rules, regulations, policies and security procedures applicable to work on the County's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

13. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

Provider shall be solely responsible for any damage to or loss of the County's equipment, facilities, property and/or data arising out of the negligent or willful act or omission of Provider or its subcontractors or consultants. In the event that Provider causes damage to the County's equipment or facilities, Provider shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to such damage.

14. NON-ENDORSEMENT AND PUBLICITY

County is not endorsing Provider or its Services, and Provider is not permitted to reference this Agreement or County in any manner without the prior written consent of County. Notwithstanding the foregoing, the parties agree that Provider may list the County as a reference in response to requests for proposals and may identify County as a customer in presentations to potential customers.

15. NON-EXCLUSIVITY

Provider acknowledges that County is not obligated to contract solely with Provider for the Services covered under this Agreement.

16. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

Provider hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

17. DEBARMENT

Provider hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this

Agreement by any governmental department or agency. Provider must notify County within thirty (30) days if debarred by any governmental entity during this Agreement.

18. INDEMNIFICATION

Provider shall indemnify and hold harmless County, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind (collectively, "Claims") which may be brought or made against County or which County must pay and incur arising out of this Agreement should fault or negligence on the part of the Provider or its subcontractors or consultants be the proximate cause of such Claims. Provider shall be fully responsible to County for the acts and omissions of its subcontractors or consultants and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

19. INSURANCE

Provider shall procure and maintain in full force and effect at all times and at its sole cost and expense, and shall ensure that any of its consultants maintains in full force and effect at all times and at its sole cost and expense, Commercial General Liability, Commercial Automobile Liability, Professional Liability and Workers' Compensation insurance, if applicable, and any additional insurance as may be required by County with limits acceptable to County. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include County as an additional insured and as a certificate holder. Provider shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by County. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. Provider shall have no right of recovery or subrogation against County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.

20. WORKERS' COMPENSATION

To the extent required by law, Provider shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event Provider is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, Provider shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling Provider's obligations under this Agreement.

Provider agrees to furnish County proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

21. REMEDIES

- a. **RIGHT TO COVER.** If Provider fails to meet any completion date or resolution time set forth, due to no fault of County, the County may take any of the following actions with or without terminating this Agreement, and in addition to, and without limiting, any other remedies it may have:
 - i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and Provider is again able to resume performance under this Agreement; and
 - ii. Deduct any and all expenses incurred by County in obtaining or performing the Services from any money then due or to become due Provider and, should the County's cost of obtaining or performing the Services exceed the amount due Provider, collect the amount due from Provider.
- b. **RIGHT TO WITHHOLD PAYMENT.** County reserves the right to withhold any portion, or all, of a scheduled payment if Provider fails to perform under this Agreement until such breach has been fully cured.
- c. **SETOFF.** Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.
- d. **OTHER REMEDIES.** Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.
- e. **NO SUSPENSION.** In the event that County disputes in good faith an allegation of breach by Provider, notwithstanding anything to the contrary in this Agreement, Provider agrees that it will not terminate this Agreement or suspend or limit any Services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

22. TAXES

Provider shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Provider shall substantiate, on demand by the County, that all taxes and other charges are being properly paid.

23. HEALTH AND SAFETY

Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performing the Services. Provider shall take all

necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees in connection with performing the Services and other persons who may be affected thereby.

24. NON-DISCRIMINATION IN EMPLOYMENT

Provider shall not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state or local law or other unlawful form of discrimination. Provider shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Provider is determined by the final order of an appropriate agency or court of competent jurisdiction to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be cancelled, terminated or suspended in whole or in part by County, and Provider may be declared ineligible for further County agreements.

25. COMPLIANCE WITH E-VERIFY PROGRAM

Pursuant to N.C.G.S. § 143-133.3, Provider understands that it is a requirement of this Agreement that Provider and its subcontractors or consultants must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Provider agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and Provider shall require its subcontractors and consultants to do the same. Upon request, Provider agrees to provide County with an affidavit of compliance or exemption.

26. CONFIDENTIAL INFORMATION

For purposes of this Agreement, the party disclosing Confidential Information is the “Discloser,” and the party receiving Confidential Information is the “Recipient.” “Confidential Information” shall mean any nonpublic information concerning the parties’ respective businesses including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of any agreement between the parties and the discussions, negotiations and proposals related thereto. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as “Confidential.” Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

- a. in the public domain through no fault of the Recipient;
- b. within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- c. lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- d. independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;
- e. disclosed with the prior written consent of the Discloser; or
- f. required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser's sole expense.

27. OWNERSHIP OF WORK PRODUCT

- a. All work product created by Provider pursuant to this Agreement, including, without limitation, design drawings, construction documents, photographs and models and any derivative works and compilations, and whether or not such work product is considered a "work made for hire" or an employment to invent (hereinafter referred to collectively as "Work Product") shall be the exclusive property of County. County and Provider agree that such original works of authorship are "works made for hire" of which County is the author within the meaning of the United States Copyright Act. To the extent that County is not the owner of the intellectual property rights in and to such Work Product, Provider hereby irrevocably assigns to County any and all of its rights, title and interest in and to all original Work Product created pursuant to this Agreement, whether arising from copyright, patent, trademark, trade secret or any other state or federal intellectual property law or doctrine. Upon County's request, Provider shall execute such further documents and instruments or obtain such documents from third parties, including consultants and subcontractors, if applicable, necessary to fully vest such rights in County. Provider forever waives any and all rights relating to original Work Product created pursuant to this Agreement, including without limitation, any and all rights arising under 17 U.S.C. § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- b. In the event the use of any of Provider's intellectual property, including any derivative work created with the use of third-party intellectual property, is necessary for the use of any Work Product, Provider hereby grants to County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the intellectual property for the purposes set forth in this Agreement and will ensure that any third-party grants the same.

- c. County may use Work Product for any other purpose and on any other project without additional compensation to Provider. Notwithstanding the foregoing, the use of Work Product by County for any purpose other than as set forth in this Agreement shall be at County's risk.

28. NO ASSIGNMENT WITHOUT CONSENT

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void. An assignee shall acquire no rights, and County shall not recognize any assignment in violation of this provision.

29. GOVERNING LAW AND VENUE

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

30. DISPUTE RESOLUTION

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

31. GOVERNMENTAL IMMUNITY

County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

32. NON-WAIVER

Failure by County at any time to require the performance by Provider of any of the provisions of this Agreement shall in no way affect County's right hereunder to enforce the same, nor shall any waiver by County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

33. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral. Notwithstanding the foregoing, all documents included in the Request for Qualifications and the qualifications statement submitted

by Provider, if applicable, including, but not necessarily limited to: General Conditions; Supplementary General Conditions; Scope of Work; Specifications; Addenda; Accepted Proposal; Notice to Proceed; Performance Bond; Payment Bond; MBE forms; Power of Attorney; Insurance Certificates; Approval by County Commissioners; Tax Statement and Certification; Notice of Substantial Completion; Notice of Final Completion and Acceptance; and Drawings are incorporated herein by reference and made an integral part of this Agreement. To the extent the terms of such documents conflict with the terms of this Agreement, the terms of this Agreement shall prevail.

34. HEADINGS

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

35. SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

36. AMENDMENTS

No amendments or changes to this Agreement, or additional Proposals or Statements of Work, shall be valid unless in writing and signed by authorized agents of both Provider and County.

37. NOTICES

- a. **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.
- b. **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.

- c. **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

- i. For the County: Brunswick County Manager
P.O. Box 249
Bolivia, NC 28422
Fax: 910-253-2022

- ii. For the Provider: MHAworks, P.A.
Attn: Michael J. Hining, Registered Agent
501 Washington Street, Suite G
Durham, NC 27701

[SIGNATURES APPEAR ON FOLLOWING PAGE]

38. SIGNATURES

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S. § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S. § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

BRUNSWICK COUNTY_____
Clerk to the BoardBy: _____
Chairman, Board of Commissioners

[SEAL]

MHAWORKS, P.A.By: Matthew Johnson

Printed Name: Matthew Johnson

Title: Project Architect

Date: 9/27/2021

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

Julie A. Miller
Julie A. Miller, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

Robert V. Shaver, Jr.
Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney

This is **EXHIBIT A**, consisting of 11 pages, referred to in and part of the **Professional Services Agreement between Owner and Architect** to which it is attached.

Architect's Services

The Professional Services Agreement is supplemented to include the following agreement of the parties.

Architect shall provide services in accordance with the Request for Qualifications, as applicable, and in accordance with the Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

Architect understands that Brunswick County would like to expand the existing Utilities Operations Center (UOC) Building located at 250 Grey Water Road NE in Supply, NC. The existing facility was completed in 2010 and included areas to accommodate future expansion. The area currently identified for the expansion is as shown on the image below.



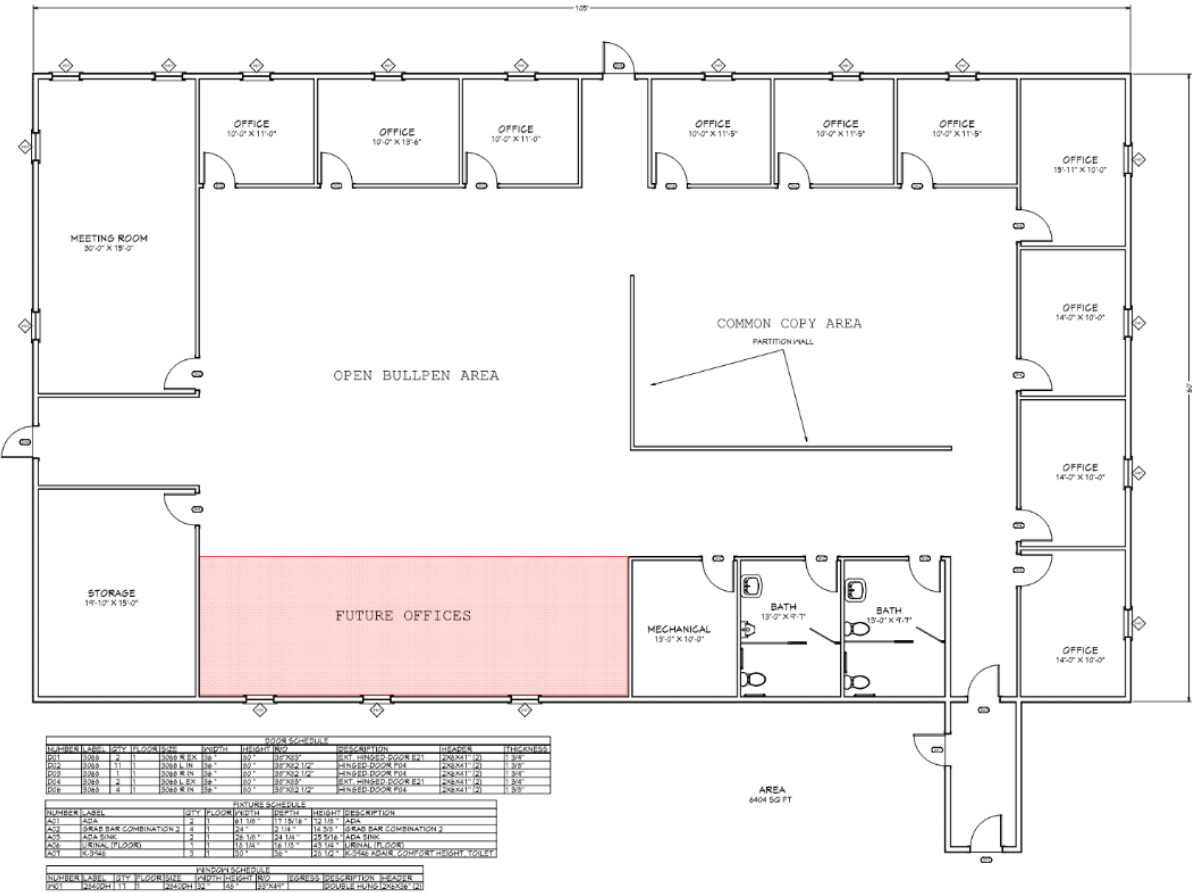
Existing Aerial Image showing proposed Expansion

The proposed expansion will be a Pre-Engineered Metal Building Structure with exterior cladding that coordinates with the existing facility aesthetic. Architect understands that the desired expansion is between 4,000sqft and 6,400sqft which will be based on what is feasible within the existing site conditions as well as the identified budget. Architect understands that site improvements will be minor and will likely only involve repairs to adjacent turf, sidewalk, curb, and fencing. Additionally, Architect understands that the intent would be for the expansion to tie into the utilities currently serving the existing building; however, this will need to be reviewed and confirmed during the design of the expansion.



Existing Facility showing area where expansion is proposed.

The interior of the expansion will need to coordinate with the existing facility; however, specific interior finishes do not have to match. The determination of the interior aesthetic will be based on the identified project budget and the Owner’s needs. Architect understands that the goal of this expansion is to maximize the building area and that the interior of the expansion could possibly be upfit in phases. The desired scope of the interior spaces may include a conference room, open office space, individual offices, storage, utility spaces, and restrooms. The expansion will be connected to the existing building through a breezeway which may or may not be enclosed to maintain access to the electrical room and fire alarm control panel in the existing building. A preliminary concept plan is shown below.



Preliminary Expansion Plan

PHASE A - Study and Preliminary Design Phase

Architect shall facilitate a kick-off meeting to review the following:

Consult with Owner to define and clarify Owner's requirements for the Project and available data.

Advise Owner of any need for Owner to provide data or services which are not part of Architect's Basic Services.

Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Architect, including but not limited to mitigating measures identified in the environmental assessment.

Upon review and confirmation of the scope of work, Architect shall:

Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.

Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.

Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.

Furnish two (2) review copies of the Preliminary Design Phase documents and any other deliverables to Owner and review them with Owner. Within fourteen (14) calendar days of receipt, Owner shall submit to Architect any comments regarding the Preliminary Design Phase documents and any other deliverables.

Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish two (2) review copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables to the Owner in accordance with the schedule outlined herein.

Architect's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

PHASE B - Design Development & Final Design Phase

After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Architect shall:

Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.

Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities. Submit permit applications to governmental authorities and act as the Agent of the Owner.

Advise Owner of any adjustments to the opinion of probable Construction Cost known to Architect.

Prepare and furnish bidding documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within twenty (20) days of receipt, Owner shall submit to Architect any comments and instructions for revisions.

Revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and submit up to seven (7) final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to the Owner in accordance with the schedule outlined herein.

Architect's services under the Final Design Phase will be considered complete on the date when the submittals have been delivered to Owner.

In the event that the Work designed or specified by Architect is to be performed or furnished under more than one prime contract, or if Architect's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Architect shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Architect's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit B whether or not the work under such contracts is to proceed concurrently.

The number of prime contracts for Work designed or specified by Architect upon which the Architect's compensation has been established under this Agreement is one (1). If more prime contracts are awarded, Architect shall be entitled to an equitable increase in its compensation under this Agreement.

PHASE C - Bidding or Negotiating Phase

After acceptance by Owner of the bidding documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Architect shall:

Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been

issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.

Issue addenda as appropriate to clarify, correct, or change the bidding documents.

Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.

Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.

If bidding documents require, the Architect shall evaluate and determine the acceptability of “or equals” and substitute materials and equipment proposed by bidders.

Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work. Provide a Recommendation of Award letter to Owner.

The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

PHASE D - Construction Phase

Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Architect shall:

General Administration of Construction Contract: Consult with Owner and act as Owner’s representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Architect as assigned in the Construction Contract shall not be modified, except as Architect may otherwise agree in writing. Architect shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

Selecting Independent Testing Laboratory: Assist Owner in the selection of an independent testing laboratory to perform testing services.

Pre-Construction Conference: Participate in a Pre-Construction Conference prior to commencement of Work at the Site.

Schedules: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Architect, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.

Baselines and Benchmarks: As appropriate, establish baselines and benchmarks for locating the Work which in Architect’s judgment are necessary to enable Contractor to proceed.

Visits to Site and Observation of Construction: In connection with observations of Contractor’s Work while it is in progress:

Make visits to the Site at intervals appropriate to the various stages of construction, as Architect deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Architect, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Architect in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Architect's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Architect will determine in general if the Work is proceeding in accordance with the Contract Documents, and Architect shall keep Owner informed of the progress of the Work.

The purpose of Architect's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Architect to better carry out the duties and responsibilities assigned to and undertaken by Architect during the Construction Phase, and, in addition, by the exercise of Architect's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Architect's visits shall be of sufficient quantity, duration, and thoroughness so that the Architect may provide the needed certifications to the governmental authorities having jurisdiction over the project. Architect shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Architect have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Architect neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.

Defective Work: Reject Work if, on the basis of Architect's observations, Architect believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

Clarifications and Interpretations; Field Orders: Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Architect may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.

Change Orders and Work Change Directives: Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.

Shop Drawings and Samples: Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Architect shall meet any Contractor's submittal schedule that Architect has accepted.

Substitutes and "or-equal": Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.

Inspections and Tests: Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Architect's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Architect shall be entitled to rely on the results of such tests.

Disagreements between Owner and Contractor: Provide written recommendations on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either recommend denial of such Claim in whole or in part, recommend approval of such Claim, or decline to resolve such Claim if Architect in its discretion concludes that to do so would be inappropriate. In making such recommendations, Architect shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any recommendation made in good faith in such capacity.

Applications for Payment: Based on Architect's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

Determine the amounts that Architect recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Architect's representation to Owner, based on such observations and review, that, to the best of Architect's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Architect's responsibility to observe Contractor's Work. In the case of unit

price work, Architect's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents). However, quantity determinations shall be made only in so far as it is Architect's responsibility to observe Contractor's

Work. The Architect may rely on quantities confirmed by Inspectors or other Resident Project Representatives assigned by the Owner.

By recommending any payment, Architect shall not thereby be deemed to have represented that observations made by Architect to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Architect in this Agreement and the Contract Documents. Neither Architect's review of Contractor's Work for the purposes of recommending payments nor Architect's recommendation of any payment including final payment will impose on Architect responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Architect to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

Contractor's Completion Documents: Receive, review, and transmit to Architect maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved, and transmit the annotated record documents which are to be assembled by Architect in accordance with the Contract Documents to obtain final payment.

Substantial Completion: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Architect considers the Work substantially complete, Architect shall deliver a certificate of Substantial Completion to Owner and Contractor.

Final Notice of Acceptability of the Work: Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Architect may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Architect shall also provide a notice that the Work is acceptable to the best of Architect's knowledge, information, and belief and based on the extent of the services provided by Architect under this Agreement. Architect shall provide a "Certificate of Compliance" and "Certificate of Completion" with the recommendation for final payment.

Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.

Review of operation and maintenance manuals as provided by the General Contractor.

Duration of Construction Phase: The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Architect for final payment to Contractors in accordance with the Contract Documents. If the Project involves more than one prime contract, then Construction Phase services may be rendered at different times in respect to the separate contracts.

PHASE E - Post-Construction Phase

During the Post-Construction Phase Architect shall:

Visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.

Visit the Project within one (1) month before the end of the Construction Contract's warranty period to ascertain whether any portion of the Work is subject to correction.

The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate two (2) months after the conclusion of the Construction Contract's warranty period.

PART 2 – ASSUPMTIONS & EXCLUSIONS

The following list of exclusions are provided to clarify the assumptions used to create this Scope of Services. The following items are excluded.

Travel to similar facilities.

Public information meetings or other meetings outside of those defined herein.

The final building structure is to be provided by the Pre-Engineered Metal Building Supplier.

Creation of full as-builts for the existing facility is not included.

Current permitting for stormwater management includes the proposed expansion, up to 6,400sqft, and additional permitting should not be required.

Modifications to existing parking areas and vehicular circulation is not anticipated and is not included.

Hydrant flow tests for the design of the fire protection system is not include and shall be the responsibility of the Fire Protection Contractor.

Construction Material Testing and/or Special Inspections are excluded and shall be contracted by the Owner through a third-party agency.

Permit & Review Fees.

PART 3 – SCHEDULE

Architect understands that the Owner would like to have this project completed as soon as possible and preferably within the next year. The desired schedule will be reviewed and developed as part of the kick-off meeting with the Owner; however, we anticipate the following milestones for the project.

- September 13, 2021 – Design Proposal provided to Brunswick County
- September 23, 2021 – Contract submitted for October 4th Board of Commissioners Meeting.
- October 5th, 2021 – Issue Notice to Proceed
- Week of October 11th – Schedule kick-off meeting with County & full Design Team.
 - a. Release Geotechnical & Survey consultants. Anticipate four (4) weeks to perform work and receive information needed for final design coordination.
 - b. Review of preliminary concept design and prepare final schematic design package for Owner review. Anticipate approximately two (2) weeks.
- Week of November 1st – Submit Schematic Design package to Owner for review.
 - a. Note that proceeding into Design Development phase will be dependent upon receipt of survey and geotechnical report.
- Week of November 29th – Proceed with Design Development Phase. Anticipate four (4) weeks to prepare complete package.
 - a. If survey and geotechnical reports are received sooner, the start of this phase may be expedited.
 - b. Provide Design Development package for Owner review the end of December 2021.
- Week of January 3rd – Review Design Development package with Owner & finalize Construction Documents. Anticipate two (2) weeks for completion of construction document package.
- Week of January 17th – Submit final Construction Documents to Owner and local AHJ Agencies for plan review and permitting process.
 - a. Duration of plan review process will need to be reviewed and discussed with Owner as to when the project will be issued for bidding to General Contractors.
- Week of February 14th – Issue the plans for bidding to General Contractors. Minimum thirty (30)-day bid window, with recommendation to allow for five (5) weeks.

- Week of March 28th – Receive bids and negotiate construction contract with Owner and General Contractor. Anticipate 2 months for full execution of the construction contract.
- Week of May 30th – Schedule pre-construction conference with Owner and General Contractor and issue Notice to Proceed. Anticipate up to nine (9) months for total construction duration.
 - a. Based on current market conditions, procurement of materials, especially pre-engineered metal buildings, have been delayed. Current estimates are approximately twenty (20) weeks for procurement of PEMB, which results in building delivery in the middle of October.
 - b. We anticipate that work on-site will start approximately two (2) months prior to the receipt of the PEMB, in the middle of August.
 - c. The duration from May to August will be utilized to prepare and review submittals and for the Contractor to procure materials.
 - d. We expect that work on-site will be roughly four (4) to six (6) months depending on the final scope of construction, resulting in Project Completion from early December 2022 to early February 2023.
- Warranty Walk-Through at ten (10) months after project completion.

This is **EXHIBIT B**, consisting of 2 pages, referred to in and part of the **Professional Services Agreement between Owner and Architect** to which it is attached.

Payments to Architect for Services
Basic Services - Lump Sum

The Professional Services Agreement is supplemented to include the following agreement of the parties.

Compensation for Basic Services - Method of Payment

A. Owner shall pay Architect for Basic Services as follows:

A Lump Sum amount based on the following estimated distribution of compensation:

	<u>Amount</u>	<u>Duration</u>
		Refer to Schedule in Exhibit A
PHASE A Study & Preliminary Design Phase	<u>\$ 9,760.00</u>	
Geotechnical Investigation	<u>\$ 4,000.00</u>	
Survey	<u>\$ 6,000.00</u>	
 PHASE B Design Development & Final Design	 <u>\$ 29,280.00</u>	
PHASE C Bidding and Negotiating Phase	<u>\$ 13,664.00</u>	
PHASE D Construction Phase	<u>\$ 37,088.00</u>	
PHASE E Post-Construction Phase	<u>\$ 7,808.00</u>	
 Basic Services Total	 <u>\$ 107,600.00</u>	

Architect may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

The Lump Sum includes compensation for Architect's services and services of Architect's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

The portion of the Lump Sum amount billed for Architect's services will be based upon Architect's estimate of the percentage of the total services actually completed during the billing period.

The date for project completion shall be determined by adding the above noted Total Duration in Exhibit A, also known as the "Time for Completion" to the Effective Date of the Agreement.