

**NORTH CAROLINA
BRUNSWICK COUNTY**

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

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 WithersRavenel, Inc. (hereinafter referred to as “Provider” or “Engineer”), 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”) at the agreed upon fees, all as more fully set forth on Exhibit “A” attached hereto.

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 07/18/2024, 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 herein (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. 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

If applicable, 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 fees as specified in Exhibit "A" 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. PERMITS AND APPROVALS

If applicable, 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.

10. 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.

11. PROVIDER REPRESENTATIONS

- (1) 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;

- (2) Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (3) 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;
- (4) 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;
- (5) Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;
- (6) Provider has not engaged in corrupt, fraudulent or coercive practices in competing for or executing this Agreement;
- (7) Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- (8) 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);
- (9) 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;
- (10) 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;
- (11) 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
- (12) 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.

12. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the Agreement. Provider will comply with all applicable federal laws, regulations, executive orders, federal government policies, procedures, and directives.

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. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

Contractors or Providers who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are

forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

18. PROCUREMENT OF RECOVERED MATERIALS

- (1) In the performance of this Agreement, Provider shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –
 - i. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
 - ii. Meeting Agreement performance requirements; or
 - iii. At a reasonable price.
- (2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) Provider also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

19. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

- (1) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause –
- (2) *Prohibitions.*
 - i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 - ii. Unless an exception in paragraph (c) of this clause applies, Provider and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

- b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- d. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(3) *Exceptions.*

- i. This clause does not prohibit contractors from providing –
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- ii. By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 - 1. *Are not used* as a substantial or essential component of any system;
and
 - 2. *Are not used* as critical technology of any system.
 - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(4) *Reporting requirement.*

- i. In the event Provider identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or Provider is notified of such by a subcontractor at any tier or by any other source, Provider shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

- ii. Provider shall report the following information pursuant to paragraph (d)(1) of this clause:
 - a. Within one (1) business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - b. Within ten (10) business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, Provider shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(5) *Subcontracts*. Provider shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

20. DOMESTIC PREFERENCE FOR PROCUREMENTS

As appropriate, and to the extent consistent with law, Provider should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

21. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

- (1) Provider agrees to provide County, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers,

and records of Provider which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

- (2) Provider agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) Provider agrees to provide authorized representatives from the federal government access to construction or other work sites pertaining to the work being completed under the Agreement.
- (4) In compliance with Section 1225 of the Disaster Recovery Act of 2018, County and Provider acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by representatives of the federal government, including the Comptroller General of the United States.

22. SUSPENSION AND DEBARMENT

- (1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Provider is required to verify that none of Provider's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) Provider must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by County. If it is later determined that Provider did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the federal government and County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23. 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.

24. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Provider acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Provider's actions pertaining to this Agreement.

25. NO OBLIGATION BY FEDERAL GOVERNMENT

The federal government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-federal entity, Provider, or any other party pertaining to any matter resulting from the Agreement.

26. MINORITY BUSINESS ENTERPRISES

If subcontracts are to be let, Provider is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

27. 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.

28. 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.

29. REMEDIES

- (1) **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.
- (2) **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.
- (3) **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.
- (4) **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.
- (5) **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.

30. 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.

31. 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.

32. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, Provider agrees as follows:

- (1) Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Provider will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) Provider will, in all solicitations or advertisements for employees placed by or on behalf of Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) Provider will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or

action, including an investigation conducted by the employer, or is consistent with Provider's legal duty to furnish information.

- (4) Provider will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Provider's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) Provider will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) Provider will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of Provider's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Provider may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) Provider will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Provider will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Provider becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Provider may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency,

instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

33. COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT

- (1) *Provider.* If applicable, Provider shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Agreement.
- (2) *Subcontracts.* If applicable, Provider or subcontractor shall insert in any subcontracts the clause above and such other clauses as may be required, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) *Breach.* A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

34. COMPLIANCE WITH THE DAVIS-BACON ACT (AS AMENDED)

- (1) If applicable, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) and the requirements of 29 C.F.R. Part 5, as may be applicable. Provider shall comply with

40 U.S.C. §§ 3141-3144 and 3146-3148 and the requirements of 29 C.F.R. Part 5, as applicable.

- (2) Providers are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (3) Additionally, Providers are required to pay wages not less than once a week.

35. CLEAN AIR ACT

- (1) Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) Provider agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

36. FEDERAL WATER POLLUTION CONTROL ACT

- (1) Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) Provider agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

37. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with the Contract Work Hours and Safety Standards Act:

- (1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and

one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section Provider and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Provider and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) *Withholding for unpaid wages and liquidated damages.* County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Provider or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) *Subcontracts.* Provider or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Further Compliance with the Contract Work Hours and Safety Standards Act, as applicable:

- (1) Provider or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2) Records to be maintained under this provision shall be made available by Provider or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency,

and the Department of Labor, and Provider or subcontractor will permit such representatives to interview employees during working hours on the job.

38. 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.

39. 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:

- (1) in the public domain through no fault of the Recipient;
- (2) within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- (3) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- (4) 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;
- (5) disclosed with the prior written consent of the Discloser; or

- (6) 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.

40. OWNERSHIP OF WORK PRODUCT

- (1) 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.
- (2) 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.
- (3) 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. NOTICES

- (1) **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.
- (2) **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.
- (3) **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
- ii. For the Provider: WithersRavenel, Inc.
219 Station Road, Suite 101
Wilmington, NC 28405

51. 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. § 66-58.1 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]

WITHERSRAVENEL, INC.By: Leonard McBryde III, P.E.Printed Name: Leonard McBryde III, P.E.Title: Utilities Director, WilmingtonDate: 6/30/2022

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

Aaron C. Smith, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

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

EXHIBIT “A”

Brunswick County Town of Navassa Water Distribution System Rehabilitation

PART 1 – PROJECT DESCRIPTION

Brunswick County acquired the Town of Navassa’s water system in July of 2020. The Navassa system was nonviable when Brunswick County acquired it and has identified components that need to be replaced or rehabilitated to bring it to Brunswick County standards. The proposed project consists of:

1. Replace approximately 12,000 LF of water line and associated appurtenance.
2. Install 40 LF of 6-inch PVC water line between the existing Brunswick County 12-inch main distribution line and the existing Town of Navassa 6-inch distribution line, including three (3) fire hydrants to facilitate line flushing.
3. Replace 20 fire hydrants.
4. Install 20 blow-off valves on dead end lines.
5. Exercise all system valves, approximately 150.
6. Install two (2) replacement industrial meters and one (1) advanced metering infrastructure (AMI) base station.

PART 2 – BASIC SERVICES

A2.01 Project Management

A. Engineer shall:

1. Manage the project by keeping the County regularly informed of progress, providing over-sight of the production tasks, and managing the monthly billing and invoicing for the project.

A2.02 Survey and Subsurface Utility Engineering (SUE)

A. Engineer shall:

1. Utilize 811, Lidar, GPS, and Brunswick County information to establish layout and profile.
2. Perform a baseline survey along the project route to establish profile and location of all pertinent planimetric features and field markings provided by SUE. The survey will be for an approximate 30-foot corridor along proposed water main alignment. Horizontal locations will be based on NC State Grid, North American Datum (NAD)’83 (2011) and Vertical control will be based on North American Vertical Datum (NAVD)’88.
3. Perform Level B SUE field investigation using Electromagnetic (EM) and Ground Penetrating Radar (GPR) to designate utilities along the project corridor(s). Mark all utilities in accordance with American Public Works Association (APWA) guidelines using marking paint and/or pin flags. Provide a detailed sketch to the survey crews to use as a reference while locating all the Level B SUE paint. This information will be incorporated into project drawings as needed.
4. Perform Level A SUE (test holes by vacuum excavation) at five (5) locations up to 6-feet in depth to determine information such as size, depth, and material on critical utilities. All test

hole locations will be conventionally surveyed and incorporated into project drawings. Appropriate traffic control measures will be used where required.

A2.03 Design

A. Engineer shall:

Based on the data and other information developed as part of the preceding Tasks, Engineer will perform the design services that include the following sub-tasks.

1. Conduct a review of compiled data including mapping, SUE, site visit and as-builts plans.
2. Evaluate collected data to determine appropriate methods for addressing project needs.
3. Consider the necessary logistics for maintaining water and sewer service to minimize interruption to service.
4. Prepare plans and specifications for the project per the following sub-tasks:
 - a. Prepare 60% Plans/Technical Specification Table of Contents: Plans will include a cover, general notes, plan sheets, project-specific details, and standard project details.
 - b. Prepare 90% Plans/Technical Specifications: Contract Documents reflecting review comments in the 60% stage.
 - c. Prepare Final Plans/Specifications: Contract Documents reflecting review comments in the 90% stage.
5. Submittal to Division of Water Infrastructure (DWI)
 - a. Submit Final Plans/Technical Specifications to DWI for approval.
 - b. Address and incorporate review comments from DWI and re-submit to DWI for final approval.
6. Opinion of Probable Construction Cost (OPCC)
 - a. Prepare and submit to the OPCC for the project based on the plans and specifications at the 60% and Final submittals.
7. Coordinate design efforts with NCDOT and other applicable permitting agencies with the goal of expediting the permit approvals necessary for the installation.

A2.04 Bidding Phase

A. Engineer shall:

Upon receipt of written authorization from the Owner, Engineer will perform the bidding services that include the following sub-tasks. This Task assumes a two (2) bid process. Additional and/or multiple bids shall be considered Additional Services.

1. Bid Advertisement
 - a. Assist in advertising the project for competitive formal bids. This will include preparing the "Notice to Bidders" for use for advertising in local newspapers, plan rooms, and website. All documents must be reviewed and approved by County in advance.
 - b. Provide electronic copies of construction documents for advertisement and bidding.

2. Pre-Bid Meeting

- a. Conduct a Pre-Bid Meeting with Owner, DWI, prospective bidders, and material suppliers. Prepare the agenda, take notes, and prepare a summary report of the meeting for distribution.
- b. Manage the project addendums. After the Pre-Bid meeting, will issue an Addendum with the Pre-Bid Meeting Summary. During the bidding phase, will issue additional addenda as deemed necessary.

3. Bid Opening

- a. Attend the bid opening, prepare the bid tabulation documents, open bids, and read into record, as well as discuss the bid results with the Owner.
- b. tabulate the bids and issue an opinion as to the responsive and responsible low bidder for the project.

A2.05 Construction Administration

A. Engineer shall:

As construction administration and review services are requested, Owner agrees that such administration, review, or interpretation of construction work or documents by Engineer shall not relieve any contractor from liability regarding its duty to comply with the engineering standards for the project and shall not give rise to a claim against a contractor's failure to hold in accordance with the applicable plans, specifications, or standards.

1. Execution of the Construction Contract

Under this task, the Engineer will assemble the contract documents for and assist the Owner with the execution process between the Contractor and the Owner.

2. Pre-Construction Conference

The Engineer will attend a Pre-Construction Conference. At the pre-construction conference, procedural guidelines and specific Project requirements will be discussed with the Contractor. Among the items to be addressed are correspondence distribution, shop drawing and scheduling procedures, Notice-to-Proceed date, critical schedule requirements, payment procedures, staging areas, emergency procedures, survey control requirements, quality control procedures and requirements, and coordination with quality assurance testing. The Engineer will prepare and provide a meeting summary to the Owner and the Contractor. The Contractor shall be responsible to provide its Sub Contractors with the meeting summary(s).

3. Construction Contract Administration

The Engineer will act on behalf of the Owner and act as its representative during the 180-calendar day construction period. The Engineer will provide contract administration required for the Project, including:

Carry out duties and responsibilities as the Engineer as stated in the General Conditions and Supplemental Conditions of the construction contract; on behalf of the Owner, the Engineer shall administer the construction contract, respond to Contractor correspondence, issue

instructions from the Owner, and maintain a complete document file for the Project. Documents to be maintained include, but are not limited to:

- a) Correspondence,
- b) Quality Control Procedures,
- c) Construction Observation Records,
- d) Shop Drawing Schedule,
- e) Shop Drawing and Submittal Log,
- f) Change Orders,
- g) Scheduling,
- h) Project Meetings,
- i) Costs And Disbursement Data, and
- j) Progress Reports.

Engineer will supervise and manage the work performed by the Resident Project Representative (RPR) during construction.

4. Progress Meetings/Site Visits

During the 180-Calendar Day construction period, the Engineer will hold monthly progress meetings from Notice-to-Proceed through Substantial Completion. In these meetings, the Owner, Engineer, and the Contractor will address such items including but not limited to schedules, coordination problems, design issues, construction issues, pending change orders, outstanding shop drawings and other submittals, procurement delays, material issues and other issues related to completion of the project.

Based on on-site observations by the Engineer and RPR, Engineer will keep the Owner informed of the progress of the work and may recommend to the Owner to disapprove or reject work that does not conform to the Contract Documents.

5. Shop Drawing and Submittals Review

The Engineer will review and respond to Shop Drawings and submittals which the Contractor is required to submit for conformance with the design concept and compliance with the information given in the Contract Documents; The Engineer will transmit one copy of shop drawings to the Owner with written comments. Included in the shop drawing review is the assessment of alternates proposed by the Contractor. Alternate requests will be reviewed for conformance with the Contract Specifications. This subtask assumes the review and response to up to twelve (12) sets of Shop Drawings and up to twelve (12) reviews and responses to other submittals.

6. Review Pay Requests

Based on the on-site observations, information provided by the RPR, and review of the applications for payment and the accompanying data and schedules, the Engineer will assess the percentage of Project Completion by the Contract and recommend payments to the Contractor in the appropriate amount.

By recommending payment, Engineer shall not thereby be deemed to have represented those observations made by Engineer to check the quality or quantity of Contractor's Work in

progress or have involved detailed inspection of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review or Contractor's Work for the purpose of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, 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.

7. Change Orders and Time Extensions

The Engineer will provide contract administration services in connection with changes to the construction contract that reflect minor changes or deletions requested by the Owner, the Engineer, or the Contractor. The Engineer will maintain a listing of additional costs and credits as a result of change orders. Owner agrees to review change orders prepared by Engineer and issue a directive on its opinion of the change order in writing. Larger changes or claims asserted by the Contractor and/or redesigns, analyses, or evaluation that are beyond the scope of this Scope of Services or required through no fault of the Engineer, requested by the Owner or Contractor, shall be considered Additional Services.

8. Substantial/Final Walk-Through and Certification

The Engineer will conduct a walk-through review with the Contractor and the RPR to determine if the Project has reached substantial completion and prepare a punch list of work items needed to meet final completion. After the Contractor has addressed the items in the punch list, the Engineer will conduct one final walk-through review to determine if the work is acceptable and is in substantial conformance with the drawings and specifications to the best of the Engineer's knowledge. Once the Engineer and Owner deem the work to be acceptable and in substantial conformance with the drawings and specifications (to the best of the Engineer's knowledge), the Engineer can provide written notice of such to the Owner. Additionally, the Engineer can recommend final payment to Contractor as appropriate. Additionally, the Engineer can certify that the Project was built within substantial conformance with the drawings and specifications (to the best of the Engineer's knowledge), but only if:

- a) Engineer has been allowed to observe construction activities, startup, and testing which he deems appropriate.
- b) Engineer determines that his observations support that the construction was carried out satisfactorily.
- c) Known nonconforming construction has been satisfactorily corrected.

9. Prepare Record Drawings

Using redline drawings, construction survey, and other information prepared by the Contractor and the RPR, the Engineer will prepare Record Drawings for the Project.

10. Post-Construction Phase

Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:

- a) Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in

consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.

- b) Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
- c) The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified, will terminate twelve months after the commencement of the Construction Contract's correction period.

A2.06 Construction Observation

A. Engineer shall:

The Engineer can provide resident project representative as an optional service to the Owner. The duties are as follows:

1. Observe if construction is proceeding according to the Drawings and Specifications.
2. Document the work in daily field observation reports.
3. Document weather conditions as well as the ability of the Contractor to perform the work.
4. The Task assumes that full time observation will be required during critical stages. Non-critical stages of construction that include activities such excavating existing lines, clearing, stripping, erosion and sediment control, miscellaneous grading, and seeding when only periodic observation may be warranted.
5. The effort for this Task is based on an eight (8) hour work week during the first two months of construction, followed by (16) hour work weeks until substantial completion and then eight (8) hour work weeks until final completion. If the Contractor desires to work on weekends the additional RPR effort and expenses shall be considered additional services.
6. Utilizing the assumptions discussed above, the Engineer has estimated that approximately 300 RPR hours will be required. The Engineer will be paid for the actual number of RPR hours worked at an hourly fee of \$118/hour, which includes expenses. The Engineer has no control over inclement weather, the sequence, productivity, and, most importantly, the timing with which the Contractor will complete the work, and thus the number of field observation hours may differ from the 300 hours estimate. The Engineer will only be paid for the actual number of RPR hours worked. A day-by-day log will be kept of RPR hours so that the Owner can track the expenditure of these hours. If conditions of the Contract or the scope of the work defined in the Contract between the Contractor and the Owner is modified, such that the contract time is extended, then the Engineer reserves the right to negotiate an increase in the budget for this task.
7. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
8. Standards of Performance

- a. Engineer shall not at any time supervise, direct, control, or have authority over any Contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Contractor to comply with Laws and Regulations applicable to that Contractor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Contractor.
- b. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- c. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Engineers.

A2.07 Funding Administration

A. Engineer shall:

General Administration and Financial Management

1. Attend the project kick-off meeting with DWI to review CWSRF loan requirements.
2. Assist the Owner in completing DWI paperwork including state assurances, progress reports, monitoring report forms, and others as required by DWI for the project.
3. Assist the Owner in completing DWI requisition payment requests and compile necessary supporting documentation for the Owner to review, execute and submit to DWI.
4. Act as liaison between the Owner and DWI.
5. Provide ongoing technical assistance regarding CWSRF regulations and DWI requirements.
6. Assist the Owner in close-out procedures and paperwork.

B. Project Implementation

1. Provide oversight and guidance of procurement procedures in accordance with DWI requirements and applicable federal and state regulations.
2. Assist in complying with regulations regarding property acquisitions and easements, if necessary.
3. Conduct coordination sessions with the project engineer, Construction Administrator and Construction Observer, Owner, DWI, and construction Contractor.
4. Provide quality control and quality assurance reviews with the project engineer and Construction Administrator in the creation of bid documents, solicitation of bids, pre-bid meeting, review of bids, assembly of construction contracts, and pre-construction meeting to comply with state and federal regulations, including minority business recruitment.
5. Support the Owner to complete necessary construction-related public notifications.
6. Work with Owner to ensure compliance with all DWI guidelines during design, bidding, and construction.
7. Confirm debarment clearance for all contractors for the Owner to verify.

8. Participate in the pre-bid and pre-construction meetings by presenting CWSRF guidelines and discussing what will be expected from DWI during the course of the project.
9. Assist in processing construction Contractor payment requests approved by the Construction Administrator and Owner, to be submitted to DWI.
10. Obtain federal wage decision(s) from the U.S. Department of Labor website.
11. Compare the federal prevailing wage decision(s) to the certified payrolls, timesheets, and supporting documentation to identify potential issues, follow up on any discrepancies.
12. Conduct reviews of weekly certified Davis-Bacon payrolls (for up to 8 total Contractors/Subcontractors under Basic Services and based on an estimated construction time period of 180 days).
13. Conduct at least one set of employee interviews with each trade represented on-site for Davis-Bacon compliance, until a representative of trades and construction phases are obtained (for up to 8 total Contractors/Subcontractors under Basic Services and based on an estimated construction time period of 180 days).
14. Obtain construction inspection reports and photos from the Construction Observer to verify Davis-Bacon compliance, as needed.
15. Work with the Owner to prepare all necessary Davis-Bacon paperwork needed for inspections.

PART 3 – TIMELINE FOR SERVICES

A3.01 *Engineer's Timeline for Services*

- A. Engineer will begin work upon receipt of executed contract and/or written notice to proceed from the County. The funding program requires projects to be awarded for construction within 24 months of the date of the LIF. Specific milestones related to the Engineering Services are as follows:
 1. Bid & Design Package Submittal: December 1, 2022

PART 4 – ADDITIONAL SERVICES

A4.01 *Additional Services Requiring Owner's Written Authorization*

- A. Environmental Information Documentation that is not detailed above.
- B. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
 1. All permitting fees;
 2. Any work previously provided in other proposals;
 3. Any other services not specifically listed within the Scope of Services.
 4. Annexation Plats
 5. Boundary Surveys;
 6. Tree survey/cover report by Registered Forester;
 7. Platting services;
 8. Plot Plans;
 9. ALTA Surveys;

10. GIS mapping services;
11. Easements, Easement/ROW Plats;
12. Wetland Delineations;
13. Wetland/Buffer Determinations;
14. Phase I & II ESA's;
15. Geotechnical services;
16. Architectural and MEP services;
17. Structural Services;
18. Arborist/Registered Forester Services;
19. Site Plans;
20. Detailed lot grading;
21. Offsite utility or road improvements;
22. Pump Station design and permitting;
23. Force main design and permitting;
24. On-site water/sewer design;
25. Equipment Selections/Design;
26. Additional Meetings/Site Visits;
27. Adjacent property owner discussions;
28. Neighborhood meetings;
29. Attendance at formal regulatory meetings unless noted above;

Payments to Engineer 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 Engineer for Basic Services as follows:

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

	<u>Amount</u>
a. Project Management	\$ <u>22,000</u>
b. Survey and SUE	\$ <u>57,000</u>
c. Design	\$ <u>94,000</u>
d. Bidding Phase	\$ <u>15,000</u>
e. Construction Administration	\$ <u>36,000</u>
f. Funding Administration	\$ <u>50,000</u>
Total	\$ <u>274,000</u>

2. An Hourly amount with an estimated budget of:

a. Construction Observation	\$ <u>57,000</u>
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3. Fee Summary

a. Lump Sum	\$ <u>274,000</u>
b. Hourly	\$ <u>57,000</u>
Total	\$ <u>331,000</u>

4. Engineer 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.
5. The Lump Sum includes compensation for Engineer's services and services of Engineer's Engineers, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
6. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.



7. The date for project completion shall be determined by adding the above noted Total Duration, also known as the "Time for Completion" to the Effective Date of the Agreement.
8. The Hourly Fee Budget estimate includes expenses such as mileage, printing, per diem, and similar expenses.
9. Owner shall pay Engineer for Basic Services by an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project and reimbursable expenses which are include in the Hourly Fee Budget.
10. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services rendered but shall not exceed the total estimated compensation amount unless approved in writing by Owner.
11. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer's services, including labor costs, overhead, and profit.
12. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
13. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.