

**ENGINEERING AND CONSULTING PROFESSIONAL
SERVICES AGREEMENT BY AND BETWEEN
BRUNSWICK-GLYNN COUNTY JOINT WATER AND SEWER COMMISSION
AND**

THIS AGREEMENT made and entered into by and between **BRUNSWICK-GLYNN COUNTY JOINT WATER AND SEWER COMMISSION**, a public corporation created by Local Act of the General Assembly of the State of Georgia, acting by and through its Commissioners (hereinafter referred to as "JWSC") and _____, a Georgia corporation (hereinafter referred to as "Engineer").

WITNESSETH

WHEREAS, JWSC requires engineering design, permitting, and construction management services for treatment plant improvements at the Academy Creek and Dunbar Creek wastewater treatment facilities, known as 2019 Water Pollution Control Facilities Rehabilitation Academy Creek and Dunbar Creek – Project No. 906 (hereinafter "Project 906");

WHEREAS, the Engineer submitted a proposal for providing professional engineering services for Project 906;

WHEREAS, the JWSC at its meeting on _____ authorized and awarded the contract for professional engineering services for Project 906 to the Engineer; and

WHEREAS, it is the intention of the parties hereto to enter into this Agreement in order to provide a statement of the respective covenants, conditions and agreements in connection with the performance of services by Engineer to the JWSC.

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. ENGAGEMENT OF ENGINEER

- (a) JWSC hereby engages the Engineer as an independent contractor to perform and the Engineer agrees to perform professional services hereinafter set forth in the Scope of Services.
- (b) Proper execution of this Agreement by the JWSC shall not be construed by the Engineer as authorization to proceed with any work under the terms of this Agreement. Engineer shall be authorized to commence the work herein upon receipt of a Notice to Proceed from the JWSC.

- (c) All persons hired or used by Engineer shall be considered Engineer's employees and agents and not employees or agents of JWSC and Engineer shall ensure that such persons are qualified to engage in the activity and services in which they participate. Engineer shall be responsible for the accuracy, completeness and adequacy of any and all work and services performed by Engineer's employees and agents and shall ensure that all applicable licensing and operating requirements of federal, state, county and municipal governments, and all applicable accreditation and other standards of quality generally accepted in the field of Engineer's activities are complied with and satisfactorily met.
- (d) The standard of care for all professional engineering and related services performed or furnished by the Engineer under this Agreement will be the care and skill ordinarily used by members of the Engineering profession practicing under similar conditions within the State of Georgia, including but not limited to, materials and quality of workmanship. Engineer expressly warrants that the drawings and specifications prepared by the Engineer will be within the standard of care and sufficient to accomplish the work and services performed hereunder. Any review or approval by the JWSC of the plans and specifications for the Project shall not be deemed to diminish the Engineer's warranty of adequacy.

2. SCOPE OF SERVICES

- (a) Engineer agrees to perform professional services and to provide all the staff, facilities, materials, equipment and labor necessary to carry out, in good faith, the complete requirements set forth herein (hereinafter referred to as the "Project" or "Work") in strict conformity with all Sections herein together with that portion of Engineer's proposal, dated _____, titled "_____" which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter "Proposal").
- (b) JWSC agrees to supply information to the Engineer for use on the Project in AutoCAD 2008 format or later version. Translation of files or entering data into a compatible format is beyond the scope of this Agreement.

3. DESCRIPTION OF SERVICES: RESPONSIBILITIES

In addition to the Scope of Services identified in Section 2, above, the following provisions shall apply to this Agreement.

(a) Final Design Phase

- (1) Engineer shall prepare for JWSC's approval, detailed drawings, plans, and specifications to describe the size, character, and scope of work to be performed by contractors on the Project. Said approval must be in writing.

- (2) JWSC shall supply existing survey data in a CAD format that is sufficient with regard to route, existing features or relevance, sufficient location of existing utilities prior to design; coordinate any additional work with surveyor as needed and approved. Engineer will perform supplemental survey as outlined in the Project Approach – Exhibit A
- (3) All designs, plans, drawings, reports, data, and other documents prepared by Engineer for the Project described herein are instruments of the JWSC and for the exclusive use of the JWSC. The JWSC hereby agrees to use the said documents in connection with only JWSC projects. Reuse or modification of any such documents by JWSC, without Engineer's written permission, shall be at JWSC's sole risk, and JWSC agrees to indemnify and hold Engineer harmless from all claims, damages, and expenses, including attorney's fees, arising out of such reuse by JWSC or by others acting through JWSC
- (4) Engineer will furnish two (2) copies, in PDF file format, of the drawings and specifications in final form to the JWSC.
- (5) Engineer agrees to redesign the Project in the event the preliminary cost estimate, the final cost estimate, or the lowest responsive bid less deductive alternates, if any, exceeds the funds available by an amount or percentage to be mutually agreeable to the JWSC and the Engineer. Engineer shall be compensated for the redesign by an addendum and fee, to be determined once the scope for the redesign is agreed upon by both parties.
- (6) Engineer is to complete all design and permitting within (180) days of receiving a signed notice to proceed.

(b) Bidding Phase

- (1) Engineer will assist the JWSC as follows:
 - (A) In creating bid package and contract documents and providing responses and addendums to plan holder questions;
 - (B) By attending pre-bid meetings and bid opening;
 - (C) By reviewing proof of bidder's qualifications and recommending approval or disapproval; and
 - (D) By evaluating the bids and making a recommendation as to contract award.

- (2) Engineer shall consult with the JWSC concerning all decisions as to the acceptability of subcontractors, if any, and other persons or organizations proposed by the general contractor.

(c) Construction Phase

The construction phase will commence with the Notice to Proceed signed by the JWSC and issued to the Contractor(s) by the Engineer. During the construction phase the following provisions will apply to this Agreement.

- (1) Engineer to coordinate and conduct public awareness and information meetings as required, ensuring all Glynn County requirements or public notification are met, including traffic control plans in conjunction with contractor.
- (2) Engineer shall conduct bi-weekly project update meetings with written agenda during construction. Additionally, this will include construction schedule review.
- (3) Engineer will visit the sites to observe the Contractor's work for compliance with the Contract Documents. Engineer shall make sufficient visits to the Project sites to determine if the work is proceeding as required. Engineer shall provide the JWSC with a minimum schedule of planned visits to the site. Proposed Construction Observation is outlined in Exhibit A. Additional site visits may be required from time to time at the request of the JWSC, or when the Engineer deems a visit to a site would be essential to determine if the work is being performed in a manner indicating that the work when completed will be in accordance with the Contract Documents, or as otherwise necessary for the Engineer to keep informed of the work. Each visit to a site shall be documented in a written field report and forwarded to the JWSC within twenty-four (24) hours of the visit.
- (4) Review and approve the Contractor's submission of shop drawings and materials submittals, as applicable. Issue additional instructions to the Contractor as may be necessary to interpret the drawings and specifications, or to illustrate changes required in the Contractor's work. All such additional instructions, whether verbal or in writing (including graphics), shall be forwarded to the JWSC within twenty-four (24) hours. Initial communication to the JWSC may be by email or facsimile with official correspondence to follow.
- (5) Engineer shall be responsible for preparation of change orders and certifying partial payment to the Contractor, as follows:
 - (A) Develop change orders during construction for any adjustment in the Contractor's scope of work, material qualities, and any other relevant matter, that may ultimately lead to an increase or

decrease in either contract price or contract time. The Engineer shall, upon developing a change order, request and review the Contractor's cost proposal and prepare some form of cost or price analysis of the specific change order. The Engineer shall submit said documents to the JWSC for approval.

- (B) Review and certify the Engineer's schedule of amounts for contract payment, including partial payments. Recommend approval or disapproval in writing to the JWSC for payment to the Contractor. All certifications for payment shall specify that a ten percent (10%) retainage is withheld by JWSC until fifty (50) percent completion of the project. At that time, if work is satisfactory, retainage can be reduced to 5% of the total contract amount.
 - (C) The JWSC reserves the right to reject Engineer's recommendation for payment to the Contractor without accrual of interest and to require additional documentation as reasonably necessary to evaluate the recommendation for payment. No certificate for payment, nor any payment shall constitute an acceptance of any work or service not in accordance with the Contract Documents.
- (6) Engineer shall be responsible for performance of final field inspections to ensure project completion. Additionally, engineer is responsible to obtain project acceptance from applicable agencies.
- (d) Substantial Completion:
- (A) Engineer shall issue the Certificate of Substantial Completion when the Project, or specified part thereof, is sufficiently completed in accordance with the Contract Documents, including completion of all tests, if any, such that the Project, or specified part thereof, can be utilized for the purposes for which it is intended.
 - (B) The Certificate of Substantial Completion shall include a list of items to be completed or corrected prior to the final inspection, and shall be supported by such data to substantiate its correctness as the JWSC may reasonably require.
- (e) Final Completion:
- (A) After **ALL** work on the Project has been completed in accordance with the Contract Documents, the Engineer shall submit to the JWSC two (2) sets of record drawings which shall be reproducible originals and shall be furnished

to the JWSC within sixty (60) days after all construction has been completed and the final inspection has been performed. Such record prints shall record information which the Engineer considers significant based upon mark-up drawings, shop drawings, and other record documents furnished by the Contractor to the Engineer and which were annotated by the Contractor to show all changes made during construction.

(B) Record drawings shall meet the requirements of the JWSC recording drawing specifications and include the following features:

- All pipe locations in relation to adjacent R/W, property lines, roads, etc.
- Sewer inverts and frame elevations
- Relevant benchmarks and points of elevation

4. COMPENSATION

- (a) The JWSC agrees to pay Engineer, in current funds, for satisfactory performance of the Work under this Agreement, those fees established and agreed upon in the Fee Schedule, in Exhibit "A" incorporated herein by reference, in an amount not to exceed _____ DOLLARS (\$_____), and which shall also pay for all loss or damage arising out of the nature of the aforesaid Work, and from unforeseen obstructions or difficulties encountered in the performance of the Work and for all expenses incurred by, or in consequence of the Work, its suspension or discontinuance, and for well and faithful completion of the Work and the whole thereof, as herein provided.
- (b) Any changes approved by the JWSC in the Scope of Work or Additional Services not contemplated by this Agreement shall be billed according to an executed change order or as an amendment to this Agreement.
- (c) Engineer agrees that the Work may require inspection and approval of the JWSC's Engineers or consultants and that the time for payment shall be tolled for a reasonable time as required for said inspection and approval. Engineer further agrees to toll the time for payment hereunder for an additional and reasonable period of time for the JWSC to approve the Work performed.
- (d) The making of a payment by the JWSC for any Work shall not constitute a waiver of any claims which JWSC may have against Engineer. JWSC may set-off from any payment to Engineer for the value of any Work omitted or done improperly, or of any claim it has against Engineer provided JWSC has sent written notice of such set-off to Engineer. Engineer may

contest any such set-off in any competent court in Glynn County, but may not terminate this Agreement or any service hereunder as a result of such set-off.

- (e) Engineer shall submit invoices to JWSC for services rendered in accordance with the payment schedule listed in Paragraph (a) of this Section. The fee shall be billed on a percent complete basis determined by actual labor and costs incurred at the time of invoicing. Engineer's fees and expenses shall be limited by the Work and by the total fee. JWSC may require and shall be furnished documentation supporting any charges billed to it. The JWSC shall pay any portion of the invoices submitted by Engineer which are not in dispute or otherwise set-off within thirty (30) Calendar days of receipt of same. In the event the JWSC fails to make payment within the said thirty (30) calendar days, the JWSC shall have an additional fifteen (15) calendar days to cure. If payment is not made during the time to cure, then interest shall accrue at the rate of seven percent (7%) per annum on the unpaid sum due and owing Engineer after the cure period. The JWSC reserves the right to request additional information from Engineer to support any invoice for payment presented, and such invoice is not payable until the additional information so requested is received by the JWSC. The acceptance of final payment by Engineer shall constitute a waiver of all claims by Engineer except those previously made in writing and still unsettled.

5. TERM OF AGREEMENT: EFFECTIVE DATE

- (a) The term of this Agreement shall be for Two Hundred Seventy (270) days in which time it is anticipated by the parties hereto that the Project shall be completed. Engineer's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The JWSC, in its sole discretion, upon request of Engineer or by JWSC's own initiative, may extend this Agreement under the same terms and conditions set forth herein for an additional time required for completion of the Work but in no event shall such extension exceed twelve (12) months.
- (b) This Agreement shall begin on the date last written below and the Work commence upon the JWSC issuing a Notice to Proceed to Engineer.

6. INSURANCE

Engineer shall procure and maintain during the life of this Agreement, and any extension thereof, errors and omission insurance, i.e., Professional Liability Insurance. The JWSC agrees to limit the Engineer's and its employee's liability to the JWSC and to all construction Contractors and Subcontractors on the project, due to the Engineer's negligent acts, errors, or omissions to meet the professional service standard of care requirements, such that the total aggregate liability of the

Engineer to those named shall not exceed \$4,000,000 and per the claim liability shall not exceed \$2,000,000. The Engineer shall maintain insurance in these amounts shown on a certificate of insurance provided to the JWSC upon execution of this agreement.

7. INDEMNIFICATION

The Engineer agrees, to the fullest extent permitted by law, to indemnify and hold harmless the JWSC against all claims, suits, damages, liabilities, and cost, including reasonable attorneys' fees, arising from the negligent acts of the Engineer in the performance of professional services under this Agreement, to the extent that the Engineer is responsible for such claims, damages, liabilities and cost, including attorneys' fees on a comparative basis of fault between the Engineer and the JWSC. The Engineer shall not be obligated to indemnify the other parties for their own negligence or for the negligence of others.

8. ASSIGNMENT

The JWSC shall consider Engineer the sole point of contact with regard to contractual matters. Engineer shall not assign any part of or all of the Work to be performed under this Agreement without the prior written consent and approval of the JWSC. The JWSC may condition any consent and approval upon such terms and provisions that JWSC may deem necessary. Further, no assignment of claims for money due or to become due to Engineer under this Agreement shall be effective unless the assignment of such claim is first approved by the JWSC.

9. PROHIBITED DISCRIMINATION

Engineer shall comply with all applicable federal and state laws prohibiting discrimination against any person on the grounds of race, color, religion, sex, national origin, age, disability, veteran status or any other status protected by law, in employment or in any condition of employment with Engineer or in participation in the benefits of the Work provided by Engineer under this Agreement.

10. COMPLIANCE WITH ALL LAWS

Engineer shall observe and comply with all laws, ordinances, rules and regulations of the federal, state, county or municipal governments, now in force or which may hereinafter be in force, including liability for all taxes, licenses or fees levied by the state or local governments. Further, Engineer shall observe and comply with policies and procedures of the JWSC relating to the Work.

11. CONFIDENTIAL MATERIAL

Any information, data, report, record, summary, table, map or study given to or prepared or assembled by Engineer under this Agreement shall be kept confidential and shall not be made available to any individual or organization by Engineer without the prior written approval of JWSC. Notwithstanding this provision, Engineer will comply with any request under the Open Records Act in a timely manner upon consultation with legal counsel for the JWSC.

12. DISPUTE RESOLUTION

- (a) Engineer irrevocably consents that any legal action or proceeding arising out of or in any manner relating to this Agreement shall be brought in any court in Glynn County, Georgia. Engineer designates the Secretary of the State of Georgia as its agent for service of process, provided no such agent located in Georgia is on file with the said Secretary. Engineer, by the execution and delivery of this Agreement, expressly and irrevocably assents to and submits to the personal jurisdiction of any court in Glynn County, Georgia, and in any said action or proceeding. Engineer hereby expressly and irrevocably waives any claim or defense in any said action or proceeding based on any alleged lack of jurisdiction, improper venue or *forum non conveniens* or any similar basis.
- (b) A dispute between the parties arising out of or in any manner relating to this Agreement, or breach thereof, may be submitted to mediation or resolved in a court of law having jurisdiction of such matters.
- (c) No provision set forth in this Section is to have the effect to abridge the right of any party to proceed in a court of law or equity.

13. MODIFICATION OF AGREEMENT

Any modification, alteration or change to this Agreement, including modification of the Work to be performed, extension of time of performance, increases or decreases in the amount of compensation, shall be made except by written amendments to this Agreement and executed by the parties or by a change order approved by the JWSC.

14. WAIVER

The failure of either party at any time to enforce or require performance of any provision hereof shall in no way operate as a waiver or affect the right of such party at a later time to enforce the same. No waiver by either party of any condition or the breach of any provision contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or

construed as a further or continuing waiver of any such condition or breach, or a waiver of any other condition or of any breach of any other provision contained in this Agreement.

15. TERMINATION

- (a) This Agreement may be terminated, with or without cause, by JWSC upon written notice to Engineer. If the Project is abandoned by JWSC for more than sixty (60) consecutive days, Engineer may terminate this Agreement upon not less than fifteen (15) calendar days written notice to JWSC.
- (b) Engineer, upon termination of this Agreement, shall promptly turn over to JWSC all designs, plans, drawings, reports, data, and other documents prepared by Engineer for the Project. Engineer shall be entitled to payment up through and including the date of termination.

16. NOTICES

- (a) All notices, approvals, consents, requests, demands, claims or other communications shall be in writing (collectively referred to as "Notice").
- (b) It shall be sufficient service of any Notice if the same shall be delivered or mailed by first class registered or certified mail, return receipt requested, postage prepaid and addressed as follows:
 - (1) If to ENGINEER:
 - (2) If to JWSC: Jimmy Junkin, Executive Director
Brunswick-Glynn County Joint Water and
Sewer Commission
1703 Gloucester Street
Brunswick, Georgia 31520
 - (3) Copy to: Charles A. Dorminy, J.D., L.L.M.
Hall Booth Smith, P.C.
3528 Darien Highway, Suite 300
Brunswick, Georgia 31525
- (c) Any Notice hereunder shall be deemed to have been given or made as of the time of actual delivery or in the case of mailing when the same should have been received in due course of post. Any notice by facsimile transmission shall be deemed to have been given or made upon receipt and if verified by the facsimile apparatus that the transmission was in fact delivered, including the number to which the facsimile was sent, and the time and date it was transmitted successfully.

- (d) The parties hereto may, by Notice given hereunder, designate any different address to which subsequent Notices shall be sent or the person to whose attention the same shall be directed.

17. WARRANTY OF AUTHORITY

Each individual executing this Agreement on behalf of any party expressly represents and warrants that he or she has authority to do so, and thereby to bind the party on behalf of which he or she signs, to the terms of this Agreement.

18. ENTIRE AGREEMENT: BENEFIT TO PARTIES

- (a) This Agreement and any attached exhibit(s) constitute the entire agreement between the parties hereto; no prior written promises, or contemporaneous or subsequent oral promises or representations, shall be binding. The terms of this Agreement are contractual and not a mere recital.
- (b) With the exception of rights expressly conferred herein, nothing expressed or mentioned in or to be implied here from is intended or shall be construed to give to any person other than the parties hereto, any legal or equitable right, remedy or claim under or in respect hereto or any agreement, condition or provision herein contained and no provision shall be construed as creating any debt as against Engineer or JWSC in favor of any such person; this Agreement and the covenants, conditions and provisions hereof being intended to be used for the sole and exclusive benefits of the parties hereto.
- (c) Engineer and JWSC, their successors, executors, administrators and assigns hereby agree to the full performance of the covenants herein contained.

19. AMBIGUITIES: CONFLICTS

- (a) Both parties have fully participated in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning, and not strictly constructed for or against either party.
- (b) In case of any conflicts, the terms and conditions set forth in this Agreement shall control over the terms and conditions of the documents incorporated herein by reference.

20. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

21. TIME IS OF THE ESSENCE

Time is of the essence in fulfilling all terms and conditions of this Agreement.

22. EXECUTION IN COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

23. MISCELLANEOUS PROVISIONS

- (a) Section captions herein are for convenience of reference only and neither limit nor amplify the provisions of this Agreement.
- (b) The foregoing whereas clauses are hereby incorporated into this Agreement and made a part thereof.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their names under seal, all by their duly authorized officers

By: _____

Attest to:

By: _____

Date: _____ (SEAL)

BRUNSWICK-GLYNN COUNTY JOINT WATER AND SEWER COMMISSION

By: _____
G. Ben Turnipseed Sr., Chairman

By: _____
Jimmy Junkin, Executive Director

Attest to:

By: _____
Janice Meridith, Commission Clerk

Date: _____ (SEAL)