

Professional Services Agreement

This Professional Services Agreement (“Agreement”) is made and entered by and between the Levy Court Commissioners of Kent County, Delaware, (the “County”), a body corporate and politic and a political subdivision of the State of Delaware and _____, (the “Contractor”).

Section 1. Scope of Work

Contractor shall perform the work as described in the Scope of Work, - _____, dated _____, 2024, and attached hereto as Exhibit “A”. The work as described in the Scope of Work constitutes the “Project”. The “not-to-exceed” limitation for purposes of this Project is \$ _____. Unless otherwise provided in the Scope of Work, the anticipated submittal of all Project deliverables is immediately upon completion of the Project.

Section 2. Compensation

(A) Basic Services: This is not a retainer agreement. The County shall pay Contractor only in accordance with the rates and the not-to-exceed limitations contained in the Scope of Work on a time and materials basis. The County shall not be obligated to pay Contractor for any services, expenses, reimbursables, or other costs in excess of the not-to-exceed amount specified in the Scope of Work unless Contractor has obtained the express, written consent of the County prior to the commencement of services or incurring the expenses claimed.

(B) Billing Period: The Contractor may submit monthly, or less frequently, an invoice for payment based on the completion of the described tasks in conformance with the approved work

schedule. Payment is due within thirty (30) days of the County's receipt of the Contractor's invoice.

(C) Reimbursable Expenses: County agrees to pay the actual, necessary and reasonable expenses incurred by Contractor in performing services under this Agreement, or to reimburse Contractor for such expenses, as the case may be, for those expenses that the County has given prior approval such as long distance telephone and fax, postage and courier costs, copying costs, out-of-area travel, and related business expenses (such expenses not to exceed \$500.00 in a particular event without the prior approval of the County).

(D) Special Services: Compensation for "special services" shall be based on the Contractor's established hourly rates which shall be stated in or attached to the Scope of Work. Statements for special services may only be submitted on a monthly basis. Contractor shall advise the County in advance if the Contractor contends that a particular service falls into the "special services" category. No service shall be compensated as a special service unless and until approved by the County. The County shall promptly determine whether a service constitutes a special service so that work shall not be unreasonably delayed. As used in this Agreement, the term "special services" means:

(1) Preparation of any special reports required for the marketing of bonds or certificates of obligation.

(2) Appearances before regulatory agencies other than the County.

(3) Assistance to the County as an expert witness in any litigation with third parties arising from the development or construction of the Project and not involving the alleged fault of the Contractor.

(4) Special investigations involving detailed consideration of operation, maintenance and overhead expenses; preparation of rate schedules, earnings, and expense statements; preparation of special feasibility studies, appraisals, valuations, and material audits or inventories required for certification of force account construction performed by the County.

(5) Detailed mill, shop, and laboratory inspection of materials or equipment.

(6) Preparation of estimates and Contractor's rolls necessary for special assessments.

(7) Additional copies of reports and specifications (over the agreed number specified in the Scope of Work) and additional blueprint copies of drawings (over the agreed number specified in the Scope of Work).

(8) Preparation of applications and supporting documents for government grants or planning advances for public works projects.

(9) Preparation of environmental statements and assistance to the County in preparing for and attending public hearings on environmental impact statements.

(E) Records of Expenses: Contractor shall maintain reasonably detailed records of all work done on behalf of the County under this Agreement and of all expenses incurred for which Contractor seeks payment or reimbursement. Contractor shall promptly provide such records to the County upon request for inspection, copying, and audit.

Section 3. Changes to the Project Work; Additional Work

(A) Changes to Work: Contractor shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If the County finds it necessary to make changes to previously satisfactorily completed work or parts thereof,

the Contractor shall make such revisions if requested and as directed by the County and such services will be considered as additional work and paid for as specified under following paragraph.

(B) Additional Work: Work that is clearly not within the general description of the Scope of Work and not does not otherwise constitute special services under this Agreement must be approved in writing by the County by supplemental agreement before the additional work is undertaken by the Contractor. If the Contractor is of the opinion that any work is beyond that contemplated in this Agreement and the Scope of Work governing the project and therefore constitutes additional work, the Contractor shall promptly notify the County of that opinion, in writing. If the County agrees that such work does constitute additional work, then the County and the Contractor shall execute a supplemental agreement for the additional work and the County shall compensate the Contractor for the additional work on the basis of the rates contained in the Scope of Work. The not-to-exceed fee shall be adjusted if additional work is approved by the County and performed by the Contractor.

Section 4. Time of Completion

The prompt completion of the services under the Scope of Work relates is critical to the County. Unnecessary delays in providing services under a Scope of Work shall be grounds for dismissal of the Contractor and termination of this Agreement without any or further liability to the County other than a prorated payment for necessary, timely, and conforming work done by Contractor prior to the time of termination. The Scope of Work shall provide, in either calendar days or by providing a final date, a time of completion prior to which the Contractor shall have completed all tasks and services described in the Scope of Work.

Section 5. Professional Liability Insurance & Other Insurance

Before commencing work under this Agreement, Contractor shall obtain and furnish to the County evidence of standard comprehensive professional liability insurance coverage in an amount of at least \$1,000,000.00 aggregate per year, covering the services provided under this Agreement. Contractor shall maintain such coverage during all phases of work provided under this Agreement and for a period of at least one (1) year after substantial completion of the Project. The County shall be issued a certificate of coverage that shall provide for a thirty (30) day notice to the County, by certified or registered mail, of cancellation, non-renewal or material alteration in the stated provisions of the policy. The Contractor shall obtain and furnish to the County evidence of workers compensation insurance as required by Delaware law.

Section 6. Miscellaneous Provisions

(A) Subletting. The Contractor shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the County. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval of the County in the subletting of any work shall not relieve the Contractor of any responsibility for work done by such subcontractor.

(B) Ownership of Documents. Upon completion or termination of this Agreement, all documents prepared by the Contractor or furnished to the Contractor by the County shall be delivered to and become the property of the County. All drawings, charts, calculations, plans, specifications and other data prepared under or pursuant to this Agreement shall be made available, upon request, to the County without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE COUNTY OR OTHERS. ANY REUSE WITHOUT PRIOR

VERIFICATION OR ADAPTATION BY THE CONTRACTOR FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE COUNTY'S SOLE RISK AND WITHOUT LIABILITY TO THE CONTRACTOR. Where applicable, Contractor shall retain all pre-existing proprietary rights in the materials provided to the County but shall grant to the County a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Contractor may, at Contractor's expense, have copies made of the documents or any other data furnished to the County under or pursuant to this Agreement.

(C) Contractor's Seal. The Contractor shall place a Delaware Professional seal of endorsement of the principal Contractor on all documents and Contractor data furnished by the Contractor to the County, including but not limited to, work done by professional engineers, land surveyors, architects, interior design, and landscape architect. All work and services provided under this Agreement will be performed in a good and workmanlike fashion and shall conform to the accepted standards and practices of the Contractor's profession or to County or State standards, whichever may be higher. The plans, specifications and Contractor data provided by Contractor shall be adequate and sufficient to enable those performing the actual construction of the work to perform the work as and within the time contemplated by the County and Contractor. The County acknowledges that Contractor has no control over the methods or means of construction or the costs of labor, materials or equipment. Unless otherwise agreed in writing, any estimates of construction costs by the Contractor are for informational purposes only and are not guarantees.

(D) Compliance with Laws. The Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without

limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish the County with satisfactory proof of compliance.

(E) Independent Contractor. Contractor acknowledges that Contractor is an independent contractor of the County and is not an employee, agent, official or representative of the County. Contractor shall not represent, either expressly or through implication, that Contractor is an employee, agent, official or representative of the County. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Contractor.

(F) Non-Collusion. Contractor represents and warrants that Contractor has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the County under this Agreement. Contractor further agrees that Contractor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the County pursuant to this Agreement) for any of the services performed by Contractor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor shall immediately report that fact to the County and, at the sole option of the County, the County may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Contractor under or pursuant to this Agreement. The County shall at all times act in accordance with the County's Ethics laws as may be amended from time to time.

(G) Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

(H) Legal Entity. If the Contractor is an entity such as a public, private, or nonprofit corporation, subchapter (s) corporation, limited liability corporation, or other legal form of corporate organization, the Contractor shall identify the State within which the entity is incorporated.

Section 7. Termination

(A) This Agreement may be terminated:

(1) By the mutual agreement and consent of both Contractor and County;

(2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;

(3) By the County, immediately upon notice in writing to the Contractor, as consequence of the failure of Contractor to perform the services contemplated by this Agreement in a timely or satisfactory manner;

(4) By the County, at will and without cause upon not less than thirty (30) days written notice to the Contractor.

(B) If the County terminates this Agreement pursuant to Section 4 or subsection 7(A)(2) or (3), above, the Contractor shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Contractor considering the actual costs incurred by the Contractor in performing work to date of termination, the value of the work that is nonetheless usable to the County, the cost to the County of employing another Contractor to complete the work required and the time required to do so, and other factors that affect the value to the County of the work performed at time of termination. In the event of termination not the fault of the Contractor, the Contractor shall be compensated for all basic, special, and additional services actually performed prior to termination, together with any reimbursable expenses then due.

Section 8. Indemnification

Contractor agrees to indemnify and hold Kent County, Delaware and all of its present, future and former agents, employees, officials and representatives harmless in their official, individual and representative capacities from any and all claims, demands, causes of action, judgments, liens and

expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental), of any conceivable character, for injuries to persons (including death) or to property (both real and personal) created by, arising from or in any manner relating to the services or goods performed or provided by Contractor – expressly including those arising through strict liability or under the constitutions of the United States or Delaware – but only to the extent allowable by Delaware law.

Section 9. Notices

Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 10. No Assignment

Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

Section 11. Severability

If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 12. Waiver

Either County or the Contractor shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 13. Governing Law; Venue

This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Delaware. The provisions and obligations of this Agreement are performable in Kent County, Delaware, such that exclusive venue for any action arising out of this Agreement shall be in Kent County, Delaware.

Section 14. Paragraph Headings; Construction

The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

Section 15. Binding Effect

Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

Section 16. Gender

Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

Section 17. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 18. Exhibits

All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 19. Entire Agreement

It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

Section 20. Relationship of Parties

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

Section 21. Right To Audit

County shall have the right to examine and audit the books and records of Contractor at any reasonable time. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

EXECUTED on this the _____ day of _____, 2024.

CONTRACTOR:

COUNTY COMMISSIONERS
KENT COUNTY, DELAWARE

_____ / _____

[Addresses for Notice follow on next page.]

ADDRESSES FOR NOTICE:

COUNTY

CONTRACTOR
