

**CITY OF FAYETTEVILLE
WORK AUTHORIZATION
FOR
PROFESSIONAL SERVICES
BY
Timmons Group**

In accordance with the Professional Services Agreement (Agreement) dated March 21, 2025, between the CITY OF FAYETTEVILLE (hereinafter called OWNER) and Timmons Group, INC. (hereinafter called CONSULTANT), OWNER hereby authorizes CONSULTANT to proceed and CONSULTANT agrees to perform in accordance with the terms of the Agreement and this Work Authorization, the following services for the following Project:

I. PROJECT

This Work Authorization is for professional services related to:

- Construction administration support for the Lyon & Ivy Road Storm Drainage & Utility Improvements project. This contract supplements the previous design contracts between the City and Timmons Group under Engineering and Capital Projects (ORD10889 & ORD12053) to provide support through construction completion. See attached Exhibit A.
- Funding through North Carolina Emergency Management – Emergency Management Disaster Relief and Mitigation Fund

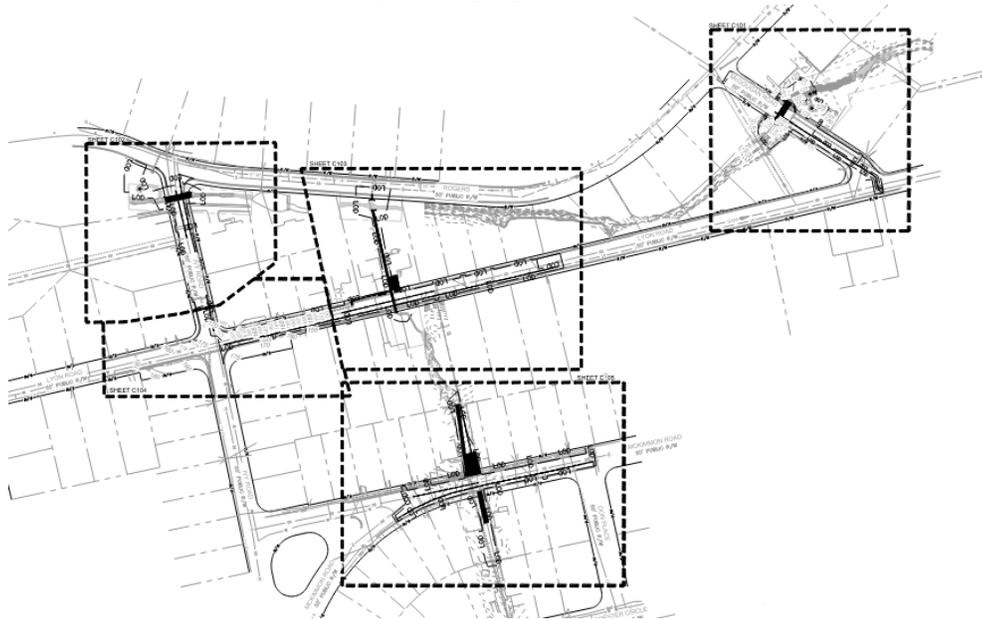
II. AGREEMENT & SCOPE OF SERVICE

The terms of the Agreement, attached as Exhibit B, are hereby incorporated by reference as if written herein and the parties confirm that its terms are a part of this Work Authorization.

The Scope of Services to be provided by CONSULTANT, in connection with this Authorization is as follows:

- As described in Exhibit A over an estimated 15 months.

- For construction support of the Lyon & Ivy Road Storm Drainage & Utility Improvements project in support of both Engineering and PWC.
- Approximate project limits for work are below and described in the approved referenced project along Rogers, Ivy, Lyon, McGougan, McKimmon Roads and connected easements within private properties.



The CONSULTANT shall request written confirmation and or execute an additional Work Authorization describing any scope change before performing any work beyond the scope specified in this Work Authorization. The confirmation shall identify any change in compensation and/or delay in completion which the scope changes entails and must be approved by the City Manager or his designee.

III. RESPONSIBILITIES

The responsibilities of the OWNER and CONSULTANT, in addition to those provided in the Agreement which are specific to this Project, are as follows:

- As described in Exhibit A.

IV. COMPENSATION

OWNER shall compensate CONSULTANT for providing the services set forth herein in accordance with the terms of the Agreement.

In the absence of a lump sum fee agreement, it is understood and agreed that:

1. CONSULTANT will perform under this Agreement on a best effort, not-to-exceed ceiling price basis and will notify OWNER when the ceiling price will be exceeded.
2. The not to exceed compensation (including travel) for this Work Authorization is \$ 662,356.00. This is not a guaranteed maximum amount but CONSULTANT shall not continue performing work in excess of this amount without further specific authorization. OWNER will be billed only for actual time worked and identified expenses.

Payment shall be made in accordance with the terms of the above referenced Agreement.

V. **SCHEDULE**

All work under this Work Authorization shall begin Beginning of Construction estimated January 1, 2026 and shall be complete by End of Construction estimated April 1, 2027.

VI. **MISCELLANEOUS**

1. The terms in this Work Authorization shall have the same meaning as provided in the Agreement.

2. **E-Verify.** CONSULTANT acknowledges that “E-Verify” is the federal E-Verify program operated by the U.S. Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. CONSULTANT further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with N.C. Gen. Stat. § 64-26(a). CONSULTANT pledges, attests and warrants through execution of this contract that CONSULTANT complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by CONSULTANT shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Work Authorization.

3. **Force Majeure.** Neither party shall be deemed to be in default of its obligations hereunder if and *so long as* it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

4. **Morality Clause.** If, in the sole opinion of the OWNER, at any time CONSULTANT or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an “Actor”) engages in any one or more of the actions below, the OWNER may immediately upon written notice to CONSULTANT, terminate this Agreement, in addition to any other rights and remedies that the OWNER may have hereunder or at law or in equity:

- a. bring disrepute, contempt, scandal, or public ridicule to the Actor;
- b. subject the Actor to prosecution;
- c. offend the community or public morals/decency;
- d. denigrate individuals or groups in the community served by the OWNER;
- e. is scandalous or inconsistent with community standards or good citizenship;
- f. adversely affect the OWNER’S finances, public standing, image, or reputation;
- g. is embarrassing or offensive to the OWNER or may reflect unfavorably on the OWNER; and,
- h. is derogatory or offensive to one or more employee(s) or customer(s) of the OWNER.

5. **Venue and Forum Selection.** The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Fourteenth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina

6. **Termination for Cause.** In the event of substantial failure by CONSULTANT to perform in accordance with the terms of this Agreement, the OWNER shall have the right to terminate CONSULTANT upon ten calendar (10) days written notice in which event CONSULTANT shall have neither the obligation nor the right to perform further services under this Agreement nor shall the OWNER be obligated to make any further payment for work that has not been performed. CONSULTANT shall provide to the OWNER all reports, surveys or other related documents upon the OWNER’S request.

7. **Termination for Convenience.** Upon thirty (30) calendar days’ written notice to CONSULTANT, the OWNER may, without cause and without prejudice to any other right or remedy legally available to the OWNER, terminate this Agreement. Upon such notice, CONSULTANT shall have neither the obligation nor the right to perform services under this Agreement nor shall the OWNER be obligated to make any further payment for work that has

not been performed in accordance with the terms stated herein. In such case of termination, CONSULTANT shall be paid for the completed and accepted work executed in accordance with this Agreement prior to the written notice of termination. Additionally, upon mutual agreement, CONSULTANT may be paid for any completed and accepted work which takes place in order to achieve a specifically identified item in the scope of services or a milestone of the Agreement, between the written notice of termination and the effective date of termination. Unless otherwise stated or agreed upon, the effective date of termination shall automatically occur 30 days after the written notice is sent by the OWNER.

8. **Protest.** Protest related to this procurement must be addressed to the Purchasing Manager for City of Fayetteville, 433 Hay St, Fayetteville, NC 28301 and shall be received, in writing, within 2 calendar days of bid award. Responses will be in writing by email and first-class mail not later than (7) calendar days following receipt of said protest by the Purchasing Manager.

9. **Indemnification.** To the extent permitted by law, CONSULTANT agrees to defend, indemnify, and hold harmless the OWNER and its elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury or damage caused by any act, omission or negligence of CONSULTANT, its agents, servants, employees, contractors, licensees, or invitees. Indemnification of the OWNER by CONSULTANT does not constitute a waiver of the OWNER'S governmental immunity in any respects under North Carolina law.

10. **CITY'S TERMS SUPERSEDE.** To the extent that there are terms in any of the attachments that conflict with the terms of this Agreement, the terms of this Agreement are superseding.

11. **Survival of Terms.** All warranties, covenants, and representations contained within this Agreement and all applicable work authorizations, if any, shall continue in full force and effect for three (3) years after the execution and delivery of the final product, act, or service taken in furtherance of this contract. Survivability shall not be impacted, or otherwise shall not be rendered null or void, by the termination or natural expiration of this contract or other applicable work undertaken in furtherance of this contract.

12. **Divestment of Companies Boycotting Israel or that Invest in Iran Certification.** CONSULTANT certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58; (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel ((i) and (ii) to be collectively referred to as "FD Lists"); and (iii) it will not take any action causing it to appear on the Treasurer's FD Lists created by the NC State Treasurer during the term of this Agreement. By signing this Agreement, CONSULTANT further agrees, as an independent obligation, separate and apart from this

Agreement, to reimburse the OWNER for any and all damages, costs and attorneys' fees incurred by the OWNER in connection with any claim that this Agreement or any part thereof is void due to CONSULTANT appearing on the Treasurer's FD Lists at any time before or during the term of this Agreement.

CONSULTANT ACCEPTANCE:

Timmons Group

BY: 

PRINT: David Duncan

TITLE: Stormwater Manager

DATE: 11/20/25

AUTHORIZATION BY:

CITY OF FAYETTEVILLE

BY: _____

TITLE: _____

DATE: _____

ATTEST:

BY: _____
JENNIFER L AYRE, MPA, MMC
City Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

TIFFANY R. MURRAY
Chief Financial Officer



5410 Trinity Rd.
Suite 102
Raleigh, NC 27607

P 919.866.4951
F 919.859.5663
www.timmons.com

RE: Lyon & Ivy Road Storm Drainage & Utility Improvements
Construction Administration

CONTRACT: Annual Services Contract between the City of Fayetteville
(the "City") and Timmons Group (the "Consultant").

All work to be performed in accordance with the terms,
limitations, and conditions of said contract.

SCOPE OF WORK: The "Consultant" shall provide transportation engineering
design services in accordance with the attached Scope of
Work.

SCHEDULE OF WORK: The "Consultant" shall support the construction work with
an estimated schedule of approximately 16 months from
NTP to the contractor.

COMPENSATION: The "Consultant" shall be paid in accordance with the
referenced contract, a total fee not to exceed of
\$662,356.00. See Attached Scope of Work.

SUBMITTED:  11/17/2025
David Duncan, PE, ENV SP Date
Project Manager
Timmons Group

APPROVED: _____
City of Fayetteville Date

SCOPE OF WORK

Lyon & Ivy Construction Administration

Project Description

This work expands upon the previously designed, approved, bid, and awarded Lyon & Ivy Road Storm Drainage & Utility Improvements project to add Timmons Group as the engineer leading daily and regular Construction Administration (CA) work on behalf of the City. Substantial completion is anticipated with 375 days of NTP with final completion within 405 days of NTP to the contractor. Effort under this CA task order is to be billed as Time and Materials (T&M) for efforts and expenses necessary to complete the inspection, reporting, documentation, coordination, and responses to RFI efforts anticipated with this project.

The following is a detailed discussion of the services proposed:

BASIC SERVICES

1) Construction Administration (T&M)

Preconstruction Meeting

The Consultant will conduct the Preconstruction Meeting for the project prior to the Notice to Proceed date. The City of Fayetteville, PWC, impacted utility owners, and the contractor will be invited and encouraged to attend the pre-construction meeting. It is assumed that the City of Fayetteville will determine the date and secure the meeting room for the Preconstruction Meeting.

An agenda will be prepared for the Preconstruction Meeting that outlines important aspects of the bid documents (contract, plans, etc), the current status of right of way acquisitions and utility relocations, required contractor submittals, minimum material testing requirements, and the final acceptance process. A draft agenda will be provided to the City of Fayetteville for review prior to the Preconstruction Meeting. The City of Fayetteville will approve the agenda. The approved agenda will be emailed to all anticipated Preconstruction Meeting attendees prior to the Preconstruction Meeting.

Project Management

The Consultant will provide project management throughout the course of the project duration including meeting City reporting and invoicing requirements.

Daily Project Representative

The Consultant will provide full-time project representative services on site (average of 40 hours per week) for the project duration, estimated as 15 months of construction. It is assumed the contractor will not actively be working for 1 month of the construction period due to mobilization, close-out, and shutdowns for City events or weather.

Coordination of Contractor's Submittals

The Consultant will serve as the primary point of contact for the contractor throughout the duration of construction on the project. Unless otherwise directed, the contractor will send all submittals to the Consultant. Upon receipt, the Consultant will review the submittal for compliance with the contract documents and distribute it within two (2) business days to the

appropriate entities (City of Fayetteville, PWC, Inspector, etc.) for review and approval. The Consultant shall create/maintain a summary log of submittals. Contractor submittals may include, but are not limited to: Schedule of Values, Progress Schedule(s), Plan of Operations narrative, source of materials documentation, shop drawings, invoices, requests for information, proposed revisions to the plans or working hours, notices of intent to file a claim, charge orders, request for final inspection, and request for final acceptance.

Baselines and Benchmarks

Provide benchmarks and baselines to the contractor via digital AutoCAD files. This does not include physical staking for construction.

Construction Progress Meetings

Progress meetings will be held monthly during the construction of the project to review recently completed and upcoming work, as well as discuss any other important issues on the project. The Consultant shall prepare an agenda for the Progress Meeting, attend the meeting, and prepare minutes for distribution to attendees within seven (7) days after the meeting is held. A draft of the agenda and a draft of the minutes will be provided to the City of Fayetteville for review and approval before either are distributed.

Engineering Site Visits

Engineering site visits will be made monthly during the construction of the project to review the progress and quality of work and to determine if the work is proceeding in accordance with the Construction Contract Documents. Additional engineering site visits are an Additional Services.

Material Testing

Provide material testing services required by contract documents including earthwork, concrete, and asphalt testing. Review test results and convey discrepancies to Contractor and Owner.

As-Builts

The Consultant will produce as-built drawings in accordance with standards set by the NC Board of Examiners for Engineers and Surveyors. The Consultant shall complete as-built survey for items constructed after items have been built. Confined space entry for as-built survey is excluded. Drawings shall include survey and contractor markups as appropriate. It is anticipated the contractor will provide any as-built survey during construction for noting buried features such as bends, elbows, and other appurtenances and that Timmons Group as-built survey task will represent visible survey features. It is anticipated that as-built pdfs will be provided to the City within seven (7) business days of receiving files from the contractor or surveyor.

Review and Approval of Shop Drawings

All shop drawings submitted by the contractor will be reviewed by the Consultant and coordinated with the City of Fayetteville as appropriate. The Consultant will provide comments or approval of the shop drawing within seven (7) business days.

Review and Approval of Wetland Boundaries and Clearing Limits

Prior to beginning construction, the contractor will be required to delineate wetland boundaries and flag the proposed clearing limits. The Consultant will review the wetland boundaries and

clearing limits on site for conformance with the contract documents within 48 hours of notice and provide written notice of the wetland flagging status for either approval or revision to the contractor and the City of Fayetteville that the wetland boundaries and clearing limits are accurate or require revision until they are accurate.

Review and Recommendation for Approval of Pay Requests (Invoices)

All monthly invoices submitted by the contractor will be reviewed and recommended for approval or revision by the inspector and then forwarded to the Consultant. The Consultant will provide comments or recommend approval of the invoices to the City of Fayetteville within three (3) business days.

Review and Response to Requests for Information

All Requests for Information submitted by the contractor will be reviewed by the Consultant. The Consultant will consult with the City of Fayetteville and provide a response within three (3) days after the Request for Information was submitted.

Review and Recommendation for Approval of Design Changes

The Consultant will review, provide comments, and recommend approval or rejection of all design changes or changes to the working hours that are proposed during the construction of the project. Design changes or changes to the working hours may be proposed by the contractor, the City of Fayetteville, or the Consultant. Design changes that are required due to errors, ambiguities, or omissions in the plans or contract documents will be made without any additional compensation. All other design changes that are proposed during the construction of the project may be negotiated and added to this scope of work as a change order.

Review and Recommendation for Approval of Construction Change Orders with Bulletin Drawings

Whenever a Change Order is required during the construction of the project, the Consultant will coordinate the scope of work, cost impacts, and schedule impacts with the contractor, the City of Fayetteville, and the project inspector. Any changes to the plans that are required will be signed and sealed by the Consultant. The revised plan sheet(s) will be attached to the Change Order (estimated as up to 4).

Once the scope, cost and schedule are agreed upon by all parties, the Consultant will:

- Prepare the Change Order using the standard template,
- Recommend its approval,
- Obtain the contractor's acceptance, and
- Forward the signed Change Order to the City of Fayetteville for approval.

Punch List and Final Acceptance

After the contractor requests a Final Inspection, the Consultant will meet the inspector and the City of Fayetteville on site and develop a punch list of items required to be completed prior to Final Acceptance of the project. The punch list will be provided to the contractor. Once the contractor has notified the Consultant that the punch list is complete, the Consultant will meet the inspector and the City of Fayetteville on site for a final walk-through of the project. The Consultant will review legal releases, permits, and warranties provided by the contractor.

Review and Recommendation for Assessment of Liquidated Damages

If Final Acceptance occurs after the Contract Completion Date (as adjusted in accordance with

the most recent Change Order), then the Consultant shall provide a written recommendation to the City of Fayetteville regarding the amount of liquidated damages that the contractor should be assessed for not delivering the project in accordance with the contract schedule.

Review and Recommendation for Claims

The contractor may submit to the City of Fayetteville a written Claim for which it properly submitted an Intent to Final a Claim while performing the work. This scope of services assumes that a written Claim will not be filed by the contractor for this project. If a written Claim is filed, additional work may be added as a change order to allow the Consultant to review the claim and provide a written recommendation to the City of Fayetteville regarding its validity.

Should funding under this task become exhausted, an additional services work order shall be negotiated for additional support if needed.

REIMBURSABLE EXPENSES (T&M)

A. Mileage

The Consultant will perform up to monthly progress meetings and engineering site visits (16 each) round trips between the Consultant and the Owner's offices or to the project site during construction. An average round trip mileage of 140 miles between the Consultant's offices and the Owner's offices is assumed for budgeting purposes.

B. Additional reimbursables

Additional expenses such as meals, postage, reproduction, daily inspection efforts, and permit fees will be reimbursed at cost with a maximum allowance of \$10,000.

EXCLUSIONS

The following additional services are not included in the current scope of services. If during work the Owner requests these or any other additional services be performed, the Consultant will provide the services through a contract modification.

- Fees, including those associated with printing, plan reviews, mitigation, applications, or permits.
- Any other service not explicitly identified in this document.
- Construction Administration tasks including:
 - Review and Recommendation for Claims

CITY OF FAYETTEVILLE
Annual Services Contract
Lyon & Ivy Road Drainage and Utility Improvements CA
Work Order No. ?

Timmons Group
5410 Trinity Road, Suite 102
Raleigh, NC 27607
#####

TASK/LABOR CLASSIFICATION	SENIOR PROJECT MANAGER	SENIOR PROJECT ENGINEER / PROJECT MANAGER	LICENSED LAND SURVEYOR	2 MAN CREW	SENIOR DESIGNER / PROJECT ENGINEER III	ENVIRONMENTAL SCIENTIST	ENVIRONMENTAL TECHNICIAN	DAILY CONSTRUCTION INSPECTOR	TOTAL HOURS	TASK FEE
Services										
1. Construction Administration (T&M)	152	508	40	156	564	24	24	2600	4068	\$649,220
<i>Preconstruction Meeting</i>	4	8			4					\$3,020
<i>Project Management</i>	100	46								\$31,010
<i>Daily Project Representative</i>								2600		\$390,000
<i>Review of Submittals</i>		20			40					\$10,100
<i>Baselines and Benchmarks</i>		2			8					\$1,650
<i>Monthly Progress Meetings</i>		64			32					\$16,960
<i>Engineering Site Visits</i>		96			64					\$28,000
<i>Material Testing (Geotechnical staff)</i>	10	38			162					\$35,200
<i>As-built survey</i>	4	20	40	156	20					\$43,080
<i>Review of Shop Drawings</i>		32			64					\$16,160
<i>Review of Wetland Boundaries & Clearing Limits</i>		6			6	24	24			\$7,590
<i>Review of Invoices</i>	16	64			32					\$20,560
<i>Review of RFIs</i>	4	24			40					\$11,740
<i>Review of Design Changes</i>	4	16			24					\$7,700
<i>Review of Change Orders & Bulletin Drawings</i>	4	40			56					\$17,260
<i>Punch List & Final Acceptance</i>	4	24			12					\$7,260
<i>Review of Liquidated Damages</i>	2	8								\$1,930
TOTAL HOURS EACH CLASSIFICATION	152	508	40	156	564	24	24	2600	4068	
CLASSIFICATION RATES	\$225.00	\$185.00	\$180.00	\$180.00	\$160.00	\$135.00	\$95.00	\$150.00		
Total - Budgeted Amounts (T&M)	\$34,200.00	\$93,980.00	\$7,200.00	\$28,080.00	\$90,240.00	\$3,240.00	\$2,280.00	\$390,000.00		\$649,220.00
DIRECT EXPENSE										
	4480	Mileage @ \$0.70								
	\$10,000	Additional Expenses								
TOTAL DIRECT EXPENSE										
TOTAL FEE NOT TO EXCEED										\$662,356.00

Exhibit B

PROFESSIONAL SERVICES AGREEMENT FOR ON-CALL CONSULTING SERVICES

BETWEEN

CITY OF FAYETTEVILLE
FAYETTEVILLE, NORTH CAROLINA

AND

TIMMONS GROUP, INC.

MARCH 21, 2025

**STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND**

**PROFESSIONAL SERVICES AGREEMENT
FOR ON CALL CONSULTING SERVICES**

THIS AGREEMENT, effective the day March 21, 2025 by and between **THE CITY OF FAYETTEVILLE, NORTH CAROLINA** (hereinafter referred to as **CITY**), with principal business offices at Fayetteville, North Carolina, and **TIMMONS GROUP, INC.** (hereinafter referred to as **CONSULTANT**), a corporation with principal business offices at 7053 Celebration Park Ave Suite 300, Richmond, VA 23225

WITNESSETH:

WHEREAS, CITY, is engaged in the operation and maintenance of facilities and services which from time to time require revision, renovation and extension of existing facilities, and the construction of new facilities and other related projects; and

WHEREAS, the professional services of engineers, architects, surveyors and others will from time to time in the future be needed by the **CITY** in the renovation of existing facilities, and in the construction of new facilities and other related projects; and

WHEREAS, pursuant to N.C.G.S. § 143-64.31 it is the public policy of this State that municipalities announce all requirements for architectural, engineering and surveying services, to select firms qualified on the basis of demonstrated competence and qualification and to negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, CONSULTANT provides professional engineering consulting services of the nature required by the **CITY** and employs trained and experienced engineering, technical and/or other personnel possessing adequate knowledge, skills and experience to provide professional services to the **CITY**; and

WHEREAS, the parties contemplate that the on-call services of **CONSULTANT** will be performed on an as needed basis, in various stages in accordance with separate authorizations to be issued by **CITY**, and the parties desire to set forth the basic terms of their agreement in this Professional Services Agreement rather than in separate authorizations to be issued by **CITY**.

NOW THEREFORE, IN CONSIDERATION of the premises and the mutual covenants herein contained, the parties hereto do hereby contract and agree as follows:

ARTICLE 1. TERM OF AGREEMENT. The term of this Professional Services Agreement for On-Call Consulting Services shall be for three (3) years from the date it is effective. The Agreement may be extended thereafter by mutual written agreement of the parties.

1.1. ASSIGNMENT. It is the intent of this Professional Services Agreement to secure the professional [type of services] services of **CONSULTANT** and failure of **CONSULTANT** for any reason to make the professional engineering services available to the **CITY** for the purposes described in this Professional Services Agreement shall be cause for termination of this Agreement. **CONSULTANT** shall not assign this Agreement without prior written consent of the **CITY**. Nothing contained in this paragraph shall prevent **CONSULTANT** from employing such independent consultants, associates and subcontractors as it may deem appropriate to assist **CONSULTANT** in the performance of services rendered.

ARTICLE 2. COMPENSATION. **CONSULTANT** shall submit to **CITY** monthly invoices for services performed and accepted during that month. **CITY** agrees to pay **CONSULTANT's** monthly invoice within thirty (30) days after said invoice is received by the **CITY**. Adjustments to an invoice for billing errors may extend the time for payment. For clarity, compensation to **CONSULTANT** shall be based upon task and/or work authorizations that are provided to and agreed upon by the **CITY**. The signing of this Professional Services Agreement does not bind or obligate the **CITY** to pay **CONSULTANT** any compensation.

2.1. VERIFICATION OF INVOICES. **CITY** has the right to require the **CONSULTANT** to produce for inspection all **CONSULTANT's** time records, salaries of personnel and charges for direct expenses for which cost-plus compensation is provided. **CONSULTANT** agrees to provide **CITY** with said records on a timely basis and cooperate with **CITY** to verify the accuracy of all invoices.

2.2. NON-APPROPRIATION. Notwithstanding any other provisions of this Agreement, the Parties agree that payments due hereunder from the **CITY** are from appropriations and monies from the City Council and other governmental entities. In the event sufficient appropriations or monies are not made available to the **CITY** to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the **CITY**.

ARTICLE 3. PROFESSIONAL STANDARDS AND DUTIES OF CONSULTANT. **CONSULTANT** shall be held to the same standard and shall exercise the same degree of care, skill and judgment in the performance of services for **CITY** as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Cumberland County, North Carolina. **CONSULTANT** warrants that the professional engineering services completed for **CITY** under this Agreement shall be performed utilizing the degree of care and skill exercised by diligent and prudent members of the same profession performing similar services on a national basis. **CONSULTANT** agrees that the professional engineering services performed shall be in a safe and workmanlike manner in compliance with all applicable laws, ordinances and regulations or rules. All professional engineering services provided by the **CONSULTANT** which are, or must be, performed by licensed professionals, will be performed by such professionals licensed by the State of North Carolina.

3.1. CONSULTANT NOT RESPONSIBLE FOR CONSTRUCTION MEANS OR SAFETY. Notwithstanding anything to the contrary: **CONSULTANT** for general construction projects shall not be responsible for any general contractor's or other project participant's failure to fulfill their contractual responsibilities to the **CITY**, nor shall **CONSULTANT** be responsible for construction means, methods, techniques, sequences, or procedures. Neither shall **CONSULTANT** be responsible for a project safety program or safety precautions unless **CONSULTANT** sets forth a safety program which is accepted by **CITY** and becomes a part of the agreement between the parties.

3.2. CONSULTANT AS CONSTRUCTION MANAGER. In the event the **CITY** contracts with the **CONSULTANT** to provide Construction Management Services, but subject to Article 3.1, the **CONSULTANT** shall make site visits appropriate to the stage of construction to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. **CONSULTANT** will endeavor to protect **CITY** against defects and deficiencies in the work of contractors and will report any observed deficiencies to **CITY**. In no event shall **CONSULTANT** be responsible for any contractor's, subcontractor's, vendor's, or other project participant's failure to comply with federal, state or local laws, ordinances, regulations, rules, codes, orders, criteria, or standards unless it has contracted with the **CITY** to do so.

ARTICLE 4. ESTIMATES OF COST AND TIME. Although **CONSULTANT** has no control over the cost of labor, materials, equipment or services furnished by others, or over contractor's, subcontractor's, or vendor's methods of determining prices, or over competitive bidding or market conditions, nevertheless **CONSULTANT's** cost estimates and time estimates shall be made on the basis of current labor and material prices and the **CONSULTANT's** experience and qualifications, and **CONSULTANT's** estimates shall be provided consistent with the standards set out in Article 3 (*Professional Standards and Duties of Consultant*). Although **CONSULTANT** has no control over the resources provided by contractors to meet contract schedules, nevertheless **CONSULTANT's** estimates or forecast of schedules shall be provided consistent with the standards set out in Article 3 (*Professional Standards and Duties of Consultant*). **CONSULTANT** does not guarantee that project costs and schedules will not vary from the estimates and schedules given to **CITY**.

ARTICLE 5. LIABILITY, INDEMNIFICATION AND INSURANCE.

5.1. GENERAL. The **CITY** and **CONSULTANT** have considered the risks and potential liability that may exist during the performance of services by **CONSULTANT** and have agreed to allocate such liabilities in accordance with this Article. During the performance of services under this Agreement, **CONSULTANT** shall purchase and maintain insurance coverage as hereinafter set forth, without lapse or changes contrary to the requirements of this section. Words and phrases used in this Article shall be interpreted in accordance with customary insurance industry usage and practice.

5.2 INDEMNITY & PROFESSIONAL LIABILITY INSURANCE. To the extent permitted by law, **CONSULTANT** agrees to indemnify and hold harmless the **CITY** and its

elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury or damage to the extent caused by any negligent or tortious act, omission or negligence of **CONSULTANT**, its agents, servants, employees, contractors, licensees, or invitees. Indemnification of the **CITY** by **CONSULTANT** does not constitute a waiver of the **CITY**'s governmental immunity in any respect under North Carolina law. **CONSULTANT** agrees to purchase and maintain professional liability insurance (errors and omissions insurance) in the amount of \$1,000,000 coverage for each claim, with a general aggregate of \$2,000,000. Said insurance coverage shall be underwritten by an insurance company authorized to do business in the State of North Carolina by the North Carolina Department of Insurance, with an A.M. Best rating of not less than A.

5.3 INDEMNITY & GENERAL LIABILITY INSURANCE. **CONSULTANT** agrees to indemnify and hold the **CITY**, its servants, agents and employees, harmless from and against all liabilities, claims, demands, suits, losses, damages, costs and expenses (including attorney's fees) for third party bodily injury to or death of any person, or damage to or destruction of any third party property, to the extent caused by the negligence of **CONSULTANT**, **CONSULTANT**'s employees, and **CONSULTANT**'s subcontractors, for whom **CONSULTANT** is legally responsible during the performance of services under this Agreement. **CONSULTANT** shall purchase and maintain at all times during performance of services under this Agreement Commercial General Liability Insurance ("CGL") with combined single limits of \$1,000,000.00 coverage for each occurrence with a general aggregate of \$2,000,000.00, designating the **CITY** as an additional insured and which said insurance provides **CONSULTANT** with insurance for contractual liability which **CONSULTANT** has assumed pursuant to the terms of this Agreement.

5.4. OTHER INSURANCE. In addition to professional liability insurance and commercial general liability insurance set forth above, **CONSULTANT** further agrees to purchase and maintain at all times during the performance of services under this Agreement insurance coverage as follows:

- Worker's Compensation Insurance as required by North Carolina law and said policy shall also afford coverage to **CONSULTANT** for employer's liability.
- Automobile liability insurance with \$1,000,000.00 combined single limit for each accident covering bodily injury and property damage.
- The CGL policy required above shall include independent contractor liability coverage.
- If applicable, the CGL policy required above shall provide **CONSULTANT** with products and completed operations insurance. Said coverage is to be written on an occurrence basis, with coverage extended for such a period of time in which suits can be filed before the running of the statute of limitations, on any claim for injury to person or property due to negligence of **CONSULTANT** in the design of any building designed by the **CONSULTANT** under the terms of this Agreement.

5.5. CERTIFICATES OF INSURANCE. **CONSULTANT** shall provide to **CITY**, within a reasonable time after request, certificates from the insurer(s) indicating the amount of insurance coverage, the nature of such coverage, and the expiration date of the policy for each of the insurance coverage requirements contained in Article 5.

ARTICLE 6. INDEPENDENT CONTRACTOR. CONSULTANT is an Independent Contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an Independent Contractor at all times. CONSULTANT shall be wholly responsible for the methods, means and techniques of performance. CITY shall have no right to supervise methods and techniques of performance employed by CONSULTANT, but CITY shall have the right to observe such performance.

ARTICLE 7. COMPLIANCE WITH LAWS. CONSULTANT agrees that in performing services pursuant to this Agreement to comply with all applicable regulatory requirements including federal, state and local laws, rules, regulations, orders, codes, criteria, and standards. CONSULTANT shall be responsible for procuring all permits, certificates, and licenses necessary to allow CONSULTANT to perform services under this Agreement. CONSULTANT shall not be responsible for procuring permits required for the construction of any building, unless such responsibility is specifically agreed to by CONSULTANT.

ARTICLE 8. CITY'S RESPONSIBILITIES. CITY will furnish to CONSULTANT all of CITY'S requirements for the project, including, but not limited to, scope of work, program, time constraints, schedule milestones, financial constraints, design objectives and design constraints, which are available to the CITY or which the CITY can reasonably obtain to furnish to CONSULTANT to enable CONSULTANT to respond to CITY. Additionally, the CITY shall also be responsible for the following:

- Make final decisions utilizing information supplied by CONSULTANT.
- Designate personnel to represent CITY in matters involving the relationship between CITY, CONSULTANT and third parties.
- Provide such accounting, independent cost estimating, and insurance counseling services as may be required by the project.
- Provide such legal services as CITY may require or CONSULTANT may reasonably request with regard to legal issues pertaining to the project, including those which may be raised by contractors, subcontractors, vendors or other project participants.
- Enter into contracts for the purchase, construction, or other services with contractors, subcontractors, and vendors.
- Provide financing for the project and make all payments in accordance with the terms of the contract.

ARTICLE 9. TERMINATION OF CONTRACT FOR CAUSE. In the event of substantial failure by CONSULTANT to perform in accordance with the terms of this contract, the CITY shall have the right to terminate CONSULTANT upon ten (10) calendar days' written notice in which event CONSULTANT shall have neither the obligation nor the right to perform further services under this contract nor shall the CITY be obligated to make any further payment for work that has not been performed. CONSULTANT shall provide the CITY all reports, surveys or other related documents upon the CITY's request.

ARTICLE 10. TERMINATION OF CONTRACT FOR CONVENIENCE. Upon thirty (30) calendar days' written notice to CONSULTANT, CITY may, without cause and without

prejudice to any other right or remedy legally available to the **CITY**, terminate this Agreement. Upon such notice, **CONSULTANT** shall have neither the obligation nor the right to perform services under this Agreement nor shall the **CITY** be obligated to make any further payment for work that has not been performed in accordance with the terms stated herein. In such case of termination, **CONSULTANT** shall be paid for the completed executed in accordance with this Agreement prior to the effective date of termination. Additionally, upon mutual agreement, **CONSULTANT** may be paid for any completed and accepted work which takes place in order to achieve a specifically identified item in the scope of services or a milestone of the Agreement, between the written notice of termination and the effective date of termination. Unless otherwise stated or agreed upon, the effective date of termination shall automatically occur thirty (30) days after the written notice is sent by the **CITY**. Upon request by the **CITY**, **CONSULTANT** shall provide to the **CITY** all reports, surveys or other related documents upon the **CITY's** request and at the **CITY's** cost. **CONSULTANT** has no liability for **CITY's** use of incomplete reports, surveys or related documents.

ARTICLE 11. NONDISCLOSURE OF PROPRIETARY INFORMATION. **CONSULTANT** shall consider all information provided by **CITY** and all drawings, reports, studies, calculations, plans, specifications, and other documents resulting from the **CONSULTANT'S** performance of the services to be proprietary, unless such information is available from public sources. **CONSULTANT** shall not publish or disclose proprietary information for any purposes other than the performance of the services without the prior written authorization of **CITY**. **CONSULTANT** shall not make any written or verbal statement to any press or news media concerning the Project without the written authorization of **CITY**.

ARTICLE 12. NOTICE. Any formal notice, demand, or request required by or made in connection with this agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO CITY: **CITY OF FAYETTEVILLE**
 ATTENTION: DOUGLAS J HEWETT
 CITY MANAGER
 433 HAY STREET
 FAYETTEVILLE, NORTH CAROLINA 28301

TO CONSULTANT: **TIMMONS GROUP, INC.**
 ATTENTION: PAUL R. TRAPP
 PRINCIPAL/CORPORATE SECRETARY
 7053 CELEBRATION PARK AVE SUITE 300, RICHMOND, VA 23225

Nothing contained in this Article shall be construed to restrict the transmission of routine communication between representatives of **CONSULTANT** and **CITY**.

ARTICLE 13. FORCE MAJEURE. Neither party shall be deemed to be in default of its obligations hereunder or responsible for any delay or failure of performance if and *so long as* it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse

governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

ARTICLE 14. GOVERNING LAW. The validity, interpretation, and execution of this Agreement and the performance of and rights accruing under this Agreement are all to be governed by the laws of the State of North Carolina.

ARTICLE 15. MISCELLANEOUS.

15.1. NONWAIVER FOR BREACH. No breach or non-performance of any term of this Agreement shall be deemed to be waived by either party unless said breach or non-performance is waived in writing and signed by the parties. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance and for any such breach or non-performance each party shall be relegated to such remedies as provided by law.

15.2. PRECEDENCE. In the event of any conflict or discrepancy between the terms of this Agreement and the specific written authorization to proceed pursuant to this Agreement, then the written authorization to proceed shall be given precedence over this Agreement in resolving such conflicts or discrepancies. If any conflict or discrepancy is discovered by either party hereto, then the written authorization to proceed, or this Agreement, shall be modified or amended, as necessary.

15.3. SEVERABILITY. The Parties agree that if any provision of this Agreement shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform to the purposes of this Agreement and the requirements of applicable law.

15.4 STATUTE OF LIMITATIONS. No action, regardless of form, arising out of this Agreement may be brought by either party after the applicable statute of limitations giving rise to the alleged cause of action.

ARTICLE 16. INTEGRATED AGREEMENT. The CITY's authorization to proceed and this Professional Services Agreement for Consulting Services shall be integrated into and shall become the integrated agreement between the parties. CONSULTANT and CITY agree that all prior negotiations, representations, letters, agreements, understandings, or other communications between them, whether written or oral, are hereby merged into the Agreement and that the Agreement supersedes all such prior negotiations, contracts and/or agreements. This Agreement shall not be modified unless such modifications are evidenced in writing, signed by both CONSULTANT and CITY.

ARTICLE 17. BENEFITS LIMITED TO PARTIES. Nothing herein shall be construed to give any right or benefits hereunder to anyone other than CITY and CONSULTANT.

ARTICLE 18. VENUE AND FORUM. The Parties expressly agree that if litigation is brought in connection with this Agreement and (1) the litigation proceeds in the Courts of the State

of North Carolina, the Parties agree that the appropriate venue shall be in Cumberland County (Fourteenth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the Parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

ARTICLE 19. E-VERIFY. CONSULTANT hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. **CONSULTANT** further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). **CONSULTANT** hereby pledges, attests and warrants through execution of this Agreement that **CONSULTANT** complies with the requirements of Article 2 of Chapter 64 of North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by **CONSULTANT** shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.

ARTICLE 20. MORALITY CLAUSE. If, in the sole opinion of the **CITY**, at any time **CONSULTANT** or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more of the actions below, the **CITY** may immediately upon written notice to **CONSULTANT**, terminate this Agreement, in addition to any other rights and remedies that the **CITY** may have hereunder or at law or in equity:

1. bring disrepute, contempt, scandal, or public ridicule to the Actor;
2. subject the Actor to prosecution;
3. offend the community or public morals/decency;
4. denigrate individuals or groups in the community served by the **CITY**;
5. is scandalous or inconsistent with community standards or good citizenship;
6. adversely affect the **CITY**'s finances, public standing, image, or reputation;
7. is embarrassing or offensive to the **CITY** or may reflect unfavorably on the **CITY**;
and,
8. is derogatory or offensive to one or more employee(s) or customer(s) of the **CITY**.

ARTICLE 21. DIVESTMENT OF COMPANIES BOYCOTTING ISRAEL OR THAT INVEST IN IRAN CERTIFICATION. **CONSULTANT** certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. § 147-86.58; (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. § 147-86.81 as a company engaged in the boycott of Israel ((i) and (ii) to be collectively referred to as "FD Lists"); and (iii) it will not take any action causing it to appear on the Treasurer's FD Lists created by the NC State Treasurer during the term of this Agreement. By signing this Agreement, **CONSULTANT** further agrees, as an independent obligation, separate and apart from this Agreement, to reimburse the **CITY** for any and all damages, costs and attorneys' fees incurred by the **CITY** in connection with any valid claim,

brought by a third party, that this Agreement or any part thereof is void due to **CONSULTANT** appearing on the Treasurer's FD Lists at any time before or during the term of this Agreement.

ARTICLE 22. CITY'S TERMS SUPERSEDE. To the extent that there are terms in any of the attachments that conflict with the terms of this Agreement, the terms of this Agreement are superseding.

ARTICLE 23. SURVIVAL OF TERMS. All warranties, covenants, and representations contained within this Agreement and all applicable work authorizations, if any, shall continue in full force and effect for three (3) years after the execution and delivery of the final product, act, or service taken in furtherance of this Agreement. Survivability shall not be impacted, or otherwise shall not be rendered null or void, by the termination or natural expiration of this Agreement or other applicable work undertaken in furtherance of this Agreement.

ARTICLE 24. NON-DISCRIMINATION. **CONSULTANT** agrees not to discriminate by reason of age, race, religion, color, sex, national origin, disability or other applicable law while performing the services required herein.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives effective the day and year first above written.

ATTEST:



CITY OF FAYETTEVILLE

JENNIFER L. AYRE
City Clerk 4/22/2025

Douglas J. Hewett, ICMA-CM
City Manager

DATE: 4/22/2025

TIMMONS GROUP, INC.

BY: Paul R. Trapp, Jr.

PRINT: Paul R. Trapp, Jr.

TITLE: Principal/Corporate Secretary

DATE: April 3, 2025

THIS INSTRUMENT HAS BEEN PREAUDITED IN
THE MANNER REQUIRED BY THE LOCAL
GOVERNMENT BUDGET AND FISCAL CONTROL ACT.