

Agenda Action Form Overview

Execution of Consulting Services Agreement with SEDC Engineering, P.C. dba NV5 for the Fundamental LEED Commissioning Services for the Durham County Administration Building Renovation. Project No.: 4730DC137.

Background/Justification

As a third-party consultant, NV5 will verify that the project's energy-related systems are installed and calibrated, and that they perform according to the owner's project requirements, basis of design and construction documents. Benefits of commissioning include reduced energy use, lower operating costs, reduced contractor callbacks, better building documentation, improved occupant productivity and verification that the systems perform in accordance with the owner's project requirements.

Policy Impact

On October 27, 2008, the Durham County BOCC adopted the High Performance Building Policy for County projects. The Durham County High Performance Building Policy requires that new construction receive a "Gold" level LEED (Leadership in Energy and Environmental Design) Certification and that renovation projects receive a "Certified" level certification. The proposal includes the necessary scope for the project to qualify for the LEED Energy & Atmosphere Prerequisite 1 for Fundamental Commissioning of Building Energy Systems. The project team is targeting a "Silver" level certification for this project.

Procurement Background

Fundamental Commissioning agents are selected based on an RFP process established for selecting various consultants to perform work on County projects. Although cost is considered, the evaluation is also contingent on other factors including the company's approach, experience with projects of similar size and scope, experience of the Principal and Project Manager assigned to the project, utilization of subcontractors, M/WBE participation, proximity to Durham and other relevant factors.

Type of purchase

- ☐ Goods
- ☒ Services
- ☐ Architect, Engineer or Surveyor Services
- ☐ Construction and Repair

Did this request for purchase go through a bid process? Yes ☐ No ☒

Goods: Bids required if \geq \$30,000, BOCC approval if \geq \$90,000

Services: Bids required if \geq \$30,000, BOCC approval if $>$ \$40,000

Construction/Repair work: Bids required if \geq \$30,000, BOCC approval if \geq \$500,000

If yes, attach a copy of bid tab and the minority and women business enterprise (MWBE) compliance review form provided by the Purchasing Division.

If no, why?

- ☐ Sole source exemption
- ☐ Cooperative purchasing program exemption
- ☐ State and federal contract exemption
- ☐ Contract is an amendment to an existing contract
- ☒ Other (please explain)

If exempted from bidding, has this request been reviewed and approved by the Purchasing Division in the agenda Legistar system? Yes ☒ No ☐

If no, why?

Based on the fact that the services are similar in scope to the Judicial Building Renovation as well as the Main Library Renovation, both of which were performed by NV5, staff has elected to utilize NV5 for the Administration Building Renovation as well.

Fiscal Impact

Funding for this Consulting Services contract is available in the Administration Building Renovations Capital Project Account.

Recommendation

The County Manager recommends that the Board authorize the execution of the contract with SEDC Engineering, P.C. dba NV5 for the Fundamental LEED Commissioning Services for the Durham County Administration Building Renovation. Project No.: 4730DC137.

May 2 2019

James Faress, P.E.
Durham County
201 E. Main Street, 5th Floor
Durham, NC 27701

Subject: Proposal for Commissioning Services - Durham County Administration Building

Dear Mr. Faress:

SEDC Engineering, P.C., an Affiliate of Sebesta, Inc., dba NV5 (NV5), is pleased to present our proposal to provide commissioning services for the Durham County Administration Building.

The sections that follow outline our detailed scope of services, deliverables, schedule, compensation, and clarifications.

SCOPE OF WORK

Our base scope of work will include the following tasks and deliverables outlined below.

Project Description

This project consists of renovations of all six building levels of the Durham County Administration Building. The project requires commissioning of newly installed Mechanical, Electrical, and Plumbing systems for the project located at 200 East Main Street, Durham, NC in a phased floor-by-floor approach.

We understand Durham County is pursuing LEED Certification under LEED v4 for Interior Design and Construction (ID&C). As a portion of that certification, we further understand commissioning services are being sought in order to achieve the Energy and Atmosphere (EA) pre-requisite for Fundamental Commissioning and Verification and additional LEED points relative to commissioning are not being pursued.

Commissioned Systems

We have based our understanding of the Commissioned Systems on the information provided by the Client (95% Design Plans dated 2/1/2019), our engineering judgment, and our experience in commissioning similar projects. We propose to commission the following systems in our scope of work.

Commissioned Systems			
System	Equipment/Subsystems	Quantity	Test Sample
Plumbing System (Division 22)			
Domestic Hot Water System	Gas-fired Domestic Water Heaters	2	100% Note (3)
	Domestic Hot Water Circulating Pump	1	
	Thermostatic Mixing Valve	1	
HVAC System (Division 23)			
Building Automation System (BAS) DDC Control System (Building Control Computer)	DDC Space Temperature Control	Included	100%
	Graphics		Note (1)
	Alarming and Trending		Note (2)
	Point Verification		
Air Handling System	Dedicated Outdoor Air Units (DOAS) and associated Coil Pumps	3	100%
	Mixed-Air Air Handling Units (AHUs)	7	100%
	4-pipe Fan Coil Units (FCUs)	148	25%
	Variable Air Volume (VAV) Terminal Units with hot water reheat	48	25%
Heating Hot Water System	Natural Gas-Fired Hot Water Boilers	2	100%
	Primary Heating Hot Water Pumps	2	100%
	Secondary Heating Hot Water Pumps	2	100%
Split A/C Systems	Split DX A/C System (no BAS connection)	1	100%
Miscellaneous Systems	Duct-Mounted Hot Water Coils	2	100%
	Toilet Exhaust Fan	1	100%
Electrical System (Division 26)			
Lighting Controls	Lighting Controls Sweep or Schedule	Included	100%
	Lighting Occupancy Sensors	Included	100%
Table Notes			
Note (1)	Automation System control panels, sensors, actuators, and other components will be tested in conjunction with the equipment controlled. The system software, graphics, operating sequences, and other operational features will be tested in conjunction with the equipment controlled.		
Note (2)	Installing contractor to submit completed installation documentation prior to system testing for CxA review.		
Note (3)	Existing equipment not previously commissioned.		

Work Tasks and Deliverables

The following tables include the commissioning services provided during each phase of the project:

Design Phase Commissioning			
Task		Description	Deliverable
1.	Commissioning Focused Design Review	<p>Perform focused review of the Construction progress submission of the commissioned systems: Plumbing; HVAC (including fire/smoke dampers); Electrical.</p> <p>Review will focus on Commissioning Facilitation, Design Features to address OPR and LEED V4 criteria including sustainability, Major concerns that could potentially affect operations and maintenance of the systems, Control System and strategies, Sequences of Operations, Energy Performance and conformance with standard engineering and construction practices.</p> <p>This review will include a back check of all open commissioning comments.</p>	Commissioning Action Log
2.	Review OPR, BOD, and Project Design	Perform a focused review of the final Construction Document submission. This review will include commissioning comments where appropriate.	Commissioning Action Log <i>LEED Scope Item: EA Prerequisite</i>
3.	Develop and Incorporate Commissioning Plan	Based on the construction documents, identify specific systems to be commissioned. The Final Commissioning Plan will also include specific individual roles and responsibilities and sample Pre-Functional Checklists and Functional Test Plans for systems to be commissioned.	Final Commissioning Plan <i>LEED Scope Item: EA Prerequisite</i>
4.	Issue Commissioning Specifications	Prepare Commissioning Specifications sections: 220800 – Commissioning of Plumbing 230800 – Commissioning of HVAC 260800 – Commissioning of Electrical	Commissioning Specification Sections <i>LEED Scope Item: EA Prerequisite</i>

Construction Phase Commissioning			
Task		Description	Deliverable
1.	Commissioning Kickoff Meeting	Introduction of CxA and commissioning process to project team and identify Commissioning Team members.	Meeting Minutes
2.	Confirm incorporation of Commissioning Requirements into construction documents	Review construction documentation and confirm incorporation of commissioning requirements into plans and specification as applicable.	Review Notes LEED Scope Item: EA Prerequisite
3.	Develop Pre-Functional Checklists and Functional Test Procedures	<p>Based on final construction documents (including applicable changes), and approved submittals, prepare draft Pre-Functional Checklists and draft Functional Performance Tests for systems to be commissioned.</p> <p>The Pre Functional Checklists will be used to document completion of system, component and/or equipment installation and to determine system readiness for functional testing.</p> <p>The Functional Performance Tests will be used to direct and document systems performance testing.</p> <p>Draft Pre-Functional Checklist's and Functional Performance Tests will be submitted to the Owner, Design Team, and Construction Manager for review and comment.</p> <p>Incorporate owner, operator, design team, and construction team comments into Pre-Functional Checklists and Functional Performance Tests.</p> <p>Scope includes one submission of Draft Pre-Functional Checklist's and Functional Performance Tests for each commissioned system.</p> <p>Scope includes one submission of the final version of the Pre-functional Checklists and Functional Performance Tests.</p>	<p>Checklists and Test Procedures</p> <p>LEED Scope Item: EA Prerequisite</p>
4.	Pre-Functional Checklist Completion Verification	<p>Verify a statistically significant sample of PFCs for completion and accuracy.</p> <p>In light of this project being executed in phases, PFC verification will be performed in a corresponding phased manner as each phase reaches a state of readiness for PFC verification to commence.</p>	Completed PFCs Daily Field Reports

Construction Phase Commissioning			
Task		Description	Deliverable
5.	Systems Functional Performance Testing	<p>Direct, facilitate, and document all Functional Performance Testing (FPT). FPTs shall be directed by the Commissioning Agent and performed by the contractors under the direction of the Commissioning Agent. We will analyze trend logs of data acquired prior to or during testing.</p> <p>In light of this project being executed in phases, PFC verification will be performed in a corresponding phased manner as each phase reaches a state of readiness for PFC verification to commence.</p> <p>Deferred/seasonal testing is not included in the initial testing.</p>	<p>Completed FPT Forms</p> <p>Commissioning Issues Log</p> <p>Daily Field Reports</p> <p>LEED Scope Item: EA Prerequisite</p>
6.	Submittal and Shop Drawing Review	<p>Based on final construction documents, prepare a list of selected submittals and shop drawings for review by the Commissioning Authority.</p> <p>Review selected submittals and shop drawings to support the commissioning process. Review will be for the purpose of developing appropriate System Readiness Checklists and Functional Test Plans.</p> <p>Reviews will focus on the ability to commission the systems, maintainability and general conformance to owner's requirements. Commissioning review of submittals and shop drawings does not replace Design Team's responsibility for approval.</p>	<p>Submittal Request Checklist</p> <p>Commissioning Submittal Review Log</p>
7.	Controls Meeting	<p>After receipt of the Controls Submittal, participate in, or conduct, a meeting with the Owner's representatives, Control Vendor, TAB contractor, Mechanical/Electrical Design team, mechanical sub-contractor and electrical sub-contractor to review the Controls Submittal and mechanical/electrical systems to be installed.</p> <p>Focus will be on how the selected sequences of operation interact with the mechanical/electrical systems and how well they meet the owner's requirements. Additional focus will be on how the Controls Vendor will implement the sequences of operation and integration of the Controls Vendor programming and installation tasks into the construction schedule.</p>	<p>Meeting Notes (it is assumed the Construction Manager will issue official minutes).</p> <p>Marked up Controls Submittal and Sequence of Operations</p> <p>Commissioning Issues Log to track action items</p>

Construction Phase Commissioning			
Task		Description	Deliverable
8.	Review Change Orders, ASI, and RFI	<p>Review change orders, architect's supplemental instructions and requests for information (with design team response) for issues that affect commissioning.</p> <p>Review is for information only and does not constitute technical or contractual approval or disapproval.</p>	Commissioning Requests for Information
9.	TAB Plan Review	Review HVAC systems Test and Balance Plan prepared by the TAB vendor. Review will be to determine general conformance with owner's requirements.	Commissioning Review Log
10.	Construction Observation Site Visits	<p>Conduct to the construction site during the Construction Phase to observe construction activities. The total number of site visits, as a combination of all five anticipated phases equals up to 17 site visits.</p> <p>Specific attention will be given to installation of mechanical, electrical, and plumbing systems for general conformance with specifications and manufacturer's installation requirements.</p> <p>The Construction Observations will also be used to verify corrective actions for issues identified on the Master Issues Log and reported completed by the Construction Manager and/or installing contractor(s).</p> <p>NV5 will conduct up to 17 Commissioning Progress Meetings as part of the above referenced site visits with the Owner, Design Team, Construction Manager, Installing Contractors, Controls/BAS Vendor, and TAB Vendor. Anticipated distribution of meetings between project phases is as follows:</p> <p>Phase 1: 5 meetings Phase 2: 5 meetings Phase 3: 3 meetings Phase 4: 3 meetings Phase 5: 1 meeting</p> <p>Construction Observation Site Visits will be held in conjunction with scheduled Owner's Progress Meetings and Commissioning Progress Meetings.</p>	Field Observation Reports Commissioning Issues Log

Construction Phase Commissioning			
Task		Description	Deliverable
11.	Review Contractor Equipment Startup Checklists	<p>Commissioning authority will review selected equipment startup reports prepared by installing contractor.</p> <p>NV5 will witness up to three selected equipment startup procedures. Ten days prior notice is required to schedule commission authority witnessing the startup.</p>	<p>Contractor Equipment Startup Checklist (this checklist is part of the Submittal and Shop Drawing Review Checklist).</p> <p>Commissioning Issues Log</p>
12.	TAB Verification	<p>Spot check TAB contractor's work-in-progress for conformance with the TAB Plan. Verify test equipment calibration. Spot check test measurements by observation of TAB contractor's readings.</p> <p>TAB Verification will be conducted during scheduled Construction Observation Visits.</p>	<p>Field Report</p> <p>Commissioning Issues Log</p>
13.	Review TAB Report	<p>Review TAB Report prepared by TAB vendor following system air and water balancing. Review will be focused on TAB results that affect system performance and/or commissioning. Specific attention will be given to equipment installation and operational issues identified by the TAB vendor.</p> <p>The Commissioning Agent will review selected daily field notes and/or preliminary reports prepared by the TAB agency during work in progress.</p> <p>The Commissioning Agent will review the Final TAB Report concurrently with review by the design Engineer.</p> <p>The Commissioning Agent will spot-check selected TAB readings to verify report accuracy. These spot-checks will be coordinated with scheduled Construction Observation visits.</p>	Commissioning Issues Log
14.	Review As-Built Drawings	Review for accuracy against as-installed conditions.	Review Report
15.	Develop Current Facility Requirements and Operations & Maintenance Plan	Document the Current Facility Requirements (CFR) and Operations and Maintenance Plan based on project documents submitted by the contractor.	Commissioning Review Log

Construction Phase Commissioning			
Task		Description	Deliverable
16.	Final Commissioning Report	<p>Compile a comprehensive commissioning report documenting all commissioning activities, including but not limited to:</p> <ul style="list-style-type: none"> • Commissioning Scope • Test Methods and Results • Outstanding Commissioning Issues • Issues Log • Commissioning Plan • Status Reports • Submittal and O&M Manual Reviews • Training Record • System Readiness Checklists • Design Review Comments 	<p>Commissioning Report</p> <p><i>LEED Scope Item: EA Prerequisite</i></p>
19.	Master Issues Log	<p>Maintain a Commissioning Issues Log to document commissioning issues identified during construction and functional testing. The Commissioning Issues Log will include recommended responsible party and recommendations for resolution of the issue. The Commissioning Issues Log will also be used to document progress toward resolution and the final resolution.</p>	Commissioning Issues Log

Schedule

We understand the construction portion of this project is to be performed in a phased approach by floor, and that the completion date for the entire project has not been established as of the date of this proposal. We anticipate that our commissioning effort will occur throughout the construction period of the project.

The following tables outline the schedule for commissioning tasks:

Construction Phase Commissioning Schedule	
Task	Completion Date
Submittal & Shop Drawing Review	2 weeks from receipt of submittals. Submittals will be reviewed concurrent with the Design Engineer submittal review. Commissioning review comments will be provided to the Design Engineer for consolidated review and reporting.
Prepare Final Pre-Functional Checklists (PFC) and Functional Performance Tests (FPT)	All drafts complete within 60 days of receipt of all submittals.
Field Observation Site Visits	Site visits will occur approximately monthly during early construction. As installation of commissioned systems progresses, site visits will occur approximately bi-weekly in preparation for systems functional testing. Site visits will be coordinated with the Construction Manager/Contractor and client.
Final PFC and FTP	2 weeks from receipt of comments on draft documents.
Construction Commissioning Plan	Approximately 2 weeks after Construction Kickoff Meeting.
Functional Performance Tests (FPT)	During last 4-6 weeks of construction phase (as applicable); 1-2 weeks following receipt of completed PFCs.
Develop CFR and O&M Plan	2 weeks from receipt of all necessary documents and completion of FPTs.
TAB Report Review	2 weeks from receipt of report.
Prepare Final Commissioning Report	4 weeks from completion of testing.

Compensation

We propose to perform the base commissioning services described above on a fixed-fee basis for a fee (including estimated expenses) of **\$49,927**.

Invoices will be submitted monthly based on services performed during the period.

Clarifications

1. The scope of services will be provided in accordance with the attached NV5 Terms and Conditions.
2. In the event that the final design and associated commissioning scope and/or schedule materially vary from our assumptions identified above, we reserve the right to request an adjustment in fees.
3. The Fee Proposal does not include the unknown costs associated with re-testing the deficiencies found while the systems are being commissioned. The cost of any retesting will be invoiced on a time and material basis in accordance with our current standard Hourly Billing Rates Schedule. The Hourly Billing Rates Schedule is subject to annual adjustment.
4. Additional Services requested by the client which are not included in the above scope of services will be invoiced on a time and material basis in accordance with our current standard Hourly Billing Rates Schedule. The Hourly Billing Rates Schedule is subject to annual adjustment.
5. We are assuming that all functional performance testing will be completed at the end of each phase of construction as systems are fully completed and ready for testing. We further understand there will generally be five (5) phases to this project.
6. We are assuming receipt of one set of half-size drawings, specifications, and design narratives for each Submission.
7. This proposal is valid for 90 days after the date of this proposal. This proposal may be extended by mutual written agreement.

We are confident that our team has the depth of experience and practical hands-on approach to Commissioning to work closely with Durham County to facilitate the delivery of a high performing, energy efficient project. Thank you again for the opportunity to present our credentials. If you have any questions or comments, please do not hesitate to contact Todd Cole at 704.621.5792 or Todd.Cole@nv5.com.

Sincerely,



Randy Lorenz, PE
President



Todd Cole, CCP
Project Manager

P57419-0002543.00

Attachments: NV5 General Terms and Conditions
Hourly Billing Rates Schedule

ACCEPTED For Durham County
<div></div>
Signature
<div></div>
Name and Title
<div></div>
Date



General Terms and Conditions

1.0 Standard of Care: The Services shall be performed in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar conditions and in the same locality as the Project. Data, interpretations and recommendations by Consultant will be based solely on information discovered by, or made available to, consultant during the course of the engagement. In connection with such information, Consultant shall not be responsible for the use or interpretation of such information by non-parties to this Agreement. Consultant shall not be held liable for problems that may occur if Consultant's recommendations are not followed.

1.1 It is understood and agreed that the Consultant shall not be held responsible for any inaccuracies in any materials, data or records as provided to the Consultant by the CLIENT, which have been prepared by any other person, firm or agency and on which Consultant in its professional judgment has relied and/or utilized in the performance of the Consultant's services. Client agrees that Consultant shall not be responsible for the means, methods, procedures performance, site safety of the construction contractors or subcontractors, or for their errors or omissions. Client agrees that the work created pursuant to this Agreement is for the sole and exclusive use of Client and is not for the benefit of any third parties. This Agreement and the Services to be performed hereunder shall in no way be construed as a guarantee of deficient-free construction.

1.2 Consultant makes no warranty, either express or implied, as to its findings, recommendations, plans, specifications, or professional advice except that the services were performed in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar conditions and in the same locality as the Project.

2.0 Construction Costs: The Client shall advise the Consultant in writing before design commencement of budgetary limitations for the cost of construction. The Consultant shall endeavor to work within such limitations and will, if requested and included within the scope of services, submit to the Client an opinion of probable construction costs. This opinion represents the Consultant's best judgment as a design professional familiar with the construction industry. The Client acknowledges that neither the Client nor the Consultant has control over the cost of labor, materials, market or negotiating conditions, or methods by which contractors determine prices for construction. The Consultant does not warrant or represent that bids or negotiated prices will not vary from its opinions of probable cost, and the Client expressly releases any claim for damages to the extent actual costs exceed the Consultant's opinions of probable cost.

3.0 Compensation: Client shall pay Consultant in accordance with the schedule of fees or charges as shown in the Proposal or fee schedule. Backup data on billing will not be available unless prior arrangements have been made. Prior to initiation of the Services, Client is required to remit any retainer specified in the Proposal. Thereafter, Consultant will submit to Client invoices for the balance due, which shall be due and payable immediately upon submission. If Client objects to all or any portion of any invoice, Client will so notify Consultant in writing within ten (10) calendar days of the invoice date, identify the cause of disagreement, and immediately pay that portion of the invoice not in dispute. In the absence of written notification described above, the balance as stated on the invoice shall be deemed accepted. Invoices are delinquent if payment has not been received within thirty (30) days from date of invoice. In such event, Client shall pay an additional charge of one and one-half (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. Consultant shall be entitled to recover for all costs and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount.

Fee schedules are periodically revised. Unless otherwise agreed, new rates apply to ongoing work as such rates are issued.

4.0 Accuracy: The Consultant shall be entitled to rely upon the accuracy of information, documents and survey supplied by the Owner.

5.0 Intellectual Property: All designs remain the intellectual property of the Consultant with license granted to Client for use under this Agreement and Project. All documents produced by the Consultant under this agreement shall remain the property of the Consultant and may not be used by this Client for any endeavor without the written consent of the Consultant

6.0 Ownership and Re-use of Documents: All documents, including Drawings and Specifications, prepared by the Consultant pursuant to this project are instruments of service. Consultant shall be deemed the author of these instruments of service and retain all common law and statutory rights, including Copyright. They are not intended or represented to be suitable for re-use by the Client or others on extensions of this project or any other project. Any re-use without written verification or adaptation by the Consultant for the specific purposes intended will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting therefrom. Any such verifications or adaptation will entitle the Consultant to further compensation at rates to be agreed upon by the Client and the Consultant.

7.0 Insurance and Indemnity: At all times during the terms of this Agreement the Consultant shall maintain, at its own cost and expense, insurance coverage as protection from claims filed against Consultant as follows:

- Workers Compensation (as required by law)
- General Liability (to person or property)
- Automobile Liability (to person or property)
- Professional Liability (errors and omissions)

At the request of the Client, Consultant shall provide appropriate certificates thereof. In the event a claim against the Consultant is brought, alleging errors or omissions by the Consultant and Consultant is found NOT to be legally liable, then Client shall pay all costs incurred by Consultant in defending itself against such claim.

Client agrees that it will defend, indemnify and hold harmless the Consultant, its officers, directors and employees, from and against any and all claims, damages, awards and costs of defense caused by the negligent or otherwise wrongful acts or omission, including breach of a specific contractual duty, of the Client or the Client's independent contractors, agents or employees..

8.0 Hazardous Materials: The Consultant and Consultant's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. The Client agrees to indemnify and hold harmless the Consultant and Consultant's consultants from and against all claims, liability or costs, including reasonable attorney's fees and expenses, arising out of or in any way connected with the presence, handling, removal, abatement or disposal of hazardous materials in any form at the project site. The Client further agrees to make no claim and hereby waives any claims or causes of action of any type against the Consultant and Consultant's consultants, which may arise out of or relate in any way to the presence of such hazardous materials.

9.0 Risk Allocation and Limitation of Liability. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the Consultant, and its officers, directors, partners, employees, agents and sub-consultants, and any of them, to the Client and anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or the agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of the Consultant, and its officers, directors, employees, agents or sub-consultants, or any of them, shall not exceed the total compensation received by the Consultant, for Services provided under this Agreement or \$50,000 whichever is more. Client agrees that Consultant shall not be responsible for the means, methods, procedures performance, site safety of the construction contractors or subcontractors, or for their errors or omissions. Client agrees that the work created pursuant to this Agreement is for the sole and exclusive use of Client and is not for the benefit of any third parties. This Agreement and the Services to be performed hereunder shall in no way be construed as a guarantee of deficient-free construction.

Neither party shall be responsible to the other for any special, incidental, indirect, penal and/or consequential damages (including lost profits) incurred by either Consultant or Client or for which either party may be liable to any third party.

10.0 Force Majeure: The Parties shall not be liable to each other for any delay in the performance of its obligations hereunder or of any damages suffered by reason of such delay, when such delay is directly or indirectly caused by, or in any manner arises from fires, floods, accidents, riots, acts of God, war, governmental interferences or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials or supplies, transportation delays, or any other causes beyond its control.

11.0 Site Safety: Client agrees that in accordance with generally accepted construction practices, the construction contractor and construction subcontractors will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property, and that this requirement shall apply continuously and not be limited to normal working hours. Neither the professional activities of Consultant nor the presence of Consultant or his or her employees or subconsultants at a construction site shall relieve the contractor and its subcontractors of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and applicable health or safety requirements of any regulatory agency or of state law. Client agrees that Consultant shall not be responsible for the means, methods, procedures performance, site safety of the construction contractors or subcontractors, or for their errors or omissions. Client agrees that the work created pursuant to this Agreement is for the sole and exclusive use of Client and is not for the benefit of any third parties. This Agreement and the Services to be performed hereunder shall in no way be construed as a guarantee of deficient-free construction

12.0 Termination: This Agreement may be terminated without cause or for convenience by either party upon thirty (30) days written notice. The obligation to provide further services under this document may be terminated for cause by either party upon seven (7) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, the Consultant shall be paid for all services rendered to the date of termination, all reimbursable expenses and termination expenses.

13.0 Successors and Assigns: Neither the Client nor the Consultant shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that are or may become due) this document, or any claims that may arise from the performance of services under this agreement, without the written consent of the other, except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this document. Nothing contained in this paragraph shall prevent the Consultant from employing such independent consultants, associates and subcontractors, as it may deem appropriate to assist in the performance of services hereunder. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the Client and the Consultant. Nothing herein shall create a contractual relationship with or cause of action in favor of a third party against either the Client or Consultant.

All claims and causes of actions between the parties to this agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of substantial completion for acts or failures to act occurring prior to substantial completion, or the date of the issuance of the final certificate for payment for acts or failures to act occurring after substantial completion.

14.0 No Third Party Beneficiaries: The Agreement gives no rights or benefits to anyone other than Client and Consultant and does not create any third party beneficiaries to the Agreement.

15.0 Dispute Resolution. Client agrees that in the event Consultant institutes litigation to enforce or interpret the provisions of this Agreement, such litigation is to be brought and adjudicated in Ramsey County, Minnesota, and Client waives the right to bring, try or remove such litigation to any other county or judicial district. The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against the Consultant, unless the Client has first provided the Consultant with a written certification executed by an independent consultant currently practicing in the same discipline as the Consultant and licensed in the same State. This certification shall: (i) contain the name and license number of the certifier; (ii) specify the acts or omissions that the certifier contends are not in conformance with the standard of care in paragraph 23; and (iii) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, (collectively "Disputes") shall be submitted to mediation before and as a condition precedent to pursuing any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and Consultant shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement

mediator cannot be agreed upon by Client and Consultant within ten (10) calendar days, a mediator shall be chosen as specified in the Mediation Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree. Any cause of action brought against Consultant shall be brought within one year of the work or services performed under this Agreement. The above shall not preclude or limit Consultant's right to file an action for collection of fees if the amount in dispute is within the jurisdiction of the small claims court or limit Consultant's right to record, perfect or enforce applicable mechanic's lien or stop notice remedies

16.0 Mutual Negotiation: Client expressly agrees that all provisions of the Agreement, including the clause limiting the liability of Consultant, were mutually negotiated. But for the inclusion of the limitation of liability clause in the Agreement, the Consultant's compensation for services would otherwise be greater and/or the Consultant would not have entered into the Agreement.

17.0 The Agreement: This Agreement constitutes the entire Agreement between CONSULTANT and CLIENT and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument. The failure of either party to insist upon strict adherence to any term of this Agreement on any occasion shall not operate or be construed as a waiver of the right to insist upon strict adherence to that term or any other term of this Agreement on any other occasion. This Agreement shall be governed and construed and obligations of the parties hereto shall be determined in accordance with the Laws of the State of Minnesota.

The signators below hereby certify that they are duly authorized to bind their respective firms to the terms hereof.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement as the day and year first above written.

Agreed and Accepted

"Client"

SEBESTA, INC. d/b/a NV5

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____



2019 Hourly Billing Rates Schedule

Intern	\$65
Project Coordinator I Drafter I	\$90
Project Coordinator II Drafter II	\$105
Designer I Project Technician	\$120
Engineer I Architect I Project Specialist I	\$125
Engineer II Project Specialist II Designer II	\$140
Architect II Engineer III Project Specialist III Designer III	\$155
Engineer IV Architect III Project Specialist IV Project Manager I	\$170
Engineer V Project Specialist V Project Manager II	\$185
Engineer VI Project Manager III	\$200
Program Manager	\$220
Principal-in-Charge	\$260

Basic Services and Reimbursable Expenses will be invoiced monthly unless otherwise agreed upon.

Reimbursable Expenses will be billed at “Cost plus 10%”. Cost is based on actual expenditures made by NV5, its employees or its professional consultants specifically for a project. The following reimbursable expenses are not included in Basic Services provided for a project: Long distance telephone calls; travel and/or vehicle mileage expense directly associated with the project; lodging and meal expense directly associated with the project; plan and specification reproduction expenses; fees paid in the name of the Client for securing approval from authorities having jurisdiction over the project; other special expenses and travel associated with the project that are authorized by the Client.

Sales & Use Taxes will be charged where appropriate and required by law. Amounts due beyond payment terms will accrue interest at 1.5% per month or the maximum amount allowed by law, whichever is less.

Rates are subject to change annually.



ATTACHMENT

MWBE Compliance Review Form - Agenda Action Form (AAF)

Department: Engineering

Project Name: LEED Commissioning Services for the Admin I Building

Durham County hereby establishes the following aspirational goals, which may be adjusted from time to time as deemed necessary by the County Manager or designee.

Categories	Construction	Architect/ Engineer	Services	Goods	MWBE Availability % <i>(Median Availability)</i>
Black American	14.6	9.8	10.9	2.8	10.4%
Asian American	1.3	3.0	1.1	.43	1.3%
Hispanic American	4.2	1.8	1.1	.43	1.5%
American Indian	.65	.75	1.0	.5	.70%
White Female	13.8	11.0	9.5	7.1	10.3%
Overall MWBE Participation Goal =					25.0%

Comments (To be completed by Purchasing):

In review of the MWBE compliance for LEED Commissioning Services for the Admin I Building, there were no participation goals achieved on this project. SEDC Engineering, P.C. dba NV5 will be utilizing their own workforce to perform this particular service on the project.

MWBE Compliance reviewed by the Durham County MWBE Management Team:

Rick Greene
 Rick Greene, Asst. Procurement Manager

5/6/19
 Date