

THIS CONTRACT AMENDMENT is made and entered into this **28th day of May, 2020**, by and between the **COUNTY OF DURHAM** (hereinafter referred to as “**County**”) and **FREESE AND NICHOLS, INC.**, (hereinafter referred to as “**Consultant**”).

WITNESSETH:

THAT WHEREAS, the County and Consultant entered into a contract dated July 1, 2019, Funds Reservation 20-398 for the provision of Project Management Services for the Snow Hill Road Pump Station Project per RFQ #: 19-040, (hereinafter the “Original Agreement”); and

WHEREAS, the County and Consultant desire to amend the Original Agreement *a first time, for the addition of construction phase assistance*, while keeping in effect all terms and conditions of the Original Agreement not inconsistent with the terms and conditions set forth below.

NOW THEREFORE, for and in consideration for the mutual covenants and agreements made herein, the parties agree to amend the Original Agreement as follows:

1. The Term of the Original Agreement hereby remains through **December 31, 2021**.
2. The compensation paid to Consultant shall be amended to add **Fifteen thousand six hundred eighty and No/100 Dollars (\$15,680.00)** for a new amount not to exceed of **Seventy-four thousand seven hundred fifteen and No/100 Dollars (\$74,715.00)**.
3. **CONFIDENTIALITY, DATA SECURITY, TRAINING AND NON-DISCLOSURE.** CONSULTANT acknowledges and agrees that, in the course of its engagement with COUNTY, CONSULTANT or its licensors, subConsultants or suppliers in connection with the services to be rendered under this Contract may receive or have access to “confidential information” or “personal identifiable information”.

CONSULTANT or its licensors, Consultants or suppliers has obtained or may need to obtain confidential information from the COUNTY in connection with the provision of services to the COUNTY or the discussions of such a proposed relationship.

The COUNTY and CONSULTANT desire to stipulate and agree that any disclosure of confidential information in connection with the provision of services or the discussion of such a proposed relationship has occurred or will occur under circumstances and conditions that will protect and preserve the confidentiality of the information.

In consideration of the pursuit of current discussions and payment for the services, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

3.1 DEFINITIONS. As used in this Contract, the following terms shall have the meanings set forth below:

Confidential Information. The term “Confidential Information” shall mean any information, in any medium, whether written, oral or electronic, not generally known in the relevant trade or industry, which falls within any of the following general categories:

- a. Trade Secrets. For purposes of this Contract, trade secrets consist of information of the COUNTY or CONSULTANT or any of its suppliers, Consultants or licensors: (a) that Derives value from being secret;

and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.

- b. Highly Restricted Information. CONSULTANT acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) CONSULTANT will also comply with any more restrictive instructions or written policies that may be provided by the COUNTY from time to time to protect the confidentiality of Highly Restricted Information, as defined below:

1. Information of the COUNTY or its suppliers, Consultants or licensors marked “Confidential” or “Proprietary.”
2. Information relating to criminal investigations conducted by the COUNTY, and records of criminal intelligence information compiled by the COUNTY.
3. Information contained in the COUNTY’s personnel files, as defined by NCGS §153A-98. This consists of all information gathered by the COUNTY about employees, except for that information which is a matter of public record under North Carolina law.
4. Citizen or employee social security numbers collected by the COUNTY.
5. Computer security information of the COUNTY, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
6. Local tax records of the COUNTY that contained information about a taxpayer’s income or receipts.
7. Any attorney/client privileged information disclosed by either party.
8. Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.
9. The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.
10. Protected Information (PHI), as defined in the Insurance Portability and Accountability Act (HIPAA), and any other information that is designated as confidential under federal or state law.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential information shall include information disclosed or revealed within one year prior to the date of this Contract.

Personal Identifiable Information. The term “Personal Identifiable Information” shall mean information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked to a specific individual.

3.2 RESTRICTIONS. CONSULTANT shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

- a. Not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the COUNTY in writing.
- b. Not directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an employee, agent, subConsultant or CONSULTANT of the COUNTY or CONSULTANT having a need to know such Confidential Information for purpose or performing work contemplated by this Contract between the COUNTY and CONSULTANT, and who has executed a

confidentiality agreement incorporating substantially the form of this Confidentiality and Non-Disclosure Agreement. CONSULTANT shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted Information to any third party without the County's prior written consent.

- c. Not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written contracts between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- d. Not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
- e. Use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, agents and subConsultants from using or disclosing the Confidential Information in a manner not permitted by this Contract.
- f. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, CONSULTANT shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- g. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the COUNTY or destroyed upon satisfaction of the purpose of the disclosure of such information.
- h. Restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
- i. Take all reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract.

3.3 EXCEPTIONS. The COUNTY agrees that CONSULTANT shall have no obligation with respect to any Confidential Information that CONSULTANT can establish was:

- a. Already known to CONSULTANT prior to being disclosed by the COUNTY;
- b. Or becomes publicly known through no wrongful act of CONSULTANT;
- c. Rightfully obtained by CONSULTANT from a third party without similar restriction and without breach hereof;
- d. Used or disclosed by CONSULTANT with the prior written authorization of the COUNTY;
- e. Disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, CONSULTANT shall first give to the other party notice of such requirement or request;
- f. Disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued Subpoena, provided that CONSULTANT shall take reasonable steps to obtain an agreement or protective order providing that this Agreement will be applicable to all disclosures under the court order or subpoena.

3.4 REMEDIES. CONSULTANT acknowledges that the unauthorized disclosure of the Confidential Information will diminish the value of the COUNTY's proprietary interests therein. Accordingly, it is agreed

that if CONSULTANT breaches its obligations hereunder, the COUNTY shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

3.5 DATA SECURITY. The CONSULTANT shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations and rules.

The CONSULTANT shall report a suspected or confirmed security breach to the COUNTY Department within twenty-four (24) hours after the breach is first discovered, provided that the CONSULTANT shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered.

If any applicable Federal, State, or local law, regulation, or rule requires the CONSULTANT to give written notice of a security breach to affect persons, the CONSULTANT shall bear the cost of the notice.

3.6 TRAINING AND NON-DISCLOSURE. Upon request by the COUNTY, CONSULTANT agrees to ensure compliance and the security of “confidential information” and “personal identifiable information”, by having its employees, agents and sub-Contractors take online privacy and security awareness training provided by COUNTY, by way of an internet link or some other electronic method to be provided by COUNTY. CONSULTANT, at the request of COUNTY, shall execute a non-disclosure agreement if, and when submitted by COUNTY.

- 4. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) PROGRAM.** It is the policy of the County to provide minorities and women-owned businesses equal opportunity to participate in all aspects of the County’s contracting programs, including but not limited to, the procurement of construction, goods and services consistent with law. The County has established an ordinance and implements an MWBE Program based on the ordinance, that promotes, increases and works towards eradicating the underutilization of minorities and women-owned businesses in the County’s contracting programs. As part of the implementation of the MWBE Program, Consultants shall complete **Attachment 2 – MWBE Utilization Form**, to provide the percentage/dollar value being subcontracted to any minority or women-owned business being utilized on this contract. Attachment 2 is hereby incorporated herein and made a part of this contract.
5. By execution hereof, the person signing for Consultant below certifies that he/she has read this Contract Amendment and that he/she is duly authorized to execute this contract on behalf of the Consultant.
6. Except for the changes made herein, the Original Agreement shall remain in full force and effect to the extent not inconsistent with this Amendment. In the event that there is a conflict between the Original Agreement and this Amendment, this Amendment shall control.

IN WITNESS WHEREOF, the parties have expressed their agreement to these terms by causing this Contract Amendment to be executed by their duly authorized office or agent. This Contract Amendment shall be effective as of the date herein.

COUNTY OF DURHAM

By: _____
Wendell Davis, County Manager

Date of Signature: _____

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

Susan Tezai, Durham County Chief Financial Officer

FREESE AND NICHOLS, INC.

By: _____
Bryan Jann, Principal

Date of Signature: _____

“ATTACHMENTS 1 & 2” to follow

**MWBE UTILIZATION FORM**

This MWBE Utilization Form is an integral part of the contract between the County of Durham and Freese and Nichols, Inc. (Consultant), which contract amendment is dated **May 28, 2020**. The purpose of this form is to assist in identifying minority participation associated with County contracts.

Note: If Purchasing has already performed MWBE pre-award compliance during a bid process and/or BOCC contract approval, please attach the pre-award compliance form to this form and submit with the contract. Completing the remainder of this form will not be required.

Description of Services/Goods: **Provision of Project Management Services for the Snow Hill Road Pump Station Project per RFQ #: 19-040.**

Contract Amount: **\$59,035.00 + \$15,680.00 = \$74,715** Contract Term: **July 1, 2019 – December 31, 2021 (Remains)**

Please check one:

☐ Contractor will provide 100% of the services/goods for this contract.

☐ Contractor will **subcontract** a percentage of the services/goods for this contract to a non-minority business enterprise or a non-profit.

☒ Contractor will **subcontract** a percentage of the services/goods for this contract to the minority-owned business enterprise(s) identified below.

Minority Business Enterprise Name, Address & E-Mail	Minority Category*	Description of Work	Percentage %	Dollar Value
CriTek		Technical Review Support	25.41%	\$15,000

***Minority Categories:** Black/African American (**B**), Female (**F**), Hispanic (**H**), Asian American (**A**), American Indian (**I**)

Durham County Goals for M/WBE Participation in the Procurement of Goods, Services and Construction

Categories	Construction	Architect/Engineer	Services	Goods	MWBE % Availability (Median Availability)
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%

This form shall accompany all contracts submitted to Purchasing.