

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) effective this 29th day of August 2019 is entered into by and between **Indian River County**, a political subdivision of the State of Florida (“Client”), with offices at 1800 27th Street, Vero Beach, Florida 32960 and **Witt O’Brien’s, LLC** (“Consultant”), located at 818 Town & Country Blvd., Suite 200, Houston, Texas 77024. For purposes of this Agreement, Client and Consultant may be referred to individually as the “Party” or collectively as the “Parties”.

WHEREAS, Consultant is in the business of providing certain consulting services, and is willing to provide such services to Client;

WHEREAS, through the solicitation and selection process for RFP 2019060, Client has selected and desires to utilize Consultant’s services as provided for herein; and,

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties hereto agree as follows:

1. Recitals. The above-referenced recitals are true and correct, and are incorporated herein.

2. Scope of Work. Consultant shall provide the services set forth in Appendix A, attached hereto and incorporated herein (“Services”). Consultant shall furnish all reports and deliverables as set forth in Appendix A in accordance with the terms set forth therein (hereafter “Deliverables”). The Services shall be requested by issuing a Notice to Proceed via email to be mutually agreed in writing by the Parties (the “NTP”) or task orders executed by both Parties (the “Task Order”), in the form substantially similar to the template attached hereto as Appendix D. All NTPs and Task Orders are incorporated herein by reference.]

3. Period of Performance. This Agreement shall remain in full force and effect for an initial term of one year, with two additional one-year renewals available, subject to mutual agreement, unless otherwise terminated by mutual consent of the parties hereto.

4. Fees. In consideration of Services performed hereunder, Client shall pay Consultant in accordance with Appendix B, which is incorporated into and forms part of this Agreement. Payment terms for the Agreement shall be in accordance with Section 12 of this Agreement.

5. Consultant’s Responsibilities. Consultant shall perform the Services utilizing the standard of care normally exercised by professional consulting firms in performing comparable services under similar conditions. CONSULTANT MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

6. Client’s Responsibilities. Client shall make timely payments in accordance with the terms and conditions of this Agreement. Client shall provide site access to the site or facility at which the Services are to be performed at such times as may reasonably be required by Consultant and shall make timely payments in accordance with the terms and conditions of this Agreement. To the extent Client has access to information relating to the Services to be performed, Client shall provide such information as is reasonably available and appropriate for the efficient performance of the Services (“Information”). Such Information includes, but is not limited to, available site history and the identification, location, quantity, concentration and character of known or suspected hazardous conditions, wastes, substances or materials that are likely to pose a significant risk to human life, health, safety or to the environment (Hazardous Waste). Consultant shall be entitled to rely upon the Information provided by the Client or the Client’s agents without independent verification except to the extent set forth herein and shall bear no liability arising from such reasonable reliance.

7. Commencement and Completion of the Services. The Services shall commence and shall be completed on the respective dates specified in this Agreement or, in the absence of such specification, as soon as good practice and due diligence reasonably permit.

8. Confidential Information. Confidential information ("Confidential Information") disclosed by either Party under this Agreement shall be clearly labeled and identified as Confidential Information by the disclosing party at the time of disclosure. When concurrent written identification of Confidential Information is not feasible at the time of such disclosure, the disclosing party shall provide such identification in writing promptly thereafter. Confidential Information shall not be disclosed to any other person except to those individuals who need access to such Confidential Information as needed to ensure proper performance of the Services. Neither Party shall be liable for disclosure or use of Confidential Information which: (1) is generally available to the public without breach of this Agreement; (2) is disclosed with the prior written approval of the disclosing party; or (3) is required to be released by applicable law or court order. Each Party shall return all Confidential Information relating to this Agreement to the disclosing party upon request of the disclosing party or upon termination of this Agreement, whichever occurs first. Each Party shall have the right to retain a copy of the Confidential Information for its internal records and subject to ongoing compliance with the restrictions set forth in this Section 8.

9. Deliverables. Upon payment in full for the Services, and unless otherwise agreed to by the Parties, the Deliverables, when applicable shall be the property of the Client. The Consultant shall not disclose the Deliverables relating to the Services to a third party without the prior written authorization of the Client. Client shall be solely responsible for any disclosure of the Deliverables, which may be required by law and agrees to indemnify and hold, subject to the limits set forth in Section 768.28, Florida Statutes, Consultant harmless for any loss, liability, or claim resulting from Client's failure to make such disclosure and fully indemnify Consultant. Where applicable law requires immediate disclosure of the Deliverables by the Consultant, Consultant shall make its best efforts to give prior notice to Client. At Client's request and expense, Consultant will assist the Client in making such disclosures as may be required by law.

Notwithstanding the foregoing, the Client acknowledges that in the course of its performance under the Agreement the Consultant may use products, materials and methodologies that are deemed Confidential Information to the Consultant, and the Client agrees that it shall have or obtain no rights in such Confidential Information except pursuant to a separate written agreement (if any) executed by the Parties.

10. LIABILITY AND INDEMNIFICATION

10.1 CONSULTANT PEOPLE AND PROPERTY. TO THE EXTENT PERMITTED BY LAW, CONSULTANT WILL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS CLIENT, FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, COSTS (INCLUDING LEGAL FEES), EXPENSES AND LIABILITIES IN RESPECT OF:

(a) LOSS OF OR DAMAGE TO THE PROPERTY OF CONSULTANT WHETHER OWNED OR LEASED BY CONSULTANT; AND

(b) PERSONAL INJURY, INCLUDING DEATH OR DISEASE, TO ANY PERSON EMPLOYED BY CONSULTANT;

ARISING FROM OR RELATING TO CONSULTANT'S PERFORMANCE OF THE AGREEMENT.

10.2 CLIENT PEOPLE AND PROPERTY. TO THE EXTENT PERMITTED BY LAW, AND TO THE LIMITS SET FORTH IN SECTION 768.28, FLORIDA STATUTES CLIENT WILL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS CONSULTANT FROM AND AGAINST ANY CLAIMS, LOSSES, DAMAGES, COSTS (INCLUDING LEGAL FEES), EXPENSES AND LIABILITIES IN RESPECT OF:

(a) LOSS OF OR DAMAGE TO THE PROPERTY OF CLIENT WHETHER OWNED OR LEASED BY CLIENT; AND

(b) PERSONAL INJURY, INCLUDING DEATH OR DISEASE, TO ANY PERSON EMPLOYED BY CLIENT;

ARISING FROM OR RELATING TO THE CLIENT'S ACTIONS IN CONNECTION WITH THE AGREEMENT.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER PARTY EXCLUDES OR LIMITS ITS LIABILITY FOR FRAUD.

10.3 LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND. EXCEPT FOR INDEMNITY OBLIGATIONS AND CLAIMS ARISING FROM BREACH OF CONFIDENTIALITY, EACH PARTY'S LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT SHALL NOT EXCEED, IN THE AGGREGATE, THE FEES ACTUALLY PAID BY CLIENT TO CONSULTANT UNDER THIS AGREEMENT.

10.4 APPLICATION OF INDEMNITIES AND LIMITATIONS OF LIABILITY. ALL INDEMNITIES AND LIMITATIONS OF LIABILITY UNDER THIS AGREEMENT SHALL APPLY IRRESPECTIVE OF CAUSE AND NOTWITHSTANDING ANY NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, ACTIVE, PASSIVE OR GROSS), BREACH OF DUTY (WHETHER STATUTORY, CONTRACTUAL OR OTHERWISE) OR OTHER FAULT OR STRICT LIABILITY OF ANY PARTY (INCLUDING ANY INDEMNIFIED PARTY), AND SHALL APPLY IRRESPECTIVE OF ANY CLAIM IN TORT, UNDER CONTRACT OR OTHERWISE AT LAW.

11. Acceptance. Client shall have ten (10) days from the date each deliverable is made to Client to reject all or part of each Deliverable. Each Deliverable, to the extent not rejected in writing by Client, shall be deemed accepted.

12. Payment Terms. Invoices will be submitted to finance@ircgov.com with a copy to kdaniels@ircgov.com and may be submitted every 15 days, or in the alternative every 30 days, and payment is due net 30 days after receipt of such invoice. Invoices for out of pocket expenses may be submitted every 15 days and payment is due net 30 days after receipt of the invoice. Timely payment is a material part of the consideration for the performance of the Services and will be subject to the Florida Prompt Payment Act. Invoices are considered accepted by Client unless a written notice explaining rejection of specific charges is provided to Consultant within ten (10) days from date submitted. A service charge equivalent to 1.5% (per month) of invoice amount may be assessed by Consultant and will be paid by Client for invoices aging beyond 30 days until invoice is paid in full.

13. Currency of Payment. Unless otherwise set forth in this Agreement, all payments shall be made in United States Dollars (\$US). Where exchange rates are involved, the rate of exchange between \$US and the other currency involved in the transaction shall be the rate of exchange as of the date of invoice. The date of each invoice shall be clearly marked on each invoice.

14. Health & Safety. Client shall notify Consultant of any known or suspected hazards existing at any site where the Services are to be provided, including but not limited to, hazardous waste, substances or materials and underground utilities.

15. Conflict of Interest. The Client acknowledges that the Consultant provides similar services for a broad range of other clients and agrees that Consultant shall be free to work for other clients in matters that do not involve the use of any Confidential Information that has been disclosed by the Client under the terms of this Agreement or do not directly relate to the specific Services provided by the Consultant to the Client under this Agreement.

16. Force Majeure. Neither Party shall be responsible for any delay or failure in performance, other than the obligation to make payments for work previously performed, to the extent that such delay or failure was caused by a force majeure event including Act of God, war, civil disturbance, governmental action, labor dispute unrelated to and without fault or negligence of the party claiming the force majeure event, computer virus, or denial of access to the site or any other event beyond the reasonable control of the claiming party. Performance under this Agreement shall resume promptly once the cause of delay or failure ceases and an equitable adjustment shall be made to the price and/or schedule of the Services including any mobilization or demobilization costs of Consultant.

17. Notice. Any notice given by either Party shall be in writing and shall be given by email with delivery confirmation, or registered or certified mail, return receipt requested, postage prepaid, or Federal Express or DHL courier, shipped prepaid, addressed to the Parties at the addresses herein designated for each Party or at such other addresses as they may hereafter designate in writing.

Indian River County, FL	Witt O'Brien's, LLC
Attention Kristin Daniels, Budget Director	Attention: Director of Contracts
Address: 1800 27 th Street Vero Beach, Florida 32960	818 Town & Country Blvd., Suite 200 Houston, TX 77024
Phone: (772) 226-1257	Phone: 281-606-4721 Alternate Phone: (202) 207-2935
Email: Kdaniels@ircgov.com ;	contractrequests@wittobriens.com with a copy to cjoiner@wittobriens.com
For Legal Notices: County Attorney 1800 27 th Street Vero Beach, FL 32960 dreingold@ircgov.com	For Legal Notices, a copy shall be provided to: Witt O'Brien's, LLC Attention: Legal Counsel 2200 Eller Drive Fort Lauderdale, FL 33316 Email: blong@ckor.com with a copy to cjoiner@wittobriens.com

18. Changed Conditions. The discovery of any hazardous waste, substance or material; underground obstruction; underground utilities; or other latent obstruction to the performance of the Services to the extent that such conditions are not the subject of the Services, and to the extent that such conditions were not brought to the attention of the Consultant prior to execution of this Agreement, or any change in law that materially affects the obligations or rights of either Party under this Agreement, shall constitute a materially different site condition entitling the Consultant to an equitable adjustment in the contract price, time of performance, or both, as appropriate. If the change materially changes the nature of the Services, the Consultant may terminate this Agreement as a result of such changed conditions.

19. Changes to the Services. The Client may direct changes within the general Scope of Work. Upon notification of such direction, the Consultant shall prepare an estimate of the additional costs and time required, if any, to perform the change. Upon mutual written agreement, Consultant shall perform the change and an equitable adjustment shall be made to the price and/or time schedule as appropriate.

20. Third Party Litigation. In the event that any litigation, proceeding, or claim (including any investigation which may be preliminary thereto) is commenced by a third party, involving the Services performed by Consultant, Consultant shall furnish, if compelled by law or upon the reasonable request of Client, such person or persons from Consultant's organization as are familiar with the matters embraced within the knowledge of Consultant's personnel to testify as witnesses and to provide Consultant's records and such other information and assistance in connection with such litigation, proceeding or claim (or investigation preliminary thereto).

21. Consultant's Personnel. At any time during the Term, Client may, in its sole and reasonable discretion, ask Consultant to replace particular employees, contractors, agents or other personnel performing Services on Consultant's behalf (collectively, "Personnel"). Upon receipt of such notification, Consultant shall immediately terminate such Personnel's performance of the Services and submit to Client, for Client's consent, which consent shall not be unreasonably withheld, the name and credentials of each individual whom Consultant suggests as a replacement for the individual so terminated. Upon receipt of notification from Client of the acceptability of such proposed replacement, Consultant shall cause such replacement immediately to commence the performance of the Services, or the applicable portion thereof.

22. Independent Contractor. Consultant is an independent contractor and shall not be deemed to be an employee or agent of the Client. Client shall not be deemed a joint employer of the other Party's employees. Consultant shall indemnify and hold Client harmless against all liability and loss resulting from i) claims made by the Consultant's employees that they are co-employed by Client, ii) Consultant's failure to pay wages to its employees, and iii) Consultants' failure to pay all taxes and fees imposed by the

government under employment insurance, social security and income tax laws with regard to Consultant's employees engaged in the performance of this Agreement.

23. Non-Solicitation of Employees. Neither Party shall solicit for employment or hire the employees of the other party with the knowledge that such employee was involved in the management or performance of the Services during the term of this Agreement and for one year thereafter.

24. Nonwaiver. No waiver of any breach of this Agreement shall operate as a waiver of any similar subsequent breach or any breach of any other provision of this Agreement.

25. Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be severed from this Agreement and to the extent possible, this Agreement shall continue without affect to the remaining provisions.

26. Assignment/Subcontracts. Neither Party may assign this Agreement without the written consent of the other Party, which shall not unreasonably be withheld; provided, however, that Consultant may assign this Agreement in connection with a sale of all or substantially all of its assets without Client's consent, or to a parent, subsidiary, or affiliate.

27. Drafting party. Each Party has reviewed this Agreement and any question of interpretation shall not be resolved by any rule of interpretation providing for interpretation against the drafting party. This Agreement shall be construed as though drafted by both Parties.

28. Governing Law. The validity, enforceability and interpretation of this Agreement shall be determined and governed by the substantive laws of the State of Florida, without reference to its rules relating to choice of law to the contrary. Any dispute arising out of this Agreement or the Consulting Services shall be brought in a state or federal court of competent jurisdiction located in Indian River County, State of Florida.

29. Captions. The captions and headings of this Agreement are intended for convenience and reference only, do not affect the construction or meaning of this Agreement and further do not inform a Party of the covenants, terms or conditions of this Agreement or give full notice thereof.

30. Additional Instruments. The Parties agree to provide the other with any and all documents required to carry out any and all obligations in connection with the Agreement as set forth herein.

31. No Agency. Except as specifically set forth otherwise, it is agreed and understood that neither Party hereto is, by this Agreement or anything herein contained, constituted or appointed agent or representative of the other for any purpose whatsoever, nor shall anything in this Agreement be deemed or construed as granting either Party any right or authority to assume or to create any obligation, warranty or responsibility, express or implied, for or in behalf of the other.

32. Order of Precedence. In the event of a conflict in the terms and conditions of this Agreement, the following order of precedence shall apply:

1. This Agreement
2. The Scope of Work ([Appendix A](#))
3. The Rate Schedule ([Appendix B](#))
4. FEMA-Related Clauses ([Appendix C](#))
5. Task Orders ([Appendix D](#)) (if applicable)
6. Consultant's submitted Proposal
7. Other Contract Documents.

33. Use of Logo. Client hereby authorizes Consultant to use its name, logo and/or trademark without further notice to Client in connection with certain promotional materials that Consultant may disseminate to the public. The promotional materials may include, but are not limited to, brochures, video tape, internet website, press releases, and advertising in periodicals. Nothing herein obligates Consultant to

use a Client's logo and/or trademark, in any promotional materials of Consultant. Consultant shall include a trademark attribution notice giving notice of the Client's ownership of its trademarks in the marketing materials in which Client's name and logo appear.

34. Termination. This Agreement may be terminated for convenience at any time by either Party provided the requesting Party provides the other with 30 days written notice. If either Party fails to perform any of its duties or obligation or shall violate any of the prohibitions imposed upon it under this Agreement, or shall be dissolved or be adjudged bankrupt or shall have a petition in bankruptcy filed against it, or shall make a general assignment for the benefit of creditors, or if a receiver shall be appointed for a Party, the other Party may terminate this Agreement, without prejudice to any other rights or claims which it may have under this Agreement, on written notice to the other Party and fifteen (15) business days opportunity to cure such breach. In any event, Client shall pay all fees due and expenses incurred for Services rendered through the date of termination.

Additionally, termination clauses applicable to Section 287.135 and 215.473, Florida Statute apply to the contract as follows. Consultant certifies that it and those related entities of Consultant as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, Consultant certifies that it and those related entities of Consultant as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

Client may terminate this Contract if Consultant is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

Client may terminate this Contract if Consultant, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

35. FEMA Clauses. If applicable to the Services provided by Consultant under this Agreement, Consultant shall comply with FEMA Clauses set forth in Appendix C.

36. Public Records Compliance. Client is a public agency subject to Chapter 119, Florida Statutes. The Consultant shall comply with Florida's Public Records Law. Specifically, the Consultant shall:

- (1) Keep and maintain public records required by the Client to perform the service.
- (2) Upon request from the Client's Custodian of Public Records, provide the Client with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the Client.
- (4) Upon completion of the contract, transfer, at no cost, to the Client all public records in possession of the Consultant or keep and maintain public records required by the Client to perform the service. If the Consultant transfers all public records to the Client upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records

stored electronically must be provided to the Client, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the Client.

B. IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

(772) 226-1424

publicrecords@ircgov.com

Indian River County Office of the County Attorney

1801 27th Street

Vero Beach, FL 32960

C. Failure of the Consultant to comply with these requirements shall be a material breach of this Agreement.

Entire Agreement. Both Parties acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and further agree that it is the entire Agreement between the Parties which supersedes all prior agreements, written or oral, relating to the subject matter hereof. No modification or waiver of any provision shall be binding unless in writing signed by the Party against whom such modification or waiver is sought to be enforced.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, execute this Agreement to be effective as of the date set forth above.

Indian River County, FL	Witt O'Brien's, LLC
<p>By: _____ Bob Solari, Chairman</p> <p>By: _____ Jason E. Brown, County Administrator (per Resolution 2019-058)</p>	<p>_____ Name: Title: Date:</p>
<p>APPROVED AS TO FORM AND LEGAL SUFFICIENCY:</p> <p>By: _____ Dylan Reingold, County Attorney</p> <p>Jeffrey R. Smith, Clerk of Court and Comptroller</p> <p>Attest: _____ Deputy Clerk (SEAL)</p>	

**APPENDIX A
SCOPE OF WORK**

Consultant shall provide the following services to the extent they are eligible for DAC reimbursement:

FEMA Public Assistance Advisory Services
FEMA Public Assistance Grant Program
FEMA Hazard Mitigation Assistance
Disaster Assistance Program Funding including FHWA, NRCS, HUD CDBG-DR, and Others
Insurance Recovery Services
Problem Resolution
Closeout and Audit Support
Appeals

As further described in Consultant's June 11, 2019 Proposal in response to RFP 2019060

**APPENDIX B
COMPENSATION/RATES**

Rates provided include all cost associated with the performance of the work, such as overhead and profits. Reimbursement for travel expenses will be made at actual cost and without markup. No work or charges will be encumbered that are not eligible for reimbursement as FEMA Direct Administrative Costs.

Position or Equivalent	Hourly Rate (USD)
Project Manager - Recovery	168
PA Specialist	155
Project Executive	260
Subject Matter Expert	155
Project Accountant	75
Senior Closeout Specialist	155
Closeout Specialist	140
Mitigation Specialist	130

NOTES ON COST PROPOSAL

- The hourly rates include all applicable overhead and profit.
- All non-labor related project costs will be billed at cost without mark-up. This includes travel expenses such as airfare, hotel, per diem, rental car and/or mileage, which will be billed in accordance with the current Federal Travel Regulation (FTR) schedule.
- All expenses shall be submitted with full supporting documentation in compliance with GSA guidelines for reimbursement

**APPENDIX C
FEMA CLAUSES**

The Parties shall comply with all federal laws and regulations applicable to the receipt of FEMA grants, including, but not limited to the contractual procedures set forth in Title 2 of the Code of Federal Regulations, Part 200 ("2 CFR 200"), including Appendix II to such Part ("Appendix II").

In addition, the Parties agrees as follows:

1. Client is entitled to exercise all administrative, contractual, or other remedies permitted by law to enforce Consultant's compliance with the terms of this Agreement, except to the extent expressly provided otherwise by this Agreement.
2. Client may terminate this Agreement for cause or convenience in accordance with the procedures set forth in this Agreement.
3. Compliance with the Davis-Bacon Act and Copeland Anti-Kickback Act as applicable to the Services.
 - a. Consultant shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 CFR Part 3 as may be applicable, which are incorporated by reference into this Agreement.
 - b. Subcontracts. Consultant and any subcontractors to Consultant shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontractors. The prime contractor shall be responsible for compliance by any Consultant, Subcontractor or lower tier subcontractor with all of these contract clauses.
 - c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor, consultant and subcontractor as provided in 29 CFR §5.12.
4. Compliance with the Clean Air Act and the Federal Water Pollution Control Act.
 - a. Clean Air Act
 - (i) Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §7401 et seq.
 - (ii) Consultant agrees to report each violation to Client (as defined in the Agreement) and understands and agrees that Client will, in turn, report each violation as required to assure notification to FEMA and the appropriate Environmental Protection Agency Regional Office.
 - (iii) Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
 - b. Federal Water Pollution Control Act
 - (i) Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
 - (ii) Consultant agrees to report each violation to Client and understands and agrees that Client will, in turn, report each violation as required to assure notification to FEMA and appropriate Environmental Protection Agency Regional Office.
 - (iii) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA."
5. Suspension and Debarment
 - a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Consultant is required to verify that none of Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940)

or disqualified (defined at 2 C.F.R. § 180.935).

- b. Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by Client. If it is later determined that Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Client, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6. Compliance with Byrd Anti-Lobbying Amendment

- a. Consultant hereby certifies to the best of its knowledge that:
 - i. No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Consultant shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- b. Consultant shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d. By executing this Agreement, Consultant hereby certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Consultant understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure,

if any.

7. Procurement of Recovered Materials

a. In the performance of this contract, Consultant shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

b. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

8. Access to Records

The following access to records requirements apply to this Agreement:

- a. Consultant agrees to provide, Client, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. Consultant agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

9. Use of DHS Seal

Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

10. Compliance with Federal Law

This is an acknowledgement that FEMA financial assistance will be used to fund the Agreement only. Consultant will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

11. Non-Obligation of Federal Government

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

12. Program Fraud and False or Fraudulent Statements or Related Acts

Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

**APPENDIX D
TASK ORDER TEMPLATE**

This Task Order No. ____, Statement of Work for _____ for the _____ (“Task Order”) effective as of _____, between _____ (“Client”) and Witt O’Brien’s, LLC (“Consultant”).

WHEREAS, this Task Order is in support of the _____ (“Agreement”), dated _____, and attached herein as an exhibit;

WHEREAS, the Client selected the Consultant to provide Services, as defined in the proposal (“Proposal”) dated _____, and attached herein as an exhibit;

NOW, THEREFORE, in consideration of the terms and conditions contained in the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Client and Consultant hereby agree as follows:

1. Parties mutually agree to add the following terms (if applicable): _____
2. Parties mutually agree to add the following specific scope: _____
3. Parties mutually agree to add the following performance period: _____
4. Parties mutually agree to add the following not to exceed amount: _____
5. Other Terms and Conditions: All other terms and conditions of the basic Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, execute this Task Order to be effective as of the date set forth above.

Indian River County , FL	Witt O’Brien’s, LLC
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____