

Boggy Creek Improvement District

3501 Quadrangle Boulevard, Suite 270, Orlando, FL 32817; Phone: 407-723-5900

www.boggycreekid.org

The following is the proposed agenda for the upcoming Meeting of the Board of Supervisors for the Boggy Creek Improvement District ("District"), scheduled to be held at **3:00 p.m. on Tuesday, May 17, 2022, at Courtyard Orlando Lake Nona, 6955 Lake Nona Blvd., Orlando, FL 32827**. A quorum will be confirmed prior to the start of the meeting.

District Staff, please use the following information to join via computer or the conference line:

Phone: 1-844-621-3956

Computer: pfmgroup.webex.com

Participant Code: 796 580 192#

BOARD OF SUPERVISORS' MEETING AGENDA

Organizational Matters

- Roll Call to Confirm a Quorum
- Public Comment Period
- 1. **Consideration of the Minutes of the April 19, 2022, Board of Supervisors' Meeting** *(provided under separate cover)*
- 2. **Letter from Supervisor of Elections – Orange County**
- 3. **Consideration of Resolution 2022-05, Designating a Date, Time and Location for the 2022 Landowners' Meeting** *[suggested date of November 15, 2022 at 2:00 p.m.]*

Business Matters

- 4. **Consideration of OUC Transfer Agreement** *(provided under separate cover)*
- 5. **Consideration of Agreement for Geotechnical Services with PSI for Lift Station 9 Force Main**
- 6. **Consideration of Power Center Roundabout Preliminary Design Proposal**
- 7. **Consideration of Traffic Engineering Services for Power Center Roundabouts with Kittelson**
- 8. **Consideration of Resolution 2022-06, Approving a Preliminary Budget for Fiscal Year 2023 and Setting a Public Hearing Date** *[suggested date of August 16, 2022 at 3:00 p.m.] (provided under separate cover)*
- 9. **Ratification of Operation and Maintenance Expenditures Paid in April 2022 in amount totaling \$69,899.24** *(provided under separate cover)*
- 10. **Ratification of Requisition Nos. 2018-234 – 2018-238 in April 2022 in an amount totaling \$32,185.05** *(provided under separate cover)*
- 11. **Recommendation of Work Authorizations/Proposed Services** *(if applicable)*
- 12. **Review of District's Financial Position and Budget to Actual YTD** *(provided under separate cover)*

Other Business

- A. Staff Reports
 - 1. District Counsel
 - 2. District Manager
 - 3. District Engineer



4. Landscape Supervisor
 5. Irrigation Supervisor
 6. Construction Supervisor
- B. Supervisor Requests

Adjournment



BOGGY CREEK IMPROVEMENT DISTRICT

**Minutes of the April 19, 2022
Board of Supervisors' Meeting**
(provided under separate cover)

BOGGY CREEK IMPROVEMENT DISTRICT

**Supervisor of Elections
- Orange County**

Bill Cowles

Date 5/6/2022

Supervisor of Elections

Orange County, FL

Time 03:27 PM

District List Report

District	Nbr	DistrictType	Description	Registered Voters					Inactive Voters				
				Total	Dems	Reps	NPA	Other	Total	Dems	Reps	NPA	Other
HSE	46	HOUSE	FLORIDA 46	81,19	48,61	8,364	23,167	1,048	11,556	6,16	1,090	4,200	105
HSE	47	HOUSE	FLORIDA 47	126,87	50,46	39,074	34,736	2,606	12,460	4,98	2,731	4,560	183
HSE	48	HOUSE	FLORIDA 48	107,81	48,38	18,576	39,452	1,402	11,172	4,74	1,508	4,780	136
HSE	49	HOUSE	FLORIDA 49	106,19	43,55	25,085	35,610	1,949	12,097	4,98	2,195	4,687	227
HSE	50	HOUSE	FLORIDA 50	92,08	32,57	26,034	31,731	1,749	7,208	2,472	1,755	2,858	123
				853,96	360,453	213,700	265,069	14,743	80,575	34,011	15,140	30,259	1,165
SB	1	SCHOOL	BOARD 1	113,489	43,99	31,42	35,891	2,174	12,259	4,84	2,517	4,638	255
SB	2	SCHOOL	BOARD 2	137,56	54,00	32,966	48,238	2,354	12,681	4,96	2,316	5,226	172
SB	3	SCHOOL	BOARD 3	122,27	51,18	28,306	40,936	1,842	11,248	4,57	1,918	4,616	135
SB	4	SCHOOL	BOARD 4	143,58	50,91	43,721	46,188	2,761	11,463	4,22	2,897	4,152	193
SB	5	SCHOOL	BOARD 5	91,40	54,59	9,788	25,879	1,141	12,869	6,77	1,291	4,683	116
SB	6	SCHOOL	BOARD 6	119,370	56,45	28,74	31,872	2,302	12,369	5,68	2,273	4,223	185
SB	7	SCHOOL	BOARD 7	126,28	49,29	38,749	36,065	2,169	7,686	2,928	1,928	2,721	109
				853,965	360,453	213,700	265,069	14,743	80,575	34,011	15,140	30,259	1,165
SEN	11	SENATE	FLORIDA 11	313,48	150,09	70,23	88,223	4,935	29,153	13,91	4,611	10,281	344
SEN	13	SENATE	FLORIDA 13	340,44	137,24	88,80	108,21	6,178	35,575	14,25	6,849	13,902	570
SEN	15	SENATE	FLORIDA 15	200,03	73,10	54,663	68,633	3,630	15,847	5,840	3,680	6,076	251
				853,965	360,453	213,700	265,069	14,743	80,575	34,011	15,140	30,259	1,165
SPC	1	BONNET CREEK	RESORT			0	0	0	0		0	0	0
SPC	2	EAST PARK		1,61	59	388	594	29	95	3	22	36	2
SPC	3	FALCON TRACE		1,90	87	354	650	26	133	5	22	53	3
SPC	4	NARCOOSSEE		1,81	67	440	672	34	261	10	50	105	6
SPC	5	STONEYBROOK WEST		3,48	1,22	1,102	1,095	68	235	8	64	80	4
SPC	6	URBAN ORLANDO		6,14	2,20	2,036	1,735	161	880	28	268	314	9
SPC	7	VISTA LAKES		4,21	1,69	965	1,497	62	339	13	60	146	2
SPC	8	RANGER DRAINAGE		6,43	1,90	2,417	1,967	146	373	113	113	13	
SPC	9	BOGGY CREEK		2		8	12	0	0		0	0	0
SPC	10	GREENEWAY		4,57	1,54	1,308	1,622	104	239	7	66	98	5
SPC	11	MYRTLE CREEK		2,38	75	664	914	54	215	7	57	82	2
SPC	13	RANDAL PARK		1,45	48	423	510	37	93	3	26	32	4
SPC	15	FOWLERS GROVE WG VIL				0	0	0	0		0	0	0
SPC	20	STOREY PARK		1,85	68	403	730	42	55	2	6	22	2
SPC	22	GROVE RESORT				0	0	0	0		0	0	0
SPC	23	DOWDEN WEST		22	9	48	75	8	0		0	0	0
SPC	24	FRERC				1	0	0	0		0	0	0
SPC	25	POITRAS EAST		16	3	43	83	4	0		0	0	0
SPC	26	GRANDE PINES CDD				0	0	0	0		0	0	0
SPC	27	WESTWOOD CDD				0	0	0	0		0	0	0
SPC	28	VALENCIA WATER CONTROL D					0	0	0		0	0	0
SPC	29	MIDTOWN IMPROVEMENT DIS		32	12	8	111	9	65	2	18	23	2
SPC	99	BELLE ISLE 2022 ANNEX		18	7	58	50	4	15	5	1	9	0
				36,82	12,981	10,742	12,317	788	2,998	1,03	773	1,139	49
UNP	9	UNPRECINCTABLE ABSENTEE		0			0	0	0	0	0	0	0
					0	0	0	0	0		0	0	0

BOGGY CREEK IMPROVEMENT DISTRICT

**Resolution 2022-05,
Designating a Date, Time and Location for
the 2022 Landowners' Meeting
*[November 15, 2022 at 2:00 p.m.]***

RESOLUTION 2022-05

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE BOGGY CREEK IMPROVEMENT DISTRICT DESIGNATING A DATE, TIME AND LOCATION FOR A LANDOWNERS' MEETING AND ELECTION; PROVIDING FOR PUBLICATION; ESTABLISHING FORMS FOR THE LANDOWNER ELECTION; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Boggy Creek Improvement District ("**District**") is a local unit of special-purpose government created and existing pursuant to Chapter 190, *Florida Statutes*, being situated entirely within the City of Orlando, Florida; and

WHEREAS, pursuant to Section 190.006(1), *Florida Statutes*, the District's Board of Supervisors ("**Board**") "shall exercise the powers granted to the district pursuant to [Chapter 190, *Florida Statutes*]," and the Board shall consist of five members; and

WHEREAS, the District is statutorily required to hold a meeting of the landowners of the District for the purpose of electing Board Supervisors for the District on a date in November established by the Board, which shall be noticed pursuant to Section 190.006(2), *Florida Statutes*.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF BOGGY CREEK IMPROVEMENT DISTRICT:

1. **EXISTING BOARD SUPERVISORS; SEATS SUBJECT TO ELECTIONS.** The Board is currently made up of the following individuals:

<u>Seat Number</u>	<u>Supervisor</u>	<u>Term Expiration Date</u>
1	Jamie Bennett	11/2024
2	Richard Levey	11/2024
3	Chad Tinetti	11/2022
4	Damon Ventura	11/2022
5	Thad Czapka	11/2022

This year, Seat 3, currently held by Chad Tinetti, Seat 4, currently held by Damon Ventura, and Seat 5, currently held by Thad Czapka are subject to election by landowners in November 2022. The two candidates receiving the highest number of votes shall be elected for a term of four (4) years. The candidate receiving the next highest number of votes shall be elected for a term of two (2) years. The term of office for each successful candidate shall commence upon election.

2. **LANDOWNER'S ELECTION.** In accordance with Section 190.006(2), *Florida Statutes*, the meeting of the landowners to elect Board Supervisor(s) of the District shall be held on the 18TH day of November, 2022, at 2:00 p.m., and located at 6955 Lake Nona Boulevard, Orlando, FL 32817.

3. **PUBLICATION.** The District's Secretary is hereby directed to publish notice of the landowners' meeting and election in accordance with the requirements of Section 190.006(2), *Florida Statutes*.

4. **FORMS.** Pursuant to Section 190.006(2)(b), *Florida Statutes*, the landowners' meeting and election have been announced by the Board at its May 17, 2022 meeting. A sample notice of

landowners' meeting and election, proxy, ballot form and instructions were presented at such meeting and are attached hereto as **Exhibit A**. Such documents are available for review and copying during normal business hours at the office of the District Manager, PFM Group Consulting, LLC, located at 3501 Quadrangle Blvd., Suite 270, Orlando, Florida 32817.

5. **SEVERABILITY.** The invalidity or unenforceability of any one or more provisions of this Resolution shall not affect the validity or enforceability of the remaining portions of this Resolution, or any part thereof.

6. **EFFECTIVE DATE.** This Resolution shall become effective upon its passage.

PASSED AND ADOPTED THIS 17th DAY OF MAY, 2022.

BOGGY CREEK IMPROVEMENT DISTRICT

ATTEST:

CHAIRMAN / VICE CHAIRMAN

SECRETARY / ASST. SECRETARY

EXHIBIT A

NOTICE OF LANDOWNERS' MEETING AND ELECTION AND MEETING OF THE BOARD OF SUPERVISORS OF THE BOGGY CREEK IMPROVEMENT DISTRICT

Notice is hereby given to the public and all landowners within Boggy Creek Improvement District ("**District**") the location of which is generally described as comprising a parcel or parcels of land containing approximately 1,085 acres, located east of Boggy Creek Road, south of Lake Nona and west of Narcoossee Road, in the City of Orlando, Florida, advising that a meeting of landowners will be held for the purpose of electing three (3) persons to the District's Board of Supervisors ("**Board**", and individually, "**Supervisor**"). Immediately following the landowners' meeting there will be convened a meeting of the Board for the purpose of considering certain matters of the Board to include election of certain District officers, and other such business which may properly come before the Board.

DATE: _____
TIME: _____
PLACE: _____

Each landowner may vote in person or by written proxy. Proxy forms may be obtained upon request at the office of the District Manager, 3501 Quadrangle Blvd., Suite 270, Orlando, Florida 32817, Ph: (407) 723-5900 ("**District Manager's Office**"). At said meeting each landowner or his or her proxy shall be entitled to nominate persons for the position of Supervisor and cast one vote per acre of land, or fractional portion thereof, owned by him or her and located within the District for each person to be elected to the position of Supervisor. A fraction of an acre shall be treated as one acre, entitling the landowner to one vote with respect thereto. Platted lots shall be counted individually and rounded up to the nearest whole acre. The acreage of platted lots shall not be aggregated for determining the number of voting units held by a landowner or a landowner's proxy. At the landowners' meeting the landowners shall select a person to serve as the meeting chair and who shall conduct the meeting.

The landowners' meeting and the Board meeting are open to the public and will be conducted in accordance with the provisions of Florida law. One or both of the meetings may be continued to a date, time, and place to be specified on the record at such meeting. A copy of the agenda for these meetings may be obtained from the District Manager's Office. There may be an occasion where one or more supervisors will participate by telephone.

Any person requiring special accommodations to participate in these meetings is asked to contact the District Manager's Office, at least 48 hours before the hearing. If you are hearing or speech impaired, please contact the Florida Relay Service by dialing 7-1-1, or 1-800-955-8771 (TTY) / 1-800-955-8770 (Voice), for aid in contacting the District Manager's Office.

A person who decides to appeal any decision made by the Board with respect to any matter considered at the meeting is advised that such person will need a record of the proceedings and that accordingly, the person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which the appeal is to be based.

Jennifer Walden
District Manager

Run Date(s): _____ & _____

PUBLISH: ONCE A WEEK FOR 2 CONSECUTIVE WEEKS, THE LAST DAY OF PUBLICATION TO BE NOT FEWER THAN 14 DAYS OR MORE THAN 28 DAYS BEFORE THE DATE OF ELECTION, IN A NEWSPAPER WHICH IS IN GENERAL CIRCULATION IN THE AREA OF THE DISTRICT

4862-3584-0543.1

**INSTRUCTIONS RELATING TO LANDOWNERS' MEETING OF
BOGGY CREEK IMPROVEMENT DISTRICT
FOR THE ELECTION OF SUPERVISORS**

DATE OF LANDOWNERS' MEETING: _____, November __, 2022

TIME: _____ .M.

LOCATION:

Pursuant to Chapter 190, *Florida Statutes*, and after a Community Development District ("**District**") has been established and the landowners have held their initial election, there shall be a subsequent landowners' meeting for the purpose of electing members of the Board of Supervisors ("**Board**") every two years until the District qualifies to have its board members elected by the qualified electors of the District. The following instructions on how all landowners may participate in the election are intended to comply with Section 190.006(2)(b), *Florida Statutes*.

A landowner may vote in person at the landowners' meeting, or the landowner may nominate a proxy holder to vote at the meeting in place of the landowner. Whether in person or by proxy, each landowner shall be entitled to cast one vote per acre of land owned by him or her and located within the District, for each position on the Board that is open for election for the upcoming term. A fraction of an acre shall be treated as one (1) acre, entitling the landowner to one vote with respect thereto. For purposes of determining voting interests, platted lots shall be counted individually and rounded up to the nearest whole acre. Moreover, please note that a particular parcel of real property is entitled to only one vote for each eligible acre of land or fraction thereof; therefore, two or more people who own real property in common, that is one acre or less, are together entitled to only one vote for that real property.

At the landowners' meeting, the first step is to elect a chair for the meeting, who may be any person present at the meeting. The landowners shall also elect a secretary for the meeting who may be any person present at the meeting. The secretary shall be responsible for the minutes of the meeting. The chair shall conduct the nominations and the voting. If the chair is a landowner or proxy holder of a landowner, he or she may nominate candidates and make and second motions. Candidates must be nominated and then shall be elected by a vote of the landowners. Nominees may be elected only to a position on the Board that is open for election for the upcoming term.

This year, three (3) seats on the Board will be up for election by landowners. The two candidates receiving the highest number of votes shall be elected for a term of four (4) years. The candidate receiving the next highest number of votes shall be elected for a term of two (2) years. The term of office for each successful candidate shall commence upon election.

A proxy is available upon request. To be valid, each proxy must be signed by one of the legal owners of the property for which the vote is cast and must contain the typed or printed name of the individual who signed the proxy; the street address, legal description of the property or tax parcel identification number; and the number of authorized votes. If the proxy authorizes more than one vote, each property must be listed and the number of acres of each property must be included. The signature on a proxy does not need to be notarized.

LANDOWNER PROXY

**BOGGY CREEK IMPROVEMENT DISTRICT
ORANGE COUNTY, FLORIDA
LANDOWNERS' MEETING – NOVEMBER __, 2022**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, the fee simple owner of the lands described herein, hereby constitutes and appoints _____ ("**Proxy Holder**") for and on behalf of the undersigned, to vote as proxy at the meeting of the landowners of the Boggy Creek Improvement District to be held at _____, on _____, at _____ a/p.m., and at any adjournments thereof, according to the number of acres of unplatted land and/or platted lots owned by the undersigned landowner that the undersigned would be entitled to vote if then personally present, upon any question, proposition, or resolution or any other matter or thing that may be considered at said meeting including, but not limited to, the election of members of the Board of Supervisors. Said Proxy Holder may vote in accordance with his or her discretion on all matters not known or determined at the time of solicitation of this proxy, which may legally be considered at said meeting.

Any proxy heretofore given by the undersigned for said meeting is hereby revoked. This proxy is to continue in full force and effect from the date hereof until the conclusion of the landowners' meeting and any adjournment or adjournments thereof, but may be revoked at any time by written notice of such revocation presented at the landowners' meeting prior to the Proxy Holder's exercising the voting rights conferred herein.

Printed Name of Legal Owner

Signature of Legal Owner

Date

Parcel Description

Acreage

Authorized Votes

[Insert above the street address of each parcel, the legal description of each parcel, or the tax identification number of each parcel. If more space is needed, identification of parcels owned may be incorporated by reference to an attachment hereto.]

Total Number of Authorized Votes:

NOTES: Pursuant to Section 190.006(2)(b), *Florida Statutes*, a fraction of an acre is treated as one (1) acre entitling the landowner to one vote with respect thereto. For purposes of determining voting interests, platted lots shall be counted individually and rounded up to the nearest whole acre. Moreover, two (2) or more persons who own real property in common that is one acre or less are together entitled to only one vote for that real property.

If the fee simple landowner is not an individual, and is instead a corporation, limited liability company, limited partnership or other entity, evidence that the individual signing on behalf of the entity has the authority to do so should be attached hereto (e.g., bylaws, corporate resolution, etc.).

OFFICIAL BALLOT
BOGGY CREEK IMPROVEMENT DISTRICT
ORANGE COUNTY, FLORIDA
LANDOWNERS' MEETING - NOVEMBER __, 2022

For Election (3 Supervisors): The two (2) candidates receiving the highest number of votes will each receive a four (4) year term, and the one (1) candidate receiving the next highest number of votes will receive a two (2) year term, with the term of office for the successful candidates commencing upon election.

The undersigned certifies that he/she/it is the fee simple owner of land, or the proxy holder for the fee simple owner of land, located within the Boggy Creek Improvement District and described as follows:

<u>Description</u>	<u>Acreage</u>
_____	_____
_____	_____
_____	_____

[Insert above the street address of each parcel, the legal description of each parcel, or the tax identification number of each parcel.] [If more space is needed, identification of parcels owned may be incorporated by reference to an attachment hereto.]

or

Attach Proxy.

I, _____, as Landowner, or as the proxy holder of _____ (Landowner) pursuant to the Landowner's Proxy attached hereto, do cast my votes as follows:

SEAT #	NAME OF CANDIDATE	NUMBER OF VOTES
3		
4		
5		

Date: _____

Signed: _____

Printed Name: _____

BOGGY CREEK IMPROVEMENT DISTRICT

OUC Transfer Agreement
(provided under separate cover)

BOGGY CREEK IMPROVEMENT DISTRICT

**Agreement for Geotechnical Services with
PSI for Lift Station 9 Force Main**

**AGREEMENT BETWEEN THE BOGGY CREEK IMPROVEMENT DISTRICT AND
PROFESSIONAL SERVICE INDUSTRIES, INC. FOR GEOTECHNICAL AND SOIL
TESTING ENGINEERING SERVICES
(LIFT STATION 9 FORCE MAIN)**

THIS AGREEMENT (the “Agreement”) is made and entered into this 17th day of May, 2022, by and between:

BOGGY CREEK IMPROVEMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, located in the City of Orlando, Florida, with a mailing address of 3501 Quadrangle Boulevard, Suite 270, Orlando, Florida, 32817 (“District”); and

PROFESSIONAL SERVICE INDUSTRIES, INC., a Delaware corporation, with a mailing address of 1748 33rd Street, Orlando, Florida 32839 (the “Contractor”).

RECITALS

WHEREAS, the District was established for the purpose of planning, financing, constructing, installing, operating, and/or maintaining certain infrastructure improvements and recreational facilities; and

WHEREAS, the District has a need to retain a professional geotechnical engineer to provide certain geotechnical exploration and engineering services, as described in more detail herein and in **Exhibit A**, which is attached hereto and incorporated herein by reference (the “Services”); and

WHEREAS, the Contractor represents that it is licensed, qualified and capable of providing the Geotechnical Services and has agreed to provide such services for the District in accordance with the terms of this Agreement; and

WHEREAS, the District and Contractor warrant and agree that they have all right, power and authority to enter into and be bound by this agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the acts and deeds to be performed by the parties and the payments by the District to the Contractor of the sums of money herein specified, it is mutually covenanted and agreed as follows:

SECTION 1. RECITALS. The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Agreement.

SECTION 2. DESCRIPTION OF WORK AND SERVICES. The duties, obligations, and responsibilities of the Contractor are to provide the services, labor and materials described in the proposal dated April 29, 2022, attached hereto as **Exhibit A**. Contractor shall coordinate the Services with other contractors performing work for the District. Should any questions arise as

to the coordination required, the Contractor shall consult with the District's engineer. Additionally:

- A. The Contractor shall report directly to the District's engineer. Contractor shall use all due care to protect the property of the District, its residents and landowners from damage and shall follow and be responsible for the Services set forth herein. Contractor agrees to repair any damage resulting from Contractor's activities and work within twenty-four (24) hours.
- B. This Agreement grants to Contractor the right to enter the District lands which are subject to this Agreement, for those purposes described in this Agreement, and Contractor hereby agrees to comply with all applicable laws, rules, ordinances and regulations affecting the provision of the Services.
- C. The District is relying on the Contractor as the expert in this field. Contractor shall be solely responsible for the means, manner and methods by which its duties, obligations and responsibilities are met to the satisfaction of the District and in accordance with this Agreement. Contractor shall use industry best practices and procedures when carrying out the Services. Any additional compensation for additional duties shall be paid only as negotiated between the parties and upon the written authorization of the District.

SECTION 3. PAYMENT FOR SERVICES. Contractor shall perform the Services identified in Section 2 herein in exchange for payment of the total sum of **\$6,102.00** ("Payment"). Such Payment shall be due upon completion of the Services and submission of a final invoice as set forth herein. This Payment includes, but is not limited to, all permits, parts, materials and labor necessary to complete the Services as described herein. Contractor agrees to render a final invoice to the District, in writing, which shall be delivered or mailed to the District. The District shall pay the Contractor the Payment within twenty-five (25) days of receipt of such an invoice. The Contractor shall maintain records conforming to usual accounting practices. If the District should desire additional work or services not provided in **Exhibit A**, the Contractor agrees to negotiate in good faith to undertake such additional work or services. Upon successful negotiations, the parties shall agree in writing to a work order, addendum, addenda, or change order to this Agreement. The Contractor shall be compensated for such agreed additional work or services based upon a payment amount acceptable to the parties and agreed to in writing. No additional services shall be provided by the Contractor unless done at the direction of the District.

SECTION 4. INSURANCE. Contractor shall, at its own expense, maintain insurance during the performance of its Services under this Agreement, with limits of liability not less than the following:

Workers Compensation	statutory
General Liability <i>Bodily Injury (including contractual)</i>	\$1,000,000/\$2,000,000

<i>Property Damage (including contractual)</i>	\$1,000,000/\$2,000,000
Automobile Liability (if applicable)	
<i>Bodily Injury and Property Damage</i>	\$1,000,000

Contractor shall provide District with a certificate naming the District, its supervisors, officers, staff, representatives and agents as additional insureds. At no time shall Contractor be without insurance in the above amounts. No policy may be canceled during the term of this Agreement without at least thirty (30) days written notice to the District. An insurance certificate evidencing compliance with this Section shall be sent to the District prior to the commencement of any performance under this Agreement.

SECTION 5. INDEPENDENT CONTRACTOR. It is understood and agreed that at all times the relationship of Contractor and its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor to the District is the relationship of an independent contractor and not that of an employee, agent, joint venturer or partner of the District. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the District and Contractor or any of its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor. The parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall hire and pay all of Contractor's employees, agents, subcontractors or anyone directly or indirectly employed by Contractor, all of whom shall be employees of Contractor and not employees of District and at all times entirely under Contractor's supervision, direction and control.

In particular, District will not: i) withhold FICA (Social Security) from Contractor's payments; ii) make state or federal unemployment insurance contributions on Contractor's behalf; iii) withhold state or federal income tax from payment to Contractor; iv) make disability insurance contributions on behalf of Contractor; or v) obtain workers' compensation insurance on behalf of Contractor.

SECTION 6. COMPLIANCE WITH LAWS, ORDINANCES AND REGULATIONS. In performing its obligations under this Agreement, Contractor and each of its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public or governmental authority having appropriate jurisdiction, including all laws, regulations and rules relating to immigration and/or the status of foreign workers. Contractor shall initiate, maintain, and supervise all safety precautions and programs in connection with its obligations herein. Contractor shall ensure that all of Contractor's employees, agents, subcontractors or anyone directly or indirectly employed by Contractor observe Contractor's rules and regulations of safety and conduct. Contractor shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to all of its employees, agents and subcontractors performing its obligations herein and other persons who may be affected, and any material, equipment and other property. Contractor shall remedy all damage or loss to any property caused in whole or in part by Contractor, its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable. Contractor shall indemnify District for all damage or losses it may incur or be

exposed to because of Contractor or any of its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor's failure to comply with the provisions contained herein.

SECTION 7. DEFAULT AND PROTECTION AGAINST THIRD PARTY INTERFERENCE. A default by either party under this Agreement shall entitle the other to all remedies available at law or in equity, which may include, but not be limited to, the right of actual damages and/or specific performance. The District shall be solely responsible for enforcing its rights under this Agreement against any interfering third party. Nothing contained in this Agreement shall limit or impair the District's right to protect its rights from interference by a third party to this Agreement.

SECTION 8. ENFORCEMENT OF AGREEMENT. In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the parties agree that the prevailing party shall be entitled to recover from the other all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution, or appellate proceedings.

SECTION 9. AMENDMENTS. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both the District and the Contractor.

SECTION 10. AUTHORIZATION. The execution of this Agreement has been duly authorized by the appropriate body or official of the District and the Contractor, both the District and the Contractor have complied with all the requirements of law, and both the District and the Contractor have full power and authority to comply with the terms and provisions of this instrument.

SECTION 11. NOTICES. All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

A. If to Contractor: Professional Service Industries, Inc.
1748 33rd Street
Orlando, Florida 32839
Attn: Robert A. Trompke, P.E.

B. If to District: Boggy Creek Improvement District
3501 Quadrangle Boulevard, Suite 270
Orlando, Florida 32817
Attn: District Manager

With a copy to: Kutak Rock LLP
107 West College Avenue
Tallahassee, Florida 32301
Attn: District Counsel

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the Contractor may deliver Notice on behalf of the District and the Contractor. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

SECTION 12. ARM'S LENGTH TRANSACTION. This Agreement has been negotiated fully between the District and the Contractor as an arm's length transaction. Both parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, both parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against either the District or the Contractor.

SECTION 13. THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the District and the Contractor and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person other than the District and the Contractor any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the District and the Contractor and their respective representatives, successors, and assigns.

SECTION 14. ASSIGNMENT. Neither the District nor Contractor may assign this Agreement without the prior written approval of the other. Any purported assignment without such approval is void.

SECTION 15. APPLICABLE LAW AND VENUE. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida. Each party consents that the venue for any litigation arising out of or related to this Agreement shall be in Orange County, Florida.

SECTION 16. INDEMNIFICATION.

- A. Obligations under this section shall include the payment of all settlements, judgments, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, arbitration and/or mediation costs, litigation expenses, reasonable attorneys' fees, expert witness fees, and paralegal fees (incurred in court, out of court, on appeal, or in bankruptcy proceedings) as ordered.

- B. To the extent of its negligence and to the extent allowed under Florida law, for third party claims, Contractor agrees to indemnify, defend, and hold harmless the District and its supervisors, officers, staff, representatives, and agents from any and all liability, claims, actions, suits, or demands by any person, corporation, or other entity for injuries, death, property damage, or of any nature, arising out of, or in connection with the work to be performed by Contractor, including litigation or any appellate proceedings with respect thereto.
- C. Contractor hereby acknowledges, agrees and covenants that nothing in this Agreement shall be deemed as a waiver of the District's sovereign immunity or the District's limits of liability as set forth in Section 768.28, *Florida Statutes*, or other statute, and nothing in this Agreement shall inure to the benefit of any third-party for the purpose of allowing any claim which would otherwise be barred under such limitations of liability or by operation of law. This Section shall survive any termination of this Agreement.

SECTION 17. TERM. This Agreement shall become effective as of the date first above written, and shall terminate upon completion of the Services set forth herein and in any amendment hereto, unless cancelled earlier, pursuant to Section 18 below.

SECTION 18. CANCELLATION. The District shall have the right to cancel this Agreement at any time due to Contractor's failure to perform in accordance with the terms of this Agreement or for any reason. Contractor shall have the right to cancel this Agreement upon thirty (30) days written notice mailed to the District at the address written above stating a failure of the District to perform in accordance with the terms of this Agreement. The District's liability upon cancellation or termination of this Agreement shall be limited to paying for the reasonable value of labor and materials physically incorporated into the Services up to the effective date of cancellation, along with the value of materials specifically fabricated by Contractor for the Services up to the date the notice of cancellation or termination was given, though not incorporated in the Services, but not reasonably usable elsewhere, less payments already made to Contractor, as Contractor's sole means of recovery for cancellation.

SECTION 19. OWNERSHIP OF DOCUMENTS. All rights in and title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, creation, inventions, reports, or other tangible work product originally developed by Contractor pursuant to this Agreement shall be and remain the sole and exclusive property of the District when developed and shall be considered work for hire.

SECTION 20. PUBLIC RECORDS. Contractor understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Contractor agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited, to Section 119.0701, *Florida Statutes*. Among other requirements and to the extent applicable by law, Contractor shall: 1) keep and maintain public records required by the District to perform the Services; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to

be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the Agreement term and following the Agreement term if Contractor does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the Agreement, transfer to the District, at no cost, all public records in Contractor's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by Contractor, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats. Contractor acknowledges that the designated Public Records Custodian for the District is Jennifer Walden.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407) 723-5900, waldenj@pfm.com, 3501 QUADRANGLE BOULEVARD, SUITE 270, ORLANDO, FLORIDA 32817.

SECTION 21. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

SECTION 22. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

SECTION 23. ENTIRE AGREEMENT. This instrument shall constitute the final and complete expression of the agreement between the parties relating to the subject matter of this Agreement. Should there be any conflict between this Agreement and **Exhibit A**, the terms and conditions of this Agreement shall prevail.

SECTION 24. WAIVER OF CONSEQUENTIAL DAMAGES. Neither party shall be liable to the other in contract, tort (including negligence and breach of statutory duty) or otherwise for loss of profit (whether direct or indirect) or for any indirect, consequential, punitive or special loss or damage, including without limitation loss of profits, revenue, business, or anticipated savings (even when advised of their possibility).

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the day and year first written above.

Witness:

BOGGY CREEK IMPROVEMENT DISTRICT

Signature of Witness

Chairman, Board of Supervisors

Print Name

Witness

PROFESSIONAL SERVICE INDUSTRIES, INC.,
a Delaware corporation

Signature of Witness

By: _____

Print Name

Print Name: _____

Title: _____

Exhibit A: Proposal dated April 29, 2022



Proposal Number: 0757-372638
April 29, 2022

Professional Service Industries, Inc.
1748 33rd Street, Orlando, FL 32839
Phone: (407) 304-5560
Fax: (407) 304-5561

Boggy Creek Improvement District
c/o Donald W. McIntosh Associates, Inc.
2200 N Park Ave
Orlando, Florida 32817

Attn: Mr. Jeffrey J. Newton, P.E., President

RE: Proposal
Geotechnical Engineering Services
Lift Station 9 Force Main
Lake Nona South
Orange County, Florida

Dear Mr. Newton:

Pursuant to your request for proposal, **Professional Service Industries, Inc. (PSI), an Intertek Company**, is pleased to submit the following fee proposal for performance of a subsurface exploration program at the site of the referenced project to support design and construction of the proposed 12-inch force main.

Project Information

The project site is within the western portion of Lake Nona South in Orange County, Florida. The project alignment currently includes portions of the existing Lake Nona Boulevard, a 4-lane median divided arterial roadway that serves as the major east-west corridor in Lake Nona, and areas of currently undeveloped land to the north of the Lake Nona Boulevard/Sanger Road Intersection.

Based on the project information provided to PSI, the proposed new 12-inch force main is planned to be aligned along Lake Nona Boulevard and extending northward at Sanger Road along the east side of the future State Road 534 right of way. The provided plans indicated the force main will be installed in the landscape medium along Lake Nona Boulevard, starting approximately 3,400 feet west-southwest of Sanger Road, before turning northward in the area of undeveloped land. We further understand the force main will be installed at depths less than 7 feet below existing grades. The new force main is to be designed and constructed in accordance with City of Orlando standards.

If any of the noted project information is incorrect or has changed, PSI should be notified so our scope of services can be updated as appropriate.

Engineering Certificate of Authorization 3684
www.intertek.com/building





Scope of Geotechnical Services

The purpose of this exploration is to obtain information on the general subsurface soil and groundwater conditions along the alignment of the proposed force main. The subsurface conditions encountered will then be evaluated with respect to the available project characteristics. In this regard, design-level geotechnical engineering evaluations for the following issues will be addressed.

1. Feasibility of utilizing conventional excavations for installation of the force main.
2. Soil subgrade preparation, including stripping, grubbing and compaction. Engineering criteria for placement and compaction of approved structural fill materials.
3. General location and description of potentially deleterious materials encountered in the borings which may interfere with construction progress or force main performance, including existing fills or surficial organics.
4. Identification of groundwater levels in the borings and an estimate of the normal seasonal high groundwater table.
5. An evaluation of corrosion potential within the force main alignment based on laboratory testing (resistivity, pH, chlorides and sulfates) of representative soils collected from the site and field testing of soils for pH/mV oxidation-reduction (redox).

The following services will be provided in order to achieve the preceding objectives:

1. Review readily available published geologic and topographic information. This published information will be obtained from the appropriate quadrangle map published by the United States Geological Survey (USGS) and the "Soil Survey of Orange County, Florida" published by the United States Department of Agriculture (USDA) Soil Conservation Service (SCS).
2. Execute a program of subsurface sampling and field testing. As requested, PSI proposes to perform twenty-two (22) auger borings in the proposed force main alignment at the locations provided to us. The borings will be spaced approximately 300 feet and extended 7 feet below existing grade.

We understand the borings locations will be surveyed and staked by DWMA prior to PSI mobilizing to perform the borings. In the auger borings, samples will be recovered at each change in soil stratum. Upon completion of drilling operations, the boreholes will be backfilled with soil cuttings.

3. Visually classify and stratify representative soil samples in the laboratory using the Unified Soil Classification System. Conduct a limited laboratory testing program, including soil gradation, pH, resistivity, sulfides, chlorides, and moisture content to meet the City's polyethylene encasement testing requirements per ANSI A21.5. Identify soil conditions at each boring location and form an opinion of the site soil stratigraphy.



4. Perform field oxidation-reduction (redox) potential testing to meet the City or Orlando's polyethylene encasement testing requirements per ANSI A21.5.
5. Collect groundwater level measurements in the boreholes at the time the borings are performed and estimate normal seasonal high groundwater levels.
6. The results of the field exploration and laboratory tests will be used in the engineering analysis and in the formulation of our geotechnical engineering recommendations for the project. The results of the subsurface exploration, including the recommendations and the data on which they are based, will be presented in a written engineering report.

Schedule

We are in a position to start work on the assignment immediately upon receipt of authorization to proceed. The first task will be to complete a utility clearance of the site through Call Sunshine which typically requires 3 to 4 business days. The fieldwork will require 1 to 2 days to complete. Laboratory services and report preparation will take on the order of 2 to 3 weeks to complete. From receiving written authorization to proceed to delivery of PSI's report will require about 3 to 4 weeks.

Throughout the course of our work on the assignment, we will be available for consultation as necessary.

Service Fee

It is proposed the fee for performance of the above-outlined services be determined on a unit price basis in accordance with the attached General Conditions. The fees are outlined in the attached Schedule of Services and Fees and the work will be performed pursuant to our General Conditions. Copies of our Schedule of Services and General Conditions are enclosed herewith and incorporated by reference into this proposal. On the basis of the estimated quantities and the Schedule of Services and Fees, it is estimated the fees will be **\$6,102.00**.



Proposal Number: 0757-372638
Boggy Creek Improvement District
April 29, 2022
Page 4 of 5

We appreciate the opportunity to offer our services to the Boggy Creek Improvement District, DWMA and Tavistock and look forward to working with you. If this proposal is acceptable, please sign below as notice to proceed and return one (1) copy of this proposal intact to our office. Should you have any questions in regard to this proposal, please do not hesitate to contact this office.

Sincerely,
PROFESSIONAL SERVICE INDUSTRIES, INC.

Robert A. Trompke, P.E.
Florida Geotechnical Practice Leader/Principal Consultant

0757-372638 (Lift Station 9 Force Main - Lake Nona)

Attachments

- Schedule of Services and Fees
- General Conditions

AGREED TO THIS _____ DAY OF _____,

BY (Please Print): _____

TITLE: _____

COMPANY: _____

SIGNATURE: _____

www.intertek.com/building





UPDATED SCHEDULE OF SERVICES AND FEES

Geotechnical Engineering Services
Lift Station 9 Force Main
Lake Nona South
Orlando, Orange County, Florida

Description	Quantity	Unit	Unit Rate	Total Cost
<u>I. FIELD INVESTIGATION</u>				
A. Mobilization of Men & Equipment	1	Trip	\$ 480.00	\$ 480.00
B. Utility Coordination and Boring Layout	4	Hours	70.00	280.00
C. Auger Borings (22 to 7 feet)	154	L.F	9.00	1,386.00
D. Field pH/mV REDOX Testing	4	Each	200.00	800.00
Subtotal Field Investigation				\$2,946.00
<u>II. LABORATORY TESTING</u>				
A. Staff Engineer (Soil Stratification)	2	Hours	\$90.00	\$ 180.00
B. Full Sieve Gradation Analyses	4	Each	90.00	360.00
C. Moisture Content	4	Each	14.00	56.00
D. Corrosion Series (pH, resistivity, CL, S)	2	Each	240.00	480.00
Subtotal Laboratory Testing				\$ 1,076.00
<u>III. ENGINEERING SERVICES</u>				
A. Principal Consultant	2	Hours	\$ 210.00	\$ 420.00
B. Project Engineer	10	Hours	110.00	1,100.00
C. CAD Drafting	4	Hours	80.00	320.00
D. Clerical	4	Hours	60.00	240.00
Subtotal Engineering Services				\$2,080.00
TOTAL ALL SERVICES				\$6,102.00

GENERAL CONDITIONS

1. **PARTIES AND SCOPE OF WORK:** Professional Service Industries Inc. ("PSI") shall include said company or its particular division, subsidiary or affiliate performing the work. "Work" means the specific service to be performed by PSI as set forth in PSI's proposal, Client's acceptance thereof and these General Conditions. Additional work ordered by Client shall also be subject to these General Conditions. "Client" refers to the person or business entity ordering the work to be done by PSI. If Client is ordering the work on behalf of another, Client represents and warrants that it is the duly authorized agent of said party for the purpose of ordering and directing said work. Unless otherwise stated in writing, Client assumes sole responsibility for determining whether the quantity and the nature of the work ordered by the client is adequate and sufficient for Client's intended purpose. Client shall communicate these General Conditions to each and every third party to whom Client transmits any part of PSI's work. PSI shall have no duty or obligation to any third party greater than that set forth in PSI's proposal, Client's acceptance thereof and these General Conditions. The ordering of work from PSI, or the reliance on any of PSI's work, shall constitute acceptance of the terms of PSI's proposal and these General Conditions, regardless of the terms of any subsequently issued document.
2. **TESTS AND INSPECTIONS:** Client shall cause all tests and inspections of the site, materials and work performed by PSI or others to be timely and properly performed in accordance with the plans, specifications and contract documents and PSI's recommendations. No claims for loss, damage or injury shall be brought against PSI by Client or any third party unless all tests and inspections have been so performed and unless PSI's recommendations have been followed. Client agrees to indemnify, defend and hold PSI, its officers, employees and agents harmless from any and all claims, suits, losses, costs and expenses, including, but not limited to, court costs and reasonable attorney's fees in the event that all such tests and inspections are not so performed or PSI's recommendations are not so followed.
3. **PREVAILING WAGES:** This proposal specifically excludes compliance with any project labor agreement, labor agreement, or other union or apprenticeship requirements. In addition, unless explicitly agreed to in the body of this proposal, this proposal specifically excludes compliance with any state or federal prevailing wage law or associated requirements, including the Davis Bacon Act. It is agreed that no applicable prevailing wage classification or wage rate has been provided to PSI, and that all wages and cost estimates contained herein are based solely upon standard, non-prevailing wage rates. Should it later be determined by the Owner or any applicable agency that in fact prevailing wage applies, then it is agreed that the contract value of this agreement shall be equitably adjusted to account for such changed circumstance. Client will reimburse, defend, indemnify and hold harmless PSI from and against any liability resulting from a subsequent determination that prevailing wage regulations cover the Project, including all costs, fines and attorney's fees.
4. **SCHEDULING OF WORK:** The services set forth in PSI's proposal and Client's acceptance will be accomplished by PSI personnel at the prices quoted. If PSI is required to delay commencement of the work or if, upon embarking upon its work, PSI is required to stop or interrupt the progress of its work as a result of changes in the scope of the work requested by Client, to fulfill the requirements of third parties, interruptions in the progress of construction, or other causes beyond the direct reasonable control of PSI, additional charges will be applicable and payable by Client.
5. **ACCESS TO SITE:** Client will arrange and provide such access to the site and work as is necessary for PSI to perform the work. PSI shall take reasonable measures and precautions to minimize damage to the site and any improvements located thereon as the result of its work or the use of its equipment.
6. **CLIENT'S DUTY TO NOTIFY ENGINEER:** Client warrants that it has advised PSI of any known or suspected hazardous materials, utility lines and pollutants at any site at which PSI is to do work, and unless PSI has assumed in writing the responsibility of locating subsurface objects, structures, lines or conduits, Client agrees to defend, indemnify and save PSI harmless from all claims, suits, losses, costs and expenses, including reasonable attorney's fees as a result of personal injury, death or property damage occurring with respect to PSI's performance of its work and resulting to or caused by contact with subsurface or latent objects, structures, lines or conduits where the actual or potential presence and location thereof were not revealed to PSI by Client.
7. **RESPONSIBILITY:** PSI's work shall not include determining, supervising or implementing the means, methods, techniques, sequences or procedures of construction. PSI shall not be responsible for evaluating, reporting or affecting job conditions concerning health, safety or welfare. PSI's work or failure to perform same shall not in any way excuse any contractor, subcontractor or supplier from performance of its work in accordance with the contract documents. Client agrees that it shall require subrogation to be waived against PSI and for PSI to be added as an Additional Insured on all policies of insurance, including any policies required of Client's contractors or subcontractors, covering any construction or development activities to be performed on the project site. PSI has no right or duty to stop the contractor's work.
8. **SAMPLE DISPOSAL:** Test specimens will be disposed immediately upon completion of the test. All drilling samples will be disposed sixty (60) days after submission of PSI's report.
9. **PAYMENT:** The quantities and fees provided in this proposal are PSI's estimate based on information provided by Client and PSI's experience on similar projects. The actual total amount due to PSI shall be based on the actual final quantities provided by PSI at the unit rates provided herein. Where Client directs or requests additional work beyond the contract price it will be deemed a change order and PSI will be paid according to the fee schedule. Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. Client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause in writing within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law), until paid. Client agrees to pay PSI's cost of collection of all amounts due and unpaid after thirty (30) days, including court costs and reasonable attorney's fees. PSI shall not be bound by any provision or agreement requiring or providing for arbitration of disputes or controversies arising out of this agreement, any provision wherein PSI waives any rights to a mechanics' lien, or any provision conditioning PSI's right to receive payment for its work upon payment to Client by any third party. These General Conditions are notice, where required, that PSI shall file a lien whenever necessary to collect past due amounts. Failure to make payment within 30 days of invoice shall constitute a release of PSI from any and all claims which Client may have, whether in tort, contract or otherwise, and whether known or unknown at the time.

GENERAL CONDITIONS

10. ALLOCATION OF RISK: CLIENT AGREES THAT PSI'S SERVICES WILL NOT SUBJECT PSI'S INDIVIDUAL EMPLOYEES, OFFICERS OR DIRECTORS TO ANY PERSONAL LIABILITY, AND THAT NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CLIENT AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY SHALL BE TO DIRECT OR ASSERT ANY CLAIM, DEMAND, OR SUIT ONLY AGAINST PSI.

SHOULD PSI OR ANY OF ITS EMPLOYEES BE FOUND TO HAVE BEEN NEGLIGENT IN THE PERFORMANCE OF ITS WORK, OR TO HAVE MADE AND BREACHED ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION OR CONTRACT, CLIENT, ALL PARTIES CLAIMING THROUGH CLIENT AND ALL PARTIES CLAIMING TO HAVE IN ANY WAY RELIED UPON PSI'S WORK AGREE THAT THE MAXIMUM AGGREGATE AMOUNT OF THE LIABILITY OF PSI, ITS OFFICERS, EMPLOYEES AND AGENTS SHALL BE LIMITED TO \$25,000.00 OR THE TOTAL AMOUNT OF THE FEE PAID TO PSI FOR ITS WORK PERFORMED ON THE PROJECT, WHICHEVER AMOUNT IS GREATER. IN THE EVENT CLIENT IS UNWILLING OR UNABLE TO LIMIT PSI'S LIABILITY IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN THIS PARAGRAPH, CLIENT MAY, UPON WRITTEN REQUEST OF CLIENT RECEIVED WITHIN FIVE DAYS OF CLIENT'S ACCEPTANCE HEREOF, INCREASE THE LIMIT OF PSI'S LIABILITY TO \$250,000.00 OR THE AMOUNT OF PSI'S FEE PAID TO PSI FOR ITS WORK ON THE PROJECT, WHICHEVER IS THE GREATER, BY AGREEING TO PAY PSI A SUM EQUIVALENT TO AN ADDITIONAL AMOUNT OF 5% OF THE TOTAL FEE TO BE CHARGED FOR PSI'S SERVICES. THIS CHARGE IS NOT TO BE CONSTRUED AS BEING A CHARGE FOR INSURANCE OF ANY TYPE, BUT IS INCREASED CONSIDERATION FOR THE GREATER LIABILITY INVOLVED. IN ANY EVENT, ATTORNEY'S FEES EXPENDED BY PSI IN CONNECTION WITH ANY CLAIM SHALL REDUCE THE AMOUNT AVAILABLE, AND ONLY ONE SUCH AMOUNT WILL APPLY TO ANY PROJECT.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY) OR OTHERWISE FOR LOSS OF PROFIT (WHETHER DIRECT OR INDIRECT) OR FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE, OR SPECIAL LOSS OR DAMAGE, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, REVENUE, BUSINESS, OR ANTICIPATED SAVINGS (EVEN WHEN ADVISED OF THEIR POSSIBILITY).

NO ACTION OR CLAIM, WHETHER IN TORT, CONTRACT, OR OTHERWISE, MAY BE BROUGHT AGAINST PSI, ARISING FROM OR RELATED TO PSI'S WORK, MORE THAN TWO YEARS AFTER THE CESSATION OF PSI'S WORK HEREUNDER, REGARDLESS OF THE DATE OF DISCOVERY OF SUCH CLAIM.

11. **INDEMNITY:** Subject to the above limitations, PSI agrees not to defend but to indemnify and hold Client harmless from and against any and all claims, suits, costs and expenses including reasonable attorney's fees and court costs to the extent arising out of PSI's negligence as finally determined by a court of law. Client shall provide the same protection to the extent of its negligence. In the event that Client or Client's principal shall bring any suit, cause of action, claim or counterclaim against PSI, the Client and the party initiating such action shall pay to PSI the costs and expenses incurred by PSI to investigate, answer and defend it, including reasonable attorney's and witness fees and court costs to the extent that PSI shall prevail in such suit.
12. **TERMINATION:** This Agreement may be terminated by either party upon seven days' prior written notice. In the event of termination, PSI shall be compensated by Client for all services performed up to and including the termination date, including reimbursable expenses.
13. **EMPLOYEES/WITNESS FEES:** PSI's employees shall not be retained as expert witnesses except by separate, written agreement. Client agrees to pay PSI's legal expenses, administrative costs and fees pursuant to PSI's then current fee schedule for PSI to respond to any subpoena. For a period of one year after the completion of any work performed under this agreement, Client agrees not to solicit, recruit, or hire any PSI employee or person who has been employed by PSI within the previous twelve months. In the event Client desires to hire such an individual, Client agrees that it shall seek the written consent of PSI, and shall pay PSI an amount equal to one-half of the employee's annualized salary, without PSI waiving other remedies it may have.
14. **FIDUCIARY:** PSI is not a financial advisor, does not provide financial advice or analysis of any kind, and nothing in our reports can create a fiduciary relationship between PSI and any other party.
15. **RECORDING:** Photographs or video recordings of the Client's own project may be taken by and used for the Client's own internal purposes. Photographs or video recordings may not be used for marketing or publicity, or distributed to a third party or otherwise published without PSI's prior review and consent in writing. Taking photographs of other Clients' samples, test setups, or facilities, or recording in any manner any test specimen other than the test specimen related to the Client's project is prohibited; and the Client agrees to hold in strict confidence and not use any proprietary information disclosed either advertently or inadvertently. The Client shall defend, hold harmless, and indemnify PSI for any breach of this clause.
16. **CHOICE OF LAW AND EXCLUSIVE VENUE:** All claims or disputes arising or relating to this agreement shall be governed by, construed, and enforced in accordance with the laws of Illinois. The exclusive venue for all actions or proceedings arising in connection with this agreement shall be either the Circuit Court in Cook County, Illinois, or the Federal Court for the Northern District of Illinois.
17. **PROVISIONS SEVERABLE:** The parties have entered into this agreement in good faith, and it is the specific intent of the parties that the terms of these General Conditions be enforced as written. In the event any of the provisions of these General Conditions should be found to be unenforceable, it shall be stricken and the remaining provisions shall be enforceable.
18. **ENTIRE AGREEMENT:** This agreement constitutes the entire understanding of the parties, and there are no representations, warranties or undertakings made other than as set forth herein. This agreement may be amended, modified or terminated only in writing, signed by each of the parties hereto.

BOGGY CREEK IMPROVEMENT DISTRICT

Power Center Roundabout Preliminary Design Proposal



Proposal Number: 0757-372638
April 29, 2022

Professional Service Industries, Inc.
1748 33rd Street, Orlando, FL 32839
Phone: (407) 304-5560
Fax: (407) 304-5561

Boggy Creek Improvement District
c/o Donald W. McIntosh Associates, Inc.
2200 N Park Ave
Orlando, Florida 32817

Attn: Mr. Jeffrey J. Newton, P.E., President

RE: Proposal
Geotechnical Engineering Services
Lift Station 9 Force Main
Lake Nona South
Orange County, Florida

Dear Mr. Newton:

Pursuant to your request for proposal, **Professional Service Industries, Inc. (PSI), an Intertek Company**, is pleased to submit the following fee proposal for performance of a subsurface exploration program at the site of the referenced project to support design and construction of the proposed 12-inch force main.

Project Information

The project site is within the western portion of Lake Nona South in Orange County, Florida. The project alignment currently includes portions of the existing Lake Nona Boulevard, a 4-lane median divided arterial roadway that serves as the major east-west corridor in Lake Nona, and areas of currently undeveloped land to the north of the Lake Nona Boulevard/Sanger Road Intersection.

Based on the project information provided to PSI, the proposed new 12-inch force main is planned to be aligned along Lake Nona Boulevard and extending northward at Sanger Road along the east side of the future State Road 534 right of way. The provided plans indicated the force main will be installed in the landscape medium along Lake Nona Boulevard, starting approximately 3,400 feet west-southwest of Sanger Road, before turning northward in the area of undeveloped land. We further understand the force main will be installed at depths less than 7 feet below existing grades. The new force main is to be designed and constructed in accordance with City of Orlando standards.

If any of the noted project information is incorrect or has changed, PSI should be notified so our scope of services can be updated as appropriate.





Scope of Geotechnical Services

The purpose of this exploration is to obtain information on the general subsurface soil and groundwater conditions along the alignment of the proposed force main. The subsurface conditions encountered will then be evaluated with respect to the available project characteristics. In this regard, design-level geotechnical engineering evaluations for the following issues will be addressed.

1. Feasibility of utilizing conventional excavations for installation of the force main.
2. Soil subgrade preparation, including stripping, grubbing and compaction. Engineering criteria for placement and compaction of approved structural fill materials.
3. General location and description of potentially deleterious materials encountered in the borings which may interfere with construction progress or force main performance, including existing fills or surficial organics.
4. Identification of groundwater levels in the borings and an estimate of the normal seasonal high groundwater table.
5. An evaluation of corrosion potential within the force main alignment based on laboratory testing (resistivity, pH, chlorides and sulfates) of representative soils collected from the site and field testing of soils for pH/mV oxidation-reduction (redox).

The following services will be provided in order to achieve the preceding objectives:

1. Review readily available published geologic and topographic information. This published information will be obtained from the appropriate quadrangle map published by the United States Geological Survey (USGS) and the "Soil Survey of Orange County, Florida" published by the United States Department of Agriculture (USDA) Soil Conservation Service (SCS).
2. Execute a program of subsurface sampling and field testing. As requested, PSI proposes to perform twenty-two (22) auger borings in the proposed force main alignment at the locations provided to us. The borings will be spaced approximately 300 feet and extended 7 feet below existing grade.

We understand the borings locations will be surveyed and staked by DWMA prior to PSI mobilizing to perform the borings. In the auger borings, samples will be recovered at each change in soil stratum. Upon completion of drilling operations, the boreholes will be backfilled with soil cuttings.

3. Visually classify and stratify representative soil samples in the laboratory using the Unified Soil Classification System. Conduct a limited laboratory testing program, including soil gradation, pH, resistivity, sulfides, chlorides, and moisture content to meet the City's polyethylene encasement testing requirements per ANSI A21.5. Identify soil conditions at each boring location and form an opinion of the site soil stratigraphy.



4. Perform field oxidation-reduction (redox) potential testing to meet the City or Orlando's polyethylene encasement testing requirements per ANSI A21.5.
5. Collect groundwater level measurements in the boreholes at the time the borings are performed and estimate normal seasonal high groundwater levels.
6. The results of the field exploration and laboratory tests will be used in the engineering analysis and in the formulation of our geotechnical engineering recommendations for the project. The results of the subsurface exploration, including the recommendations and the data on which they are based, will be presented in a written engineering report.

Schedule

We are in a position to start work on the assignment immediately upon receipt of authorization to proceed. The first task will be to complete a utility clearance of the site through Call Sunshine which typically requires 3 to 4 business days. The fieldwork will require 1 to 2 days to complete. Laboratory services and report preparation will take on the order of 2 to 3 weeks to complete. From receiving written authorization to proceed to delivery of PSI's report will require about 3 to 4 weeks.

Throughout the course of our work on the assignment, we will be available for consultation as necessary.

Service Fee

It is proposed the fee for performance of the above-outlined services be determined on a unit price basis in accordance with the attached General Conditions. The fees are outlined in the attached Schedule of Services and Fees and the work will be performed pursuant to our General Conditions. Copies of our Schedule of Services and General Conditions are enclosed herewith and incorporated by reference into this proposal. On the basis of the estimated quantities and the Schedule of Services and Fees, it is estimated the fees will be **\$6,102.00**.



We appreciate the opportunity to offer our services to the Boggy Creek Improvement District, DWMA and Tavistock and look forward to working with you. If this proposal is acceptable, please sign below as notice to proceed and return one (1) copy of this proposal intact to our office. Should you have any questions in regard to this proposal, please do not hesitate to contact this office.

Sincerely,

PROFESSIONAL SERVICE INDUSTRIES, INC.

Robert A. Trompke, P.E.

Florida Geotechnical Practice Leader/Principal Consultant

0757-372638 (Lift Station 9 Force Main - Lake Nona)

Attachments

- Schedule of Services and Fees
- General Conditions

AGREED TO THIS _____ DAY OF _____,

BY (Please Print): _____

TITLE: _____

COMPANY: _____

SIGNATURE: _____



UPDATED SCHEDULE OF SERVICES AND FEES

**Geotechnical Engineering Services
Lift Station 9 Force Main
Lake Nona South
Orlando, Orange County, Florida**

<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Rate</u>	<u>Total Cost</u>
<u>I. FIELD INVESTIGATION</u>				
A. Mobilization of Men & Equipment	1	Trip	\$ 480.00	\$ 480.00
B. Utility Coordination and Boring Layout	4	Hours	70.00	280.00
C. Auger Borings (22 to 7 feet)	154	L.F	9.00	1,386.00
D. Field pH/mV REDOX Testing	4	Each	200.00	800.00
Subtotal Field Investigation				\$2,946.00
<u>II. LABORATORY TESTING</u>				
A. Staff Engineer (Soil Stratification)	2	Hours	\$90.00	\$ 180.00
B. Full Sieve Gradation Analyses	4	Each	90.00	360.00
C. Moisture Content	4	Each	14.00	56.00
D. Corrosion Series (pH, resistivity, CL, S)	2	Each	240.00	480.00
Subtotal Laboratory Testing				\$ 1,076.00
<u>III. ENGINEERING SERVICES</u>				
A. Principal Consultant	2	Hours	\$ 210.00	\$ 420.00
B. Project Engineer	10	Hours	110.00	1,100.00
C. CAD Drafting	4	Hours	80.00	320.00
D. Clerical	4	Hours	60.00	240.00
Subtotal Engineering Services				\$2,080.00
TOTAL ALL SERVICES				\$6,102.00

GENERAL CONDITIONS

1. **PARTIES AND SCOPE OF WORK:** Professional Service Industries Inc. ("PSI") shall include said company or its particular division, subsidiary or affiliate performing the work. "Work" means the specific service to be performed by PSI as set forth in PSI's proposal, Client's acceptance thereof and these General Conditions. Additional work ordered by Client shall also be subject to these General Conditions. "Client" refers to the person or business entity ordering the work to be done by PSI. If Client is ordering the work on behalf of another, Client represents and warrants that it is the duly authorized agent of said party for the purpose of ordering and directing said work. Unless otherwise stated in writing, Client assumes sole responsibility for determining whether the quantity and the nature of the work ordered by the client is adequate and sufficient for Client's intended purpose. Client shall communicate these General Conditions to each and every third party to whom Client transmits any part of PSI's work. PSI shall have no duty or obligation to any third party greater than that set forth in PSI's proposal, Client's acceptance thereof and these General Conditions. The ordering of work from PSI, or the reliance on any of PSI's work, shall constitute acceptance of the terms of PSI's proposal and these General Conditions, regardless of the terms of any subsequently issued document.
2. **TESTS AND INSPECTIONS:** Client shall cause all tests and inspections of the site, materials and work performed by PSI or others to be timely and properly performed in accordance with the plans, specifications and contract documents and PSI's recommendations. No claims for loss, damage or injury shall be brought against PSI by Client or any third party unless all tests and inspections have been so performed and unless PSI's recommendations have been followed. Client agrees to indemnify, defend and hold PSI, its officers, employees and agents harmless from any and all claims, suits, losses, costs and expenses, including, but not limited to, court costs and reasonable attorney's fees in the event that all such tests and inspections are not so performed or PSI's recommendations are not so followed.
3. **PREVAILING WAGES:** This proposal specifically excludes compliance with any project labor agreement, labor agreement, or other union or apprenticeship requirements. In addition, unless explicitly agreed to in the body of this proposal, this proposal specifically excludes compliance with any state or federal prevailing wage law or associated requirements, including the Davis Bacon Act. It is agreed that no applicable prevailing wage classification or wage rate has been provided to PSI, and that all wages and cost estimates contained herein are based solely upon standard, non-prevailing wage rates. Should it later be determined by the Owner or any applicable agency that in fact prevailing wage applies, then it is agreed that the contract value of this agreement shall be equitably adjusted to account for such changed circumstance. Client will reimburse, defend, indemnify and hold harmless PSI from and against any liability resulting from a subsequent determination that prevailing wage regulations cover the Project, including all costs, fines and attorney's fees.
4. **SCHEDULING OF WORK:** The services set forth in PSI's proposal and Client's acceptance will be accomplished by PSI personnel at the prices quoted. If PSI is required to delay commencement of the work or if, upon embarking upon its work, PSI is required to stop or interrupt the progress of its work as a result of changes in the scope of the work requested by Client, to fulfill the requirements of third parties, interruptions in the progress of construction, or other causes beyond the direct reasonable control of PSI, additional charges will be applicable and payable by Client.
5. **ACCESS TO SITE:** Client will arrange and provide such access to the site and work as is necessary for PSI to perform the work. PSI shall take reasonable measures and precautions to minimize damage to the site and any improvements located thereon as the result of its work or the use of its equipment.
6. **CLIENT'S DUTY TO NOTIFY ENGINEER:** Client warrants that it has advised PSI of any known or suspected hazardous materials, utility lines and pollutants at any site at which PSI is to do work, and unless PSI has assumed in writing the responsibility of locating subsurface objects, structures, lines or conduits, Client agrees to defend, indemnify and save PSI harmless from all claims, suits, losses, costs and expenses, including reasonable attorney's fees as a result of personal injury, death or property damage occurring with respect to PSI's performance of its work and resulting to or caused by contact with subsurface or latent objects, structures, lines or conduits where the actual or potential presence and location thereof were not revealed to PSI by Client.
7. **RESPONSIBILITY:** PSI's work shall not include determining, supervising or implementing the means, methods, techniques, sequences or procedures of construction. PSI shall not be responsible for evaluating, reporting or affecting job conditions concerning health, safety or welfare. PSI's work or failure to perform same shall not in any way excuse any contractor, subcontractor or supplier from performance of its work in accordance with the contract documents. Client agrees that it shall require subrogation to be waived against PSI and for PSI to be added as an Additional Insured on all policies of insurance, including any policies required of Client's contractors or subcontractors, covering any construction or development activities to be performed on the project site. PSI has no right or duty to stop the contractor's work.
8. **SAMPLE DISPOSAL:** Test specimens will be disposed immediately upon completion of the test. All drilling samples will be disposed sixty (60) days after submission of PSI's report.
9. **PAYMENT:** The quantities and fees provided in this proposal are PSI's estimate based on information provided by Client and PSI's experience on similar projects. The actual total amount due to PSI shall be based on the actual final quantities provided by PSI at the unit rates provided herein. Where Client directs or requests additional work beyond the contract price it will be deemed a change order and PSI will be paid according to the fee schedule. Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. Client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause in writing within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law), until paid. Client agrees to pay PSI's cost of collection of all amounts due and unpaid after thirty (30) days, including court costs and reasonable attorney's fees. PSI shall not be bound by any provision or agreement requiring or providing for arbitration of disputes or controversies arising out of this agreement, any provision wherein PSI waives any rights to a mechanics' lien, or any provision conditioning PSI's right to receive payment for its work upon payment to Client by any third party. These General Conditions are notice, where required, that PSI shall file a lien whenever necessary to collect past due amounts. Failure to make payment within 30 days of invoice shall constitute a release of PSI from any and all claims which Client may have, whether in tort, contract or otherwise, and whether known or unknown at the time.

GENERAL CONDITIONS

10. **ALLOCATION OF RISK:** CLIENT AGREES THAT PSI'S SERVICES WILL NOT SUBJECT PSI'S INDIVIDUAL EMPLOYEES, OFFICERS OR DIRECTORS TO ANY PERSONAL LIABILITY, AND THAT NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CLIENT AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY SHALL BE TO DIRECT OR ASSERT ANY CLAIM, DEMAND, OR SUIT ONLY AGAINST PSI.

SHOULD PSI OR ANY OF ITS EMPLOYEES BE FOUND TO HAVE BEEN NEGLIGENT IN THE PERFORMANCE OF ITS WORK, OR TO HAVE MADE AND BREACHED ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION OR CONTRACT, CLIENT, ALL PARTIES CLAIMING THROUGH CLIENT AND ALL PARTIES CLAIMING TO HAVE IN ANY WAY RELIED UPON PSI'S WORK AGREE THAT THE MAXIMUM AGGREGATE AMOUNT OF THE LIABILITY OF PSI, ITS OFFICERS, EMPLOYEES AND AGENTS SHALL BE LIMITED TO \$25,000.00 OR THE TOTAL AMOUNT OF THE FEE PAID TO PSI FOR ITS WORK PERFORMED ON THE PROJECT, WHICHEVER AMOUNT IS GREATER. IN THE EVENT CLIENT IS UNWILLING OR UNABLE TO LIMIT PSI'S LIABILITY IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN THIS PARAGRAPH, CLIENT MAY, UPON WRITTEN REQUEST OF CLIENT RECEIVED WITHIN FIVE DAYS OF CLIENT'S ACCEPTANCE HEREOF, INCREASE THE LIMIT OF PSI'S LIABILITY TO \$250,000.00 OR THE AMOUNT OF PSI'S FEE PAID TO PSI FOR ITS WORK ON THE PROJECT, WHICHEVER IS THE GREATER, BY AGREEING TO PAY PSI A SUM EQUIVALENT TO AN ADDITIONAL AMOUNT OF 5% OF THE TOTAL FEE TO BE CHARGED FOR PSI'S SERVICES. THIS CHARGE IS NOT TO BE CONSTRUED AS BEING A CHARGE FOR INSURANCE OF ANY TYPE, BUT IS INCREASED CONSIDERATION FOR THE GREATER LIABILITY INVOLVED. IN ANY EVENT, ATTORNEY'S FEES EXPENDED BY PSI IN CONNECTION WITH ANY CLAIM SHALL REDUCE THE AMOUNT AVAILABLE, AND ONLY ONE SUCH AMOUNT WILL APPLY TO ANY PROJECT.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY) OR OTHERWISE FOR LOSS OF PROFIT (WHETHER DIRECT OR INDIRECT) OR FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE, OR SPECIAL LOSS OR DAMAGE, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, REVENUE, BUSINESS, OR ANTICIPATED SAVINGS (EVEN WHEN ADVISED OF THEIR POSSIBILITY).

NO ACTION OR CLAIM, WHETHER IN TORT, CONTRACT, OR OTHERWISE, MAY BE BROUGHT AGAINST PSI, ARISING FROM OR RELATED TO PSI'S WORK, MORE THAN TWO YEARS AFTER THE CESSATION OF PSI'S WORK HEREUNDER, REGARDLESS OF THE DATE OF DISCOVERY OF SUCH CLAIM.

11. **INDEMNITY:** Subject to the above limitations, PSI agrees not to defend but to indemnify and hold Client harmless from and against any and all claims, suits, costs and expenses including reasonable attorney's fees and court costs to the extent arising out of PSI's negligence as finally determined by a court of law. Client shall provide the same protection to the extent of its negligence. In the event that Client or Client's principal shall bring any suit, cause of action, claim or counterclaim against PSI, the Client and the party initiating such action shall pay to PSI the costs and expenses incurred by PSI to investigate, answer and defend it, including reasonable attorney's and witness fees and court costs to the extent that PSI shall prevail in such suit.
12. **TERMINATION:** This Agreement may be terminated by either party upon seven days' prior written notice. In the event of termination, PSI shall be compensated by Client for all services performed up to and including the termination date, including reimbursable expenses.
13. **EMPLOYEES/WITNESS FEES:** PSI's employees shall not be retained as expert witnesses except by separate, written agreement. Client agrees to pay PSI's legal expenses, administrative costs and fees pursuant to PSI's then current fee schedule for PSI to respond to any subpoena. For a period of one year after the completion of any work performed under this agreement, Client agrees not to solicit, recruit, or hire any PSI employee or person who has been employed by PSI within the previous twelve months. In the event Client desires to hire such an individual, Client agrees that it shall seek the written consent of PSI, and shall pay PSI an amount equal to one-half of the employee's annualized salary, without PSI waiving other remedies it may have.
14. **FIDUCIARY:** PSI is not a financial advisor, does not provide financial advice or analysis of any kind, and nothing in our reports can create a fiduciary relationship between PSI and any other party.
15. **RECORDING:** Photographs or video recordings of the Client's own project may be taken by and used for the Client's own internal purposes. Photographs or video recordings may not be used for marketing or publicity, or distributed to a third party or otherwise published without PSI's prior review and consent in writing. Taking photographs of other Clients' samples, test setups, or facilities, or recording in any manner any test specimen other than the test specimen related to the Client's project is prohibited; and the Client agrees to hold in strict confidence and not use any proprietary information disclosed either advertently or inadvertently. The Client shall defend, hold harmless, and indemnify PSI for any breach of this clause.
16. **CHOICE OF LAW AND EXCLUSIVE VENUE:** All claims or disputes arising or relating to this agreement shall be governed by, construed, and enforced in accordance with the laws of Illinois. The exclusive venue for all actions or proceedings arising in connection with this agreement shall be either the Circuit Court in Cook County, Illinois, or the Federal Court for the Northern District of Illinois.
17. **PROVISIONS SEVERABLE:** The parties have entered into this agreement in good faith, and it is the specific intent of the parties that the terms of these General Conditions be enforced as written. In the event any of the provisions of these General Conditions should be found to be unenforceable, it shall be stricken and the remaining provisions shall be enforceable.
18. **ENTIRE AGREEMENT:** This agreement constitutes the entire understanding of the parties, and there are no representations, warranties or undertakings made other than as set forth herein. This agreement may be amended, modified or terminated only in writing, signed by each of the parties hereto.

BOGGY CREEK IMPROVEMENT DISTRICT

**Traffic Engineering Services for Power Center
Roundabouts with Kittelson**

**AGREEMENT FOR TRAFFIC ENGINEERING SERVICES
(POWER CENTER ROUNDABOUTS)**

THIS AGREEMENT (“**Agreement**”) is made and entered into this 17th day of May, 2022, by and between:

Boggy Creek Improvement District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, located in the City of Orlando, Florida, with a mailing address of 3501 Quadrangle Blvd., Suite 270, Orlando, Florida, 32817 (“**District**”); and

Kittelson & Associates, Inc., an Oregon corporation, with an address of 225 East Robinson Street, Suite 355, Orlando, Florida 32801 (“**Engineer**”).

RECITALS

WHEREAS, the District is a local unit of special purpose government established pursuant to the Uniform Community Development District Act of 1980, as codified in Chapter 190, Florida Statutes, by ordinance of the City Council for the City of Orlando, Florida; and

WHEREAS, the District is authorized to plan, acquire and/or maintain improvements, facilities and services in conjunction with the development and maintenance of the lands within the District; and

WHEREAS, the District desires Engineer to provide the District with certain traffic and roadway related engineering services for the roundabouts located in the Lake Nona Power Center site (“**Project**”), as described in more detail in **Exhibit A** (“**Proposal**”); and

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and the acts and deeds to be performed by the parties, the receipt and sufficiency of which are hereby acknowledged by the parties, it is mutually covenanted and agreed as follows:

1. RECITALS. The recitals set forth above are hereby incorporated into the terms of this Agreement.

2. SCOPE OF WORK. The Engineer will provide certain engineering services as described in the Proposal attached hereto.

3. REPRESENTATIONS. The Engineer hereby represents to the District that:

- a. It has the experience and skill to perform the services required to be performed by this Agreement.
- b. It shall design to and comply with applicable federal, state, and local laws, and codes, including without limitation, professional registration and licensing requirements (both corporate and individual for all required basic disciplines) in effect during the term of this Agreement, and shall, if requested by District,

provide certification of compliance with all registration and licensing requirements.

- c. It shall perform said services in accordance with generally accepted professional standards in the most expeditious and economical manner, and to the extent consistent with the best interests of District.
- d. It is adequately financed to meet any financial obligations it may be required to incur under this Agreement.

4. COMPENSATION. As compensation for the services identified in **Exhibit A** and further described herein, District agrees to pay Engineer a sum not-to-exceed Twenty-Nine Thousand Five Hundred Dollars (**\$29,500.00**). Such Payment shall be due upon completion of the Services and submission of a final invoice as set forth herein. This Payment includes, but is not limited to, all permits, parts, materials and labor necessary to complete the Services as described herein. Engineer agrees to render a final invoice to the District, in writing, which shall be delivered or mailed to the District. The District shall pay the Engineer the Payment within twenty-five (25) days of receipt of such an invoice. The Engineer shall maintain records conforming to usual accounting practices. If the District should desire additional work or services not provided in **Exhibit A**, the Engineer agrees to negotiate in good faith to undertake such additional work or services. Upon successful negotiations, the parties shall agree in writing to a work order, addendum, addenda, or change order to this Agreement. The Engineer shall be compensated for such agreed additional work or services based upon a payment amount acceptable to the parties and agreed to in writing. No additional services shall be provided by the Engineer unless done at the direction of the District.

5. TERM. The term of this Agreement will be from the time of execution of this Agreement by both parties until either (1) the Project is complete, or (2) such time as this Agreement is terminated pursuant to its terms.

6. OWNERSHIP & REUSE OF DOCUMENTS. All rights in and title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, creation, inventions, reports, or other tangible work product originally developed by Engineer pursuant to this Agreement ("**Work Product**") shall be and remain the sole and exclusive property of the District when developed and paid for by the District and shall be considered work for hire.

The Engineer shall deliver all Work Product to the District upon completion thereof unless it is necessary for the Engineer in the District's sole discretion, to retain possession for a longer period of time. Upon early termination of the Engineer's services hereunder, the Engineer shall deliver all such Work Product whether complete or not. The District shall have all rights to use any and all Work Product. Engineer shall retain copies of the Work Product for its permanent records, provided the Work Product is not used without the District's prior express written consent. The Engineer agrees not to recreate any Work Product contemplated by this Agreement, or portions thereof, which if constructed or otherwise materialized, would be reasonably identifiable with the Project.

The District exclusively retains all manufacturing rights to all materials or designs developed under this Agreement. To the extent the services performed under this Agreement

produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for the District as the author, creator, or inventor thereof upon creation, and the District shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. The Engineer hereby assigns to the District any and all rights the Engineer may have including, without limitation, the copyright, with respect to such work. The Engineer acknowledges that the District is the motivating factor for, and for the purpose of copyright or patent, has the right to direct and supervise the preparation of such copyrightable or patentable materials or designs.

7. INSURANCE. Subject to the provisions of this Article, the Engineer shall maintain insurance during the performance of its services under this Agreement, with limits of liability not less than the following:

Workers' Compensation	Statutory
General Liability	
Bodily Injury (including Contractual)	\$1,000,000/\$2,000,000
Property Damage (including Contractual)	\$1,000,000/\$2,000,000
Automobile Liability	Combined Single Limit \$1,000,000
Bodily Injury / Property Damage	
Professional Liability for Errors and Omissions	\$1,000,000

If any such policy of insurance is a "claims made" policy, and not an "occurrence" policy, the Engineer shall, without interruption, and at the District's option, maintain the insurance for at least three years after the one year anniversary of this Agreement.

The District, its officers, supervisors, agents, staff, and representatives shall be named as additional insured parties, except with respect to the Worker's Compensation Insurance and the Professional Liability for Errors and Omissions Insurance both for which only proof of insurance shall be provided. The Engineer shall furnish the District with the Certificate of Insurance evidencing compliance with the requirements of this Section. No certificate shall be acceptable to the District unless it provides that any change or termination within the policy periods of the insurance coverage, as certified, shall not be effective without written notice to the District per the terms of the applicable policy. Insurance coverage shall be from a reputable insurance carrier, licensed to conduct business in the state of Florida.

If the Engineer fails to have secured and maintained the required insurance, the District has the right (without any obligation to do so, however), to secure such required insurance in which event, the Engineer shall pay the cost for that required insurance and shall furnish, upon demand, all information that may be required in connection with the District's obtaining the required insurance.

8. CONTINGENCY FEE. The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Engineer, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

9. AUDIT. Records of the Engineer pertaining to the services provided hereunder shall be kept on a basis of generally accepted accounting principles and shall be available to the District or its authorized representative for observation or audit at mutually agreeable times. The Engineer agrees that the District or any of its duly authorized representatives shall have access to and the right to examine any books, documents, papers, and records of the Engineer involving transactions related to the Agreement. The Engineer agrees that payment made under the Agreement shall be subject to reduction for amounts charged thereto that are found on the basis of audit examination not to constitute allowable costs. All required records shall be maintained until either (a) the completion of an audit and resolution of all questions arising therefrom, or (b) three years after the expenditure of all funds under this Agreement, or (c) the public record retention period established by the District's records retention policy, whichever comes later.

10. INDEMNITY. To the extent allowed under section 725.08, *Florida Statutes*, the Engineer agrees to indemnify, defend and hold the District and its officers, supervisors, agents, staff, and representatives and any successors and assigns of the foregoing (together, "**Indemnitees**") harmless from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees and costs and all fees and costs of mediation or alternative dispute resolution, which may come against the Indemnitees to the extent caused wholly or in part by negligent, reckless, or intentionally wrongful acts, omissions, or defaults by the Engineer or persons employed or utilized by Engineer in the course of any work done in connection with any of the matters set out in this Agreement.

11. SOVEREIGN IMMUNITY. The Engineer agrees and covenants that nothing in this Agreement shall constitute or be construed as a waiver of District's limitations on liability pursuant to section 768.28, *Florida Statutes*, or any other statute or law.

12. PUBLIC RECORDS. Engineer understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Engineer agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited, to Section 119.0701, *Florida Statutes*. Among other requirements and to the extent applicable by law, Engineer shall: 1) keep and maintain public records required by the District to perform the services; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the Agreement term and following the Agreement term if Engineer does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of

the Agreement, transfer to the District, at no cost, all public records in Engineer's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by Engineer, Engineer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats. Engineer acknowledges that the designated Public Records Custodian for the District is Jennifer Walden.

IF ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO ENGINEER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407) 723-5900, waldenj@pfm.com, OR 3501 QUADRANGLE BOULEVARD, SUITE 270, ORLANDO, FLORIDA 32817.

13. CONFLICTS OF INTEREST. The Engineer shall bear the responsibility for acting in the District's best interests, shall avoid any conflicts of interest and shall abide by all applicable ethical canons and professional standards relating to conflicts of interest.

14. SUBCONTRACTORS. The Engineer may subcontract portions of the services, subject to the terms of this Agreement and subject to the prior written consent of the District, which may be withheld for any or no reason. Without in any way limiting any terms and conditions set forth in this Agreement, all subcontractors of Engineer shall be deemed to have made all of the representations and warranties of Engineer set forth herein and shall be subject to any and all obligations of Engineer hereunder. Prior to any subcontractor providing any services, Engineer shall obtain from each subcontractor its written consent to and acknowledgment of the terms of this Agreement. Engineer shall be responsible for all acts or omissions of any subcontractors.

15. INDEPENDENT CONTRACTOR. The District and the Engineer agree and acknowledge that the Engineer shall serve as an independent contractor of the District. Neither the Engineer nor employees of the Engineer, if any, are employees of the District under the meaning or application of any federal or state unemployment, insurance laws, or any other potentially applicable laws. The Engineer agrees to assume all liabilities or obligations by any one or more of such laws with respect to employees of the Engineer, if any, in the performance of this Agreement. The Engineer shall not have any authority to assume or create any obligation, express or implied, on behalf of the District and the Engineer shall have no authority to represent as agent, employee, or in any other capacity the District unless set forth differently herein or authorized by vote of the Board.

16. THIRD PARTIES. Nothing in the Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred by operation of law.

17. CONTROLLING LAW. The Engineer and the District agree that this Agreement shall be controlled and governed by the laws of the State of Florida. Venue for any action arising under this Agreement shall be in the State Courts located in Orange County, Florida.

18. ASSIGNMENT. Neither the District nor the Engineer shall assign, sublet, or transfer any rights under or interest in this Agreement without the express written consent of the other, and any purported assignment without such written consent is void.

19. TERMINATION. The District may terminate this Agreement for cause immediately upon notice to Engineer. The District or the Engineer may terminate this Agreement without cause upon thirty (30) days written notice. At such time as the Engineer receives notification of the intent of the District to terminate the contract, the Engineer shall not perform any further services unless directed to do so in writing by the District. In the event of any termination or breach of any kind, the Engineer shall not be entitled to consequential damages of any kind (including but not limited to lost profits), but instead the Engineer's sole remedy will be to recover payment for services rendered to the date of the notice of termination, subject to any offsets.

20. RECOVERY OF COSTS AND FEES. In the event either party is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorneys' fees at all judicial levels.

21. AMENDMENTS. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both of the parties hereto and formally approved by the Board.

22. AGREEMENT. This Agreement reflects the negotiated agreement of the parties, each represented by competent legal counsel. Accordingly, this Agreement shall be construed as if both parties jointly prepared it, and no presumption against one party or the other shall govern the interpretation or construction of any of the provisions of this Agreement.

23. EXHIBITS. To the extent of any conflict between this Agreement and its **Exhibit A**, this Agreement shall control. Further, the "Terms and Conditions" referenced in the Proposal do not apply to this Agreement.

24. NOTICES. All notices, requests, consents and other communications hereunder ("**Notices**") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or telecopied to the parties, as follows:

- | | |
|---------------------------|--|
| A. If to Engineer: | Kittelson & Associates, Inc.
225 East Robinson Street, Suite 355
Orlando, Florida 32801
Attn: Adam Burghdoff, P.E. |
| B. If to District: | Boggy Creek Improvement District
3501 Quadrangle Boulevard, Suite 270
Orlando, Florida 32817
Attn: District Manager |

With a copy to: Kutak Rock LLP
107 West College Avenue
Tallahassee, Florida 32301
Attn: District Counsel

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the Engineer may deliver Notice on behalf of the District and the Engineer. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) day's written notice to the parties and addressees set forth herein.

25. INDIVIDUAL LIABILITY. UNDER THIS AGREEMENT, AND SUBJECT TO THE REQUIREMENTS OF SECTION 558.0035, FLORIDA STATUTES, WHICH REQUIREMENTS ARE EXPRESSLY INCORPORATED HEREIN, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

[THIS SPACE INTENTIONALLY LEFT BLANK]

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

Attest:

BOGGY CREEK IMPROVEMENT DISTRICT

Assistant Secretary/Secretary

Chairperson / Vice Chairperson,
Board of Supervisors

KITTELSON & ASSOCIATES, INC.

Witness

By: _____
Its: _____

EXHIBIT A - Proposal dated March 22, 2022

EXHIBIT A



225 East Robinson Street, Suite 355
Orlando, FL 32801
P 407.540.0555 F 407.540.0550

March 22, 2022

Project #: 27658

Mr. Jeffrey Newton
Boggy Creek Improvement District
12051 Corporate Boulevard
Orlando, FL 32817

RE: BCID Power Center Roundabouts

Dear Jeffrey:

Attached is a proposal for roundabout preliminary design services associated with the Lake Nona Power Center site. Part "A" identifies our proposed services for the project in accordance with the terms and conditions outlined in Part "B". This scope was developed based on our discussions with you, our review of the proposed development plan, and our familiarity with Lake Nona and the City of Orlando.

We propose to conduct the services (detailed in Part "A" herein) on a lump sum basis for \$29,500 (detailed in Table 1 of the attached Part "B").

This proposal (scope of work, budget, and timeline) is effective for sixty days.

Daniel Torre will serve as the Project Manager and Adam Burghdoff will serve as the Project Principal providing senior review and quality assurance. Any questions of a technical or contractual nature can be directed to either of us.

Please review this proposal at your earliest convenience. If the attached Professional Services Agreement is satisfactory, please return a signed copy electronically. A fully executed copy will be returned for your records. Thank you for the opportunity to propose on this project. If you have any questions, please call us at 407.373.1121.

Sincerely,
KITTELSON & ASSOCIATES, INC.

A handwritten signature in blue ink, appearing to read 'Daniel Torre'.

Daniel Torre
Engineer

A handwritten signature in blue ink, appearing to read 'Adam Burghdoff'.

Adam Burghdoff
Principal Engineer

PROFESSIONAL SERVICES AGREEMENT

March 22, 2022

Kittelson & Associates, Inc.
225 East Robinson Street, Suite 355
Orlando, FL 32801
407.540.0555 (P)
407.540.0550 (F)

Boggy Creek Improvement District with an office at 12051 Corporate Boulevard, Orlando FL 32817 (the "CLIENT") hereby enters into this Professional Services Agreement (this "Agreement") with KITTELSON & ASSOCIATES, INC. to perform the services as described in this Agreement's Part "A" - Scope of Work (the "Services") for the BCID Power Center Roundabouts (the "Project"), subject to all of the provisions described in Part "B" Terms and Conditions.

PART A - SCOPE OF WORK

TASK 1 – PRELIMINARY ROUNDABOUT HORIZONTAL DESIGN

Kittelson will prepare a horizontal roundabout design for the two proposed locations along Lake Nona Boulevard, shown in **Figure 1**.



Figure 1: Proposed Roundabout Locations

The horizontal roundabout designs will support further evaluation of the feasibility of roundabout implementation, potential impacts, and potential extents of reconstruction along Lake Nona Boulevard. The product of this task will be exhibits illustrating the roundabout designs and corresponding design checks (e.g. speed control verification, design vehicle paths, and sight-distance checks) to support internal review and external coordination with the City of Orlando. No construction plans are included under this scope of work.

The roundabout lane configurations will be based on traffic analysis conducted in the Lake Nona Power Center Traffic Analysis. The horizontal design alternative for the roundabout will be prepared utilizing survey data and design files provided by DWMA to tie into the existing Lake Nona Boulevard alignment. DWMA will provide all aerials, survey, utility, ROW, and roadway design files necessary for Kittelson to prepare the horizontal roundabout design. The design will be prepared following the principals-based process outlined in *NCHRP Report 672, Roundabouts: An Informational Guide – 2nd Edition* and augmented by Kittelson's practical and research experience.

The following activities will be undertaken as part of Task 1:

1. Two horizontal roundabout designs will be prepared by Kittelson along Lake Nona Boulevard. Due to the iterative nature of roundabout design, multiple options may need to be tested; however, one initial design for each location will be fully developed and delivered as part of this scope. Requests for an additional alternative will be addressed after receiving additional authorizations. The designs will be developed to a level of detail to illustrate the following basic geometric and pavement marking elements: the locations of curb and gutter lines, raised splitter islands, central island and truck apron, basic pavement markings, crosswalk and ped ramp locations, and initial proposed sidewalk location.
 - a. Deliverable(s):
 - i. PDF format sheets illustrating the roundabout alternatives over aerial photography along with applicable Performance Drive alignment information.
 - ii. CADD files containing the horizontal design for the roundabout layout.
2. For each of the two roundabout design alternatives developed, Kittelson will prepare key design checks to verify adequacy of the horizontal geometry. A package of figures in PDF format will be prepared that documents the design checks. This includes checks of: fastest path vehicle speeds, design vehicle swept paths, and sight distance triangles. The design check package will be compiled in a manner suitable for submission to the reviewing agencies as part of the review package to demonstrate that the design achieves each of the key design principles outlined in NCHRP Report 672.
 - a. Deliverable: Compiled set of design check figures in PDF format for each of the two roundabout design alternatives.

Kittelson will prepare for and attend one meeting with the City of Orlando to discuss horizontal roundabout designs. Requests for major adjustments to the designs after delivery, will be addressed at a time and materials basis after receiving additional authorizations.

PART B – TERMS AND CONDITIONS

- I. **GENERAL:** The terms and conditions set forth herein shall govern all services subsequently performed on behalf of CLIENT unless changed by a written agreement signed by KITTELSON & ASSOCIATES, INC. In case any one or more of the provisions contained in this Agreement shall be held unenforceable, the enforceability of the remaining provisions contained herein shall not be impaired thereby.
- II. **LIMITATION OF LIABILITY:** CLIENT AGREES THAT IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT, KITTELSON & ASSOCIATES, INC.'S AGGREGATE JOINT, SEVERAL AND INDIVIDUAL LIABILITY, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, PROFESSIONAL MALPRACTICE, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY OF RECOVERY SHALL BE LIMITED TO AN AMOUNT NO GREATER THAN THREE TIMES THE TOTAL COMPENSATION RECEIVED BY KITTELSON & ASSOCIATES, INC. UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.
- III. **LIMITATION OF REMEDY:** CLIENT COVENANTS THAT IT WILL NOT, UNDER ANY CIRCUMSTANCES, BRING A LAWSUIT OR CLAIM AGAINST KITTELSON & ASSOCIATES, INC.'S INDIVIDUAL EMPLOYEES, OFFICERS, DIRECTORS OR SHAREHOLDERS AND THAT CLIENT'S SOLE REMEDY SHALL BE AGAINST KITTELSON & ASSOCIATES, INC.
- IV. **WAIVER OF CONSEQUENTIAL DAMAGES:** NEITHER KITTELSON & ASSOCIATES, INC. NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS SHALL BE LIABLE FOR ANY INDIRECT, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO FINES, PENALTIES AND LOST PROFITS, WHETHER SAID CLAIM IS BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL OR EQUITABLE THEORY OF RECOVERY.
- V. **INDEMNITY:** To the maximum extent allowed by law, CLIENT and KITTELSON & ASSOCIATES, INC. shall indemnify and hold harmless, but not defend, each other and the indemnified party's employees, officers, directors and agents from, for and against all claims, losses, legal costs and expenses resulting from any bodily injury or property damage, but only to the extent caused by the indemnifying party's negligence.
- VI. **OWNERSHIP OF DOCUMENTS:** KITTELSON & ASSOCIATES, INC is deemed the author and owner of its documents and other instruments of service, and will retain all common law, statutory, and other reserved rights, including copyrights. So long as CLIENT complies with all terms of this Agreement, including but not limited to terms of payment, KITTELSON & ASSOCIATES, INC. grants CLIENT a nonexclusive license to use instruments of professional service for the purpose of constructing, occupying and maintaining the Project. Reuse or modification of any such documents by CLIENT, without KITTELSON & ASSOCIATES, INC.'s written permission, shall be at CLIENT's own sole risk and CLIENT agrees to defend, indemnify, reimburse and hold harmless KITTELSON &

ASSOCIATES, INC. from all claims, liabilities, losses, costs, damages and expenses, including attorney's fees and expert's fees, related to the reuse by CLIENT or others acting through CLIENT.

VII. **ELECTRONIC DOCUMENTS:** If KITTELSON & ASSOCIATES, INC. provides CLIENT any documents or other instruments of service in electronic form ("Electronic Documents"), acceptance and use of the electronic documents by CLIENT shall be at CLIENT's sole risk and CLIENT shall:

- a. Waive and covenant not to sue KITTELSON & ASSOCIATES, INC. or its employees alleging any inaccuracy or defect of the Electronic Documents.
- b. Agree that KITTELSON & ASSOCIATES, INC. makes no representation with regard to the compatibility of the Electronic Documents with any software or hardware or that the data is fit for any specific use.
- c. Indemnify, hold harmless, reimburse and defend KITTELSON & ASSOCIATES, INC. from, for and against any claim, damage, liability, loss, expense or cost, including attorneys' fees and expert's fees, that may arise from CLIENT'S use of the Electronic Documents or any subsequent modification of the Electronic Documents by any person or entity.
- d. CLIENT agrees that prior to use of the Electronic Documents on any project other than the Project, CLIENT shall retain the services of a licensed professional as necessary to review and revise the Electronic Documents for compliance with the local laws, practices and standards of the place where the Project will be located.

VIII. **DISPUTE RESOLUTION:** In any dispute arising out of this Agreement or the Services, with the exception of disputes relating to CLIENT's non-payment, partial payment or late payment of any amount due under an invoice issued by KITTELSON & ASSOCIATES, INC. ("Payment Disputes"), for which the remedy will be in accordance with Article XVI of this Agreement, the Parties shall first attempt to resolve the dispute through good-faith negotiation. In the event that the Parties are unable to resolve the dispute through negotiation, CLIENT agrees that any claim or dispute arising out of this Agreement or the Services, with the exception of Payment Disputes, shall be submitted to non-binding mediation. If the dispute cannot be resolved by mediation, the parties agree to submit their dispute to binding arbitration before a single arbitrator. The arbitration shall be held in Multnomah County, Oregon and shall be conducted by and pursuant to the rules of Arbitration Service of Portland, Inc. (ASP), and the arbitrator shall be chosen in accordance with ASP rules. Except in the case of Payment Disputes, the parties agree that so long as they are making good-faith efforts to resolve the dispute pursuant to the terms of this Article, they shall continue to perform under this Agreement.

IX. **GOVERNING LAW:** Without regard to conflict of laws, the rights and liabilities of the parties under this Agreement shall be governed by the laws of the State of Oregon.

X. **TIME BAR TO LEGAL ACTION:** All legal actions by either party against the other arising out of or in any way connected with this Agreement or the services to be performed hereunder shall be barred

and under no circumstances shall any such legal action be initiated by either party after the earlier of three (3) years or the State's applicable statute of limitations, both of which shall commence to run on the last day Services are performed under this Agreement.

- XI. **DIRECT EXPENSES:** KITTELSON & ASSOCIATES, INC.'s Direct Expenses shall be those costs incurred on or directly for the Project, including but not limited to necessary transportation costs including mileage at the current IRS-allowed rates, meals and lodging. Reimbursement for automobiles, meals and lodging, and any other expenses furnished by commercial sources shall be on the basis of actual charges plus a 10% markup.

All communication fees including, but not limited to computer services, telephone, faxes, postage, overnight deliveries, and in-house copies, printing, and binding charges shall be billed on the basis of a per direct labor hour fee when furnished by KITTELSON & ASSOCIATES, INC.

- XII. **PROFESSIONAL SERVICES:** KITTELSON & ASSOCIATES, INC. staff is defined as all permanent and temporary employees, as well as any and all contract labor of KITTELSON & ASSOCIATES, INC. All KITTELSON & ASSOCIATES, INC., staff time spent working on the Project will be billed as applicable per Table 1.

- XIII. **COST ESTIMATE:** Any cost estimates provided by KITTELSON & ASSOCIATES, INC. as part of the Services will be on a basis of experience and judgment, but because it has no control over market conditions or bidding procedures KITTELSON & ASSOCIATES, INC. cannot warrant that bids, construction or other Project costs will not vary from these cost estimates.

- XIV. **PEER REVIEW:** Any peer review report prepared by KITTELSON & ASSOCIATES INC. as part of the Services herein merely represents its professional, unbiased opinion regarding the deliverable. This opinion is based solely on KITTELSON & ASSOCIATES, INC.'s evaluation of the information provided by CLIENT and should not be considered an exhaustive review, insurance against errors or omissions in the deliverable, or advocacy of the intended project. CLIENT agrees that the purpose and intent of KITTELSON & ASSOCIATES, INC.'s evaluation of the deliverable is to reduce the risk of errors or omissions only and not to eliminate such risk. KITTELSON & ASSOCIATES, INC. offers no warranty or guarantee with regard to any requested peer review performed under this AGREEMENT.

- XV. **TERMINATION FOR CONVENIENCE:** In addition to other rights of termination, either CLIENT or KITTELSON & ASSOCIATES, INC. may terminate this Agreement for its convenience by giving 30 days' written notice to the other party. In such event, CLIENT shall forthwith pay KITTELSON & ASSOCIATES, INC. in full for all work previously authorized and performed prior to effective date of termination as well as all unavoidable expenses incurred prior to termination.

- XVI. **PAYMENT TO KITTELSON & ASSOCIATES, INC./REMEDIES FOR PAYMENT DISPUTES:** Monthly invoices will be issued by KITTELSON & ASSOCIATES, INC. for all services performed under the terms of this Agreement, and reimbursement of direct expenses. A retainer, if applicable, will be required in advance of start of services and will be credited to the final invoice(s) of Project. Invoices are due

and payable within 30 days of receipt. The CLIENT must notify the KITTELSON & ASSOCIATES, INC.'s Project Manager or Project Accountant, in writing, within 30 days of receipt of any disputed charges in an invoice (the "Disputed Charges"). In the event CLIENT gives notice of any Disputed Charges in an invoice, the undisputed invoiced amounts are still due and owing under the terms of this Article. Interest at the rate of 1.5 percent per month, or alternatively at the highest monthly rate allowable in the jurisdiction where the Services are being provided, whichever is higher, will be charged on all past due amounts. Interest charges on past due amounts are in addition to the fixed ceiling for the contract and are not counted in determining whether the fixed ceiling has been reached. CLIENT'S failure to make payments to KITTELSON & ASSOCIATES, INC. within 90 days of the issuance of an invoice shall constitute a material breach of this Agreement and KITTELSON & ASSOCIATES, INC. shall have the option to withhold services until paid or terminate this Agreement. Payment Disputes, including but not limited to disputes over (a) CLIENT's non-payment or late payment of any charge on an invoice; and (b) any charge on an invoice identified by CLIENT as a Disputed Charge, are not subject to the Dispute Resolution and Arbitration provisions of Article VIII of this Agreement, and KITTELSON & ASSOCIATES, INC. may avail itself of any and all available legal and equitable remedies to address such Payment Disputes, including, but not limited, to asserting a lien against the real property where PROJECT is located. In the event KITTELSON & ASSOCIATES, INC. is required to undertake collection actions, or otherwise incur any costs in connection with the collection of amounts owing under a past-due invoice, all such costs shall be the responsibility of CLIENT. KITTELSON & ASSOCIATES, INC. prefers that all payments be made through the Automated Clearing House Network ("ACH"). The following bank account information is provided below for this purpose:

Account Name: Kittelson & Associates, Inc.
Bank Name: Chase Bank
Account Number: 179118350
ABA Number: 325070760
Remittance Advice: apinvoice@kittelson.com

- XVII. **PREVAILING PARTY ATTORNEY FEES:** In the event of any litigation between the parties arising out of this Agreement, including mandatory arbitration under Article VIII of this Agreement, the prevailing party shall be entitled to recovery of its reasonable attorney's fees incurred in the litigation.
- XVIII. **ADDITIONAL INSURED:** KITTELSON & ASSOCIATES, INC. shall cause its general liability insurers to name CLIENT as an additional insured.
- XIX. **PROFESSIONAL STANDARDS:** KITTELSON & ASSOCIATES, INC. shall be responsible for performing the Services to the level of competency currently maintained by other practicing professional engineers performing the same type of services in CLIENT'S community. KITTELSON & ASSOCIATES, INC. makes no warranty, guarantee or assurance, express or implied, that the Services will yield or accomplish a perfect or particular outcome for the Project.

XX. **ENTIRE AGREEMENT:** This Agreement constitutes the entire, legally-binding contract between the parties regarding its subject matter and supersede any and all prior or contemporaneous understandings, agreements, or representations, whether oral or written. Amendments to this Agreement will be governed by this Agreement and must be in writing and signed by both the CLIENT and KITTELSON & ASSOCIATES, INC.

XXI. **NO THIRD PARTY RIGHTS:** To the fullest extent permitted by law, no party has any third party beneficiary or other rights arising from or related to the Services.

AUTHORIZATION TO PROCEED: Signing this form shall constitute agreement with all terms and conditions of this AGREEMENT and authorization by CLIENT for KITTELSON & ASSOCIATES, INC. to proceed with performance of the Services as of the date first written above (the "EFFECTIVE DATE").

Table 1:

Project Phase Description	Billing Method	Authorized Amount
Task 1	Lump Sum	\$29,500

Accepted for:

BOGGY CREEK IMPROVEMENT DISTRICT

Signature

Print Name

Title

Date

Approved for:

KITTELSON & ASSOCIATES, INC.

Signature

Print Name

Title

Date

BOGGY CREEK IMPROVEMENT DISTRICT

**Resolution 2022-06,
Approving a Preliminary Budget for Fiscal Year 2023
and Setting a Public Hearing Date**
[August 16, 2022 at 3:00 p.m.]
(provided under separate cover)

BOGGY CREEK IMPROVEMENT DISTRICT

**Operation and Maintenance Expenditures Paid in
April 2022 in an amount totaling \$69,899.24
*(provided under separate cover)***

BOGGY CREEK IMPROVEMENT DISTRICT

**Requisition Nos. 2018-234 – 2018-238 Paid in
April 2022 in an amount totaling \$32,185.05
*(provided under separate cover)***

BOGGY CREEK IMPROVEMENT DISTRICT

Work Authorization/Proposed Services
(if applicable)

BOGGY CREEK IMPROVEMENT DISTRICT

**District's Financial Position and
Budget to Actual YTD**
(provided under separate cover)