

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) effective as of 20th day of July, 2022 (“**Effective Date**”) is entered into by and between:

Franklin County, KS (“Client”), a Kansas local government entity, with offices at 1428 S. Main Street, Suite 2, Ottawa, Kansas 66067; and,

Witt O’Brien’s, LLC (“Consultant”), a Delaware limited liability company, having an office at 818 Town & Country Blvd., Suite 200, Houston, Texas 77024 USA.

For purposes of this Agreement, Client and Consultant may be referred to individually as the “Party” or collectively as the “Parties”.

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

WHEREAS, Client desires to utilize Consultant’s services as provided for herein; and,

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

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

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

3. Period of Performance. The initial period of this Agreement shall be for one (1) year from its effective date, unless earlier terminated in accordance with this Agreement. Thereafter, this Agreement shall automatically renew on its expiration date for one (1) year successive periods until terminated by either party in accordance with this Agreement.

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

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

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

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

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

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

Notwithstanding anything to the contrary, it is understood and acknowledged that in its normal course of business Consultant and/or its third parties may use materials, products, methodologies, and the like which may be confidential, trade secret, or proprietary to Consultant and/or its third parties, and all rights to such information, including intellectual property rights, shall be and remain the property of Consultant and/or its third party regardless of when such information is or was developed; and Client shall have no nor shall it obtain any right thereto.

10. LIABILITY AND INDEMNIFICATION

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

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

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

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

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

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

(b) PERSONAL INJURY, INCLUDING DEATH OR DISEASE, TO ANY PERSON EMPLOYED BY CLIENT;
ARISING FROM OR RELATING TO THE CLIENT'S ACTIONS IN CONNECTION WITH THE AGREEMENT.
NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER PARTY EXCLUDES OR
LIMITS ITS LIABILITY FOR FRAUD.

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

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

11. Acceptance. Client shall have five (5) days from the date each deliverable is made to Client to
reject all or part of each Deliverable. Each Deliverable, to the extent not rejected in writing by Client,
shall be deemed accepted.

12. Payment Terms. Invoices will be submitted to: Janet Paddock, 315 S. Main St., Ottawa, KS 66067
and may be submitted every 15 days, or in the alternative every 30 days, and payment is due net 30
days after receipt of such invoice. Invoices for out of pocket expenses may be submitted every 15
days and payment is due net 30 days after receipt of the invoice. Timely payment is a material part
of the consideration for the performance of the Services. Invoices are considered accepted by Client
unless a written notice explaining rejection of specific charges is provided to Consultant within ten
(10) days from date submitted. A service charge equivalent to 1.5% (per month) of invoice amount
may be assessed by Consultant and will be paid by Client for invoices aging beyond 30 days until
invoice is paid in full. In the event that payment has not been made in accordance with the terms of
this Agreement, in addition to any other remedy, which Consultant may have under law or equity,
Consultant may stop work immediately, without further duty, obligation, and/or liability.

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

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

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

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

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

To: Franklin County, KS	Witt O'Brien's, LLC
Attention: Derek Brown Address: 1428 S. Main, Ste 2, Ottawa, KS 66067 Phone: 785-229-3493 Email: dbrown@franklincoks.org	Attention: Director of Contracts & Compliance 818 Town & Country Blvd., Suite 200 Houston, Texas 77024 USA Phone: +1 (281) 320-9796 Alternate Phone: +1 281-606-4721 contractrequests@wittobriens.com with a copy to cjoiner@wittobriens.com For Legal Notices, a copy shall be provided to: Witt O'Brien's, LLC Attention: Legal Counsel 2200 Eller Drive Fort Lauderdale, Florida 33316 USA Email: blong@ckor.com with a copy to cjoiner@wittobriens.com

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

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

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

and to provide Consultant's records and such other information and assistance in connection with such litigation, proceeding or claim (or investigation preliminary thereto).

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

22. Independent Contractor. Consultant is an independent contractor and shall not be deemed to be an employee or agent of the Client. Client shall not be deemed a joint employer of the other Party's employees. Consultant shall indemnify and hold Client harmless against all liability and loss resulting from i) claims made by the Consultant's employees that they are co-employed by Client, ii) Consultant's failure to pay wages to its employees, and iii) Consultants' failure to pay all taxes and fees imposed by the government under employment insurance, social security and income tax laws with regard to Consultant's employees engaged in the performance of this Agreement.

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

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

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

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

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

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

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

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

31. No Agency. Except as specifically set forth otherwise, it is agreed and understood that neither Party hereto is, by this Agreement or anything herein contained, constituted or appointed agent or representative of the other for any purpose whatsoever, nor shall anything in this Agreement be

deemed or construed as granting either Party any right or authority to assume or to create any obligation, warranty or responsibility, express or implied, for or in behalf of the other.

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

1. This Agreement
2. The Scope of Work (Appendix A)
3. The Rate Schedule (Appendix B)
4. Federal-Related Clauses (Appendix C)
5. Task Orders (Appendix D) (if applicable)
6. Other Contract Documents.

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

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

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

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

//SIGNATURE PAGE FOLLOWS//

IN WITNESS WHEREOF, the Parties hereto cause this Agreement to be executed by their duly authorized signatories set forth below.

Franklin County, KS	Witt O'Brien's, LLC
Signature:	Signature:
Name: Derek Brown	Name:
Title: County Administrator	Title:
Date:	Date:

**APPENDIX A
SCOPE OF WORK**

Consultant shall provide the Services as set out in Consultant Proposal dated June 29, 2022 which is attached hereto as Exhibit A and is incorporated into and forms part of this Agreement.

**APPENDIX B
COMPENSATION/RATES**

Witt O'Brien's proposes a 12-month engagement with Franklin County, with two one-year renewals. Our fees will be based on the rate schedule outlined below and will be invoiced on a time and materials basis, not to exceed \$15,000 through July 19, 2023.

The following rate schedule is intended to be comprehensive in nature to provide the greatest amount of flexibility to Franklin County in identifying and utilizing services based on dynamic needs of the County.

FEE Schedule

Professional Services	Rate/Hour
Management Consultant V	\$225.00
Management Consultant IV	\$175.00
Management Consultant III	\$150.00
Management Consultant II	\$120.00
Management Consultant I	\$ 95.00

While we anticipate all work for Franklin County to be conducted virtually by the Witt O'Brien's team, if conditions change and on-site support is required, in addition to the hourly rates quoted above, out-of-pocket expenses incurred in connection with performance of this agreement will be invoiced. Travel expenses such as lodging, airfare (coach class), rental car, and other miscellaneous expenses shall be reimbursed at our cost, without mark-up. Per diem will be reimbursed in accordance with the rates published by General Services Administration (GSA) for the area of operation. If mileage is applicable, mileage shall be reimbursed at the prevailing IRS mileage rate.

APPENDIX C FEDERAL CLAUSES

The Parties shall comply with all federal laws and regulations whether specifically identified herein and/or are in effect as of the date of contract award that are applicable to the receipt of Federal award, including, but not limited to the contractual procedures set forth in Title 2 of the Code of Federal Regulations, Part 200 ("2 CFR 200"), including Appendix II to such Part ("Appendix II").

In addition, the Parties agrees as follows:

1. Client is entitled to exercise all administrative, contractual, or other remedies permitted by law to enforce Consultant's compliance with the terms of this Agreement, except to the extent expressly provided otherwise by this Agreement.
2. Client may terminate this Agreement for cause or convenience in accordance with the procedures set forth in this Agreement.
3. Suspension and Debarment
 - a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Consultant is required to verify that none of Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - b. Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - c. This certification is a material representation of fact relied upon by Client. If it is later determined that Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Client, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
4. Compliance with Byrd Anti-Lobbying Amendment
 - a. Consultant hereby certifies to the best of its knowledge that:
 - (i) No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Consultant shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- b. Consultant shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d. By executing this Agreement, Consultant hereby certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Consultant understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

5. Access to Records

The following access to records requirements apply to this Agreement:

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

6. Compliance with Federal Law

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

7. Non-Obligation of Federal Government

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

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

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

13. Prohibition on Contracting for Covered Telecommunications Equipment or Services:

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in 200.216 Prohibition on certain telecommunications and video surveillance services or equipment, as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the consultant and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit consultant from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or Contract Provisions Guide 28

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; and

ii. Are not used as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the consultant identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the consultant is notified of such by a subcontractor at any tier or by any other source, the consultant shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Consultant shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the consultant shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Consultant shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.”

14. “Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the consultant should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”

15. Affirmative Socioeconomic Steps

If subcontracts are to be let, the prime consultant is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.

16. Copyright and Data Rights - License and Delivery of Works Subject to Copyright and Data Rights(as applicable)

The Consultant grants to the Client, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Consultant will identify such data and grant to the Client or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Consultant will deliver to the Client data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Client.

17. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT(as applicable)

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the Federal Government.

18. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (Applicable to construction contracts exceeding \$2,000 and contracts exceeding \$100,000 that involve the employment of mechanics or laborers)(These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market or contracts for the transportation or transmission of intelligence)

The Consultant shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by consultants or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the consultant and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.

19. EQUAL EMPLOYMENT OPPORTUNITY (as applicable, Any contract that uses federal funds to pay for construction work is a “federally assisted construction contract” and must include the equal

opportunity clause found in 2 C.F.R. Part 200, unless otherwise stated in 41 C.F.R. Part 60, which are incorporated by reference into this Agreement)

During the performance of this contract, the consultant agrees as follows:

- (1) The consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with

procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (8) The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Consultant debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

20. Safeguarding of Sensitive Information and Information Technology Security and Privacy Training (Applicable when contractor has access to sensitive information or contractor IT system as defined in the agreement that are used to input, store, process, output and/or transmit sensitive data)
- (a) Applicability. This clause applies to the Consultant, its subcontractors, and Consultant employees (hereafter referred to collectively as "Consultant"). The Contractor shall insert the substance of this clause in all subcontracts.
- (b) Definitions. As used in this clause—

“Personally Identifiable Information (PII)” means information that can be used to distinguish or trace an individual's identity, such as name, social security number, or biometric records, either alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, or mother's maiden name. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. In performing this assessment, it is important for an agency to recognize that non-personally identifiable information can become personally identifiable information whenever additional information is made publicly available—in any medium and from any source—that, combined with other available information, could be used to identify an individual.

PII is a subset of sensitive information. Examples of PII include, but are not limited to: name, date of birth, mailing address, telephone number, Social Security number (SSN), email address, zip code, account numbers, certificate/license numbers, vehicle identifiers including license plates, uniform resource locators (URLs), static Internet protocol addresses, biometric identifiers such as fingerprint, voiceprint, iris scan, photographic facial images, or any other unique identifying number or characteristic, and any information where it is reasonably foreseeable that the information will be linked with other information to identify the individual.

(a) *Sensitive Information*, as used in this clause, means any information, which if lost, misused, disclosed, or, without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

- (1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Pub. L. 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);
- (2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, part 1520, as amended, “Policies and Procedures of Safeguarding and Control of SSI,” as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);
- (3) Information designated as “For Official Use Only,” which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and
- (4) Any information that is designated “sensitive” or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

(b) “Information Technology Resources” include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.

(c) Consultant employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to

determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Consultant's employees shall be fingerprinted, or subject to other investigations as required. All Consultant employees requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under Departmental procedures.

(d) The Contracting Officer may require the Consultant to prohibit individuals from working on the contract if the Government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.

(e) Work under this contract may involve access to sensitive information. Therefore, the Consultant shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the Contracting Officer. For those Consultant employees authorized access to sensitive information, the Consultant shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after contract performance.

(f) The Consultant shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

**APPENDIX D
TASK ORDER TEMPLATE**

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

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

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

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

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

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

[Insert Client]	Witt O’Brien’s, LLC
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date: