

## SUBCONSULTANT AGREEMENT

**Wilson Engineers Project Number: 19-038**

This Agreement is made this 30<sup>th</sup> day of October, 2019, by and between Wilson Engineers, LLC, 1620 W. Fountainhead Pkwy, Ste. 501, Tempe, AZ 85282 hereinafter called "**Engineer**" and NSB Group of Gannett Fleming Inc. hereinafter called "**Subconsultant**", to perform services on the following Project:

**PROJECT: Chandler WRF Improvements Project**

**OWNER: City of Chandler**

Therefore, for valuable consideration as set forth herein, the Engineer and Subconsultant agree as set forth below.

### ARTICLE 1 SCOPE OF SERVICES

#### **1.1 RELATIONSHIP OF THE PARTIES.**

Engineer employs Subconsultant as an independent consultant, to perform the services described in Exhibit "A". It is understood that the Engineer will not provide fringe benefits, including health insurance benefits, paid vacation or any other employee benefits to Subconsultant.

#### **1.2 SUBCONSULTANT'S SERVICES.**

Subconsultant shall perform such services (the "**Subconsultant's Services**") under the general direction of the Engineer and in accordance with this Agreement and the applicable provisions of the Prime Agreement between the Owner and Engineer. In the event of conflict between the terms of this Agreement and the Prime Agreement, the terms of the Prime Agreement will govern.

#### **1.3 COMPLIANCE WITH LAWS.**

The Subconsultant agrees to be bound by and comply with all federal, state and local laws, ordinances and regulations applicable to the Subconsultant's Services.

#### **1.4 PRIME AGREEMENT.**

The Subconsultant shall be bound to the Engineer by

the same terms and conditions of the Prime Agreement between the Engineer and the Owner as relates to the Subconsultant's Services, and the Engineer shall have the same remedies against the Subconsultant as the Owner has under the Prime Agreement against the Engineer. A copy of the Prime Agreement is attached hereto as Exhibit "B", although compensation information may be omitted. The Prime Agreement is incorporated herein by this reference.

### ARTICLE 2 PERIOD OF SERVICE

#### **2.1 SERVICES SCHEDULE.**

Subconsultant shall perform the services described in Exhibit "A" in the same time frame and sequence as Engineer is required to perform under the Prime Agreement. In the event Subconsultant is unable to meet specified schedules through no fault of the Engineer, compensation to the Subconsultant shall be subject to equitable reduction.

#### **2.2 COMPLETION.**

This agreement will expire upon satisfactory completion of Subconsultant's Services and receipt of final payment from Engineer to Subconsultant.

## **ARTICLE 3** **SUBCONSULTANT'S FEE**

### **3.1 TIME AND MATERIAL FEE WITH NOT-TO-EXCEED PRICE.**

The parties agree that fees for the project are invoiced as time and material for the Subconsultant's Services and shall not exceed \$15,000.00, including Expenses as shown in Exhibit A.

## **ARTICLE 4** **PAYMENT**

### **4.1 GENERAL PROVISIONS**

#### **4.1.1 Lien Waivers.**

Lien Waivers, properly executed by Subconsultant may be requested by Engineer and, when requested, shall be furnished after receipt of each progress payment.

#### **4.1.2 Lien Free Project.**

The Subconsultant shall promptly pay its employees, subconsultants and suppliers and shall not permit any liens to be filed on the Owner's or other property. In the event that Subconsultant shall fail to do so, Engineer may pay and discharge any such lien or claim and deduct the amount so paid, plus reasonable attorney's fees, from any amounts due or to become due to the Subconsultant. Subconsultant shall indemnify the Owner and Engineer against any such loss or damage they may suffer or become liable for on account of such lien.

### **4.2 PROGRESS PAYMENTS**

#### **4.2.1 Application.**

Invoices for payment shall be submitted to Engineer once every four (4) weeks and shall state the amount of the time that the Subconsultant has spent in fulfillment of this Agreement during the applicable pay period. Such Invoices for Payment shall include an itemization of the time spent by labor classification. Expenses (if applicable) shall be supported by receipts and description. The form of the invoice will be approved by the Engineer.

#### **4.2.2 Time of Payment.**

Payments to the Subconsultant shall be made no later than fourteen (14) days after receipt by the Engineer of payment from the Owner for such Subconsultant's Services.

#### **4.2.3 Condition Precedent.**

The receipt by Engineer of payment from the Owner shall be a condition precedent to Engineer's obligation to make a progress payment to the

Subconsultant and Subconsultant acknowledges that payment by the Engineer shall be directly contingent upon Engineer's receipt of such payment from the Owner.

## **ARTICLE 5** **ENGINEER'S OBLIGATIONS**

### **5.1 AUTHORIZED REPRESENTATIVE.**

The Engineer shall designate one or more persons who shall be the Engineer's authorized representative. Such persons shall be authorized to make changes in this Agreement.

### **5.2 TIMELY COMMUNICATIONS.**

The Engineer shall transmit, with reasonable promptness, all submittals, transmittals, and written approvals relating to the Subconsultant's Services.

## **ARTICLE 6** **SUBCONSULTANT'S OBLIGATIONS**

### **6.1 PERFORMANCE OF CONTRACT.**

Subconsultant agrees to perform its services in a professional manner. Unless otherwise provided herein, Subconsultant agrees to furnish all materials, supplies, tools, equipment, supervision, labor, utilities, testing, drawings and anything else necessary to fully perform all of the services described in Exhibit "A".

### **6.2 COORDINATION.**

The Subconsultant shall (a) cooperate with the Engineer and all others whose services may relate to, or interfere with, the Subconsultant's Services; and (b) specifically note and immediately advise the Engineer of any interference with the Subconsultant's Services.

### **6.3 AUTHORIZED REPRESENTATIVE.**

The Subconsultant shall designate one person who shall be the Subconsultant's authorized representative. Such person shall be authorized to make changes in this Agreement.

### **6.4 SUBCONSULTANT'S OPERATIONS.**

Subconsultant shall not enter property without first securing the property owner's permission. Where Subconsultant is required to work in public right-of-way, Subconsultant will comply with all traffic control procedures required by the local jurisdiction.

**ARTICLE 7**  
**USE OF SUBCONSULTANT'S REPORTS AND  
OTHER DOCUMENTS**

**7.1** The Engineer shall be the owner of all drawings, specifications, surveys, reports or documents created and prepared by the Subconsultant and shall retain all common law, statutory and other reserved rights, including the copyright. The Subconsultant shall be permitted to retain copies of the Subconsultant's documents for information and reference.

**ARTICLE 8**  
**ENGINEER REMEDIES**

**8.1 TERMINATION BY ENGINEER.**

The Engineer may terminate this Agreement for cause or for its convenience upon written notice to the Subconsultant.

**8.2 SUSPENSION BY OWNER.**

Should the Owner suspend the Engineer's Contract or any part of the Contract which includes the Subconsultant's Services, the Engineer shall so notify the Subconsultant in writing and upon receipt of said notice the Subconsultant shall immediately suspend the Subconsultant's Services.

**8.3 COMPENSATION.**

In the event of termination by Owner or for Engineer's convenience, Subconsultant shall be entitled to receive payment for all work satisfactorily performed prior to notice of termination. There shall be no claim to lost or anticipated profits by Subconsultant. If termination is for cause by either Owner or Engineer, the Engineer is entitled to withhold such amounts from the contract balance as necessary to protect Engineer from loss caused by the Subconsultant.

**ARTICLE 9**  
**INDEMNIFICATION**

**9.1 SUBCONSULTANT'S PERFORMANCE.**

To the fullest extent permitted by law, the Subconsultant shall indemnify and hold harmless the Engineer and Owner from and against all damages, losses and expenses, including but not limited to reasonable attorney's fees, but only to the extent caused by any negligent act, error or omission of the Subconsultant or anyone directly or indirectly employed by the Subconsultant or anyone for whose acts the Subconsultant may be liable.

**ARTICLE 10**  
**INSURANCE**

**10.1 SUBCONSULTANT'S INSURANCE.**

Prior to start of the Subconsultant's Services, the Subconsultant shall procure for the Subconsultant's Services, and maintain in force, Worker's Compensation Insurance, Employer's Liability Insurance, Automobile Insurance, Professional Liability Insurance, and Commercial General Liability Insurance.

**10.2 MINIMUM LIMITS OF LIABILITY.**

The Subconsultant's insurance shall be written with limits of liability not less than those set forth below:

<b><u>TYPE</u></b>	<b><u>LIMITS OF INSURANCE</u></b>
Workers Compensation	Statutory Amount
Employer's Liability	\$1,000,000 by disease \$1,000,000 each accident \$1,000,000 each employee
Commercial General Liability:	
Including Bodily Injury Liability, Personal and Advertising Injury and Property Damage	
Each Occurrence	\$1,000,000
Annual Aggregate	2,000,000
Umbrella Coverage	
Each Occurrence	\$2,000,000
Annual Aggregate	\$5,000,000
Comprehensive Automobile Liability:	
Combined Single Limit	\$1,000,000

Professional Liability: \$5,000,000 annual aggregate

If the aggregate is eroded by reserve or claim payments of more than one-half the aggregate, the policy limit will be reinstated by Subconsultant

**10.3 CANCELLATION, RENEWAL OR  
MODIFICATION.**

The Subconsultant shall maintain in effect all insurance coverage required under this Agreement at the Subconsultant's sole expense. All insurance policies shall contain a provision that the coverage's afforded thereunder shall not be cancelled or nonrenewed until at least thirty (30) days prior written notice has been given to the Engineer. Certificates of Insurance shall be filed with the Engineer prior to the commencement of the Subconsultant's Services. The

Certificate of Insurance must contain a specific waiver of all insurance company's subrogation rights against the Engineer ~~and Owner~~ for all coverages.

#### **10.4 WAIVER OF RIGHTS.**

The Engineer and Subconsultant waive all rights against each other for loss or damage to the extent covered and paid for by any insurance.

#### **10.5 ENDORSEMENTS.**

All insurance shall be placed with insurance companies ~~licensed~~ to do business in the state where the service is to be performed, and with a current Best's Insurance Guide Rating of A and Class X, or better. In all cases, except Professional Liability and Worker's Compensation coverage, the policies will be endorsed and the certificate must specifically state that "the Owner and Wilson Engineers are named as additional insured parties". Any coverage afforded the Owner and Wilson Engineers as additional insured's shall apply as primary and not excess to any insurance issued in the name of the Owner and Wilson Engineers.

### **ARTICLE 11** **DISPUTE RESOLUTION**

#### **11.1 MEDIATION.**

In the event a dispute shall arise between the parties to this Agreement, then as a condition precedent to any arbitration or legal action by either party, the parties agree to participate in at least one session of mediation, as needed, in an effort to resolve the dispute. The parties agree to split the mediator's fees equally. The mediation shall be administered by a mutually agreeable mediation service and shall be held in Phoenix, Arizona, unless another location is mutually agreed upon.

#### **11.2 OWNER DISPUTES.**

In the event that the Subconsultant's Services is involved in a dispute between the Owner and the Engineer, then the Subconsultant agrees to participate in any lawsuit or arbitration proceeding which may be pending between the Owner and Engineer related thereto and hereby agrees to any consolidation of such proceedings. If the dispute is to be resolved by arbitration, the Federal Arbitration Act shall apply. This agreement to participate in arbitration and any award rendered therein shall be enforceable in a court of proper jurisdiction.

#### **11.3 SUBCONSULTANT DISPUTES.**

All disputes solely between the parties hereto shall be resolved in the Circuit Court of Maricopa County, Arizona.

### **ARTICLE 12** **CONTRACT INTERPRETATION**

#### **12.1 LAW AND EFFECT.**

This Agreement shall be governed by the law of the State of Arizona.

#### **12.2 SEVERABILITY AND WAIVER.**

The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The invalid provision shall be deemed stricken and the remainder of this Agreement shall remain in full force and effect.

#### **12.3 ENTIRE AGREEMENT.**

This Agreement is solely for the benefit of the parties hereto and represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, proposals, or agreements, either written or oral. There are no intended third-party beneficiaries of this Agreement. This Agreement shall be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

#### **12.4 MODIFICATION AND/OR AMENDMENTS.**

No modification or amendment of any of the terms and conditions of this Agreement shall be valid unless agreed to in writing and signed by the parties.

#### **12.5 ASSIGNMENT.**

This Agreement shall not be assigned nor any portion of the services subcontracted without the express written consent of the Engineer, which consent may be withheld in Engineer's sole discretion.

The parties have entered into this Agreement the day and year written above.

Engineer: Wilson Engineers, LLC,

By: Uday Kumar Gandhe

Title: Principal

Subconsultant: NSB Group of Gannett Fleming, Inc.

By: Ruth M. Stanley

Title: Vice President

**SCOPE OF SUBCONSULTANT'S SERVICES AND RATE SCHEDULE**

**EXHIBIT "A"**

**Exhibit A**  
**Hourly Rates**



*Excellence Delivered As Promised*

**Gannett Fleming, Inc. Rate Schedule**  
**2019**

**Labor Rates**

<b>Position/Title</b>	<b>Direct Hourly Rate</b>	<b>Hourly Billable Rate</b>
Project Principal	\$82.00	\$236.31
Senior Project Engineer	\$70.00	\$201.72
Project Manager	\$64.00	\$184.43
Project Engineer	\$52.00	\$149.85
Engineer	\$41.00	\$118.15
CADD Manager	\$40.00	\$115.23
Senior CADD Designer	\$37.00	\$106.63
Engineer in Training	\$34.00	\$97.98
CADD Designer	\$32.00	\$92.22
Technician	\$22.00	\$63.40
Project Manager Assistant	\$24.00	\$69.16
Senior Inspector	\$42.00	\$121.03
Inspector	\$34.00	\$97.98

Overhead Rate = 161.98%

Profit = 10%

**Other Direct Costs**

Mileage	\$0.545 per mile
Regraphics/Printing/Plotting	At Cost

**PRIME AGREEMENT**

**EXHIBIT "B"**



19-038

September 26, 2019

Email: steve.todd@wilson-engineers.com

Mr. Steve Todd  
Wilson Engineers, LLC  
1620 W. Fountainhead Pkwy., Ste. 501  
Tempe, AZ 85282

Reference: **NOTICE TO PROCEED AND RETURN OF EXECUTED AGREEMENT**

<b>Project Name:</b>	Water Reclamation Facility Improvements
<b>Project Number:</b>	WW1901.201
<b>Effective Date:</b>	September 26, 2019
<b>Completion Date:</b>	December 19, 2020
<b>Amount:</b>	[REDACTED]
<b>Council Approval:</b>	September 12, 2019

This letter serves as NOTICE TO PROCEED with performance of the above-mentioned Agreement.

A fully executed copy of the agreement is attached for your files. The original signed Notice to Proceed and fully executed copy of the agreement was mailed to you. Please indicate the above-mentioned project number on all correspondence; failure to do so will cause unnecessary delays.

When submitting payment requests, the following information is needed:

1. **Application and Certification for Payment** – Email (preferred) completed City of Chandler form to: CapitalProjects.Payables@chandleraz.gov or mail to: Capital Projects, P.O. Box 4008, MS407, Chandler, AZ 85244. Please go to <https://www.chandleraz.gov/government/departments/public-works-and-utilities/capital-projects> for the payment application;
2. **Billing Invoice** – Clear and detailed;
3. **Current Summary Spreadsheet** - Reflecting: work completion percentage, billed amount/percent, and project task status;
4. **Backup Documentation** - All backup supporting items 1, 2, and 3.

The Project Manager assigned to this project is Sandy Story. The PM can be reached at [Sandra.story@chandleraz.gov](mailto:Sandra.story@chandleraz.gov) or 480-782-3588.

If you have any questions, please contact Paula Brown at [paula.brown@chandleraz.gov](mailto:paula.brown@chandleraz.gov) or 480-782-3308.

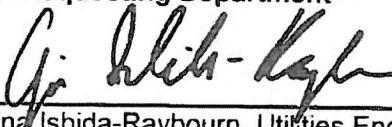
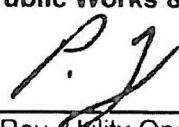
Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew Goh".

Andrew Goh, P.E.  
CIP City Engineer  
Public Works - Capital Project Division

SEP 12 2019

 <b>CHANDLER</b> arizona		PURCHASING ITEM FOR COUNCIL AGENDA Memo No. CP20-027	1. Agenda Item Number: <b>32</b>
TO: <b>MAYOR AND COUNCIL</b>		3. Date Prepared: August 22, 2019	2. Council Meeting Date: September 12, 2019
THROUGH: <b>CITY MANAGER</b>		4. Requesting Department: Public Works & Utilities	
5. SUBJECT: Professional Services Agreement No. WW1901.201 with Wilson Engineers, LLC, for the Water Reclamation Facility Improvements			
6. RECOMMENDATION: Staff recommends City Council award Professional Services Agreement No. WW1901.201 to Wilson Engineers, LLC, for the Water Reclamation Facility Improvements, in an amount not to exceed [REDACTED]			
<b>7. BACKGROUND/DISCUSSION:</b> The City provides wastewater services to over 260,000 residents. This number is projected to increase to 300,000 by the year 2040. Wastewater is delivered to reclamation facilities where it is treated to produce A+ quality effluent for delivery to the City's reclaimed water system. The Ocotillo Water Reclamation Facility, located at 3333 S. Old Price Road, was originally built in 1985. The Airport Water Reclamation Facility, located at 905 E. Queen Creek Road, was originally built in 1998. Both facilities are in need of rehabilitation due to aging infrastructure. Major components of the project will include the replacement of sand media filters with updated cloth media technologies, rehabilitation of secondary clarifiers, replacement of large diameter blower piping, and related instrumentation and electrical upgrades.			
The project scope of work consists of multiple phases to include preliminary design, detailed design, permitting of improvements, agency coordination, and construction delivery method assistance. The contract completion time is 450 calendar days following Notice to Proceed.			
<b>8. EVALUATION:</b> The City's selection process was conducted in accordance with City policy and procedure and State law. Staff solicited and received two (2) Statements of Qualifications on May 5, 2019. The Selection Committee reviewed the Statements of Qualifications on June 6, 2019, and ranked the firms as follows:			
1. Wilson Engineers, LLC 2. Carollo Engineers, Inc.			
Staff recommends contract award to Wilson Engineers, LLC, based on qualifications, relevant firm experience, team experience, project understanding, and project approach.			
<b>9. FINANCIAL IMPLICATIONS:</b> Cost: [REDACTED] Savings: N/A Long Term Costs: N/A			
Fund Source: Account No.: 611.3910.6817.6WW621 Fund Name: Wastewater Bond Program Name: Water Reclamation Facility Improvements CIP Funded: Yes Amount: [REDACTED]			
10. PROPOSED MOTION: Move City Council award Professional Services Agreement No. WW1901.201 to Wilson Engineers, LLC, for the Water Reclamation Facility Improvements, in an amount not to exceed [REDACTED]			
<b>ATTACHMENTS:</b> Location Map, Agreement			

APPROVALS	
<b>11. Requesting Department</b>  Gina Ishida-Raybourn, Utilities Engineering Manager	<b>13. Public Works &amp; Utilities</b>  Paul Roy, Utility Operation Manager
<b>12. Public Works &amp; Utilities</b>  Andrew Goh, Capital Projects Manager	<b>14. City Manager</b>  Marsha Reed



**WATER RECLAMATION  
FACILITIES IMPROVEMENTS  
PROJECT NO. WW1901.201**

