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Board of Commissioners 11-7-18  
Agenda Item Transmittal Form  
Procurement/Contract Transmittal Form

|                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Type of contract:</b> 1 year <input type="checkbox"/> Multi-year <input checked="" type="checkbox"/> Single Event <input checked="" type="checkbox"/>                                                                                                                                                                                                            |  | Purchasing Use Only<br>Contract #:                                                                                                                                                                                                                                                           |
| <input type="checkbox"/> <b>Submission Information</b><br>Contact Name: Terrell Gibbs<br>Department: Water Resources<br>Project Title: Snapping Shoals WPCP<br>Funding Account Number:<br>Contract amount: \$24,923,565.90<br>Contract Type: Goods ( ) Services (x) Labor ( )<br>Contract Action: New (x) Renewal ( ) Change Order ( )<br>Original Contract Number: |  | <input type="checkbox"/> <b>Vendor Information</b><br>Vendor Name: Lakeshore Engineering, LLC<br>Address: 1259 Ellsworth Drive, Atlanta 30318<br>Address:<br>Email: glong@lakeshoreengineering.com<br>Phone #: 404-355-3976<br>Contact: Garland Long<br>Term of contract: 25 months from NTP |
| <b>Finance Director Signature</b><br>I have reviewed the attached contract, and the amount is approved for processing.<br>Signature: <i>F. Miller</i> Date: 11.28.18                                                                                                                                                                                                |  | <b>Procurement Officer Signature</b><br>I have reviewed the attached contract, and it is in compliance with Purchasing Policies of Rockdale County.<br>Signature: <i>Jana Malone</i> Date: 11/13/18                                                                                          |

Summary:

This contract is for the construction of a 3 MGD water pollution control plant.

ITB # 18-10

Department Head/Elected Official Signature: *[Signature]*

Date: 11/6/18

**AGREEMENT FOR THE CONSTRUCTION OF  
THE 3 MGD SNAPPING SHOALS WATER  
POLLUTION CONTROL PLANT**

This Agreement entered into on this \_\_\_\_\_ day \_\_\_\_\_ of 2018, between ROCKDALE COUNTY, GEORGIA, a political subdivision of the State of Georgia, whose address is 962 Milstead Avenue, Conyers, Georgia 30012, (hereinafter referred to as the "County") and LAKESHORE ENGINEERING, LLC, a Limited Liability Company, whose address is 1259 Ellsworth Drive, Atlanta, GA 30318 (hereinafter referred to as "Contractor").

WHEREAS, the County desires to engage the services of Contractor for the construction of the 3 MGD Snapping Shoals Water Pollution Control Plant; and

WHEREAS, Contractor is qualified to perform this service and desires to render this service to the County as provided herein.

NOW THEREFORE, the County engages the services of Contractor for and in consideration of the mutual promises contained in this Agreement and the parties agree as follows:

**1. Services Provided by Contractor.**

The Contractor will furnish all products, tools, construction equipment, skill and labor of every description necessary to carry out and to complete in a good, firm, substantial workmanlike manner the construction of the 3 MGD Snapping Shoals Water Pollution Control Plant as described in the County's Invitation to Bid (ITB) No. 18-10 incorporated herein by reference, (hereinafter called "Work"), and Contractor's bid dated May 24, 2018, attached hereto and made a part hereof (hereinafter called "Bid"). Contractor shall provide, at their expense, all vehicles and equipment necessary to provide this Work. The Work shall be performed at the direction of the Water Resources Director or his designee and consistent with all Federal, State and local laws.

The Contract Documents, Bid Documents, Invitation to Bid, and drawings are considered essential parts of the Agreement, and requirements occurring in one are as binding as though occurring in all. They are intended to define, describe and provide for all labor necessary to complete the Work in an acceptable manner, ready for use, or operation by the County.

**2. Fees and Compensation.**

- (a) Contract Price: The Contract Price shall not exceed Twenty Four Million, Nine Hundred Twenty Three Thousand, Five Hundred Sixty Five and .90/100 (\$24,923,565.90) Dollars, as stated in the attached ESG Engineering Technical Memorandum dated October 4, 2018, and shall be the total amount payable by the County to the Contractor for the performance of the Work set forth in the Contract Documents, unless amended as agreed upon by both parties in writing as detailed in Section 6 of this Agreement. The County shall provide payment within thirty (30) days of receiving said undisputed invoice.

It is understood that the Contractor shall provide and pay for all products, labor (including labor performed after regular working hours, on Saturdays or Sundays, or on legal holidays),

tools, construction equipment, supervision, and all other services and facilities of any nature whatsoever necessary to execute, complete, place into operation, and deliver the Work.

The Contractor shall be responsible for any additional expenses incurred by the County as a result of the extended work hours, including resident inspection overtime. The cost associated with resident inspector overtime will be deducted from the Contractor's monthly payment request.

(b) **Payments Withheld:** The County may decline to approve an application for payment, in whole or in part, as may be necessary to protect the County from loss because of:

- (1) Failure of the Contractor to make payments properly to subcontractors or for labor or products.
- (2) Unsatisfactory prosecution of the Work by the Contractor either due to quality of the Work or if the Contractor is behind the currently approved construction schedule.

When the above reasons for nonpayment are corrected, then payment will be made for amounts withheld because of such reasons, not later than the next payment.

(c) **Retention:** The County will retain the following amounts from each properly certified estimate:

- (1) Until the value of the Work completed, including stored materials, is at least 50 percent of the Contract amount, 10 percent of the value of all Work satisfactorily completed, including stored materials.
- (2) When the value of the completed Work totals at least 50 percent of the Contract amount, the County will reduce the retainage to 5 percent of the value of Work completed, including stored materials provided the Work is progressing satisfactorily and there is no specific cause for retaining a larger sum. The total amount retained will be at least 5 percent of the Contract amount, adjusted for Change Orders, until the date of final payment.
- (3) The County may elect to reinstate retention of 10 percent of the value of the Work completed if at any time the Contractor fails to make satisfactory progress or if there is other specific cause. No form of collateral in lieu of cash will be acceptable as retainage.

Amounts retained by the Contractor from payments due to suppliers and subcontractors (expressed as a percentage) shall not exceed that being retained by the County.

(d) **Payment Request and Invoices:** Original Payment Requests and invoice(s) must be submitted to:

Rockdale County Finance Department

P.O. Box 289

Conyers, GA 30012

(Reference Contract No. 2018-\_\_\_\_)

Payment is to be made no later than thirty (30) days after submittal of undisputed invoice.

3. **Effective Dates, Term, and Liquidated Damages of Agreement.**

The effective date of this Agreement shall be the date said Agreement is signed by the Chairman of the Rockdale County Board of Commissioners (the "Board"). The terms of this Agreement shall be twenty five (25) months from the effective date, unless terminated by either party as detailed in section 13 of this Agreement.

The Contractor shall begin the Work no later than thirty (30) days after issuance of the Notice to Proceed, and shall complete the Work no later than seven hundred and twenty five (735) days after issuance of the Notice to Proceed, unless a time extension is authorized in writing by the Project Manager.

Time is of the essence and is an essential element of this Contract, and the Contractor shall pay to the County, not as a penalty, but as liquidated damages, the sum of \$1000.00 for each calendar day that there is default of completing the Work within the time limit named herein. If the Contractor abandons the Contract before commencement of the Work or defaults in completion of all the Work after commencement thereof, the Contractor shall be liable for such liquidated damages. These fixed liquidated damages are not established as a penalty but are calculated and agreed upon in advance by the County and the Contractor due to the uncertainty and impossibility of making a determination as to the actual and consequential damages incurred by the County and the general public of Rockdale County, Georgia as a result of the failure on the part of the Contractor to complete the Work on time. Such liquidated damages referred to herein are intended to be and are cumulative and shall be in addition to every other remedy now or hereafter enforceable at law, in equity by statute, or under the Contract.

4. **Rejection of Work and Materials.**

All products furnished and all Work completed will be inspected by the County. All products furnished and all Work completed that is not in accordance with the Contract Documents or that is defective will be rejected. All rejected products or Work shall be removed immediately. If rejected products or Work is not removed within 48 hours, the County will have the right and authority to stop the Work immediately and will have the right to arrange for the removal of said rejected products or Work at the cost and expense of the Contractor.

5. **Supervision of Work.**

The Contractor shall supervise and direct the Work. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of the Work. The Contractor shall employ and maintain on the Work a qualified supervisor or superintendent who shall be designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the Work.

The supervisor shall have full authority to act on behalf of the Contractor and to execute the orders or directions of the County without delay. The supervisor shall have full authority to promptly supply products, tools, plant equipment and labor as may be required. The supervisor's authority shall be such that all communication given to the supervisor shall be as binding as if given to the Contractor.

The Contractor shall employ only competent and skilled personnel. The Contractor shall, upon demand from the County, immediately remove any superintendent, foreman or workman whom the County may consider incompetent or undesirable.

6. **Changes in the Contract.**

The County may at any time, as the need arises, order changes within the scope of the Work without invalidating the Contract Agreement. If such changes increase or decrease the amount due under the Contract Documents, or in the time required for performance of the Work, an equitable adjustment will be authorized by Change Order.

7. **Insurance and Bonds.**

The Contractor shall not commence any work under this Contract until all insurance and bonds, as stipulated in the Invitation to Bid, have been obtained and such insurance and bonds have been approved by the County, nor shall the Contractor allow any subcontractor to commence any work on subcontractor's contract until all similar insurance and bonds required of the subcontractor have been so obtained and approved by the Contractor.

8. **Interruption of Facility Operations.**

The Contractor shall provide the County with written notice at least three days prior to any interruption in facility operations required by construction activity. The notice shall include the date and time of the scheduled interruption, the length of time the interruption will be in effect, the procedures to be followed, a complete identification of all those processes, equipment and operations to be affected and all other information the County may require. The Contractor shall provide any equipment, piping, auxiliary power or other means necessary to sustain facility operations.

9. **Protection of Work, Property and Persons.**

- (a) The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the Work and other persons who may be affected thereby, all the Work and all products to be incorporated therein, whether in storage on or off the site, and other property at the site *or* adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- (b) The Contractor shall comply with the Department of Labor Safety and Health Regulations for construction, promulgated under the Occupational Safety and Health Act of 1970 (PL 91-596) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54) as amended. The Contractor shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection.

- (c) The Contractor shall remedy all damage, injury or loss to any property, improvements or facilities caused, directly or indirectly, in whole or in part, by the Contractor or any of the Contractor's subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The property, improvements or facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the Work. In case of failure on the part of the Contractor to restore such property, or make good such damages or injury, the County may, after 48 hours written notice, proceed to repair, rebuild, or otherwise restore such property, improvements or facilities as may be deemed necessary. The cost thereof will be deducted from any monies due or which may become due the Contractor under this Contract.
- (d) In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the County, shall act to prevent threatened damage, injury or loss.
- (e) Completed Work and stored products shall be suitably protected during unseasonable weather, to allow Work to proceed in a timely fashion. Work planned, or in progress, should be performed to minimize impact of adverse weather.

**10. Protection of the Environment.**

- (a) The Contractor shall be responsible for taking all measures required to minimize all types of pollution associated with the undertaking of the proposed Work, and shall abide by the requirements of all governmental agencies having jurisdiction over the Work or Contractor's Project operations. This shall include but not be limited to air, water & noise pollution during torch cutting, grinding, burning and grading operations.
- (b) Any area used or involved in the Project that is disturbed by the Contractor, shall be restored to original or better condition, even though such area is outside the limits of that specified for grading, grassing or landscaping.
- (c) The Contractor is responsible for maintenance of all erosion control measures, final removal of all temporary BMP's, and irrigation of all permanent vegetative measures until fully established.

**11. Protection, Location and Relocation of Utilities.**

The Contractor shall notify utility owners of the new work in accordance with Georgia Law by calling the Utilities Protection Center (UPC) at 800-282-7411, 72 hours before work is to begin. The Contractor shall protect from damage all existing improvements or utilities at, or in proximity to, the site of the Work, and shall repair or restore any damage to such facilities resulting from failure to exercise reasonable care in the performance of Work. If the Contractor fails or refuses to repair any such damage promptly, the County may have the Work performed and charge the cost thereof to the Contractor.

Prior to the construction or installation of any new Work, the Contractor shall excavate all

existing utilities within the vicinity of the Work to their actual vertical and horizontal location. In order to avoid conflicts between existing and new Work, the Contractor shall either relocate the existing utility on a temporary or permanent basis, or shall take whatever means necessary to protect the existing facilities or utilities during the installation of new Work.

**12. Indemnification.**

In addition to its agreement to obtain and maintain insurance as set forth herein, the Contractor agrees to indemnify and hold harmless the County, its officers, agents, and employees, from any and all claims against the County, its officers, agents and employees, which arise out of any act or omission of the Contractor or any of the Contractor's officers, agents and/or employees, and any and all claims which result from any condition created or maintained by the Contractor or anyone employed by the Contractor or any of their officers, agents or employees, which condition does not specify to be created or maintained by this Contract.

**13. Termination of Agreement.**

In the event either party elects to terminate this Agreement for whatever reason deemed appropriate, written notice shall be provided and termination shall be effective 15 days from receipt of written notice.

**14. Notice.**

Any notice or other communication required or permitted to be given under this Agreement must be in writing and must be mailed by overnight delivery or certified mail, postage prepaid, so that the notifying party can prove delivery of notice and the date thereof, and addressed as follows:

To the County:

Rockdale County, Georgia  
Attn: Tina Malone  
981 Milstead Ave., Suite 200  
Conyers, GA 30012

Email – [tina.malone@rockdalecountyga.gov](mailto:tina.malone@rockdalecountyga.gov)

To the Contractor:

Lakeshore Engineering, LLC  
Attn: Garland Long  
1259 Ellsworth Drive  
Atlanta, GA 30318

Email – [glong@lakeshoreengineering.com](mailto:glong@lakeshoreengineering.com)

The addresses stated in this paragraph may be changed by the respective parties upon a documented notice delivered in advance, pursuant to this paragraph.

**15. Assignment.**

The Contractor shall have no right to transfer or assign its interest in this Agreement without the prior written consent of an authorized representative of the County.

**16. Corporate Authority.**

Contractor represents to the County that this Agreement, the transaction contemplated in this Agreement, and the execution and delivery hereof, have been duly authorized by all necessary corporate proceedings and actions, including, without limitation, the action on the

part of the directors. The individual executing this Agreement on behalf of Contractor warrants that he or she is authorized to do so and that this Agreement constitutes the legally binding obligation of the corporation.

17. **Waiver.**

No action taken pursuant to this Agreement shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement in this Agreement. The waiver by any party of a breach of any provision or condition contained in this Agreement shall not operate or be construed as a waiver of any subsequent breach or of any other conditions.

18. **Severability.**

If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

19. **Interpretation.**

Should any provision of this Agreement require a judicial interpretation, the parties agree that the body interpreting or construing this Agreement will not apply the assumption that the terms of this Agreement will be more strictly construed against one party by reason of the rule of legal construction that an instrument is to be construed more strictly against the party which itself or through its agents prepared the Agreement. The parties acknowledge and agree that they and their agents have each participated equally in the negotiation and preparation of this Agreement.

20. **Venue & Jurisdiction.**

The County and the Contractor, by entering into this Promissory Note, hereby agree that the courts of Rockdale County, Georgia shall have jurisdiction to hear and determine any claims or disputes between them pertaining directly or indirectly to this Agreement. Contractor expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced in said courts. The choice of forum set forth in this section shall not be deemed to preclude the bringing of any action by the County or the enforcement by the County of any judgment obtained in such forum in any other appropriate jurisdiction. Further, the Contractor hereby waives the right to assert the defense of forum non-convenient and the right to challenge the venue of any court proceeding.

21. **Governing Law.**

This Agreement shall be construed and interpreted according to the provisions of the laws of the State of Georgia.

22. **Binding Effect.**

This Agreement shall be binding upon the Contractor and its successors and permitted assigns.

23. **Further Assurances.**

The Contractor agrees to execute, acknowledge, seal and deliver, after the date of this Agreement, without additional consideration, such further assurances, instruments and



documents, and to take such further actions, as the County may reasonably request in order to fulfill the intent of this Agreement and the transactions contemplated by this Agreement.

24. **Entire Agreement.**

This Agreement, its attachments and essential documents (as provided in I above) represent the entire understanding of the parties with regard to the subject matter of this Agreement. There are no oral agreements, understandings, or representations made by any party to this Agreement that are outside of this Agreement and are not expressly stated in it. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by all parties.

By signing this Agreement, the parties acknowledge that they have read each and every page of this Agreement before signing same and that they understand and assent to all the terms thereof. In addition, by signing this Agreement, the parties acknowledge that they are entering into this Agreement freely and voluntarily and under no compulsion or duress.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date and year first above written.

LAKESHORE ENGINEERING, LLC

ROCKDALE COUNTY, GEORGIA

By: *[Handwritten Signature]*

By: \_\_\_\_\_  
Osborn Nesbitt, Sr., Chairman

Witness:

Attest:

Jeffrey A Laurion  
Notary Public  
State of Georgia  
Cherokee County

*[Handwritten Signature]*

\_\_\_\_\_  
Jennifer Rutledge, County Clerk

Federal Tax I.D. Number:

Approved as to Form:

27-1067659

\_\_\_\_\_  
M Qader A. Baig, County Attorney