

**IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA**

SYNOVUS CORPORATE TRUST, )  
 )  
Plaintiff, )  
 )  
v. ) Case No. 02-CV-2023-901332.00  
 )  
WATER WORKS AND SEWER BOARD )  
OF CITY OF PRICHARD, )  
 )  
Defendant. )

---

**John S. Young Jr. LLC,**  
**Receiver of the Prichard Water Works and Sewer Board**  
**Receiver Monthly Report #3**

**February 20, 2024**

**Introduction**

The following is a summary and update of the financial and operational status of the PWWSB system and actions taken by the Receiver since the filing of the Receiver Monthly Report #2 on January 22, 2024.

**Financial**

As discussed in the previous Receiver Monthly Report #2 (January 2024), the first quarter financial performance of PWWSB, compared to its FY2024 budget, showed significant revenue deficiencies and operating expense overruns. Therefore, a detailed investigation of the budgets assumptions and projections was undertaken. This exercise concluded that the original budget developed by the Board had numerous errors and did not properly reflect the financial condition of the utility. Revenues were overestimated due to the projected timing of the rate adjustment and anticipated collection rates. Several necessary expenses were excluded from the budget (franchise

fees, bond default legal expenses, etc.) while other expenses were significantly understated (purchased water costs, insurance, maintenance, equipment rental, Reserve Fund replenishment, etc.). When these budget adjustments were made, the original Board budget shows a \$4.5M deficit.

Other budget adjustments were also necessary to reflect costs associated with the Court's Receiver Order. These adjustments included the impact of the Order's modification of collection procedures, required increase in professional service costs and future legal efforts associated the Board's appeal of the Receiver Order. These additional expenses result in the revised FY2024 budget showing a \$5.5M deficit. This deficit will result in significant financial challenges for the utility in 2024.

### **Operations**

The PWWSB operating staff continues to repair numerous water leaks that are occurring within its distribution system. Over 20 leaks were repaired in January on line sizes ranging from ¾-inch to 8-inch. Collection systems and pumping station maintenance continues at numerous locations in an attempt to minimize sanitary sewer overflows (SSOs). The Receiver continues to solicit grant funds from the County, USEPA, Alabama Department of Environmental Management (ADEM), and other sources to replace the system's deteriorating infrastructure.

To comply with the recently issued ADEM water Consent Order, a hydraulic analysis of the water system was completed and provided to ADEM. As expected, the analysis concluded that several of the water storage tanks within the system need to be at different elevations and/or require additional storage volume. These system deficiencies have occurred due to infrastructure and customer changes within the system over the past several decades. The proposed system improvements recommended in the report will result in the elimination of one tank, maintaining

three tanks through the addition of control valves and piping enhancements, and ultimately building one additional storage tank.

### **Receiver Progress**

- Multiple meetings have been held with USEPA and Moonshot Missions to request technical assistance and training. These efforts have resulted in contracting with Communities Unlimited to develop needed policies and procedures for the utility and provide the associated training. These services will be provided at no cost to PWWSB. They have already begun work and expect to have everything completed by September 2024. A copy of the Comprehensive Technical Assistance Work Plan entered between the Receiver and Communities Unlimited is attached hereto as Exhibit 1.
- A capital investment project list has been submitted to ADEM for possible grant funding. The list includes over \$20M of projects needed to comply with Consent Orders, reduce water leakage, address sanitary sewer overflows, provide proper water storage, and properly monitor and control system operations. This capital investment project submittal will be followed by a grant “pre-application” and Preliminary Engineering Report that will formally request the grant funding by the end of February 2024. The Receiver has engaged Hazen & Sawyer to assist with preparation of the ADEM preapplication form and Preliminary Engineering Report. A copy of the contract (reflecting a contract amount of \$25,000.00) entered between the Receiver and Hazen & Sawyer for that scope of work is attached hereto as Exhibit 2.
- The Receiver’s role and progress was reviewed with the Alabama Attorney General’s office of Consumer Interest.
- Meetings were held to discuss the approach to be taken with the Alabama Village initiative.

- Information continues to be gathered to support the on-going Asset Management Study being performed by Hazen & Sawyer. Field work should begin in late February.
- To comply with the water Consent Order, a cross connection prevention program is being developed for submittal to ADEM. The program will require annual inspection and testing of customer backflow prevention devices.
- The third Citizen Advisory Council of Prichard meeting was held on February 15, 2024 from 2 p.m. to 4 p.m. at the Prichard Municipal Complex and was livestreamed to the public.
- New Human Resource policies were reviewed with all PWWSB staff.
- Reviewed FY2024 PWWSB financial challenges with the Bond Trustee.

Dated this 20<sup>th</sup> day of February, 2024.

John S. Young, Jr. LLC  
Receiver of the Prichard Water Works and Sewer  
Board

/s/ John S. Young, Jr.  
By: John S. Young, Jr., Sole Member of John S.  
Young, Jr. LLC

# EXHIBIT 1

# COMMUNITIES Unlimited

## Comprehensive Technical Assistance Work Plan for City of Prichard Water & Sewer Board January 29, 2024

Prepared by: Dinah Foreman

Version 2024.001

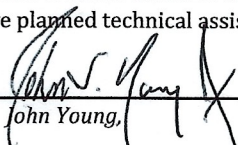
| TMF Assessment Deficiency | <u>Proposed</u> Technical Assistance Tasks to be Performed | Anticipated Completion Date |
|---------------------------|--|-----------------------------|
| 1-NA                      | Perform Analysis: TMF Assessment                           | 1/29/2024                   |
| 2-NA                      | RCAP Plans: TA Work Plan/Community Service Agreement       | 1/29/2024                   |
| 3-T4                      | Write/Update Policies/Procedures: Operational              | 9/30/2024                   |
| 4-T4                      | On-site Training: Operator Training                        | 9/30/2024                   |
| 5-T4                      | On-site Training: Other Staff Training                     | 9/30/2024                   |
| 6-T4                      | Develop/Update Plan: Sampling Plan                         | 9/30/2024                   |
| 7-F1                      | Write/Update Policies/Procedures: Managerial               | 9/30/2024                   |

### Anticipated Outcomes Resulting from the Proposed Technical Assistance:

- 1 Increased Managerial Capacity
- 2 Financial Sustainability

### CERTIFICATION OF APPROVAL AND ACCEPTANCE OF OFFER OF TECHNICAL ASSISTANCE

I have reviewed and approved this proposed Work Plan for technical assistance and understand that ALL costs associated with the proposed services are fully subsidized by a technical assistance grant with the US Environmental Protection Agency and that City of Prichard Water & Sewer Board or Communities Unlimited may amend this agreement to include additional technical assistance, remove planned technical assistance tasks, or if necessary to revoke this agreement.

  
 \_\_\_\_\_  
 John Young, Mr.

02-03-2024  
 \_\_\_\_\_  
 Date

This Technical Assistance Work Plan was drafted by Dinah Foreman, Communities Unlimited (CU) after interviewing staff members and conducting a preliminary assessment. This work plan is NOT a binding contract for services but provides a framework of anticipated technical services to be provided by CU. Communities Unlimited will make a good faith effort to complete the tasks outlined in this work plan but reserves the right to drop tasks that can not be completed, add tasks as needed, and / or terminate its technical assistance with City of Prichard Water & Sewer Board. This assistance is provided at NO COST to City of Prichard Water & Sewer Board by Communities Unlimited and is made possible by funding received by the US Environmental Protection Agency. Questions or Comments may be forwarded to the following persons:

#### Technical Assistance Provider

**Dinah Foreman**  
 Alabama Coordinator - Environmental Services  
 PO Box 1062, Rogersville, AL 35652  
 256.483.8611  
 Dinah.Foreman@CommunitiesU.org

#### Supervisor

**Alexander Brandon**  
 East Environmental Services Area Director  
 PO Box 241, Madison, MS 39130  
 601.506.6305  
 Alexander.Brandon@CommunitiesU.org

# EXHIBIT 2

**AGREEMENT  
FOR PROFESSIONAL SERVICES**

Between

**Prichard Water Works and Sewer  
Board**

And

**Hazen and Sawyer**

FOR

**SRF Funding Water and  
Wastewater - Preapplication and  
Preliminary Engineering Report**



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**OWNER:** [Prichard Water Works and Sewer Board]

**PROJECT:** [SRF Funding Water and Wastewater -  
Preapplication and Preliminary Engineering  
Report]

**AGREEMENT BETWEEN PRICHARD WATER WORKS AND SEWER BOARD  
AND HAZEN AND SAWYER  
FOR PROFESSIONAL SERVICES**

This Agreement, dated the \_\_\_\_\_ day of February , 2024 is made and entered into between  
Prichard Water Works and Sewer Board (Owner, hereinafter "**OWNER**")  
ATTN; John S. Young, Jr. LLC (Receiver)  
c/o John S. Young, Jr. Sole Member of Receiver  
125 East Clark Avenue  
Prichard, AL 36610

and

Hazen and Sawyer (hereinafter "**ENGINEER**")  
2 Chase Corporate Drive,  
STE 170  
  
Birmingham, AL 35244.

WHEREAS, the Receiver was appointed by the Circuit Court of Mobile County, Alabama in the case styled *Synovus Corporate Trust v. Water Works and Sewer Board of City of Prichard* by the order entered on November 10, 2012 ("Receiver Order"). Further Synovus Corporate Trust is the Indenture Trustee ("Trustee") as reflected in the Receiver Order;

WHEREAS, the Receiver is authorized to enter this Agreement on behalf of the Owner pursuant and subject to the terms of the Receiver Order;

WHEREAS, **OWNER's** Project, of which **ENGINEER's** services under this Agreement are a part, is generally identified as follows:  
SRF Funding Water and Wastewater – Application and Preliminary Engineering Report ,  
(hereinafter "**PROJECT**"); and

WHEREAS, **OWNER** requests **ENGINEER's** services in connection with the **PROJECT**;

NOW THEREFORE, in consideration of the mutual promises herein contained, **OWNER** and **ENGINEER** agree as follows:

## Art. 1 THE AGREEMENT DOCUMENTS

- 1.1 Included Documents. The Agreement consists of: (1) this Agreement, including Schedule A, Scope of Services, and Schedule B, Compensation, attached hereto.
- 1.2 Entire Agreement. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.
- 1.3 Modification. **Unless otherwise provided for herein**, no amendments, changes, alterations, or modifications of this Agreement shall be effective unless in writing and executed by **OWNER** and **ENGINEER**.

## Art. 2. SCOPE OF SERVICES AND DIVISION OF RESPONSIBILITIES

- 2.1 OWNER Responsibilities. In addition to other responsibilities of **OWNER** as set forth in this Agreement, **OWNER** must designate its representative to fulfill the following responsibilities, at its expense, which **ENGINEER** shall rely upon:
  - a) Provide **ENGINEER** with all criteria and full information as to **OWNER's** requirements for the **PROJECT**, including design objectives and constraints, flexibility, expandability, capacity and performance requirements, budgetary limitations, operating and testing data, as-built drawings, and previous reports if any. Provide **ENGINEER** with copies of all design and construction standards that **OWNER** will require to be included in the Drawings and Specifications, and provide copies of **OWNER's** standard forms, conditions, and related documents for **ENGINEER** to include in the bid documents, when applicable.
  - b) Provide to **ENGINEER** any other available information pertinent to the **PROJECT** including reports and data relative to previous designs, or investigation at or adjacent to the Site.
  - c) Following **ENGINEER's** assessment of initially available **PROJECT** data and upon **ENGINEER's** request, provide or make available such additional **PROJECT** related information and data as is reasonably required to enable **ENGINEER** to complete its services. Such additional information or data includes the following:
    1. Property descriptions.
    2. Zoning, deed, and other land use restrictions.
    3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
    4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or

- subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
5. Environmental assessments, audits, investigations, impact statements, and other relevant environmental or cultural studies as to the **PROJECT**, the Site, and adjacent areas.
  6. Data or consultations as required for the **PROJECT** but not otherwise identified in the Agreement or the Exhibits thereto.
- d) Provide prompt written notice to **ENGINEER** whenever **OWNER** observes or otherwise becomes aware of the presence at the Site of any environmental concern, or of any other development that affects the scope or time of performance of **ENGINEER** services, or any defect or nonconformance in **ENGINEER** services, the Work, or in the performance of any contractor.
  - e) Arrange safe access to and make all provisions for **ENGINEER** to enter upon public and private property as required for **ENGINEER** to perform services under the Agreement.
  - f) Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the **PROJECT** designed or specified by **ENGINEER** and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the **PROJECT**.

### Art. 3. NOTICE TO COMMENCE WORK AND DURATION OF AGREEMENT

- 3.1 Commencement. **ENGINEER** is authorized to begin rendering services as of the effective date and issuance of Notice-to-Proceed and will terminate either: (1) upon the satisfactory completion of **ENGINEER's** scope of services set forth in Schedule A; (2) on the date specified in Schedule B, if such date is specified, as applicable; or (3) as otherwise terminated under this Agreement.
- 3.2 Time for Completion. **ENGINEER** shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Schedules A and/or B. If, through no fault of **ENGINEER**, such periods of time or dates are changed, or the orderly and continuous progress of **ENGINEER's** services is impaired, or **ENGINEER's** services are delayed or suspended, then the time for completion of **ENGINEER's** services, and the rates and amounts of **ENGINEER's** compensation, shall be adjusted equitably. If **OWNER** authorizes changes in the scope, extent, or character of the **PROJECT**, then the time for completion of **ENGINEER's** services, and the rates and amounts of **ENGINEER's** compensation, shall be adjusted equitably. **OWNER** shall make decisions and carry out its other responsibilities in a timely manner so as not to delay **ENGINEER's** performance of its services.

## Art. 4. PAYMENT AND BILLING

- 4.1 Payment Amount(s). As compensation for the services to be performed by **ENGINEER**, **OWNER** shall pay **ENGINEER** the amount(s) set forth in Schedule B, attached hereto. The method of compensation shall be set forth in Schedule B. **OWNER** agrees only to be liable for payment to **ENGINEER** for **ENGINEER's** proper performance of services, as provided for in Schedule B.
- 4.2 Invoicing and Documentation. **ENGINEER** shall keep accurate back-up documentation of the time expended in executing its scope of work. Payment for services performed by **ENGINEER** shall be based upon **ENGINEER's** satisfactory completion of services as properly invoiced and documented by **ENGINEER**. **ENGINEER's** invoices and documentation shall be subject to verification by **OWNER** prior to payment. Engineer will receive payment on invoices directly from the **TRUSTEE**. All invoices shall be sent to **OWNER** and **TRUSTEE** at the following addresses: Invoices submitted by **ENGINEER**, at a minimum, shall:
- a) accurately describe the services rendered during the invoice period;
  - b) identify any other authorized expenses incurred hereunder; and
  - c) make reference to this Agreement, and otherwise identify the invoice in such manner as **OWNER** may reasonably require.

**ENGINEER** will receive payment on invoices directly from the **TRUSTEE**. All invoices and billing documentation shall be sent to **OWNER** and **TRUSTEE** at the following address:

**Prichard Water Works and Sewer Board**  
Attention: John S. Young, Jr. LLC (Receiver)  
125 East Clark Avenue  
Prichard, AL 36610  
j.young@comcast.net

**To Trustee:**  
Attention: Dean D. Matthews  
Managing Director, Corporate Trust  
Synovus Bank  
800 Shades Creek Parkway- STE 275  
Birmingham, AL 35209  
(205) 868-4873 (direct)  
deanmatthews@synovus.com

- 4.3 Failure to Pay. If **OWNER** fails to make any payment due to **ENGINEER** for services and expenses within 30 days after receipt of **ENGINEER's** invoice, then:
- a) amounts due to **ENGINEER** will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from the thirtieth day; and
  - b) **ENGINEER** may, after giving seven days written notice to **OWNER**, suspend services under this Agreement until **OWNER** has paid in full all amounts due

for services, expenses, and other related charges. **OWNER** waives any and all claims against **ENGINEER** for any such suspension.

- 4.4 Disputed Invoices. If **OWNER** contests an invoice, **OWNER** shall promptly advise **ENGINEER** of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- 4.5 Legislative Actions. If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on **ENGINEER's** services or compensation under this Agreement, then **ENGINEER** may invoice such new taxes, fees, or charges as a reimbursable expense. **OWNER** shall reimburse **ENGINEER** for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which **ENGINEER** is entitled under the terms of Schedule B.
- 4.6 Opinions of Probable Construction Cost. **ENGINEER's** opinions of probable construction cost are to be made on the basis of **ENGINEER's** experience and qualifications and represent **ENGINEER's** best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because **ENGINEER** has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, **ENGINEER** cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction costs prepared by **ENGINEER**. If **OWNER** requires greater assurance as to probable construction cost, **OWNER** must employ an independent cost estimator.
- 4.7 Opinions of Total Project Costs. The services, if any, of **ENGINEER** with respect to total project costs shall be limited to assisting the **OWNER** in collating the various cost categories which comprise total project costs. **ENGINEER** assumes no responsibility for the accuracy of any opinions of total project costs.

## Art. 5. DATA AND INFORMATION

- 5.1 All documents are instruments of services in respect to this **PROJECT** and **ENGINEER** shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of **ENGINEER**) whether or not the **PROJECT** is completed. **OWNER** shall not rely in any way on any document unless it is in printed form, signed or sealed by **ENGINEER** or one of its consultants.
- 5.2 **OWNER** may make and retain copies of documents for information and reference in connection with use on the **PROJECT** by **OWNER**. **ENGINEER** grants **OWNER** a limited license to use the documents on the **PROJECT**, extensions of the **PROJECT**, and for related uses of the **OWNER**, subject to receipt by **ENGINEER** of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) **OWNER** acknowledges that such documents are not intended or represented to be suitable for use on the **PROJECT** unless completed by **ENGINEER**, or for use or reuse by **OWNER** or others on extensions of the **PROJECT**, on any other project, or for any other use or purpose, without

written verification or adaptation by **ENGINEER**; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by **ENGINEER**, as appropriate for the specific purpose intended, will be at **OWNER's** sole risk and without liability or legal exposure to **ENGINEER** or to its officers, directors, members, partners, agents, employees, and consultants; (3) **OWNER** shall indemnify and hold harmless **ENGINEER** and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by **ENGINEER**; and (4) such limited license to **OWNER** shall not create any rights in third parties.

- 5.3 If **ENGINEER** at **OWNER's** request verifies the suitability of the documents, completes them, or adapts them for extensions of the **PROJECT** or for any other purpose, then **OWNER** shall compensate **ENGINEER** at rates or in an amount to be agreed upon by **OWNER** and **ENGINEER**.

## Art. 6. SUBCONTRACTING

Performance of this Agreement shall not be subcontracted in whole or in part without the consent of **OWNER** which shall not be unreasonably withheld. In the event **OWNER** consents to such subcontract, **ENGINEER** shall remain bound by the terms of this Agreement until the satisfactory completion of all work hereunder or the termination or expiration hereof, whichever shall first occur. **ENGINEER** may employ consultants as **ENGINEER** deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by **OWNER**.

## Art. 7. CONFLICTS OF INTEREST

- 7.1 Neither **ENGINEER** nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with **ENGINEER's** loyal and conscientious exercise of judgment related to its performance under this Agreement.
- 7.2 **ENGINEER** agrees that none of its officers or employees shall, during the duration of this Agreement, serve as an expert witness against **OWNER** in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of **OWNER** for the work performed under this Agreement or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.
- 7.3 In the event **ENGINEER** is permitted to utilize subcontractors to perform any services required by this Agreement, **ENGINEER** agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this Article 7.

## Art. 8. SUSPENSION OF SERVICES

- 8.1 By OWNER. **OWNER** may suspend, delay, or interrupt the **PROJECT** for up to 60 days upon 7 days written notice to **ENGINEER**. The written notice must be in advance of the effective time and date of suspension and will fix the date on which performance of such services will be resumed. **ENGINEER** shall be entitled to an adjustment in compensation, an extension of time, or both, directly attributable to any such suspension, to the extent that such suspension was not due to any fault of **ENGINEER**.
- 8.2 By ENGINEER. **ENGINEER** may suspend, delay, or interrupt its services, or any portion thereof, for a period of 60 days upon 7 days written notice to **OWNER** for nonpayment.

## Art. 9. TERMINATION

- 9.1 Termination for Cause by Either Party. Either party may terminate this Agreement at any time for cause by giving the other party **seven days** written notice if the other party fails to perform its obligations under this Agreement and fails to cure within such **seven-day** period.
- 9.2 Termination for Cause by ENGINEER. Upon seven days written notice if **OWNER** demands that **ENGINEER** furnish or perform services contrary to **ENGINEER**'s responsibilities as a licensed professional; or upon seven days written notice if **ENGINEER**'s services for the **PROJECT** are delayed or suspended for more than 60 days for reasons beyond **ENGINEER**'s control, **ENGINEER** may terminate this Agreement. **ENGINEER** shall have no liability to **OWNER** on account of such termination.
- 9.3 Termination for Convenience. **OWNER** may terminate this Agreement at any time with or without cause upon at least **fourteen days** written notice to **ENGINEER**. In the event of such a termination for convenience, **ENGINEER** will be paid for that portion of the work satisfactorily completed prior to termination.
- 9.4 Payments Upon Termination. In the event of any termination, **ENGINEER** will be entitled to invoice **OWNER** and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination. In the event of termination by **OWNER** for convenience or by **ENGINEER** for cause, **ENGINEER** shall be entitled, in addition to invoice **OWNER** and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with **ENGINEER**'s subcontractors or consultants, and other related close-out costs.

## Art. 10. CHANGES IN THE SERVICES

- 10.1 Written Change Order. **OWNER** may, by written order to **ENGINEER**, request additional services, issue revisions or direct the omission of services within the general scope of this Agreement. Any additional services shall be performed upon execution of an applicable change order regarding compensation and extensions



of time. No changes will be made absent specific written direction and agreement for payment.

- 10.2 Equitable Adjustment. If such changes cause an increase or decrease in **ENGINEER's** cost of, or time required for, performance of any services under this Agreement, an equitable adjustment may be made in price and/or time of performance, provided that any claim for an adjustment must be made in strict accordance with the terms of this Agreement. **ENGINEER** shall submit such claim in writing within **30 days** of receipt of said written order.

## Art. 11. NOTICES

All notices or orders provided for in this Agreement shall be in writing, addressed to the appropriate party at the address which appears below (or as modified in writing by such party) and given personally, by United States mail (return receipt requested), or by a courier service. All notices shall be effective upon the date of receipt.

**OWNER** if mailed by certified or registered mail, postage prepaid to:

Prichard Water Works and Sewer Board  
Attention: John S. Young, Jr. - Receiver  
125 East Clark Avenue  
Prichard, AL 36610;

or

**ENGINEER** if mailed by certified or registered mail, postage prepaid to:

Hazen and Sawyer  
Attention: Stephen H. King  
2 Chase Corporate Drive,  
STE 170  
Birmingham, AL 35244.

## Art. 12. CLAIMS AND DISPUTES

- 12.1 Applicable Law. This Agreement shall be interpreted and construed in accordance with the laws of the state where the **PROJECT** is located.
- 12.2 Dispute Resolution Procedure. **OWNER** and **ENGINEER** each hereby waives any rights it may have to a trial by jury of any such litigation. Further, any such claims or disputes and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the courts of the state in which the **PROJECT** is located.
- 12.3 Neither **OWNER** nor **ENGINEER** shall be liable to the other for any special, incidental, indirect or consequential damages whatsoever arising out of or relating in any way to this Agreement.

## Art. 13. INSURANCE

- 13.1 ENGINEER Coverage. **ENGINEER** shall procure and maintain insurance as set forth below. **ENGINEER** shall cause **OWNER** to be listed as an additional insured on any applicable general liability insurance policy carried by **ENGINEER**.
- 13.2. Minimum Coverage of ENGINEER. **ENGINEER** shall maintain at a minimum the following insurance policies and coverage with carriers authorized to cover risks and licensed to underwrite policies and have an A.M. Best's rating of A-VII or higher:
- (a) Worker's Compensation & Disability Insurance as required by all applicable state and federal laws.
  - (b) Employer's Liability with limits of **\$500,000** each accident, **\$500,000** Disease (each employee) and **\$500,000** Disease (policy limit).
  - (c) Comprehensive General Liability with minimum limits of **\$1,000,000** per occurrence and **\$1,000,000** in the aggregate.
  - (d) Professional Liability with limits of not less than **\$1,000,000**, per claim and **\$1,000,000** in the aggregate, insuring the professional liability of **ENGINEER**.
  - (e) Business Auto Insurance for all owned, hired, non-owned and Employers' non-ownership vehicles with minimum limits of **\$1,000,000** combined single limit.
  - (f) Other Insurance Coverage Requirements: None
- 13.3 Certificates of Insurance. **ENGINEER** shall deliver to **OWNER** certificates of insurance evidencing the coverages indicated in Sections 13.1 and 13.2 above. Such certificates shall be furnished prior to commencement of **ENGINEER**'s services and at renewals thereafter during the life of the Agreement.
- 13.4 At any time, **OWNER** may request that **ENGINEER** or its consultants, at **OWNER**'s sole expense, provide additional insurance coverage, increased limits, or revised deductibles.
- 13.5 Cancellation, Renewal or Modification. Should coverage afforded under any policy be canceled, non-renewed, materially changed (materially changed defined as a reduction in the policy limit by endorsement during the policy period), or allowed to expire, **ENGINEER** shall provide **OWNER** with at least 30 days prior written notice or, in the event of non-payment, ten days prior written notice.
- 13.6 Failure to Maintain Insurance. In the event **ENGINEER** fails to maintain any of the insurance required under this Agreement, it shall constitute a material breach of this Agreement.

## Art. 14. INDEMNIFICATION

- 14.1 Indemnification by ENGINEER. To the fullest extent permitted by law, **ENGINEER** shall indemnify and hold harmless **OWNER**, and its officers and employees from and against claims, damages, losses and expenses of any nature or kind including, but not limited to, reasonable attorneys' fees, arising out of, resulting from or relating in any way to negligence, recklessness, intentionally wrongful conduct or breach of contract of **ENGINEER**, its subcontractors, anyone directly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article 14.
- 14.2 Indemnification by OWNER. To the extent permitted by Alabama law, **OWNER** shall indemnify and hold harmless **ENGINEER** and its shareholders, directors, officers, agents and employees from and against claims, damages, losses and expenses of any nature or kind including, but not limited to, attorneys' fees, arising out of, resulting from or relating in any way to negligence, recklessness, intentionally wrongful conduct or breach of contract of **OWNER**, its subcontractors, anyone directly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article 14.
- 14.3 Environmental Indemnification. To the fullest extent permitted by law, **OWNER** shall indemnify and hold harmless **ENGINEER**, and its shareholders, directors, officers, agents and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of **ENGINEER**, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from an environmental concern at, on, or under the site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to the injury or to destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate **OWNER** to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- 14.4 Mutual Waiver. To the fullest extent permitted by law, **OWNER** and **ENGINEER** waive against each other, and the other's shareholders, directors, officers, agents and employees, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the **PROJECT**.
- 14.5 This Article 14, Indemnification, shall survive the termination of this Agreement.
- 14.6 Both parties acknowledge and agree that the foregoing obligations are specific considerations for this Agreement and without such duties and obligations neither party would enter this Agreement.

## Art. 15. PERFORMANCE STANDARDS

- 15.1 Standard of Care. **ENGINEER** shall perform all professional services with the care and skill ordinarily exercised by members of the same profession currently practicing in the United States, on projects of similar size and complexity at the time the services are performed. **ENGINEER** makes no warranties, express or implied, under this Agreement or otherwise, in connection with **ENGINEER'S** services.
- 15.2 Reliance on Others. Subject to the standard of care set forth in Article 15, **ENGINEER** and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- 15.3 **ENGINEER** shall not be required to sign any documents, no matter by whom requested, that would result in **ENGINEER** having to certify, guarantee, or warrant the existence of conditions whose existence **ENGINEER** cannot ascertain. **OWNER** agrees not to make resolution of any dispute with **ENGINEER** or payment of any amount due to **ENGINEER** in any way contingent upon **ENGINEER** signing any such documents.
- 15.4 During construction, **ENGINEER** neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the contract documents.
- 15.5 During construction, **ENGINEER** shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- 15.6 During construction, **ENGINEER** shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other person (except **ENGINEER**; own agents, employees, and consultants) at the site or otherwise furnishing or performing any work; or for any decision made regarding the contract documents, or any application, interpretation, or clarification of the contract documents, other than those made by **ENGINEER**.

## Art. 16. RECORDS

- 16.1 If the services to be performed hereunder relate to a state or federal government contract, the Comptroller General of the United States and the department or agency of the government having cognizance over this Agreement, and any of their duly authorized representatives, shall have access to and the right to examine any directly pertinent books, documents, papers and records of **OWNER** or **ENGINEER** involving transactions related to this Agreement.
- 16.2 **ENGINEER** shall grant access to such records until the expiration of **three years** after final payment under this Agreement.

## Art. 17. AUDIT RIGHT AND RETENTION OF RECORDS

- 17.1 **OWNER** shall have the right to audit the books and records of **ENGINEER**. **ENGINEER** shall keep such records and accounts as may be necessary in order to record complete and correct entries related to the **PROJECT**.
- 17.2 **ENGINEER** shall preserve and make available, at reasonable times for examination and audit by **OWNER** all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement until the expiration of **three years** after final payment under this Agreement.

## Art. 18. LIMITATION OF LIABILITY

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of **ENGINEER** and **ENGINEER's** officers, directors, members, partners, agents, employees, and Consultants, to **OWNER** and anyone claiming by, through, or under **OWNER** for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the **PROJECT** or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of **ENGINEER** or **ENGINEER's** officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by **ENGINEER** under this Agreement.

## Art. 19. SUCCESSORS AND ASSIGNEES

This Agreement is to be binding on the heirs, successors and assignees of **OWNER** and **ENGINEER**, but is not to be assigned by either **OWNER** or **ENGINEER**, without first obtaining the written consent of the other.

## Art. 20. MUTUAL WAIVER OF BREACH AND MATERIALITY

Failure by **either party** to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. **OWNER** and **ENGINEER** agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

## Art. 21. PERMITS, LICENSES, NOTICES AND COMPLIANCE WITH LAWS

- 21.1 **ENGINEER** shall comply with federal, state and local tax laws, social security acts, unemployment compensation acts and worker's compensation acts insofar as applicable to the performance of services under this Agreement.
- 21.2 **ENGINEER** shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds

provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by **OWNER**, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

- 21.3 **ENGINEER's** decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.
- 21.4 **ENGINEER** shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, **ENGINEER** shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.
- 21.5 **ENGINEER** shall take affirmative action to ensure that applicants are employed, and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

## Art. 22. SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless **OWNER** elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within **seven days** after the finding by the court becomes final.

## Art. 23. JOINT PREPARATION

Preparation of this Agreement has been a joint effort of **OWNER** and **ENGINEER**, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

## Art. 24. PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in the Articles of this Agreement shall prevail and be given effect.

## Art. 25. PROJECT SPECIFIC TERMS

The following additional **PROJECT** specific terms and conditions are:

  None

## Art. 26. COUNTERPARTS

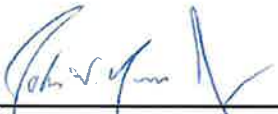
This Agreement may be executed in **counterparts**, each of which shall be deemed to be an original.


Art. 27. APPROVAL

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers and is made effective the day and year first above written.


**PRICHARD WATER WORKS AND SEWER BOARD**


**HAZEN AND SAWYER**

By:   
\_\_\_\_\_  
John S. Young Jr. LLC, Receiver  
By John S. Young, Jr. LLC Sole Member of  
Receiver  
Date: 2-9-2024

By:   
\_\_\_\_\_  
Stephen King, P.E., BCEE  
Associate Vice President  
Date: 2-8-2024

Witnessed By:

  
\_\_\_\_\_  
Cameron Kapperman  
Attorney - Baker Donelson  
Date 2/9/24  
Title \_\_\_\_\_

  
\_\_\_\_\_  
2/8/23 Date  
Sr. Associate  
Title \_\_\_\_\_



**SCHEDULE A**  
**SCOPE OF SERVICES**

**Prichard Water Works and Sewer Board**

**SRF Funding Water and Wastewater – Preapplication (ADEM Form 340 CW; ADEM Form 370 DW) and the associated Preliminary Engineering Reports**

The scope of work to be provided by **ENGINEER** includes professional services for the elements listed below.

The purpose of this SRF Funding Water and Wastewater – Preapplication and Preliminary Engineering Report is to obtain grant funding for the projects identified and listed below:

The projects will be grouped into a water package (Drinking Water) and a separate wastewater (Clean Water) package including,

**Water Package (Drinking Water):**

1. Vigor Tank Improvements with control valves for low zone supply- Phase 1
2. Lott Road Tank Improvements- Phase 1
3. Office Standpipe Removal- Phase 1
4. Chickasaw Tank Improvements and small waterline replacement to improve pressure- Phase 1
5. Anderson Road Tank Improvements and Distribution System Improvements to add PRV Valves- Phase 1
6. Distribution System SCADA (Storage Tanks) - Phase 1
7. Lovejoy Loop Pipe Replacement Design – Phase 2
8. Alabama Village System Isolation – Phase 2
9. Small Main Replacement- Phase 2
10. Lovejoy Loop Replacement (Phase A) – Phase 3
11. Lovejoy Loop Replacement (Phase B)- Phase 4
12. **Alternate Project:** New 1 MG Lott Road Elevated Storage Tank

**Wastewater Package (Clean Water):**

1. Collection System SCADA – Phase 2
2. Morris WWTP Improvements – Phase 2
3. Lift Station Improvements – Phase 2
4. Morris WWTP Improvements – Phase 3 (Digester, Grit Removal, Bar Screen, Clarifiers, Pump Stations, SCADA, etc.)
5. Collection System Improvements – Phase 3
6. **Alternate Project:** Brooks WWTP Improvement Design
7. **Alternate Project:** Brooks WWTP Improvements (Digester, Trickling Filters, Pumps, Lab, etc.)

The objective of the project is to prepare and submit the SRF preliminary funding preapplication packages per ADEM requirements.

**Scope of Services**

**TASK 1 PREAPPLICATION AND PRELIMINARY ENGINEERING REPORT**

Hazen will be responsible for developing and submitting the ADEM preapplication (form 340 CW; and form 370 DW) and the associated Preliminary Engineering Reports to the Water Board

*Task 1 Deliverables:*

- Submit the preapplication package and preliminary engineering report to obtain ADEM approval. One package for Drinking Water and one package for Clean Water.

**TIME OF COMPLETION**

**Prichard Water Works and Sewer Board**

**SRF Funding Water and Wastewater – Preapplication (ADEM Form 340 CW; ADEM Form 370 DW) and the associated Preliminary Engineering Reports**

**TIME OF COMPLETION**

**Schedule**

| <b>TASK</b> | <b>TASK DESCRIPTION</b>                             | <b>TASK COMPLETION</b> |
|-------------|---|------------------------|
| 1           | Preapplications and Preliminary Engineering Reports | February 29, 2024      |

**SCHEDULE B  
COMPENSATION**

**Prichard Water Works and Sewer Board**

**SRF Funding Water and Wastewater – Preapplication (ADEM Form 340 CW; ADEM Form 370 DW) and the associated Preliminary Engineering Reports**

**OWNER shall pay ENGINEER as full compensation for the services identified under Schedule A the lump sum amount of \$25,000. .**