



Attachment A

February 12, 2021

Mr. David Pugh, Manager
Town of Cramerton
155 N. Main Street
Cramerton, NC 28032

Subject: Proposed Engineering Services - REVISED
Street Paving and Maintenance Contract 2021

Dear David:

LaBella Associates, P.C. (LaBella) is pleased to submit our proposal to the Town of Cramerton (Town) for providing engineering services for the proposed street maintenance and paving improvements. See the attached for the defined project limits. Our understanding of the project scope is described below.

PROJECT DESCRIPTION:

1. Preparation of a Project Bid Manual and plans suitable to advertise and receive formal bids for a pavement resurfacing and maintenance contract for preselected streets. The identified streets total approximately 3.5 miles.
2. Construction administration and periodic observation services for the construction project.

SCOPE OF SERVICES:

Task #1 –Construction Documents for Street Paving Contract

Plans will be developed in conformance with the NCDOT Standard Specifications for Roads and Structures and suitable for formal bidding. Construction plans will include a cover sheet, vicinity/site plan for the selected streets to be improved, related storm drainage, and details and specifications. The site plans for the streets will be developed from the Town's GIS database at a scale of 1"= 100' or other legible scale suitable for multiple streets to be shown on a single sheet.

Plans for approximately 1,800 linear feet of streets on Timberlane Drive, South Fork Lane, Chesterfield drive in the Timberlake development will be designed to replace existing roll asphalt curb with new concrete valley curb. Associated storm drainage system and driveway apron improvements may be warranted and will be noted on the construction plans and included in the Bid Proposal.

Design plans (striping, pavement markings, etc.) and construction documents along with associated bid specifications and construction estimate will be prepared for improvements to Cimarron Boulevard involving traffic calming design such as narrowing lane widths, adding bike and pedestrian lanes utilizing the existing pavement widths with curb as is, and adding stop signs at intersection using the concept sketch provided by the Town. General erosion control notes and details will be provided as necessary. It is anticipated that the disturbed area will remain under one acre and a formal Erosion Control permit will not be required. Progress plans will be submitted to the Town and impacted utility owners for review and comment. After receiving review comments from the Town and affected utility companies, LaBella will develop final plans and specifications in conformance with the NCDOT Standard Specifications for Roadways and Structures.



LaBella will provide a final estimate for construction costs for the project based upon the currently defined project limits. The Town may elect to fully fund the project based upon the calculated estimate or may direct LaBella to reduce the scope of the project to a specified budget amount, currently estimated at approximately \$2,200,000. LaBella will then prepare the final construction estimate, Proposal Form, construction bid specifications, and special provisions as needed for acquiring bids for construction in accordance with State and local requirements.

Task #2 – Geotechnical Services and Pavement Section Design

LaBella will identify locations within the project limits and coordinate with our geotechnical sub-consultant to obtain pavement and subgrade core samples, to determine existing field conditions and to make recommendations for the proposed pavement typical sections. Geotechnical services will be provided by Joel E. Woods and Associates. Please note that the on-call Agreement allows for a 10% markup by LaBella for sub-consultant coordination services.

Task #3 – Construction Formal Bid and Award Services

LaBella will prepare a bid advertisement, furnish bid documents to plan rooms and printers, and shall respond to questions from contractors during the bid process. Duncan Parnell Printers shall provide plan copies and plan distribution services to interested bidders. LaBella will prepare and issue any necessary addenda, conduct the formal bid opening, provide bid tabulation of all bids, verify that low bidder meets all contract requirements, and make recommendation of award of contract to the Town.

Task #4 – Construction Administration and Periodic Construction Inspections for Street Paving Contract

LaBella will provide office and field administration of the construction contract as necessary for the construction of the street paving contract (the “Work”). LaBella shall consult with and advise the Town and act as Town’s representative during the construction contract period. The Town’s instructions to the Contractor shall be issued through LaBella’s assigned Project Manager who shall have the authority to act on behalf of the Town in dealings with Contractor to the extent provided in this Agreement. These services shall include issuance of Notice to Proceed, conduct pre-construction meeting and prepare/distribute meeting minutes, review Contractors’ submittals/shop drawings; respond to requests for information (RFI’s) from the Contractor and prepare Field orders and Change orders as necessary; review and recommend for payment the Contractor’s Applications for payment (assume 2); perform a substantial completion inspection and in collaboration with the Town prepare and deliver a punch list for the contractor to address; perform a final completion inspection to ensure all punchlist items have been addressed

LaBella shall provide one field Inspector to assist the Town in inspecting the progress and quality of the Work of the Contractor. The Inspector shall be LaBella’s agent at the site, and will act as directed by and under the supervision of the Project Manager. The Inspector will make visits to the site at intervals appropriate to the stage of construction to observe the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. On the basis of on-site observations, LaBella shall keep the Town informed of the progress and quality of the Work and shall alert the Town to defects and deficiencies in the Work of the Contractor. LaBella shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures of construction selected by Contractor or for safety and environmental programs and precautions incidental to the Work.

Periodic Inspections for the Street Paving Contract by the Inspector shall be based on a total hour basis (430 Construction Inspection hours estimated) and is intended to be at a sufficient level to



satisfactorily inspect the Contractor's Work. These services will be conducted concurrently with the construction contract, which is estimated to be 120 calendar days. LaBella shall notify the Town promptly if above level of field representation is insufficient to inspect work as defined by LaBella and the Town.

REIMBURSABLE EXPENSES:

Reimbursable expenses shall be compensated at cost unless otherwise noted and shall be limited to the actual expenditures made by the Engineer during the performance of the work with respect to travel, postage, courier expenses, copies, printing, plots, permitting fees, photographs, maps, or other miscellaneous project expenses.

ADDITIONAL SERVICES:

If authorized by the Town, furnish additional services not included in the tasks described above. Approval by the Town shall be granted in writing prior to initiation of any additional services. Compensation for additional services performed shall be in accordance with the hourly and unit price rates and rates for reimbursable expenses set forth in the agreement. Additional services may include such items as changes in scope requested by the owner or reviewing agency, utility relocation or renewal designs, environmental assessments, geotechnical services during the construction phase, or other tasks not defined in the project scope.

Please note that the construction periods listed above are assumed and based upon the Town's defined project limits and budget. After plans and a final construction estimate are developed, it may be determined that the construction period should be increased to allow for satisfactorily completion of the Work. In this case, LaBella will submit a revised scope and fee proposal for the increase in number of days for construction administration and construction inspections engineering services.

FEE:

LaBella will perform the services described on a time and materials basis with a not-to-exceed fee, based upon the Fee Schedule shown on the next page. A breakdown of the project costs may be provided upon request.

A summary of the not-to-exceed fees is as follows:

<u>TASK</u>	<u>FEE</u>
Task #1 - Construction Documents Paving Contract	\$ 45,360.00
Task #2 - Geotechnical Services	\$ 7,500.00
Task #3 - Formal Construction Bidding Services	\$ 3,355.00
Task #4 - Construction Admin/ Construction Observation Paving Contract	<u>\$ 59,770.00</u>
Subtotal-	\$ 115,985.00
Reimbursable Expenses	\$ 1,750.00
Total Not-To-Exceed Fee:	\$ 117,735.00



SCHEDULE:

LaBella proposes to complete Tasks #1 and #2 within 60 calendar days after receipt of a Notice to Proceed from the Town.

Task #3 will be completed within 30 days after the Town provides a Notice to Proceed for the formal bidding task. A start date for the paving construction contract is targeted for July 1, 2021. Task #4 will run concurrently with the street paving contract, which is estimated to be 120 days.

We appreciate the opportunity to work with you on the project and be of service to the Town. If this proposal is acceptable, please sign the attached Professional Services Agreement and return one copy to LaBella for signature. Please contact me if you have any questions or require additional information.

Sincerely,

LaBella Associates

Bonnie A. Fisher, P.E.
Project Manager

Attachment - Agreement



**LABELLA ASSOCIATES
TOWN OF CRAMERTON ENGINEERING SERVICES**

SCHEDULE OF FEES

<u>CLASSIFICATION</u>	<u>BILLING RATE</u>
Principal	\$175.00/hour
Project Manager	\$165.00/hour
Senior Engineer	\$160.00/hour
Senior Project Engineer	\$145.00/hour
Project Engineer	\$125.00/hour
Design Engineer II	\$105.00/hour
Design Engineer I	\$ 95.00/hour
Senior Engineering Technician	\$115.00/hour
Engineering Technician	\$100.00/hour
Construction Inspector	\$ 85.00/hour
Engineering Co-op	\$72.00/hour
Clerical	\$72.00/hour
Mileage	at current IRS rate
Expenses	at cost
Subconsultants	at cost plus 10 percent

Exhibit B
Terms and Conditions

Terms and Conditions

LaBella's Responsibilities: LaBella shall designate a representative authorized to act on its behalf with respect to the Project. All notices required under this Agreement shall be given to that representative.

LaBella shall perform its services consistent with the professional skill and care ordinarily provided by members of the same profession practicing in the same or similar locality under the same or similar circumstances. LaBella shall perform its services as expeditiously as is consistent with such professional skill and care, and the orderly progress of the Project.

LaBella shall comply with all applicable federal, state, and local laws and regulations in effect during the term of this Agreement. LaBella shall promptly inform Client of any changes to any laws and regulations that LaBella reasonably believes will have a material effect upon the cost of the Project, or the scope of LaBella's services. In such event, Client and LaBella shall re-negotiate the terms of this Agreement, and if unable to do so, then either party may terminate this Agreement without cause and without penalty or liability to the other party.

Client's Responsibilities: Client shall designate a representative authorized to act on its behalf with respect to the Project. All notices required under this Agreement shall be given to that representative.

Client shall provide LaBella with all available information regarding the Project necessary for LaBella to perform its professional services, including Client's requirements for the Project. Client also shall provide information regarding the Project site and any existing facilities, including destructive testing and investigation of concealed conditions and hazardous substances, in a timely manner. If Client does not perform destructive testing or investigation, nor provide information beyond that which is apparent by non-intrusive observations, or in the event documentation or information furnished by Client is inaccurate or incomplete, then any resulting damages, losses and expenses, including the cost of LaBella's changes in service or additional services, shall be borne by Client.

Client shall examine documents submitted by LaBella and render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of LaBella's services.

Additional Services: LaBella may provide additional services after execution of this Agreement without invalidating the Agreement. LaBella shall not proceed to provide any additional services, unless and until LaBella receives written direction from Client. Client shall compensate LaBella for additional services as set forth in LaBella's proposal, or as agreed upon in writing signed by both parties.

Assignment: Neither party may assign any benefit or obligation under this Agreement without the prior written consent of the other party, except LaBella may use the services of persons and entities not in LaBella's employ when appropriate and customary to do so.

Confidentiality: During the Project, confidential and/or proprietary information of the Client might be furnished to LaBella. LaBella shall use such information for the purpose of providing its professional services on the Project, and for no other purpose. LaBella shall hold such information in strict confidence, and shall not disclose such information to any person or entity, except sub-consultants engaged on the Project. Upon completion of its services, LaBella shall return or destroy all confidential and/or proprietary information to the Client.

Instruments of Service: All plans, drawings, specifications, calculations, reports and other documents prepared by LaBella as instruments of service are and shall remain the property of LaBella. Client agrees that the re-use of LaBella's instruments of service on any extension of the Project, or on any other project, is prohibited without first obtaining LaBella's written permission and consent.

Escalation: In the event the term of this Agreement is extended beyond the period of service set forth in LaBella's proposal, then compensation for professional services are subject to review and escalation by LaBella upon thirty (30) days written notice to Client. The project budget will be adjusted accordingly.

Suspension: Client may suspend this Agreement in whole or in part at any time for convenience upon seven (7) days written notice. Upon receipt of notice, LaBella shall immediately discontinue all services. LaBella shall be entitled to compensation for all services rendered up to the date of suspension. If the suspension exceeds three (3) months, an equitable adjustment in compensation shall be negotiated to compensate LaBella for all reasonable costs incurred by LaBella on account of the suspension of the Project, such as for preparation of documents for storage, maintaining space and equipment pending resumption, the orderly demobilization of staff, maintaining employees on a less-than-full-time basis, terminating employment of personnel because of suspension, rehiring former employees or hiring new employees because of resumption, reacquainting employees with the Project upon resumption, and making revisions to comply with Project requirements at the time of resumption.

Termination: Either party may terminate this Agreement for cause upon seven (7) days written notice with an opportunity to cure any default during that period.

Insurance: LaBella shall maintain, at its own expense, throughout the term of this Agreement and until the expiration of all applicable statutes of limitation, the following insurance coverages:

- Comprehensive general liability insurance with policy limits of not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate for bodily injury and property damage;
- Automobile liability insurance covering owned, non-owned, rented and hired vehicles operated by LaBella with policy limits of not less than \$1,000,000 combined single limit and aggregate for bodily injury and property damage;
- Umbrella liability insurance with policy limits of not less than \$10,000,000 each occurrence and \$10,000,000 in the aggregate;
- Worker's compensation insurance at statutory limits and employer's liability insurance with a policy limit of not less than \$1,000,000 for all employees engaged in the rendering of professional services under this Agreement; and

- Professional liability insurance with policy limits of not less than \$3,000,000 per claim and \$5,000,000 in the aggregate.

Client shall be named as an additional insured under the CGL, Automobile and Umbrella insurance policies. LaBella shall provide to the Client certificates of insurance evidencing compliance with the requirements of this Agreement. The certificates shall contain a provision that at least thirty (30) days prior written notice shall be given to Client in the event of cancellation, non-renewal, or reduction of the insurance.

Indemnification: To the fullest extent permitted by law, LaBella shall indemnify and hold the Client and its officers and employees harmless from and against liabilities, damages, losses and judgments, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of LaBella, its employees and its consultants in the performance of professional services under this Agreement. Client agrees that LaBella's financial responsibility for any and all liabilities, damages, losses, judgments, expenses and attorneys' fees shall be limited to the available proceeds of LaBella's insurance coverage.

Disputes: The parties agree that mediation before a mutually agreeable neutral third party shall be a condition precedent to any legal action arising out of this Agreement, unless waived in writing by the parties. The cost of the mediation shall be borne equally by the parties. The mediation shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, unless the parties agree otherwise. No demand for mediation shall be made after the date that the applicable statute of limitations would bar a legal or equitable action based on the claim or dispute.

Venue and Jurisdiction: Any legal suit, action or proceeding arising out of or relating to this agreement shall be instituted in a court of competent jurisdiction located in the state and county where the project is located, and the parties hereby waive any objection which they may have now or hereafter to the venue of any such suit, action or proceeding, and also hereby irrevocably consent to the personal jurisdiction of any such court in any such suit, action or proceeding.

Choice of Law: This Agreement shall be interpreted, construed and enforced in accordance with the laws of the state where the project is located without giving effect or reference to any conflict of laws provisions.

Consequential Damages: In any suit, action or proceeding, the parties shall be entitled to recover compensatory damages incurred as a result of the breach of this Agreement, but neither party shall be liable to the other for any special, indirect, or consequential damages.

Late Fees, Costs and Attorneys' Fees: An additional charge of 1.5% of an invoice will be imposed each month on all past due accounts. Imposition of such charges does not constitute an extension of the payment due date. In the event that LaBella must bring suit to collect payment of any invoices, then Client agrees to pay LaBella's costs and expenses, including reasonable attorneys' fees.

Remedies Cumulative: The rights and remedies available to a party under this Agreement are cumulative and in addition to, not exclusive of, or in substitution for, any other rights or remedies either party may have at law, or in equity, or under this Agreement. Nothing contained in this Agreement shall be deemed to preclude either party from seeking injunctive relief, if necessary, in order to prevent the other party from willfully or intentionally breaching its obligations under this Agreement or to compel the other party to perform its obligations hereunder.

Non-Waiver: Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement will not be construed as a waiver of any right accruing under this Agreement, nor affect any subsequent breach, nor affect the effectiveness of this Agreement or any part hereof, nor prejudice either party as regards any subsequent action.

Force Majeure: Neither party to this Agreement shall be liable to the other for delays in performing the obligations called for by this Agreement, or the direct and indirect costs resulting from such delays, that are caused by labor strikes, riots, war, acts of government authorities other than the Client (if a governmental authority), extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

Severability: The provisions of this Agreement are hereby agreed and declared to be severable. Any term or provision of this Agreement which is held to be unenforceable by a court of competent jurisdiction shall be deemed to have been stricken from this Agreement, and the remaining terms and provisions of this Agreement shall be construed and enforced without such terms or provisions.

Counterparts: This Agreement may be executed in one or more counterparts, each one of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

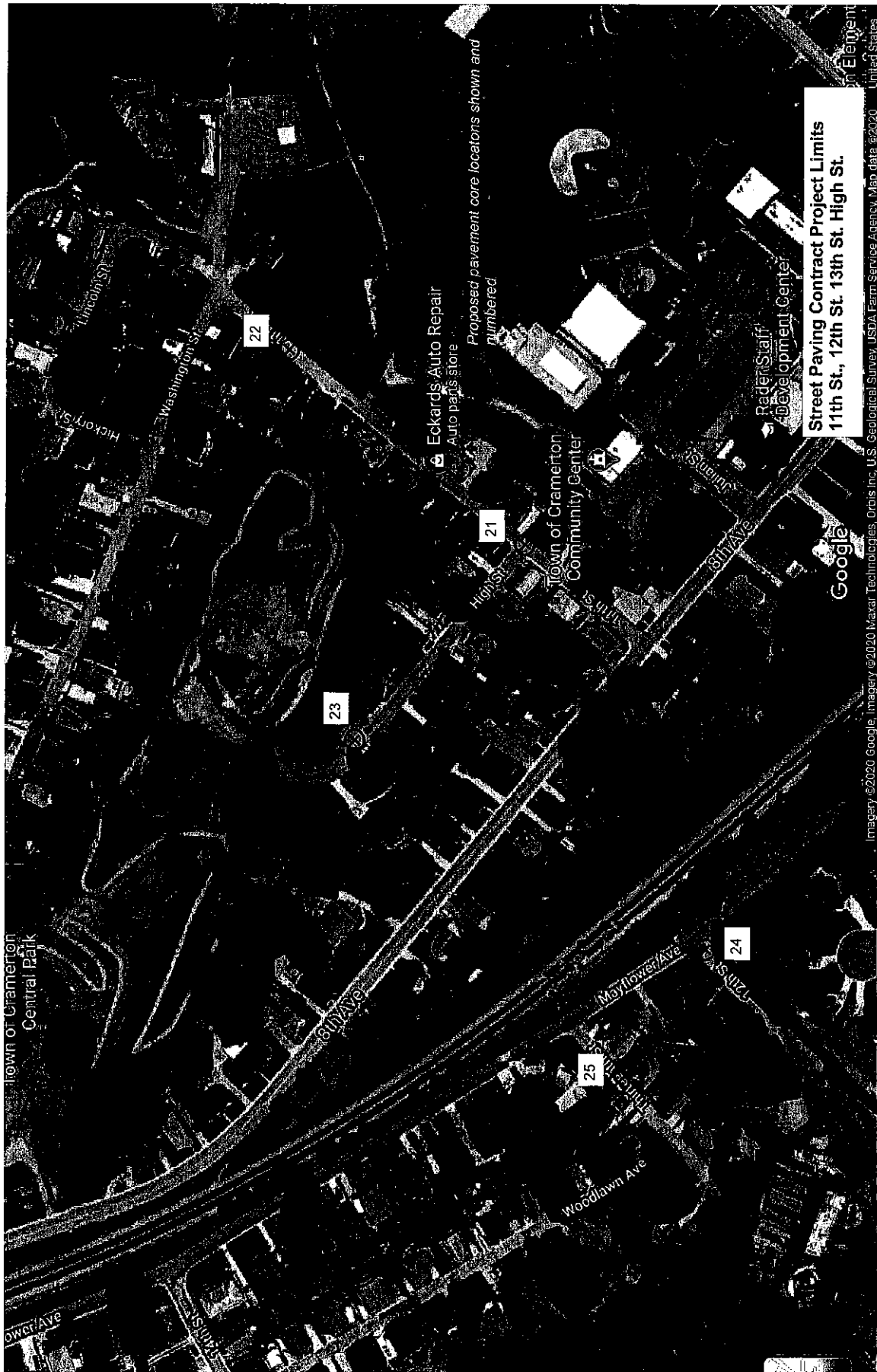
Scope of Agreement: This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral, except that terms specific to future projects shall be set forth in LaBella's proposals. This Agreement may be amended only by written instrument signed by both parties.



Proposed pavement core locators shown and numbered

**Street Paving Contract Project Limits
Timberlake Subdivision**

The Courtyards
at Cramerton, an...
Villa by Google



Street Paving Contract Project Limits
11th St., 12th St. 13th St. High St.

Professional Services Agreement

Agreement made the _____ day of _____, 2021
between

LaBella Associates, P.C.
("LaBella")

and

Town of Cramerton
("Client")

for services related to the following Project:

Engineering Services
Street Paving and Maintenance Contract 2021
("Project")

LaBella and Client hereby agree as follows:

- Description of Services:** LaBella shall perform the services set forth and described in LaBella's proposal, dated 2/12/2021, a copy of which is attached as *Exhibit A*, in accordance with the terms and conditions of this contract attached as *Exhibit B*.
- Compensation for Services:** Client shall compensate LaBella for its professional services as set forth in LaBella's proposal. LaBella shall submit invoices for services rendered on a monthly basis. Client shall make payment to LaBella no later than thirty (30) days after the date of each invoice.
- Term:** LaBella shall commence performing its services when Client gives notice to proceed. This Agreement shall terminate when LaBella's services are completed, or as otherwise provided in this Agreement.

LaBella Associates, P.C.

Client Name

By: _____

By: _____

Title Southeastern Regional Vice President

Title _____

Date: _____

Date _____

**TOWN OF CRAMERTON
CONTRACT FOR ENGINEERING SERVICES**

This Contract for Engineering Services ("Contract") is made and entered into to be effective _____, 2021 ("Effective Date") between **Town of Cramerton** ("the Town") and **LaBella Associates, 400 S. Tryon Street, Suite 1300, Charlotte, NC 28285** ("the Contractor"). For and in consideration of the mutual promises set forth in this Contract, the parties do mutually agree as follows:

1. Obligations of the Contractor - The Contractor agrees to provide **Engineering Services for Street Paving and Maintenance for the TOWN OF CRAMERTON**. (the "Services") as more particularly described in the Exhibit "A" attached hereto and incorporated herein by reference.

This Contract does not grant the Contractor the right or the exclusive right to provide specified services to the Town. Similar services may be obtained from sources other than the Contractor (or not at all) at the discretion of the Town.

The Contractor shall begin work immediately upon issuance of a written notice to proceed and shall adhere to the Schedule as set forth in Exhibit A. The Contractor agrees to perform the Services in a timely, complete, and professional manner and in accordance with the terms and conditions of this Contract. Furthermore, the Contractor represents and warrants that (i) it is duly qualified and, if required by law, licensed to provide the Services; (ii) it will provide the Services in a manner consistent with the level of care and skill ordinarily exercised by contractors providing similar Services under similar conditions; (iii) it possesses sufficient experience, personnel, and resources to provide the Services; (iv) it shall provide the Services in compliance with applicable laws, statutes, ordinances, codes, orders, rules and regulations; and (v) its reports, if any, shall be complete, accurate, and unambiguous.

2. Obligations of the Town. The Town hereby agrees to pay to the Contractor for the faithful performance of this Contract a total not to exceed **\$117,735.00** as follows:

a. <u>Task #1</u> – Construction Documents Paving Contract:	\$45,360.00
b. <u>Task #2</u> – Geotechnical Services:	\$ 7,500.00
c. <u>Task #3</u> - Formal Construction Bidding Services	\$ 3,355.00
d. <u>Task #4</u> – Construction Admin/Construction Observation Paving Contract	<u>\$59,770.00</u>
Subtotal:	\$115,985.00
Reimbursable Expenses:	<u>\$ 1,750.00</u>
TOTAL NOT TO EXCEED:	\$117,735.00

Any additional services hereinafter agreed to in writing by Town shall be billed at the rates set forth in Exhibit A attached hereto and incorporated herein by reference.

3. The Town's Project Coordinator. **David Pugh, the Town Manager**, is designated as the Project Coordinator for the Town. The Project Coordinator shall be the Town's representative in connection with the Contractor's performance under this Contract. The Town has complete discretion in replacing the Project Coordinator with another person of its choosing.
4. Primary Client Contact for the Contractor. **Bonnie A. Fisher** is designated as the Primary Contact for the Contractor. The Primary Contact is fully authorized to act on behalf of the Contractor in connection with this Contract.
5. Terms and Methods of Payment. The Town will make payment after invoices are approved on a net 30-day

basis. Invoices shall be detailed to the satisfaction of Town and applicable North Carolina sales tax shall be invoiced as a separate item. Invoices shall be sent to the Town's Chief Finance Officer with a copy to the Town's Project Coordinator. The Town will not pay in advance for Services without the prior approval of the Town's Finance Officer.

6. Standard Terms and Conditions: The Contractor agrees to the Standard Terms and Conditions set forth as Attachment 1 attached hereto and incorporated herein by reference.
7. Counterpart Execution. This Contract may be executed and recorded in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Each party shall be entitled to rely upon executed copies of this Contract transmitted by facsimile or electronic "PDF" to the same and full extent as the originals.
8. Contract Documents: The Contractor's execution of this Contract constitutes an agreement to all written and electronic agreements affecting a contractual relationship between the Town and Contractor and all documents referred to therein (the "Contract Documents"), including, but not limited to, the proposal, the printed contract form and attachments, contract bonds, plans, standard specifications and supplemental specifications, standard special provisions and project special provisions contained in the proposal, and all executed supplemental agreements.

SIGNATURES APPEAR ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Town and the Contractor have executed this Contract on the day and year first written above.

LaBella Associates

the Contractor Name

Signature of Authorized Representative Date

the Contractor's Federal Identification #
[if Contract is with Organization or Social Security Number if individual]

Town of Cramerton

Owner

Signature of Authorized Representative Date

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Signature of Authorized Finance Officer Date

Attachment 1

Standard Terms and Conditions

1. **Entire Agreement.** The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between the Contractor and the Town with respect to the purchase by the Town of the Services provided or work performed as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to the Town shall control. No additional or supplemental provision or provisions in variance herewith that may appear in the Contractor's quotation, acknowledgment, invoice, or in any other communication from the Contractor to the Town shall be deemed accepted by or binding on the Town. The Town hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until the Town's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by the Town are subject to correction.
2. **Nondiscrimination.** During the performance of the Contract, the Contractor shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.
3. **Conflict of Interest.** The Contractor represents and warrants that no member of the Town or any of its employees or officers who may obtain a direct benefit, personal gain or advantage for themselves or a relative or associate as a result of the Contract, subcontract or other agreement related to the Contract is in a position to influence or has attempted to influence the making of the Contract, has been involved in making the Contract, or will be involved in administering the Contract. The Contractor shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.
4. **Gratuities to the Town.** The right of the Contractor to proceed may be terminated by written notice if the Town determines that the Contractor, its agent or another representative offered or gave a gratuity to an official or employee of the Town in violation of policies of the Town.
5. **No Kickbacks to the Contractor.** The Contractor shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a Town contract or in connection with a subcontract relating to a Town contract. When the Contractor has grounds to believe that a violation of this clause may have occurred, the Contractor shall promptly report to the Town in writing the possible violation.
6. **E-Verification.** The Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
7. **Indemnification.** The Contractor shall indemnify and hold harmless the Town, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of the Contractor's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of the Contractor's breach of the terms and conditions of the Contract. In the event the Contractor, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of the Town in the performance of the Contract Documents, the Contractor agrees that it will indemnify and hold harmless the Town, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.
8. **Insurance.** Unless such insurance requirements are waived or modified by the Town, the Contractor certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to the Town and authorized to do business in the State of North Carolina: Automobile - the Contractor shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired automobiles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each

occurrence. Commercial General Liability - the Contractor shall maintain commercial general liability insurance that shall protect the Contractor from claims of bodily injury or property damage which arise from performance under the Contract. This insurance shall include coverage for contractual liability. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each occurrence/annual aggregate. The Contractor shall maintain Umbrella liability insurance with policy limits of not less than \$10,000,000 each occurrence and \$10,000,000 in the aggregate. Worker's Compensation and Employers' Liability Insurance - If applicable to the Contractor, the Contractor shall meet the statutory requirements of the State of North Carolina for worker's compensation coverage and employers' liability insurance. The Contractor shall maintain professional liability insurance with a policy limit of not less than \$3,000,000 per claim and \$5,000,000 in in the aggregate. The Contractor shall also provide any other insurance or bonding specifically recommended in writing by the Town or required by applicable law. Certificates of such insurance shall be furnished by the Contractor to the Town and shall contain the provision that the Town be given 30 days' written notice of any intent to amend or terminate by either the Contractor or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.

9. Suspension. Town may suspend this Contract in whole or in part for convenience upon seven (7) days written notice. Upon receipt of notice, Contractor shall immediately discontinue all services. Contractor shall be paid for services rendered through the date of suspension. If the suspension exceeds three (3) months, the Parties shall endeavor to negotiate an equitable adjustment to compensation to address any extraordinary costs incurred by Contractor as a result of the suspension.
10. Termination for Convenience. In addition to all of the other rights which the Town may have to cancel this Contract, the Town shall have the further right, without assigning any reason therefore, to terminate the Contract, in whole or in part, at any time at its complete discretion by providing 10 days' notice in writing from the Town to the Contractor. If the Contract is terminated by the Town in accordance with this paragraph, the Contractor will be paid for services actually rendered through the date of termination.
11. Termination for Default. The Town may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by the Contractor. In addition to any other remedies available to the Town law or equity, the Town may procure upon such terms as the Town shall deem appropriate, Services substantially similar to those so terminated, in which case the Contractor shall be liable to the Town for any excess costs for such similar goods, supplies, or services and any expenses incurred in connection therewith.
12. Contract Funding. It is understood and agreed between the Contractor and the Town that the Town's obligation under the Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of the Town for any payment may arise until funds are made available to the Town's Finance Officer and until the Contractor receives notice of such availability. Should such funds not be appropriated or allocated, the Contract shall immediately be terminated. the Town shall not be liable to the Contractor for damages of any kind (general, special, consequential or exemplary) as a result of such termination.
13. Improper Payments. The Contractor shall assume all risks attendant to any improper expenditure of funds under the Contract. The Contractor shall refund to the Town any payment made pursuant to the Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or procedure. The Contractor shall make such refunds within 30 days after the Town notifies the Contractor in writing that a payment has been determined to be improper.
14. Contract Transfer. The Contractor shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of the Town.
15. Contract Personnel. The Contractor agrees that it has, or will secure at its own expense, all personnel required to provide the Services set forth in the Contract.
16. Contract Modifications. The Contract may be amended only by written amendment duly executed by both the Town and the Contractor.
17. Relationship of Parties. The Contractor is an independent contractor and not an employee of the Town. The conduct and control of the work will lie solely with the Contractor. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between the Contractor and the Town. Employees of the Contractor shall remain subject to the exclusive control and

- supervision of the Contractor, which is solely responsible for their compensation.
18. Advertisement. The Contract will not be used in connection with any advertising by the Contractor without prior written approval by the Town.
 19. No Pre-Judgment or Post-Judgment Interest. In the event of any action by the Contractor for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and the Contractor specifically waives any claim for interest.
 20. Background Checks. At the request of the Town's Project Coordinator, the Contractor (if an individual) or any individual employees of the Contractor shall submit to the Town criminal background check and drug testing procedures.
 21. Confidential Information. Employee Personnel Information: If, during the Contractor's performance of the Contract, Contractor should obtain any information pertaining to employees of the Town's personnel records, Contractor agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. Other Confidential Information: (a) the Contractor agrees that it will at all times hold in confidence for the Town all designs, know-how, techniques, devices, drawings, specifications, patterns, technical information, documents, business plans, item requirements, forecasts and similar data, oral, written or otherwise, conveyed by the Town to the Contractor in connection herewith or procured, developed, produced, manufactured or fabricated by the Contractor in connection herewith or procured, developed, produced, manufactured or fabricated by the Contractor in connection with the Contractor's performance hereunder (collectively, "Information"). The Contractor shall exercise the same degree of care to prevent disclosure of any Information to others as it takes to preserve and safeguard its own proprietary information, but in any event, no less than a reasonable degree of care. The Contractor shall not, without the prior written consent of the Town, reproduce any Information; nor disclose Information to any party; nor use any Information for any purpose other than performance for the benefit of the Contractor hereunder. Any technical knowledge or information of the Contractor which the Contractor shall have disclosed or may hereafter disclose to the Town in connection with the Services or other performance covered by the Contract shall not, unless otherwise specifically agreed upon in writing by the Town, be deemed to be confidential or proprietary information and shall be acquired by the Town free from any restrictions as part of the consideration of the Contract.
 22. Intellectual Property. The Contractor agrees, at its own expense, to indemnify, defend and save the Town harmless from all liability, loss or expense, including costs of settlement and attorney's fees, resulting from any claim that the Town's use, possession or sale of the Services or any goods infringes any copyright, patent or trademark or is a misappropriation of any trade secret.
 23. Mediation. If a dispute arises out of or relates to the Contract, or the breach of the Contract, and if the dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation.
 24. No Third-Party Benefits. The Contract shall not be considered by the Contractor to create any benefits on behalf of any third party. The Contractor shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third-party benefits.
 25. Force Majeure. If the Town is unable to perform its obligations or to accept the Services because of Force Majeure (as hereinafter defined), the time for such performance by the Town or acceptance of Services will be equitably adjusted by allowing additional time for performance or acceptance of Services equal to any periods of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of the Town.
 26. Strict Compliance. The Town may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.
 27. General Provisions. The Town's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default. If action be instituted by the Contractor hereunder, the Town shall be entitled to recover costs and reasonable attorney's fees. the

Contractor may not assign, pledge, or in any manner encumber the Contractor's rights under this Contract, or delegate the performance of any of its obligations hereunder, without the Town's prior, express written consent.

28. **Contract Situs.** All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Gaston County, North Carolina. North Carolina law will govern the interpretation and construction of the Contract.
29. **Severability.** Any provision of this Contract that is determined by any court of competent jurisdiction to be invalid or unenforceable will not affect the validity or enforceability of any other provision. Any provision of the Contract held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
30. **FEDERAL FUNDS:** If the source of funds for this contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable): Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324).