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**AGENDA**  
**CUMBERLAND COUNTY BOARD OF COMMISSIONERS**  
**JUDGE E. MAURICE BRASWELL**  
**CUMBERLAND COUNTY COURTHOUSE - ROOM 564**  
**MAY 18, 2020**  
**9:00 AM**

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LOCATION: In order to comply with the N.C. Governor's Executive Order 138, Section 6.A. and B., this meeting will be available to the public and media live via the Cumberland County website ([co.cumberland.nc.us](http://co.cumberland.nc.us)), Facebook page ([facebook.com/CumberlandNC](https://facebook.com/CumberlandNC)), Youtube page ([youtube.com/user/CumberlandCountyNC/videos](https://youtube.com/user/CumberlandCountyNC/videos)), and on Fayetteville Cumberland Education Channel (FCE-TV) Spectrum Cable Channel 5.

INVOCATION - Commissioner Larry Lancaster

PLEDGE OF ALLEGIANCE -

**PUBLIC COMMENT PERIOD**

1. APPROVAL OF AGENDA

2. PRESENTATIONS

A. Update on COVID-19 (Coronavirus) by Dr. Jennifer Green, Public Health Director

3. CONSENT AGENDA

A. Approval of May 4, 2020 Regular Meeting Minutes

B. Approval to Pay Prior Year Invoice

C. Approval of Acceptance of Workers Compensation Settlement

D. Approval of Acceptance of Workers Compensation Settlement

E. Approval of Budget Ordinance Amendments for the May 18, 2020 Board of Commissioners' Agenda

F. Approval of Cumberland County Board of Commissioners Agenda Session Items

1. Request for New Epidemiology Nurse and Funding for 3 Temporary Nurses for COVID-19 Response

2. Contract for Crown Coliseum Cooling Tower Replacement

3. Contract for Crown Coliseum and Agri-Expo ADA Repairs and Associated Budget Ordinance Amendment #200234

4. Amendment to Owner-Engineer Agreement Number 1 with McGill Associates, P.A., for the Bragg Estates Water and Sewer District and Associated Budget Ordinance Amendment #200031

5. Engaging Outside Counsel to Provide Title Opinion for Easement Parcels

6. Selection of a Fiscal Year 2021 Workforce Innovation and Opportunity Act Title I

Program Services Provider and One Stop Center Manager

7. Engagement with Elliott Davis for Census Data Testing for the Local Government Employee Retirement System (LGERS) Employer Participants

4. ITEMS OF BUSINESS

- A. Consideration of Revised Schedule for Fiscal Year 2021 Budget Work Sessions and Budget Public Hearing
- B. Update on Revenue Trends Amid COVID-19
- C. Deobligation of Hurricane Matthew Community Development Block Grant - Disaster Recovery Funding by the North Carolina Office of Recovery and Resiliency and Associated Budget Ordinance Amendment #200122
- D. Consideration of a Resolution to Amend the Local Act Authorizing the Food and Beverage Tax

5. NOMINATIONS

- A. Joint Planning Board (2 Vacancies)
- B. Board of Adjustment (1 Vacancy)
- C. Fayetteville-Cumberland Parks and Recreation Advisory Commission (4 Vacancies)

6. APPOINTMENTS

- A. ABC Board (2 Vacancies)

**RECESS THE BOARD OF COMMISSIONERS' MEETING**

**CONVENE THE BRAGG ESTATES WATER AND SEWER DISTRICT GOVERNING BOARD MEETING**

**BRAGG ESTATES WATER AND SEWER DISTRICT GOVERNING BOARD AGENDA:**

7. BRAGG ESTATES WATER AND SEWER DISTRICT CONSENT AGENDA

- A. Approval of Minutes of the April 20, 2020 Bragg Estates Water & Sewer District Governing Board Meeting
- B. Amendment to Owner-Engineer Agreement Number 1 with McGill Associates, P.A., for the Bragg Estates Water and Sewer District and Associated Budget Ordinance Amendment #200031
- C. Approval of Engaging Outside Counsel to Provide Title Opinion for Easement Parcels

**ADJOURN THE BRAGG ESTATES WATER AND SEWER DISTRICT GOVERNING BOARD MEETING**

**RECONVENE THE REGULAR BOARD OF COMMISSIONERS MEETING**

8. CLOSED SESSION: If Needed

**ADJOURN**



**WATCH THE MEETING LIVE**

**THIS MEETING WILL BE STREAMED LIVE THROUGH THE COUNTY'S WEBSITE, CO.CUMBERLAND.NC.US. LOOK FOR THE LINK AT THE TOP OF THE HOMEPAGE.**

**THE MEETING WILL ALSO BE BROADCAST LIVE ON FAYETTEVILLE/CUMBERLAND EDUCATIONAL TV (FCETV), SPECTRUM CHANNEL 5.**

**IT WILL BE REBROADCAST ON WEDNESDAY, MAY 20, AT 7:00 PM AND FRIDAY, MAY 22, AT 10:30 AM.**

**REGULAR BOARD MEETINGS:**

**June 1, 2020 (Monday) - 9:00 AM**  
**June 15, 2020 (Monday) - 6:45 PM**  
**No Board of Commissioners' Meetings in July**

**FY2021 BUDGET MEETINGS**

<b>June 1, 2020 (Monday) - 9:00 AM</b>	<b>Budget Presentation</b>
<b>June 3, 2020 (Wednesday) - 5:30 PM</b>	<b>Budget Work Session</b>
<b>June 8, 2020 (Monday) - 7:00 PM</b>	<b>Budget Public Hearing</b>
<b>June 9, 2020 (Tuesday) - 5:30 PM</b>	<b>Budget Work Session</b>
<b>June 11, 2020 (Thursday) - 1:00 PM</b>	<b>Budget Work Session</b>
<b>June 17, 2020 (Wednesday) - 5:30 PM</b>	<b>Budget Work Session</b>



## **FINANCE OFFICE**

### **MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: VICKI EVANS, FINANCE DIRECTOR**

**DATE: 5/11/2020**

**SUBJECT: APPROVAL TO PAY PRIOR YEAR INVOICE**

#### **BACKGROUND**

There is a period of time after June 30th of fiscal year-end in which transactions of the prior year will continue to be processed (typically until the third week in August). After that cutoff date has passed, a department may still receive a vendor invoice that is payable for services that were rendered, or goods were received in the prior fiscal year. When that occurs, approval by the Board of Commissioners is required for payment. The following department meets that criteria:

Sheriff's Office  
Vendor: Central Square  
Invoice Date: June 4, 2018  
Total Amount: \$80.00

#### **RECOMMENDATION / PROPOSED ACTION**

Management is requesting approval to pay the prior year invoice for the Sheriff's Office that totals \$80.00.

#### **ATTACHMENTS:**

Description	Type
Sheriff Office Prior Year Invoice	Backup Material



**Cumberland County  
SHERIFF'S OFFICE**  
Ennis W. Wright, Sheriff



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Internationally Accredited Law Enforcement Agency

**MEMORANDUM**

TO: VICKI EVANS, FINANCE DIRECTOR  
FROM: LISA BLAUSER, SHERIFF'S OFFICE BUSINESS MANAGER *L. Blause*  
DATE: APRIL 24, 2020  
SUBJECT: REQUEST TO PAY PRIOR YEAR INVOICE FOR SHERIFF'S OFFICE

We are requesting payment of a prior year invoice to Superion, LLL/Central Square Technologies for shipping and handling costs. Invoice 209443 is dated 6/4/2018 and totals \$80.00. We requested the vendor waive this charge as it was not included on the original quote for the merchandise purchased, however the vendor clarified the quote did state "any estimated shipping and handling is not included in quote total."

The Sheriff's Office Budget Office did not receive this invoice until recently. All other invoices related to this project were paid during Fiscal Year 18. It appears the former Sheriff's Office Information Technology Supervisor received the invoice and was communicating with the company to waive the charge. This issue was still not resolved upon his retirement. The company recently reached out for an update, which is when the Sheriff's Office Budget Office became aware of the outstanding invoice. Sufficient funds exist within the FY 20 Sheriff's Office budget (1014200-533510) for payment of this invoice.

Please contact me should any additional information be required.



# Invoice

<b>Invoice No</b>	<b>Date</b>	<b>Page</b>
209443	06/4/2018	1 of 1

Superion, LLC, a CentralSquare Company  
1000 Business Center Drive  
Lake Mary, FL 32746

Billing Inquiries: [Accounts.Receivable@centralsquare.com](mailto:Accounts.Receivable@centralsquare.com)

**Bill To**  
Cumberland County Sheriff's Office  
Attn Lisa Blausen  
131 DICK ST  
FAYETTEVILLE NC 28301  
United States

**Ship To**  
Cumberland County Sheriff's Office  
Attn Lisa Blausen  
131 DICK ST  
FAYETTEVILLE NC 28301  
United States

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
5321LG	CUMBERLAND COUNTY SHERIFF'S OFFICE		USD	Net 30	07/4/2018

	Description	Units	Rate	Extended
1	2852 Hardware Shipping & Handling for E-Seek USB Mag Swipe/Barcode Reader- Q-00005082.	1	\$80.00	\$80.00

Please include invoice number(s) on your remittance advice,  
made payable to Superion, LLC

**ACH:**

Routing Number 121000358  
Account Number 1416612641  
E-mail payment details to: [Accounts.Receivable@CentralSquare.com](mailto:Accounts.Receivable@CentralSquare.com)

**Check:**

12709 Collection Center Drive  
Chicago, IL 60693

**Subtotal** \$80.00

**Tax** \$0.00

**Invoice Total** \$80.00

**Payments Applied** \$0.00

**Balance Due** \$80.00



## **RISK MANAGEMENT**

### **MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: IVONNE MENDEZ, ACCOUNTING SUPERVISOR**

**DATE: 5/6/2020**

**SUBJECT: APPROVAL OF ACCEPTANCE OF WORKERS COMPENSATION SETTLEMENT**

#### **BACKGROUND**

During a closed session on April 6, 2020, the Board of Commissioners approved moving forward with a workers compensation settlement. Per NCGS § 143-318.11, the terms of the settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded. The Order Approving Compromise Settlement Agreement is attached.

Please note: Commissioner Adams recused himself from the closed session on April 6, 2020 specific to this discussion.

#### **RECOMMENDATION / PROPOSED ACTION**

Accept the report of Order Approving Compromise Settlement Agreement, filed on April 15, 2020 by the North Carolina Industrial Commission.

#### **ATTACHMENTS:**

Description	Type
Order Approving Compromise Settlement Agreement	Backup Material

NORTH CAROLINA INDUSTRIAL COMMISSION

I.C. No. 14-034801, JOSHUA LAFAVE, Plaintiff, v. COUNTY OF CUMBERLAND, Defendant-Employer, YORK RISK SERVICES GROUP, and SEDGWICK CMS, Defendant-Administrator

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ORDER APPROVING COMPROMISE SETTLEMENT AGREEMENT

BY: Kimberly K. Fennell, Special Deputy Commissioner

FILED: 04/15/20

A duly executed compromise settlement agreement was received in the office of the undersigned for consideration.

A P P E A R A N C E S

Plaintiff: Adams, Burge & Boughman PLLC, Fayetteville, NC  
Vickie L. Burge, appearing  
Facsimile: (910) 485-1021  
Vickie@abb-law.com

Defendants: Teague Campbell Dennis & Gorham, LLP, Raleigh, NC  
Latasia A. Fields, appearing  
Facsimile: (919) 873-1814  
tjones@teaguecampbell.com

\*\*\*\*\*

After giving due consideration to all matters involved in this case in accordance with Chapter 97 of the North Carolina General Statutes and Commission Rules, and upon the parties' stated or implied representation that copies of all relevant medical reports have been submitted with the agreement to the Commission as required by Rule 11 NCAC 23A .0502(b)(1), the compromise settlement agreement is deemed by the Commission to be fair and just, and in the best interests of all parties. Furthermore, the interests of all parties and of any person, including a health benefit plan, who paid medical expenses of the plaintiff have been set forth in the settlement agreement and have been considered. It further appears that the agreement contains a finding that the positions of all parties to the agreement are reasonable as to the payment of medical expenses. The agreement is incorporated herein by reference and is approved in the amount of **ONE HUNDRED TWENTY THOUSAND DOLLARS AND 00/100 (\$120,000.00)**. Compliance with the terms of the agreement shall discharge defendants from further liability under the Workers' Compensation Act by reason of the injury giving rise to the claim.


An attorney's fee of \$20,000.00 is approved for plaintiff's counsel to be deducted from the sum due plaintiff and paid directly to the attorney.

Defendants shall pay the costs.

It is noted, however, that this Order does not purport to approve, resolve or address any issue or matter over which the Industrial Commission has no jurisdiction, whether or not such issue or matter is referred to in the compromise settlement agreement executed by the parties in this action.

**DEFENDANTS**

Shall File a Form 28C Report  
Upon Receipt of this Order.

  
\_\_\_\_\_  
Kimberly K. Fennell  
Special Deputy Commissioner



## **RISK MANAGEMENT**

### **MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: IVONNE MENDEZ, ACCOUNTING SUPERVISOR**

**DATE: 5/11/2020**

**SUBJECT: APPROVAL OF ACCEPTANCE OF WORKERS COMPENSATION SETTLEMENT**

#### **BACKGROUND**

During a closed session on April 6, 2020, the Board of Commissioners approved moving forward with a workers compensation settlement. Per NCGS § 143-318.11, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded. The Order Approving Compromise Settlement Agreement is attached.

#### **RECOMMENDATION / PROPOSED ACTION**

Accept the report of Order Approving Compromise Settlement Agreement, filed on April 14, 2020 by the North Carolina Industrial Commission.

#### **ATTACHMENTS:**

Description	Type
Order Approving Compromise Settlement Agreement	Backup Material

NORTH CAROLINA INDUSTRIAL COMMISSION

.C. No. 16-025410, TIMOTHY J. CRAWFORD, Plaintiff, v. COUNTY OF CUMBERLAND,  
Defendant-Employer, YORK RISK SERVICES GROUP, a SEDGWICK CMS COMPANY,  
Defendant-Administrator

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ORDER APPROVING COMPROMISE SETTLEMENT AGREEMENT  
by Michael R. Kelly, Special Deputy Commissioner

FILED: 04/14/20

A duly executed compromise settlement agreement was received in the office of the undersigned for consideration.

A P P E A R A N C E S

Plaintiff: Law Offices of James Scott Farrin, Durham, NC  
Susan A. Overby, appearing  
Facsimile: (919) 688-4468

Defendants: Teague Campbell Dennis & Gorham, LLP, Raleigh, NC  
Tracey L. Jones, appearing  
Facsimile: (919) 873-1814

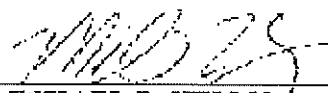
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After giving due consideration to all matters involved in this case in accordance with Chapter 97 of the North Carolina General Statutes and Commission Rules, and upon the parties' stated or implied representation that copies of all relevant medical reports have been submitted with the agreement to the Commission as required by Rule 11 NCAC 23A .0502(b)(1), the compromise settlement agreement is deemed by the Commission to be fair and just, and in the best interests of all parties. Furthermore, the interests of all parties and of any person, including a health benefit plan, who paid medical expenses of the plaintiff have been set forth in the settlement agreement and have been considered. It further appears that the agreement contains a finding that the positions of all parties to the agreement are reasonable as to the payment of medical expenses. The agreement is incorporated herein by reference and is approved in the amount of **TWO HUNDRED THOUSAND DOLLARS AND 00/100 (\$200,000.00)**. Compliance with the terms of the agreement shall discharge defendants from further liability under the Workers' Compensation Act by reason of the injury giving rise to the claim.

An attorney's fee of \$50,000.00 is approved for plaintiff's counsel to be deducted from the sum due plaintiff and paid directly to the attorney.

Defendants shall pay the costs. Defendants shall file a Form 28C Report upon receipt of this Order.

It is noted, however, that this Order does not purport to approve, resolve or address any issue or matter over which the Industrial Commission has no jurisdiction, whether or not such issue or matter is referred to in the compromise settlement agreement executed by the parties in this action.

  
\_\_\_\_\_  
MICHAEL R. KELLY  
Special Deputy Commissioner





## **BUDGET DIVISION**

### **MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: MELISSA CARDINALI, ASSISTANT COUNTY MANAGER**

**DATE: 5/12/2020**

**SUBJECT: APPROVAL OF BUDGET ORDINANCE AMENDMENTS FOR THE MAY 18, 2020 BOARD OF COMMISSIONERS' AGENDA**

#### **BACKGROUND**

##### **General Fund 101**

- 1) Sheriff's Office – Budget Ordinance Amendment B200008 to allocate additional funds in the amount of \$13,707 to the Sheriff's Office storage array project.**

The Board is requested to approve Budget Ordinance Amendment B200008 to allocate additional funds to the storage array project in the Sheriff's Office. This project will provide additional data storage capacity. The original budget for this project was \$95,000, but the lowest bid received was \$108,707. The Cumberland County Sheriff's Office will provide the remaining \$13,707 from available fuel funds from declining fuel prices.

Please note this amendment requires no additional county funds.

- 2) Sheriff's Office – Budget Ordinance Amendment B200063 to recognize a donation to the Cumberland County Sheriff's Office from Korean Presbyterian Church in the amount of \$1,000.**

The Board is requested to approve Budget Ordinance Amendment B200063 to recognize a donation to the Cumberland County Sheriff's Office from Korean Presbyterian Church in the amount of \$1,000. This donation will be used toward the replacement of an ice machine in the Law Enforcement Center. Please note this amendment requires no additional county funds.

- 3) Public Health – Budget Ordinance Amendment B200006 to recognize Federal funds distributed through the North Carolina Department of Health and Human Services: Division of Public Health in the amount of \$205,618 for COVID-19 crisis response.**

The Board is requested to approve Budget Ordinance Amendment B200006 to recognize Federal funds distributed through the North Carolina Department of Health and Human Services: Division of

Public Health in the amount of \$205,618. These funds will be used for COVID-19 crisis response activities.

Please note this amendment requires no additional county funds.

**RECOMMENDATION / PROPOSED ACTION**

Approve Budget Ordinance Amendments.



## **DEPARTMENT OF PUBLIC HEALTH**

### **MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: DR. JENNIFER GREEN, HEALTH DIRECTOR**

**DATE: 5/7/2020**

**SUBJECT: REQUEST FOR NEW EPIDEMIOLOGY NURSE AND FUNDING FOR 3  
TEMPORARY NURSES FOR COVID-19 RESPONSE**

#### **BACKGROUND**

The FY2021 Cumberland County Department of Health budget request includes a request for one additional Communicable Disease nurse (PHN III) to serve in the Epidemiology clinic. The current COVID-19 pandemic has highlighted and exacerbated the need for this position. Nurses in the Epidemiology Clinic are on the front lines of the COVID-19 pandemic. They are responsible for identifying positive cases, conducting case investigations and contact tracing for each positive case, and facilitating testing for suspected cases. They conduct these activities in addition to their other mandated duties to prevent the spread of other communicable diseases (TB, Hepatitis, Meningitis, etc.) The Epidemiology Clinic is currently staffed by three communicable disease nurses (PHN III), one nurse supervisor and a Medical Office Assistance. Prior to COVID-19, there was an identified need for an additional PHN III to manage the NCDHHS mandated services. During our State audit, North Carolina Department of Health and Human Services (NCDHHS) recommended the hiring of an additional nurse for the Epidemiology clinic. The salary and fringes for the new position \$75,610.

In addition, we have identified an additional need for five temporary nurses to aid in the response for the COVID-19 pandemic (two funded by NC DHHS COVID 19 funding and three funded by Cumberland County). NC DHHS has tasked each local health department with increasing our capacity for contact tracing and testing for COVID-19. Increasing our capacity in these two areas is part of Governor Cooper's plan to reopen North Carolina. Currently, we cannot meet the demand to increase testing and contact tracing, while still providing our other services mandated by NCDHHS. The additional temporary nursing staff will support our efforts to deploy mobile test units in zip codes with the highest number of cases. As we increase testing, we will also see an increase in the number of positive cases, which require contact tracing. We anticipate needing at least 20 staff to assist with contact tracing daily. We are requesting additional Cumberland County funding for three temporary nurses for three months. The projected total cost is \$60,000.

#### **RECOMMENDATION / PROPOSED ACTION**

At the May 14, 2020 Agenda Session Meeting, the Board of Commissioners unanimously approved placing the action below as a Consent Agenda Item on the May 18, 2020 Board of Commissioners' Meeting: Approval of Budget Ordinance Amendment B200124 in the amount of \$67,784.



## **OFFICE OF THE COUNTY MANAGER**

### **MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: TRACY JACKSON, ASST. COUNTY MANAGER FOR ENVIRONMENTAL  
AND COMMUNITY SAFETY**

**DATE: 5/5/2020**

**SUBJECT: CONTRACT FOR CROWN COLISEUM COOLING TOWER REPLACEMENT**

#### **BACKGROUND**

The Capital Improvement Plan (CIP) in FY 20 identified the replacement of the Crown Coliseum Cooling Tower. The total project budgeted amount is \$731,500. In February, Engineering & Infrastructure (E&I) staff contracted with Stanford White, Inc., to perform the design for the replacement of the cooling tower in the amount of \$66,000.

The project was advertised electronically on the Cumberland County Vendor Self Service site and State Interactive Purchasing Site (IPS). The project pre-bid meeting was held on April 20, 2020. The bid date was advertised for April 30, 2020. The certified bid tab and letter of recommendation to award the project from Stanford White, Inc., are attached. The lowest, responsible and responsive bidder was provided by Boilermasters, Inc., in the amount of \$530,000. This bid amount includes the acceptance of bid alternate #1 for a stainless-steel tower, which would provide a longer life cycle than a galvanized tower. Budgeted funds are available for the completion of this project.

#### **RECOMMENDATION / PROPOSED ACTION**

This item was heard at the May 14, 2020 Board of Commissioners' Agenda Session meeting, and the Board agreed to forward it as a Consent Agenda item for approval of the following actions at the May 18, 2020 Board of Commissioners' meeting:

1. Accept the bids and award a contract to the lowest, responsible and responsive bidder, Boilermasters, Inc. in the amount of \$530,000.
2. Establish a contingency in the amount of \$53,000 to be used for additional work through a contract change order recommended by County Engineering staff and approved by the County Manager.

**ATTACHMENTS:**

Description

CC CT Letter of Recommendation

CC CT Bid Tab

Type

Backup Material

Backup Material



PO Box 19944 | Raleigh, NC 27619 | tel 919.832.8118 | fax 919.832.8120 | [stanfordwhite.com](http://stanfordwhite.com)

May 1, 2020

Mr. Allan Riddle, PE  
Assistant County Engineer  
Cumberland County Engineering  
130 Gillespie Street  
Fayetteville, NC 28301

**VIA EMAIL** [ariddle@co.cumberland.nc.us](mailto:ariddle@co.cumberland.nc.us)

Re: Crown Coliseum Cooling Tower Replacement  
Cumberland County  
Fayetteville, NC  
SW# 0367-09-00-19

Dear Allan:

We have separately provided your office the following items for your use:

1. Two Original Certified Bid Tabulation.
2. Contractor's Original Proposal.

The apparent low bid for the project is prepared by Boiler Masters, Inc, for \$530,000. It is my understanding that this amount can be supported by the funds that are available for the project.

Based on the above, I recommend that contracts be awarded as follows:

Base Bid	\$498,000
Alternate 1	\$32,000
Alternate 2	<b>Not taken</b>
<b>Total</b>	<b>\$530,000</b>

Please review and advise as to how Cumberland County will proceed with this project. If you have any questions or need additional information, please let me know.

Sincerely,

**STANFORD WHITE, Inc.**

Roger M. Woods, PE



## BID TABULATION

PO Box 19944 | Raleigh, NC 27619 | tel 919.832.8118 | fax 919.832.8120 | [stanfordwhite.com](http://stanfordwhite.com)

**PROJECT:** Crown Coliseum Cooling Tower Replacement **PROJECT NO.:** 0367-09-00-19  
**OWNER:** Cumberland County **BIDS DUE:** Thursday, April 30, 2020 at 2:00 PM  
**PRIME:** Mechanical

Bidders	License NO.	Bid Security	Base Bid	Alternate-1 All stainless steel tower	Alternate-2 Polypropylene Piping in lieu of steel piping	Addendum # 1 & 2	MBE Appendix A or B
Boiler Masters	#63135 GC #10313	Yes	\$498,000	\$32,000	No Bid	Yes	A
Brady Services	20378	Yes	\$719,944	\$37,309.77	\$18,296.98	Yes	B
Digitrol HVAC Services	11979	Yes	\$691,000	\$33,000	\$26,000	Yes	A
Haire Plumbing	4230	Yes	\$675,000	\$33,500	-\$150,500	Yes	A
Hockaday Mechanical	G.C. #11291 #74467	Yes	\$589,000	\$31,600	-\$10,000	Yes	A

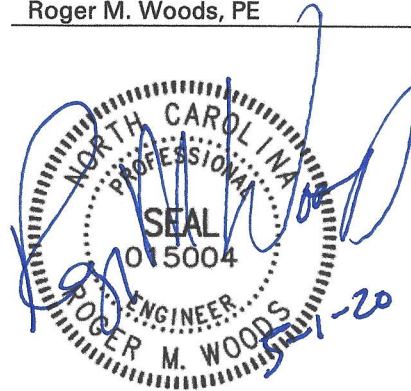


Bid Tabulation  
Crown Coliseum Cooling Tower Replacement  
SW#0367-09-00-19  
April 30, 2020  
Page 2

Piedmont Service Group	#79485	Yes	\$785,400	\$32,980	No Bid	Yes	A
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I CERTIFY THAT THIS IS A TRUE AND ACCURATE TABULATION OF BIDS RECEIVED.

BY: Roger M. Woods, PE





## **OFFICE OF THE COUNTY MANAGER**

### **MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: TRACY JACKSON, ASSISTANT COUNTY MANAGER OF ENVIRONMENTAL AND COMMUNITY SAFETY**

**DATE: 5/5/2020**

**SUBJECT: CONTRACT FOR CROWN COLISEUM AND AGRI-EXPO ADA REPAIRS AND ASSOCIATED BUDGET ORDINANCE AMENDMENT #200234**

#### **BACKGROUND**

County Engineering has been working to make improvements to the Crown Complex as funding allows. Renovations to restrooms and ticket booths that are not compliant with the Americans with Disabilities Act (ADA) were identified and have been slated for implementation. In the Crown Coliseum and Exposition Center, the restrooms lack proper grab bars, sinks, and plumbing fixtures. Additionally, the ticket booths in both facilities lack proper transaction windows to accommodate ADA customers. In order to provide compliant ADA restrooms and ticket booths, the Engineering and Infrastructure Department (E&I) selected Cromwell Architect Engineers, Inc., from the List of Qualified Architectural/Engineering Firms approved by the Board of Commissioners at the September 17, 2018 meeting. North Carolina General Statute 143-64.31 requires local governments to select firms qualified to provide architectural, engineering and surveying services on the basis of demonstrated competence and qualifications for the type of professional services required without regard to fee. Cromwell Architect and Engineers, Inc. and Engineering and Infrastructure staff met on-site to perform a walkthrough of the facilities issues. Cromwell Architects Engineers, Inc., completed the design and the project was advertised for a pre-bid meeting on April 21, 2020 and a bid meeting on May 1, 2020.

The certified bid tab and letter of recommendation to award the contract to the lowest, responsible and responsive bidder from Cromwell Architect Engineers, Inc., is attached. The lowest, responsible and responsive bid was submitted by M&E Contracting, Inc., in the amount of \$484,987 (\$466,548 for restroom renovations and \$18,439 as Option 2 for ticket booth renovations). An owner's allowance of \$50,000 is included within the bid amount, therefore a contingency amount is not needed for this project.

Project design costs specific to these ADA improvements totaled \$56,230, bringing the total project cost to \$541,217. The total budget for the project was \$400,000. A budget revision is required to cover the budgeted

shortfall totaling \$141,217.

### **RECOMMENDATION / PROPOSED ACTION**

This item was heard at the May 14, 2020 Board of Commissioners' Agenda Session meeting, and the Board agreed to forward it as a Consent Agenda item for approval of the following actions at the May 18, 2020 Board of Commissioners' meeting:

- The Board is requested to approve Budget Ordinance Amendment #200234 to appropriate Occupancy Tax fund balance of \$58,717. Budgeted savings from the Crown cooling tower project, totaling \$82,500 will be utilized for a total budgetary increase of \$141,217.
- Accept the bids and award a contract to the lowest, responsible and responsive bidder M&E Contracting, Inc. in the amount of \$484,987.

### **ATTACHMENTS:**

Description	Type
CC/AE Letter of Recommendation	Backup Material
CC/AE Bid Tab	Backup Material



CROMWELL

cromwell.com

501.372.2900

72201

little rock, ar

101 south spring street

engineers

architects

## LETTER OF RECOMMENDATION

4 May 2020

Allen J. Riddle, P. E., Assistant County Engineer  
Cumberland County Engineering and Infrastructure Department  
Historic Courthouse  
130 Gillespie Street  
Fayetteville NC 28301

Re: Crown Complex ADA Repair

Dear Mr. Riddle:

Cromwell Architects Engineers recommends that Cumberland County award the project entitled CROWN COMPLEX ADA REPAIR, FAYETTEVILLE, NORTH CAROLINA to M&E Contracting, Inc. of Fayetteville NC in the amount of \$484,987.00. This sum is the total of the Base Bid of \$466,548.00 and Bid Option 0002, \$18,439.00.

Sincerely,

  
Daniel M. Hicks, AIA



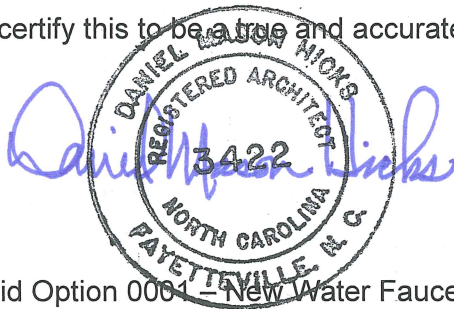
## BID TABULATION

Cumberland County Crown Center ADA Repair Project  
Received 2:00pm 1 May 2020

Cromwell Architects Engineers  
109 Hay Street  
Fayetteville NC 28301

BIDDER	BASE BID	Bid Option 0001	Bid Option 0002	Bid Option 0003
M&E Contracting	\$466,548.00	\$15,756.00	\$18,439.00	\$66,275.00
Shaw Construction	\$469,000.00	\$15,000.00	\$72,000.00	\$62,000.00

I certify this to be a true and accurate record of the bids as received.



Daniel Mason Hicks, AIA

1 May 2020

Bid Option 0001 – New Water Faucets on Lavatories

Bid Option 0002 – New ADA Compliant Ticket Window and Transaction Counter

Bid Option 0003 – Install New Toilet Partitions to Match Existing



## **OFFICE OF THE COUNTY MANAGER**

### **MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: TRACY JACKSON, ASSISTANT COUNTY MANAGER FOR ENVIRONMENTAL AND COMMUNITY SAFETY**

**DATE: 5/6/2020**

**SUBJECT: AMENDMENT TO OWNER-ENGINEER AGREEMENT NUMBER 1 WITH MCGILL ASSOCIATES, P.A., FOR THE BRAGG ESTATES WATER AND SEWER DISTRICT AND ASSOCIATED BUDGET ORDINANCE AMENDMENT #200031**

#### **BACKGROUND**

The contract between McGill Associates, P.A. and Bragg Estates Water and Sewer District was executed in 2015 (attached for reference). The contract did not include preparation of plats for thirty easements and 1 plat for the purchase of the sewer pump station site which is now needed for the preparation of the easement documents so the project can move forward. A lump sum amount of \$25,000 is proposed as additional compensation for the plats. There is also a request to increase the consultant's fees and make an adjustment to the construction phase services per the terms of the contract for McGill Associates, P.A., because their standard rate has increased since the contract was executed in 2015. The lump sum rate increase for the construction phase services requested is \$18,345, for a total contract increase for this amendment of \$43,345.

USDA Rural Development approved this request by McGill Associates, P.A. and funds are available in the project budget.

#### **RECOMMENDATION / PROPOSED ACTION**

This item was heard at the May 14, 2020 Board of Commissioners' Agenda Session meeting, and the Board agreed to forward it as a Consent Agenda item for approval of the following actions at the May 18, 2020 Board of Commissioners' meeting and the May 18, 2020 Bragg Estates Water and Sewer District agenda:

1. Approve Amendment to Owner-Engineer Agreement No. 1 with McGill Associates, P.A. in the amount of \$43,345.

1. Approve **Budget Ordinance Amendment #200031** in the amount of \$43,345 for the Amendment to Owner-Engineer Agreement No. 1 with McGill Associates, P.A.

**ATTACHMENTS:**

Description	Type
Amendment Number 1	Backup Material
Orig McGill Contract for BE Proj	Backup Material

This is **EXHIBIT K**, consisting of [2] pages,  
referred to in and part of the **Agreement  
between Owner and Engineer for Professional  
Services** dated **June 15, 2015** .

**AMENDMENT TO OWNER-ENGINEER AGREEMENT  
Amendment No. 1**

The Effective Date of this Amendment is: \_\_\_\_\_.

Background Data

Effective Date of Owner-Engineer Agreement: June 15, 2015

Owner: Cumberland County, North Carolina

Engineer: McGill Associates, P.A.

Project: Bragg Estates Wastewater Collection System Expansion

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- X   Additional Services to be performed by Engineer
- Modifications to services of Engineer
- Modifications to responsibilities of Owner
- X   Modifications of payment to Engineer
- Modifications to time(s) for rendering services
- Modifications to other terms and conditions of the Agreement

Description of Modifications:

1. **Easement and Pump Station Plats** - Engineer shall provide plats exhibits for 30 easements and purchase of the sewer pump station site. Owner will be responsible for acquisition of easements including preparation of easement agreements, negotiations and payment of any acquisition costs and recording costs. A lump sum amount of **\$25,000** shall be considered additional compensation as follows:
  - a. 30 Plat Exhibits at \$800 each: \$24,000
  - b. 1 Pump Station Property Plat: \$1,000



2. **Lump Sum Hourly Rate Increases** - Due to the delay in the project proceeding and an increase in standard hourly rates, a lump sum amount of **\$3,540** shall be added to the compensation for the following remaining work elements by the amounts listed below:

- |                            |         |
|----------------------------|---------|
| a. Construction Phase      | \$2,590 |
| b. Post Construction Phase | \$950   |

3. **Lump Sum Hourly Rate Increases** - Due to the delay in the project proceeding and an increase in standard hourly rates, the compensation for Resident Project Representative Services shall be increased by **\$14,805**, with a new hourly rate of **\$90** per hour based on standard hourly rates.

Agreement Summary:

Original agreement amount:	<u>\$237,000.00</u>
Net change for prior amendments:	<u>\$0.00</u>
This amendment amount:	<u>\$ 43,345.00</u>
Adjusted Agreement amount:	<u>\$280,345.00</u>

Change in time for services (days or date, as applicable): \_\_\_\_\_

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.


OWNER:  
Cumberland County, North Carolina

ENGINEER:  
McGill Associates, P.A.

By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

By:   
Print  
name: Douglas Chapman

Title: Principal

Date Signed: 3-31-2020

## BASIC FEE SCHEDULE

**JANUARY 2020**

<b>PROFESSIONAL FEES</b>	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>
Senior Principal	\$225			
Principal – Regional Manager – Director	\$190	\$205	\$210	\$215
Practice Area Lead	\$160	\$170	\$195	\$210
Senior Project Manager	\$170	\$185	\$195	\$200
Project Manager	\$155	\$165	\$175	\$180
Project Engineer	\$110	\$125	\$140	\$145
Engineering Associate	\$95	\$100	\$110	\$115
Planner- Consultant – Designer	\$100	\$115	\$135	\$150
Engineering Technician	\$90	\$105	\$115	\$120
CAD Operator – GIS Analyst	\$80	\$85	\$95	\$100
Construction Services Manager	\$130	\$145	\$155	\$160
Construction Administrator	\$95	\$110	\$120	\$125
Construction Field Representative	\$85	\$90	\$95	\$100
Environmental Specialist	\$85	\$95	\$100	\$105
Surveyor	\$90	\$95	\$100	\$105
Surveying Associate	\$70	\$75	\$80	\$85
Survey Technician	\$75	\$80	\$85	\$90
Survey Field Technician	\$60	\$65	\$70	\$75
Administrative Assistant	\$70	\$75	\$80	\$85

### **1. EXPENSES**

- a. Mileage - \$0.65/mile
- b. Robotics/GPS Equipment - \$25/hr.
- c. Survey Drone - \$100/hr.
- d. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

### **2. ASSOCIATED SERVICES -**

- a. Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus ten (10) percent.

Bragg Estates Wastewater Collection System Expansion  
Amendment To Owner-Engineer Agreement - Amendment No. 1

Employee Class	Hours Budgeted	Original Rate	Current Rate	Additional Costs
Construction Phase				
Principal	24	\$ 180.00	\$ 205.00	\$ 600.00
Project Engineer I	60	\$ 120.00	\$ 140.00	\$ 1,200.00
Engineering Technician I	6	\$ 75.00	\$ 90.00	\$ 90.00
Administrative Assistant I	70	\$ 60.00	\$ 70.00	\$ 700.00
				\$ 2,590.00
Post Construction Phase				
Principal	6	\$ 180.00	\$ 205.00	\$ 150.00
Project Engineer I	4	\$ 120.00	\$ 140.00	\$ 80.00
Engineering Technician I	8	\$ 75.00	\$ 90.00	\$ 120.00
Administrative Assistant I	20	\$ 60.00	\$ 70.00	\$ 200.00
CAD Operator I	40	\$ 70.00	\$ 80.00	\$ 400.00
				\$ 950.00
Resident Project Representative CFR II	987	\$ 75.00	\$ 90.00	\$ 14,805.00

This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

## **AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES**

Prepared by



Issued and Published Jointly by



**Cumberland County**  
**Contract No:** 2016-020

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**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of

June 15, 2015

("Effective Date") between

Cumberland County

("Owner") and

McGill Associates, P.A.

("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:  
Bragg Estates Wastewater Collection System Expansion

("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are for the Bragg Estates Water and Sewer District and generally identified as follows:

1. Preparation of a Preliminary Engineering Report for the proposed wastewater collection system extension in accordance with RUS Bulletin 1780-2. The report is intended to supplement an Application package to USDA for Rural Development Funding.
2. Preparation of an Environmental Report in accordance with RUS Bulletin 1794A-602 for the proposed wastewater collection system extension. This report is intended to supplement an Application package to USDA for Rural Development Funding.
3. Completion of the Preliminary Design and Final Design Phases of the project, and the pursuit of all regulatory permits from appropriate agencies.
4. Provide Bidding and Negotiation, Construction Phase, and Post-Construction Phase services for the proposed wastewater collection system extension based on the approved Final Design plans.

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

**1.01 Scope**

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER'S RESPONSIBILITIES**

**2.01 General**

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer's services;
  2. the presence at the Site of any Constituent of Concern; or
  3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

### ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

#### 3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

#### 3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- 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.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

### ARTICLE 4 – INVOICES AND PAYMENTS

#### 4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. **Invoices must include a breakdown of services provided.**



#### 4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
  - 2. 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.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

### ARTICLE 5 – OPINIONS OF COST

#### 5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity 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 Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

#### 5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

### 5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, 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.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
  - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
  - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
    - a. changes after the Effective Date to Laws and Regulations;
    - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
    - c. changes after the Effective Date to Owner-provided written policies or procedures.

- F. Engineer shall not be required to sign any document, no matter by who requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during

construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

### 6.03 Use of Documents

- A. ~~All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.~~ All Documents, information, and materials of any and every type prepared by the Engineer pursuant to this Agreement shall be jointly owned by the Engineer and the Owner as co-owner. Such Documents shall include but not be limited to data, Drawings, Specifications, reports, Record Drawings, estimates, summaries, change orders, responses to Contractor requests, and such other information and materials as may have been accumulated by the Engineer in performing the work under this Agreement, whether completed or in process. The Engineer shall assume no responsibility for the unintended use by others of any such Documents, information, or materials outside the scope of this Project which are not related to the scope of services described under this Agreement. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. ~~Owner~~ **Co-Owner** may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants ~~Owner~~ **Co-Owner** a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the ~~Owner~~ **Co-Owner**, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) ~~Owner~~ **Co-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~~ **Co-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~~ **Co-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~~ **Co-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~~ **Co-Owner** shall not create any rights in third parties.

- D. 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.

#### 6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer ~~shall~~ **may** jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

#### 6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in

other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. 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 that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.06 *Suspension and Termination*

##### A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

##### B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
  - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
  - b. by Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
    - 3) Engineer shall have no liability to Owner on account of such termination.

- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
  1. In the event of any termination under Paragraph 6.06, 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. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
  2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive 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 Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

#### 6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment,

subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.



- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days' notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys' fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or 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.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, 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 this Agreement or the Project, from any cause or causes.

#### 6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

#### 6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

### ARTICLE 7 – DEFINITIONS

#### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall:  
(a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.

13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up,

and of which the services to be performed or furnished by Engineer under this Agreement are a part.

25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer ~~as an Additional Service~~ and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
  36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
  37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
  38. **Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service including USDA Rural Development.**
- B. *Day*:
1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### **8.01 Exhibits Included:**

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.

J. Exhibit J, Special Provisions.

K. Exhibit K, Amendment to Owner-Engineer Agreement. **(Not Included)**

#### 8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

#### 8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

#### 8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

#### 8.05 *Federal Requirements*

- A. **Agency Concurrence.** Signature of a duly authorized representative of Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.
- B. **Audit and Access to Records.** Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement,

for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

- C. ***Restrictions on Lobbying.*** Engineer and each Consultant shall comply with Restrictions on Lobbying if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. ***Suspension and Debarment.*** Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - lower tier transactions - to the Owner who will forward it the USDA, Rural Development processing office.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: Cumberland County

By: Kenneth S. Edge  
Print name: Kenneth S. Edge  
Title: Chairman  
Date Signed: 8.3.15

Engineer: McGill Associates, P.A.

By: Michael S. Apke  
Print name: Michael S. Apke, P.E.  
Title: Principal  
Date Signed: 5/14/15

Engineer License or Firm's Certificate No. (if required):  
C-0459

State of: North Carolina

Address for Owner's receipt of notices:  
117 Dick Street  
Fayetteville, North Carolina 28301

Address for Engineer's receipt of notices:  
5 Regional Circle, Suite A  
Pinehurst, North Carolina 28374

Designated Representative (Paragraph 8.03.A):  
Jeffery P. Brown, P.E.

Title: Engineer and Infrastructure Director  
Phone Number: 910-678-7633  
E-Mail Address: jbrown@co.cumberland.nc.us

Designated Representative (Paragraph 8.03.A):  
Michael S. Apke, P.E.

Title: Principal  
Phone Number: 910-295-3159  
E-Mail Address: mike.apke@mcgillengineers.com

**THIS INSTRUMENT HAS BEEN PRE-AUDITED  
IN THE MANNER REQUIRED BY LOCAL  
GOVERNMENT BUDGET AND FISCAL  
CONTROL ACT.**

Ericka Evans  
County Finance Director

**APPROVED FOR LEGAL SUFFICIENCY**

BY: see attached memo  
**County Attorney's Office**

**RICKEY L. MOOREFIELD**  
County Attorney



**PHYLLIS P. JONES**  
Assistant County Attorney

**ROBERT A. HASTY, JR.**  
Assistant County Attorney

**OFFICE OF THE COUNTY ATTORNEY**

5<sup>th</sup> Floor, New Courthouse • P.O. Box 1829 • Suite 551 • Fayetteville, North Carolina 28302-1829  
(910) 678-7762

**MEMORANNDUM**

TO: Amy Hall, Public Utilities  
FROM: Phyllis P. Jones *[Signature]*  
SUBJECT: Legal Review of the Engineering Agreement with McGill Associates for Bragg Estates  
DATE: July 13, 2015

No opinion is rendered as to § 6.06 D.2—*Payments Upon Termination* because the costs are not determinable from the face of the contract. No opinion is rendered as to the open-ended indemnity clause referenced in §6.11.B *Indemnification and Mutual Waiver* and the attached Exhibit I—"Limitations of Liability referenced therein. This contract is approved for legal sufficiency subject to the limitations stated above and to the contract being properly executed and pre-audited.

This is **EXHIBIT A**, consisting of [ 17 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

## **Engineer's Services**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

#### **A1.01 Study and Report Phase**

**A. Engineer shall:**

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
  - a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions.
  - b. ~~If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions. In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.~~
  - c. ~~If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [ ] [insert specific number] alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~
2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.
4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and

evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.

6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.
8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs. **The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency."**
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
10. When mutually agreed **and approved by the Agency**, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
14. Perform or provide the following other Study and Report Phase tasks or deliverables: **Provide an Environmental Report as defined at 7 CFR 1794 and RUS Bulletin 1794A-602 or other Agency approved format. The Environmental Report must be concurred in by the Agency.**

15. Furnish [ 1 ] review copies of the Report and any other Study and Report Phase deliverables to Owner within [ 60 ] days of the Effective Date and review it with Owner. Within [ 30 ] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
  16. ~~Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish [ ] copies of the revised Report and any other Study and Report Phase deliverables to the Owner within [ ] days of receipt of Owner's comments.~~ **Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within [ 30 ] days of receipt of Owner's and Agency's comments.**
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

#### A1.02 *Preliminary Design Phase*

- A. After acceptance by Owner **and concurrence by Agency** of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
  2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner **and Agency** during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
  3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
  4. Visit the Site as needed to prepare the Preliminary Design Phase documents.



5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
  6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
  7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
  8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable. **Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.**
  9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:  
[ NONE ].
  10. Furnish [ 1 ] review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within [ 120 ] days of authorization to proceed with this phase, and review them with Owner. Within [ 30 ] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
  11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner [ 1 ] copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within [ 30 ] days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

#### A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other

Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
9. Perform or provide the following other Final Design Phase tasks or deliverables: **The Engineer shall identify the building codes, and accessibility standards used in the design and indicate them on the drawings and specifications and certify that final drawings and specifications, comply with those standards.**
10. Furnish for review by Owner, its legal counsel, and Agency and other advisors, [ 1 ] copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within [ 60 ] days of authorization to proceed with the Final Design Phase, and review them with Owner. Within [ 30 ] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.

11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit [ 1 ] final copies of such documents to Owner within [ 60 ] days after receipt of Owner's comments and instructions.
  12. **Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer's Certificate of Final Plans and Specifications (Attachment GC-B) for this purpose.**
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), **and all final design phase deliverables have been accepted by Owner.**
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is [ 1 ]. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

#### *A1.04 Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.



2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents. **Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible.**
  3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
  4. Consult with Owner as to the qualifications of prospective contractors.
  5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
  6. ~~If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.~~ **The Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved "or equals" and substitutes. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.**
  7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
  8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
  9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: **Upon award of the construction contract, the Engineer shall furnish to Owner five (5) executed copies of the Contract Documents and one electronic copy of the signed documents, including drawings and specifications.**
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

#### A1.05 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700,

Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
4. *Pre-Construction Conference:* Participate in **and chair** a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* ~~If requested by Owner to do so,~~ maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:

- a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
  - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
  - c. **The visits described in Article A1.05.A9a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.**
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.

12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. **Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations.**
19. *Inspections and Tests:*
  - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or

approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.

- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
  - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
  - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose

responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. ~~Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.~~ **Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner.**
23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables.
  - a. **Upon substantial completion, the engineer shall provide a copy of the certificate of substantial completion to the Agency.**
25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will

not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

#### A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
  2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
  3. Perform or provide the following other Post-Construction Phase tasks or deliverables:  
[None ]
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

## PART 2 – ADDITIONAL SERVICES

#### A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements **not including the preparation of the Environmental Report defined under Basic Services**; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2 **but only if the Owner's request is made after completion of the Study and Report Phase.**
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
  - a. detailed consideration of operations, maintenance, and overhead expenses;
  - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
  - c. preparation of appraisals;
  - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
  - e. detailed quantity surveys of materials, equipment, and labor; and
  - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
  - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.

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Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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- b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
  12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
  13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
  14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
  15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
  16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
  17. (Deleted)
  18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
  19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
  20. Preparation of operation, maintenance, and staffing manuals.
  21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
  22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
  23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.

24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

#### A2.02 *Additional Services Not Requiring Owner's Written Authorization*

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
  1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
  2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; ~~services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project;~~ evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
  3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
  4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
  5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.

6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of [ 3 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

## **Owner's Responsibilities**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - 1. Property descriptions.
  - 2. Zoning, deed, and other land use restrictions.
  - 3. Utility and topographic mapping and surveys.

4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
  6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
  7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for 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. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. 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.
- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: [None]



This is **EXHIBIT C**, consisting of [ 8 ] pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated June 15, 2015.

**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-1: Basic Services – Lump Sum**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

**C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment**

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. A Lump Sum amount of \$[157,000] based on the following estimated distribution of compensation:

a. Study and Report Phase	\$[27,000]
b. Preliminary Design Phase	\$[42,000]
c. Final Design Phase	\$[52,000]
d. Bidding and Negotiating Phase	\$[10,000]
e. Construction Phase	\$[19,500]
f. Post-Construction Phase	\$[ 6,500]
  2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner **and Agency**.
  3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.
  4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges): [N/A]
  5. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding [12] months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted **with concurrence of the Owner and Agency.**



## **COMPENSATION PACKET RPR-2: Resident Project Representative – Standard Hourly Rates**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

### **C2.04 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment**

#### **A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:**

1. **Resident Project Representative Services:** For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$[80,000 ] based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a [240] day construction schedule. **This amount includes an estimated \$74,000 in RPR services and \$6,000 in mileage and other reimbursables.**
2. **If rate(s) for RPR services is not indicated in Appendix Two of Exhibit C "Standard Hour/Rate Schedule", the Standard Hourly Rate for RPR services is \$75 per hour.**

#### **B. Compensation for Reimbursable Expenses:**

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of [1.1].
4. The Reimbursable Expenses Schedule will be adjusted annually (as of [TBD]) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred by the Owner and Agency.**

C. *Other Provisions Concerning Payment Under this Paragraph C2.04:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of [ 1.1 ].
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
  - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner **and Agency** written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at **no** cost.

## COMPENSATION PACKET AS-1: Additional Services – Standard Hourly Rates

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

### C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of [1.1].
4. The Reimbursable Expenses Schedule will be adjusted annually (as of June) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

C. *Other Provisions Concerning Payment for Additional Services:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of [1.1].

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at **no** cost.

This is **Appendix 1 to EXHIBIT C**, consisting of [ 1 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

### **Reimbursable Expenses Schedule**

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Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

Mileage - \$0.65 per mile

GPS Equipment - \$25.00 per hour

Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

Associated services required by the project such as soil analysis, biological surveys, archaeological surveys, etc. shall be at cost plus ten (10) percent.

This is **Appendix 2 to EXHIBIT C**, consisting of [ 1 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

## Standard Hourly Rates Schedule

### A. Standard Hourly Rates:

- Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
- The Standard Hourly Rates apply only as specified in Article C2.

### B. Schedule:

Hourly rates for services performed on or after the date of the Agreement are:

Firm Principal	\$ 180.00	CADD Operator I	\$ 70.00
Program Services Manager I	\$ 140.00	CADD Operator II	\$ 75.00
Program Services Manager II	\$ 155.00	CADD Operator III	\$ 80.00
Senior Project Manager I	\$ 155.00	Construction Services Manager I	\$ 110.00
Senior Project Manager II	\$ 165.00	Construction Services Manager II	\$ 120.00
Project Manager I	\$ 130.00	Construction Administrator I	\$ 85.00
Project Manager II	\$ 140.00	Construction Administrator II	\$ 95.00
Project Engineer I	\$ 100.00	Construction Administrator III	\$ 105.00
Project Engineer II	\$ 110.00	Construction Field Representative I	\$ 70.00
Project Engineer III	\$ 120.00	Construction Field Representative II	\$ 75.00
Engineering Associate I	\$ 80.00	Construction Field Representative III	\$ 80.00
Engineering Associate II	\$ 85.00	Planner I	\$ 85.00
Engineering Technician I	\$ 75.00	Planner II	\$ 95.00
Engineering Technician II	\$ 85.00	Planner III	\$ 105.00
Engineering Technician III	\$ 95.00	Surveyor I	\$ 85.00
Electrical Engineer I	\$ 100.00	Surveyor II	\$ 95.00
Electrical Engineer II	\$ 110.00	Surveying Associate I	\$ 70.00
Electrical Engineer III	\$ 120.00	Surveying Associate II	\$ 75.00
Electrical Engineering Associate I	\$ 80.00	Survey Technician I	\$ 55.00
Electrical Engineering Associate II	\$ 85.00	Survey Technician II	\$ 60.00
Electrical Engineering Technician I	\$ 75.00	Survey Technician III	\$ 65.00
Electrical Engineering Technician II	\$ 85.00	Administrative Assistant (I-III)	\$ 60.00
Electrical Engineering Technician III	\$ 95.00	Accounting Assistant (I-II)	\$ 75.00



This is **EXHIBIT D**, consisting of [ 5 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

## **Duties, Responsibilities, and Limitations of Authority of Resident Project Representative**

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

### **ARTICLE 1 - SERVICES OF ENGINEER**

#### **D1.01 Resident Project Representative**

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. **Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.**
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
  - 1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
  - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
  - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings

(but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
  - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
  - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
  - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
  - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
  - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected,



- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- ~~b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.~~
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.



ENGINEERS JOINT CONTRACT  
DOCUMENTS COMMITTEE

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**NOTICE OF ACCEPTABILITY OF WORK**

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**PROJECT: BRAGG ESTATES WASTEWATER COLLECTION SYSTEM EXPANSION**

**OWNER: CUMBERLAND COUNTY**

**CONTRACTOR:**

**OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:**

**EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:**

**ENGINEER: MCGILL ASSOCIATES, P.A.**

**NOTICE DATE:**

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**To:** \_\_\_\_\_  
**Owner**

**And To:** \_\_\_\_\_  
**Contractor**

**From:** \_\_\_\_\_  
**Engineer**

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, and the following terms and conditions of this Notice:

**CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK**

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

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Exhibit E – Notice of Acceptability of Work.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

This is **EXHIBIT F**, consisting of [ 2 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

### **Construction Cost Limit**

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Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

#### **F5.02    *Designing to Construction Cost Limit***

- A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of \$[1,540,000].
- B. A bidding or negotiating contingency of [10] percent will be added to any Construction Cost limit established.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then-established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit. **Engineer's determinations on types and quality of materials, equipment, and component systems to be included in the Drawings and Specifications are subject to approval by Agency in accordance with requirements of 7 CFR 1780, including open and free competition.**
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for

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Exhibit F – Construction Cost Limit.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

This is **EXHIBIT G**, consisting of [ 2 ] pages,  
referred to in and part of the **Agreement**  
**between Owner and Engineer for Professional**  
**Services** dated June 15, 2015.

## **Insurance**

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Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

### **G6.05 Insurance**

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
  - 1) Bodily injury, each accident: \$[500,000]
  - 2) Bodily injury by disease, each employee: \$[500,000]
  - 3) Bodily injury/disease, aggregate: \$[500,000]
- c. General Liability --
  - 1) Each Occurrence (Bodily Injury and Property Damage): \$[1,000,000]
  - 2) General Aggregate: \$[2,000,000]
- d. Excess or Umbrella Liability --
  - 1) Per Occurrence: \$[1,000,000]
  - 2) General Aggregate: \$[1,000,000]
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):  
\$[1,000,000]
- f. Professional Liability --
  - 1) Each Claim Made \$[2,000,000]
  - 2) Annual Aggregate \$[2,000,000]
- g. Other (specify): \$[N/A]

2. By Owner:

- a. Workers' Compensation: Statutory

b. ~~Employer's Liability~~

- 1) ~~Bodily injury, Each Accident~~ \$[ ]
- 2) ~~Bodily injury by Disease, Each Employee~~ \$[ ]
- 3) ~~Bodily injury/Disease, Aggregate~~ \$[ ]

c. General Liability --

- 1) General Aggregate: \$[1,000,000]
- 2) Each Occurrence (Bodily Injury and Property Damage): \$[1,000,000]

d. ~~Excess Umbrella Liability~~

- 1) ~~Per Occurrence:~~ \$[ ]
- 2) ~~General Aggregate:~~ \$[ ]

e. ~~Automobile Liability - Combined Single Limit (Bodily Injury and Property Damage):~~

\$[ ]

f. Other (specify): \$[N/A]

B. *Additional Insureds:*

- 1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

a. [None]  
Engineer

b. [None]  
Engineer's Consultant

c. [None]  
Engineer's Consultant

d. [ ]  
[other]

- 2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
- 3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.



This is **EXHIBIT H**, consisting of [ 2 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

## **Dispute Resolution**

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Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

### **~~H6.08 Dispute Resolution~~**

~~A. **Mediation:** Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by [here insert name of mediator, or mediation service]. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.~~

**[or]**

~~A. **Arbitration:** All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the [insert the name of a specified arbitration service or organization here] rules effective at the Effective Date, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph H6.09.A will be specifically enforceable under prevailing law of any court having jurisdiction.~~

- ~~1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the [specified arbitration service or organization]. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.~~
- ~~2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$[ ] (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$[ ] (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$[ ] (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.~~
- ~~3. The rules of any arbitration shall be supplemented to include the following: The award rendered by the arbitrators shall be in writing, and shall include (a) a precise breakdown of~~

~~the award, and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.~~

- ~~4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.~~
- ~~5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Paragraph H6.09.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.~~
- A. The parties must resolve any claim, dispute or other matter in contention arising out of, or relating to, this Contract which involves \$15,000 or more through the following procedure. The parties shall first negotiate in good faith to reach an equitable settlement to the dispute. If a negotiated settlement cannot be reached within 10 business days, the parties shall submit to mediation. The parties shall select a mediator, licensed by either the North Carolina or federal courts and mutually agreeable to all parties in the dispute to conduct the proceedings which shall be held at the Owner's place of business. If the parties cannot select a mediator within 10 business days, then the Owner shall select a mediator (or, if the Owner is a party to the dispute, the Cumberland County Trial Court Administrator). The mediator's cost shall be equally shared by all parties to the dispute. If a mediated settlement cannot be reached, the final recourse to the aggrieved party is legal action instituted and tried in the General Court of Justice of North Carolina under North Carolina Law with venue for trial being Cumberland County. No party shall have a right to resort to litigation until mediation shall first have occurred and not been successful.**

**In accordance with North Carolina General Statute 143-135.26(12) and as a condition to this Contract, the prime contractor shall incorporate this dispute resolution clause in any and all contracts with first-tier subcontractors who in turn shall incorporate this clause in any contracts with lower-tier subcontractors.**

This is **EXHIBIT I**, consisting of [ 1 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

## **Limitations of Liability**

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Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

**A. *Limitation of Engineer's Liability***

1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, 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.
  2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for 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 this Agreement or the Project, from any cause or causes, including but not limited to:
- B. *Indemnification by Owner:*** To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.



This is **EXHIBIT J**, consisting of [ 1 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

### **Special Provisions**

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Paragraph(s) [ C2.01 ] of the Agreement is/are amended to include the following agreement(s) of the parties:

**1. Section C2.01 (Compensation For Basic Services) of the Agreement is amended to include the following agreement(s) of the parties:**

Cumberland County previously issued Purchase Order Number [Q1014] to McGill Associates, P.A. on [2/7/14] in the amount of \$27,000 for preparation of the Preliminary Engineering Report and Environmental Report for this project.

The total amount of Basic Services and Resident Project Representative Services in this Agreement, less the previous purchase order and payments is therefore [\$210,000].



**OFFICE OF THE COUNTY ATTORNEY**

**MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: COUNTY ATTORNEY**

**DATE: 5/15/2020**

**SUBJECT: ENGAGING OUTSIDE COUNSEL TO PROVIDE TITLE OPINION FOR  
EASEMENT PARCELS**

**BACKGROUND**

Upon completion of the engineering for the Bragg Estates sewer system, it was determined that easements would be required on approximately 30 parcels within the Bragg Estates Subdivision. The County Attorney's Office does not have the staff to complete this work at this time. County Attorney requests the Board to authorize the District to engage local real estate attorney, Rebecca Person, to do this work. Ms. Person has an active real estate practice and does title work for the PWC and NCDOT. She has agreed to do this work for a flat fee of \$500 per parcel. The county attorney has examined the title to some parcels in this subdivision and believes this to be a reasonable fee.

**RECOMMENDATION / PROPOSED ACTION**

County attorney recommends the Board authorizes the Bragg Estates Water and Sewer District to engage attorney Rebecca Person to complete the title work for the acquisition of sewer easements in the Bragg Estates Subdivision at a flat fee of \$500 per parcel.



## OFFICE OF THE COUNTY MANAGER

### MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: TRACY JACKSON, ASST. COUNTY MANAGER/INTERIM WORKFORCE DIRECTOR**

**DATE: 4/20/2020**

**SUBJECT: SELECTION OF A FISCAL YEAR 2021 WORKFORCE INNOVATION AND OPPORTUNITY ACT TITLE I PROGRAM SERVICES PROVIDER AND ONE STOP CENTER MANAGER**

#### **BACKGROUND**

Cumberland County receives annual funding from the state to provide workforce development services through the Workforce Innovation and Opportunity Act (WIOA). These important services are focused on local employers, unemployed and underemployed adults, veterans, dislocated workers, In School Youth (aged 14-21) and Out of School Youth (aged 16-24). These services were contracted to Educational Data Systems, Inc, also known as “EDSI,” for FY19 and the first 6 months of FY20. EDSI’s contract ended December 31, 2019 and to date has not been extended.

The RFP for FY21 WIOA Title I Program Services was released on January 6, 2020 (copy attached) and the deadline for receipt of proposals was February 17, 2020. Proposals were received from Eckerd Concepts, EDSI, and Two Hawk Workforce Services. Proposals were evaluated by an ad hoc review committee, which consisted of Workforce Development Board and Youth Council members. The review committee reviewed submissions for the following information which were weighted as indicated: customer flow, staffing, statement of work, and program design (36%); organizational experience, past performance, and references (23%); transition and staff training plan (9%); program cost/budget proposal (14%); and program metrics (9%). Bidders made oral presentations (9%) to supplement their proposals on March 4, 2020. **The review committee recommended Two Hawk Workforce Services as the most qualified and responsive proposer which was then considered and approved by the Executive Committee of the Workforce Development Board on April 3, 2020.** A copy of the scoring results for each of the proposed service providers is attached.

Estimated allocations for FY21 for the specific program areas in Cumberland County were included in the

RFP as follows:

1. \$800,000 for adult services programs
2. \$550,000 for dislocated worker programs
3. \$800,000 for youth services programs

These not-to-exceed amounts are separate and apart from administrative costs and may be subject to change as they were based upon a prior estimate of available funds. It is anticipated that the exact funding amount will be known at or about the time of final contract negotiations. All contracts for services will be on a cost-reimbursement basis, based upon performance, and may be extended for two additional years at the discretion of the County.

With Board of Commissioner approval, the Workforce Development Board will negotiate a FY21 contract with Two Hawk Workforce Services for administrative costs associated with providing the aforementioned services. A proposed contract is to be presented for the consideration of the Board of Commissioners prior to July 1, 2020.

### **RECOMMENDATION / PROPOSED ACTION**

This item was heard at the May14, 2020 Board of Commissioners' Agenda Session meeting, and the Board agreed to forward it as a Consent Agenda item for approval of the following actions at the May 18, 2020 Board of Commissioners' meeting:

1. Approval of Two Hawk Workforce Services as the successful proposer to provide WIOA Title I Youth, Adult, and Dislocated Worker program services, and One Stop Operator Services for the Cumberland County NCWorks Career Center in FY21, and
2. Authorization to negotiate a FY21 contract for these services with Two Hawk Workforce Services

### **ATTACHMENTS:**

Description	Type
Provider Scoring Summaries	Backup Material
One Stop Summary	Backup Material

**CUMBERLAND COUNTY WORKFORCE DEVELOPMENT BOARD**  
**RFP 188 - WFD WIOA Title I Program Services PY2020/FY2021 - Evaluation Sheet \***

		EVALUATION CRITERIA							
		Customer Flow, Staffing, Statement of Work, and Program Design	Organizational Experience, Past Performance, and References	Transition and Staff Training Plan	Program Cost/ Budget Proposal	Program Metrics	Presentation	Total Points	
		40 Points Max	25 Points Max	10 Points Max	15 Points Max	10 Points Max	10 Points Max	110 Points Max	
	CARL MANNING	35	20	8	9	10	9	91	
	DIANA POTTS	35	15	5	10	5	5	75	
	JENNIFER WATSON	25	15	10	10	10	10	80	
	KELSEY ALLEN	40	25	10	15	10	10	110	
	DR. BROWN	36	22.5	8.5			8	75	
								431	

\* All information is *confidential* until an award is finalized.



EDSI

# CUMBERLAND COUNTY WORKFORCE DEVELOPMENT BOARD

RFP 188 - WFD WIOA Title I Program Services PY2020/FY2021 - Evaluation Sheet \*

		EVALUATION CRITERIA							
		Customer Flow, Staffing, Statement of Work, and Program Design	Organizational Experience, Past Performance, and References	Transition and Staff Training Plan	Program Cost/ Budget Proposal	Program Metrics	Presentation	Total Points	
		40 Points Max	25 Points Max	10 Points Max	15 Points Max	10 Points Max	10 Points Max	110 Points Max	
	CARL MANNING	20	10	4	9	6	7	56	
	DIANA POTTS	30	15	5	5	1	2	58	
	JENNIFER WATSON	10	5	5	5	5	5	35	
	KELSEY ALLEN	30	0	10	10	10	10	70	
	DR. BROWN	26.8	17.5	8			8	60.3	
								279.3	

\* All information is confidential until an award is finalized.

Two Hawk Services

## CUMBERLAND COUNTY WORKFORCE DEVELOPMENT BOARD

RFP 188 - WFD WIOA Title I Program Services PY2020/FY2021 - Evaluation Sheet \*

		EVALUATION CRITERIA								
		Customer Flow, Staffing, Statement of Work, and Program Design	Organizational Experience, Past Performance, and References	Transition and Staff Training Plan	Program Cost/ Budget Proposal	Program Metrics	Presentation	Total Points		
		40 Points Max	25 Points Max	10 Points Max	15 Points Max	10 Points Max	10 Points Max	110 Points Max		
	CARL MANNING	35	20	9	10	10	10	104		
	DIANA POTTS	35	20	10	10	8	5	88		
	JENNIFER WATSON	25	20	10	10	10	10	85		
	KELSEY ALLEN	35	25	10	15	10	5	100		
	DR. BROWN	32	21.25	7.5			7	67.5		
								444.5		

\* All information is confidential until an award is finalized.

Two Hawk Services

## CUMBERLAND COUNTY WORKFORCE DEVELOPMENT BOARD

RFP 188 - WFD WIOA Title I One Stop Operator PY2020/FY2021 - Evaluation Sheet \*

		EVALUATION CRITERIA							
		Experience and Philosophy	Approach	Assurance and Flexibility	Budget/Narrative			Total Points	
		30 Points Max	50 Points Max	10 Points Max	10 Points Max			100 Points Max	
	KEVIN BROOKS	25	50	10	10			95	
	DIANA POTTS	28	47	9	10			94	
	JENNIFER WATSON	30	30	10	10			70	
	KELSEY ALLEN	30	50	5	10			95	
	DR. BROWN	27	42	10	10			89	
								443	

\* All information is confidential until an award is finalized.



## FINANCE OFFICE

### **MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: VICKI EVANS, FINANCE DIRECTOR**

**DATE: 5/14/2020**

**SUBJECT: ENGAGEMENT WITH ELLIOTT DAVIS FOR CENSUS DATA TESTING FOR THE LOCAL GOVERNMENT EMPLOYEE RETIREMENT SYSTEM (LGERS) EMPLOYER PARTICIPANTS**

#### **BACKGROUND**

The Office of State Auditor (OSA) selected a sample of 49 employer participants of the LGERS and has asked those units and their independent auditors to provide assurance to OSA on the accuracy of certain elements of census data. The objective of census data testing conducted through an external audit engagement is to provide assurance to OSA and the Department of State Treasurer that the census data being provided by employers is materially correct.

Cumberland County was last selected for this type of data testing during the audit for fiscal year 2016. This is a separate engagement from the fiscal year 2020 contract to audit accounts at an additional cost of \$7,500. The report is due to the Local Government Commission on or before October 31, 2020.

#### **RECOMMENDATION / PROPOSED ACTION**

At the May 14, 2020 agenda session meeting, the Board of County Commissioners approved placing the following action as a consent item on the May 18, 2020 Board of Commissioners' meeting agenda:

Approval of the engagement with Elliott Davis for Census Data Testing for the Local Government Employee Retirement System (LGERS) Employer Participants, totaling \$7,500.

#### **ATTACHMENTS:**

Description

Engagement Letter - Elliott Davis LGERS testing

Type

Backup Material



April 30, 2020

The Board of County Commissioners and Management  
of Cumberland County, North Carolina

This letter is to explain our understanding of the arrangements regarding our engagement to examine the employee census data and related underlying payroll records of Cumberland County (the County) for the year ended December 31, 2019, in accordance with attestation standards established by the American Institute of Certified Public Accountants. We ask that you confirm this understanding.

### **Engagement Services**

We will perform an examination of the employee census data and related underlying payroll records in relation to established or stated criteria, which are the plan information and records of the Local Government Employees' Retirement System (LERS). Accordingly, we will perform such procedures as we consider necessary to evaluate the employee census data and related underlying payroll records in relation to the established or stated criteria for the purpose of expressing positive assurance on the accuracy and completeness of the information provided to LERS.

The services that we will perform are not designed and cannot be relied upon to disclose errors, fraud or illegal acts, should any exist. However, we will inform the appropriate level of management of any material errors that come to our attention and any fraud or illegal acts that come to our attention, unless they are clearly inconsequential.

Furthermore, the services were not designed to provide assurance on internal control or identify significant deficiencies or material weaknesses. However, we will communicate to management and the Board of County Commissioners any significant deficiencies or material weaknesses that become known to us during the course of the engagement.

### **County's Responsibilities**

Management is responsible for the accuracy and completeness of the employee census data and related underlying payroll records. Management is responsible for providing us with a written management representation letter confirming certain representations made during the course of the engagement. Management is responsible for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of the employee census data and related underlying payroll records that are free from material misstatement, whether due to fraud or error.

Management is responsible for identifying and ensuring that the entity complies with the laws and regulations applicable to its activities, and for informing us about all known material violations of such laws or regulations. In addition, management is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected

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fraud affecting the entity involving management, employees who have significant roles in internal control, and others where the fraud could have a material effect on the financial statements. Management is also responsible for informing us of its knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, analysts, regulators, short sellers or others.

Because Elliott Davis, PLLC will rely on the County and its management and the Board of County Commissioners to discharge the foregoing responsibilities, the County holds harmless and indemnifies Elliott Davis, PLLC and its shareholders and employees from all claims, liabilities, losses and costs arising in circumstances where there has been a knowing misrepresentation by a member of the County's management that has caused, in any respect, Elliott Davis, PLLC's breach of contract or negligence. This provision will survive termination of this letter.

### **Records and Assistance**

The attestation standards require that we perform our examination engagement only if we have reason to believe that the employee census data and related underlying payroll records are capable of evaluation against criteria that are suitable and available to users. If circumstances arise relating to the condition of the County's records, the availability of appropriate evidence or indications of a significant risk of material misstatement of the employee census data and related underlying payroll records because of error or fraud that, in our professional judgment, prevent us from completing the engagement, forming an opinion or issuing our report, we retain the unilateral right to take any course of action permitted by professional standards, including declining to express an opinion or issue a report, or withdrawing from the engagement.

During the course of our engagement, we may accumulate records containing data that should be reflected in the County's books and records. The County will determine that all such data, if necessary, will be so reflected. Accordingly, the County will not expect us to maintain copies of such records in our possession.

The assistance to be supplied by County personnel, including the preparation of schedules and analyses of accounts, will be discussed and coordinated with Vicki Evans, Finance Director. The timely and accurate completion of this work is an essential condition to our completion of our services and issuance of our report.

### **Fees, Costs, and Access to Documentation**

Our fees for the services described above are based upon the value of the services performed and the time required by the individuals assigned to the engagement plus directly billed expenses, including report processing, and travel. Interim billings will be submitted as work progresses and as expenses are incurred. Billings are due upon submission. Our estimated fees for the above services are \$7,500. Our fees and timely completion of our work assumes cooperation from County personnel, timely responses to our inquiries, and that unexpected circumstances will not be encountered during the engagement. If any of the aforementioned criteria are not met, we will discuss a revised fee estimate before we incur additional costs.

In the event we are requested or authorized by the County or are required by government regulation, subpoena or other legal process to produce our documentation or our personnel as witnesses with respect to our engagements for the County, the County will, so long as we are not a party to the

proceeding in which the information is sought, reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel, incurred in responding to such requests.

Our professional standards require that we perform certain additional procedures on current and previous years' engagements whenever a shareholder or professional employee leaves the firm and is subsequently employed by or associated with a client. Accordingly, the County agrees it will compensate Elliott Davis, PLLC for any additional costs incurred as a result of the Company's employment of a shareholder or professional employee of Elliott Davis, PLLC.

#### **Claim Resolution**

Cumberland County and Elliott Davis, PLLC agree that no claim arising out of services rendered pursuant to this arrangement letter shall be filed more than the earlier of two years after the date of the written report issued by Elliott Davis, PLLC or the date of this arrangement letter if no report has been issued. In no event shall either party be liable to the other for claims of punitive, consequential, special, or indirect damages. Elliott Davis, PLLC's liability for all claims, damages and costs of the County arising from this engagement is limited to the amount of fees paid by the County to Elliott Davis, PLLC or the services rendered under this arrangement letter.

#### **Information Security - Miscellaneous Terms**

Elliott Davis, PLLC is committed to the safe and confidential treatment of the County's proprietary information. Elliott Davis, PLLC is required to maintain the confidential treatment of client information in accordance with relevant industry professional standards which govern the provision of services described herein. The County agrees that it will not provide Elliott Davis, PLLC with any unencrypted electronic confidential or proprietary information, and the parties agree to utilize commercially reasonable measures to maintain the confidentiality of the County's information, including the use of collaborate sites to ensure the safe transfer of data between the parties.

Elliott Davis, PLLC may terminate this relationship immediately in its sole discretion if Elliott Davis, PLLC determines that continued performance would result in a violation of law, regulatory requirements, applicable professional standards or Elliott Davis, PLLC's client acceptance or retention standards, or if the County is placed on a verified sanctioned entity list or if any director or executive of, or other person closely associated with, the County or its affiliates is placed on a verified sanctioned person list, in each case, including but not limited to lists promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. State Department, the United Nations Security Council, the European Union or any other relevant sanctioning authority.

If any term or provision of this arrangement letter is determined to be invalid or unenforceable, such term or provision will be deemed stricken and all other terms and provisions will remain in full force and effect.

#### **Parties' Understandings Concerning Situation Around COVID-19**

Elliott Davis and Cumberland County acknowledge that, at the time of the execution of this arrangement letter, federal, state and local governments, both domestic and foreign, have restricted travel and/or the movement of their citizens due to the ongoing and evolving situation around COVID-19. In addition, like many organizations and companies in the United States and around the globe, Elliott Davis has restricted its employees from travel and onsite work, whether at a client facility or Elliott Davis facility, to protect the health of both Elliott Davis's and its clients' employees. Accordingly, to the extent that any of the services described in this arrangement letter requires or relies on Elliott Davis or Cumberland County personnel to travel and/or perform work onsite, either at Cumberland County's or Elliott Davis's facilities,

including, but not limited to, maintaining business operations and/or IT infrastructure, Elliott Davis and Cumberland County acknowledge and agree that the performance of such work may be delayed, significantly or indefinitely, and thus certain services described herein may need to be rescheduled and/or suspended at either Elliott Davis's or Cumberland County's sole discretion. Elliott Davis and Cumberland County agree to provide the other with prompt written notice (email will be sufficient) in the event any of the services described herein will need to be rescheduled and/or suspended. Elliott Davis and Cumberland County also acknowledge and agree that any delays or workarounds due to the situation surrounding COVID-19 may increase the cost of the services described herein. Elliott Davis will obtain Cumberland County's prior written approval (email will be sufficient) for any increase in the cost of Elliott Davis services that may result from the situation surrounding COVID-19.

### Reporting

We will issue a written report upon completion of our examination of the employee census data and related underlying payroll information in relation to established or stated criteria. Our report will be addressed to the Board of County Commissioners. We cannot guarantee that positive assurance on the employee census data and related underlying payroll records will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement.

This letter constitutes the complete and exclusive statement of agreement between Elliott Davis and the County, superseding all proposals, oral or written, and all other communications, with respect to the terms of the engagement between the parties.

If this letter defines the arrangements as the County understands them, please sign and date the attached copy and return it to us. We appreciate your business.

ELLIOTT DAVIS, PLLC



Thomas J. McNeish, CPA  
Shareholder

Confirmed on behalf of **Cumberland County**:

\_\_\_\_\_  
W. Marshall Faircloth, Chairman / Date  
*Board of County Commissioners*

\_\_\_\_\_  
Amy H. Cannon, County Manager / Date

*This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.*

\_\_\_\_\_

*Approved for Legal Sufficiency*

\_\_\_\_\_





**OFFICE OF THE COUNTY MANAGER**

**MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: AMY H. CANNON, COUNTY MANAGER**

**DATE: 1/29/2020**

**SUBJECT: CONSIDERATION OF REVISED SCHEDULE FOR FISCAL YEAR 2021  
BUDGET WORK SESSIONS AND BUDGET PUBLIC HEARING**

**BACKGROUND**

A budget schedule was previously approved with a presentation of the FY2021 Recommended Budget at a separate meeting on Thursday, May 28, 2020. Management recommends canceling this meeting and including the FY2021 Recommended Budget Presentation as an Item of Business at your June 1, 2020 meeting.

**RECOMMENDATION / PROPOSED ACTION**

The following schedule is recommended for consideration with all meetings to be held in the Judge E. Maurice Braswell Courthouse, 117 Dick Street, Fayetteville, NC.

- Monday, June 1, 2020 at 9:00 AM - Budget Presentation
- Wednesday, June 3, 2020 at 5:30 PM - Budget Work Session
- Monday, June 8, 2020 at 7:00 PM - Budget Public Hearing / Work Session
- Tuesday, June 9, 2020 at 5:30 PM - Budget Work Session
- Thursday, June 11, 2020 at 1:00 PM - Budget Work Session
- Wednesday, June 17, 2020 at 5:30 PM - Budget Work Session

Adopt the schedule for FY21 budget work sessions and public hearing as modified.



**OFFICE OF THE COUNTY MANAGER**

**MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: AMY H. CANNON, COUNTY MANAGER**

**DATE: 5/14/2020**

**SUBJECT: UPDATE ON REVENUE TRENDS AMID COVID-19**

**BACKGROUND**

In response to an inquiry made by the Board of Commissioners at the May 14, 2020 Agenda Session I would like to provide the following information regarding revenue trends during the COVID-19 pandemic. As part of our data compilation for the FY21 budget process, Budget staff has researched the most significant revenue sources to try to determine the potential impact of the pandemic on those revenues.

The 'stay-at-home' order was issued by Governor Cooper towards the end of March 2020. Therefore, most of the revenues collected in subsequent months have not been reported or distributed to the County. However, Budget staff has reached out to local hoteliers, restaurants and our Tax Office to ascertain impacts on these revenues. The most difficult part of this exercise is that the true impact of COVID-19 on revenues will not start to fully emerge until late June or July.

What has been observed as of today:

- Ad valorem tax collections are trending lower than previous years, as much as one percent
- Food and beverage retailers report significant reductions due to restaurant and bar closures resulting in reduced food and beverage tax collections of approximately 30% less for the month of March 2020 versus March 2019
- Occupancy tax for March appears to be trending approximately 35% lower than March 2019

- Sales for the month of March are approximately 16% lower than the same month last year

We will continue to monitor revenues over the course of the pandemic and phased re-opening of the State.

**RECOMMENDATION / PROPOSED ACTION**

For information purposes only.



**OFFICE OF THE COUNTY MANAGER**

**MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: TRACY JACKSON, ASSISTANT COUNTY MANAGER FOR ENVIRONMENTAL AND COMMUNITY SAFETY**

**DATE: 5/1/2020**

**SUBJECT: DEOBLIGATION OF HURRICANE MATTHEW COMMUNITY DEVELOPMENT BLOCK GRANT - DISASTER RECOVERY FUNDING BY THE NORTH CAROLINA OFFICE OF RECOVERY AND RESILIENCY AND ASSOCIATED BUDGET ORDINANCE AMENDMENT #200122**

**BACKGROUND**

The North Carolina Office of Recovery and Resiliency (NCORR) has formally notified the County that it has deobligated funding initially allocated for Hurricane Matthew. This was previously discussed with the Board of Commissioners at their December 12, 2019 Agenda Session meeting in which representatives from NCORR were present to explain the forthcoming deobligation of funds. The item was moved forward as an item of business at the December 16, 2019 regular meeting and a new subrecipient agreement with the State was approved at that time.

Attached is a copy of the letter sent to the County deobligating \$20,286,168.30 of the original Hurricane Matthew allocation of \$23,260,000 awarded to Cumberland County. A budget amendment is necessary to reduce the budget by the amount of the deobligated funds.

**RECOMMENDATION / PROPOSED ACTION**

This item was heard at the May 14, 2020 Board of Commissioners' Agenda Session meeting, and the Board agreed to forward it as an Item of Business for consideration of the following action at the May 18, 2020 Board of Commissioners' meeting:

Approve Budget Ordinance Amendment #200122 in the amount of \$20,199,473 recognizing the deobligation of these CDBG-DR funds.

**ATTACHMENTS:**

Description

Type





# North Carolina Department of Public Safety

## Office of Recovery and Resiliency

Roy Cooper, Governor  
Erik A. Hooks, Secretary

Michael A. Sprayberry, Director  
Laura H. Hogshead, Chief Operating Officer

Mr. Tracy Jackson, Assistant County Manager  
Cumberland County  
117 Dick Street  
Fayetteville, NC 28301

April 17, 2020

Mr. Jackson,

The North Carolina Department of Public Safety, Office of Recovery and Resiliency (NCORR) has recently enacted a new subrecipient agreement with Cumberland County that reflects the transition of the county's Community Development Block Grant – Disaster Recovery (CDBG-DR) funded housing recovery program from the county to NCORR. The new subrecipient agreement also makes clear that the county will continue to administer the infrastructure recovery program. The purpose of this memorandum is to clearly explain the change in budgets from the previous subrecipient agreement to the new subrecipient agreement.

### Previous Subrecipient Agreement Budget

In October 2017, the State of North Carolina awarded up to \$34,945,328 of CDBG-DR grant funds to support Cumberland County's recovery from Hurricane Matthew. Of this amount, a total of \$23,260,000 was allocated to the county through a subrecipient agreement executed on December 1, 2017. This budget included the cost of the homeowner recovery program, infrastructure, multi-family rental, supportive housing, the economic development, and the administrative and overhead costs of the county to run the entire CDBG-DR recovery program for the county. The only cost not covered by this budget was the administrative and program management costs of the State of North Carolina. The following table outlines the total agreement, amounts budgeted, and the amount remaining to be budgeted.

Funding Category	2019 SRA Allocation
<b>Total Subrecipient Agreement</b>	<b>\$23,260,000</b>
Budgets Established with the County	
Infrastructure/Community Recovery	\$3,800,000
Multi-Family Rental	\$4,900,000
Supportive Housing	\$2,500,000
Housing Recovery	\$8,660,000
Administration	\$400,000
Planning Costs	\$1,000,000
Economic Development	\$2,000,000
<b>Total Budgeted Costs of the SRA</b>	<b>\$23,260,000</b>

Mailing Address:  
Post Office Box 110465  
Durham, NC 27709



NORTH CAROLINA OFFICE OF RECOVERY AND RESILIENCY

Telephone: 984.833.5350

[www.ncdps.gov](http://www.ncdps.gov)  
[www.rebuildnc.gov](http://www.rebuildnc.gov)





# North Carolina Department of Public Safety

## Office of Recovery and Resiliency

Roy Cooper, Governor  
Erik A. Hooks, Secretary

Michael A. Sprayberry, Director  
Laura H. Hogshead, Chief Operating Officer

### Transition to the New Subrecipient Agreement

As the Homeowner Recovery Program transitioned to NCORR, NCORR has assumed the full budgetary responsibilities for Cumberland County's housing recovery. Cumberland County is a most impacted and distressed community, as determined by the US Department of Housing and Urban Development (HUD), meaning that the State of North Carolina must spend 80% of the Matthew CDBG-DR grant in Cumberland County and five other counties. **NCORR is committed to fully serving every eligible Hurricane Matthew homeowner who applied to our program, regardless of the original budget of the previous subrecipient agreement.** Under the new subrecipient agreement, the funds will still be spent in Cumberland County to support the housing recovery, but from the NCORR-managed Homeowner Recovery Program.

### The New Subrecipient Agreement Budget

Executed on December 17, 2019, the new subrecipient agreement fully funds the following: the original budgetary commitment for the Community Recovery Infrastructure program in the county; activity delivery costs for the county to manage the infrastructure program; and an amount to cover residual county program management costs from the previous subrecipient agreement.

Funding Category	2019 SRA Allocation
Infrastructure Program	\$2,500,000
Infrastructure Program Activity Delivery Costs	\$125,000
<b>Subtotal – Infrastructure Program</b>	<b>\$2,625,000</b>
Housing Recovery Program Transition Costs	\$100,000
<b>Total – Subrecipient Agreement</b>	<b>\$2,725,000</b>

### Change of Budgets from the 2017 Agreement to the 2019 Agreement

In an effort to be clear regarding the budgetary changes from the previous agreement to the current agreement, please see the following summary.

1. The budget for the Homeowner Program (currently known as the Homeowner Recovery Program) was moved from the Cumberland County agreement to NCORR's state-centric program.
2. The Multi-Family Rental budget was moved to NCORR and reallocated to the NC Housing Finance Agency, who have awarded a \$12,417,203 project in Fayetteville -- of which \$9.8 million is CDBG-DR funds.
3. The Infrastructure/Community Recovery budget of \$3,800,000 was transferred to the City of Fayetteville under a separate subrecipient agreement for the Community Resource Center project.

Mailing Address:  
Post Office Box 110465  
Durham, NC 27709



NORTH CAROLINA OFFICE OF RECOVERY AND RESILIENCY

Telephone: 984.833.5350  
[www.ncdps.gov](http://www.ncdps.gov)  
[www.rebuildnc.gov](http://www.rebuildnc.gov)





# North Carolina Department of Public Safety

## Office of Recovery and Resiliency

Roy Cooper, Governor  
Erik A. Hooks, Secretary

Michael A. Sprayberry, Director  
Laura H. Hogshead, Chief Operating Officer

4. The Economic Development program remains unchanged, as this program and associated budget is administered by the NC Department of Commerce and was not part of the subrecipient agreement with Cumberland County.
5. The Administration Budget was also moved to the NCORR program as Administration is typically reserved for the CDBG-DR grantee to carry out overall grant management functions. In return, NCORR budgeted an additional 5% for program management of the county's Infrastructure Program (\$125,000) and \$100,000 in activity delivery budget to cover any residual county costs from the original subrecipient agreement.
6. The Planning Budget was moved to NCORR as HUD only permits the use of planning funds by the grantee for grant-wide planning activities, such as the development of Action Plans. Project specific designs and plans should be budgeted as soft-costs within your infrastructure project budget.
7. The Supportive Housing Program Budget was left intact as part of the new agreement with the county, but the purpose is now described as part of the Infrastructure Program. Specifically, this budget is for the Robins Meadow project. As mention before, NCORR added a \$125,000 activity delivery amount to support the county's program management costs and \$100,000 of additional funds to cover residual costs the previous subrecipient agreement.

NCORR is grateful to Cumberland County for the working partnership we have formed and looks forward to the county's continued recovery from Hurricane Matthew. As NCORR proceeds with the statewide Homeowner Recovery Program, we are more than happy to provide the county with regular updates regarding applicants, awards, and construction progress. With this information, county leadership and your citizens can best understand the continued housing recovery in Cumberland County. If you have any questions about our agreement, budgets, or NCORR's recovery programs, please do not hesitate to reach out.

Sincerely,

Laura Hogshead, Chief Operating Officer  
NC Office of Recovery and Resiliency

Mailing Address:  
Post Office Box 110465  
Durham, NC 27709



Telephone: 984.833.5350  
[www.ncdps.gov](http://www.ncdps.gov)  
[www.rebuildnc.gov](http://www.rebuildnc.gov)





**OFFICE OF THE COUNTY ATTORNEY**

**MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: COUNTY MANAGER AND COUNTY ATTORNEY**

**DATE: 5/15/2020**

**SUBJECT: CONSIDERATION OF A RESOLUTION TO AMEND THE LOCAL ACT  
AUTHORIZING THE FOOD AND BEVERAGE TAX**

**BACKGROUND**

At its May 14, 2020, the Board considered requesting the local legislative delegation to sponsor a local bill to amend the local act authorizing the Food and Beverage Tax by removing the sunset provision and clarifying that the tax proceeds can be used for arts and entertainment facilities located anywhere within the County. The matter was not moved forward to this agenda as a consent item. County manager and county attorney advise this is prudent to continue planning for a new performing arts facility to replace the obsolete theater at the Crown Complex, and is necessary if a new performing arts facility is sited anywhere other than the Crown Complex.

**RECOMMENDATION / PROPOSED ACTION**

County manager and county attorney recommend adoption of the attached Resolution to amend the local act authorizing the food and beverage tax.

**ATTACHMENTS:**

Description	Type
Resolution to Amend Food and Beverage Tax	Backup Material
Proposed Draft of Amendments	Backup Material

**CUMBERLAND COUNTY BOARD OF COMMISSIONERS**

**RESOLUTION REQUESTING CUMBERLAND COUNTY'S DELEGATES TO THE GENERAL ASSEMBLY TO SPONSOR AND SUPPORT A LOCAL BILL TO AMEND SESSION LAW 1993-413, AUTHORIZING A PREPARED FOOD AND BEVERAGE TAX**

Whereas, pursuant to the authority contained in Session Law 1993-413, the Cumberland County Board of Commissioners levied a one percent (1%) tax on prepared food and beverages sold within Cumberland County, which is required by that law to be transferred to the Cumberland County Civic Center Commission exclusively for debt service and any other costs of acquiring, constructing, maintaining, operating, marketing and promoting the arena or expanded arena facilities; and

Whereas, in addition to the arena, the arena facilities consist of the auditorium and theater constructed prior to the arena and the Crown Coliseum constructed after the arena, collectively known as the Crown Complex; and

Whereas, these aging facilities require significant, on-going maintenance and capital improvements to serve the purposes for which they were built and the auditorium and theater are approaching the ends of their useful lives; and

Whereas, these arts and entertainment venues, like most public arts and entertainment venues, operate at a loss and require the subsidy provided by the prepared food and beverage tax to remain in service; and

Whereas, these public arts and entertainment venues improve the quality of life and are significant to the economy and growth of the County as a regional commercial center; and

Whereas, this law contains a sunset provision which requires the Board of Commissioners to repeal the tax when the debt on the Crown Complex is extinguished, which shall occur in 2023; and

Whereas, the Board of Commissioners has engaged a consultant to evaluate the market and residents' preferences for a performing arts venue to replace the obsolete theater to include a recommendation on where it should be sited within the County to best serve its purposes; and

Whereas, without the continued funding provided by the prepared food and beverage tax, it is impractical for the County to continue planning for a performing arts venue.

THEREFORE BE IT RESOLVED, that the Cumberland County Board of Commissioners requests each of the County's Senators and Representatives in the General Assembly to sponsor and support a local bill amending Session Law 1993-413 to remove the sunset provision and clarify that the prepared food and beverage tax proceeds may be used to finance and support arts and entertainment venues located anywhere in the County in the future to expand or replace these existing arena facilities commonly known as the Crown Complex, consistent with the proposed draft attached hereto.

Adopted this 18<sup>th</sup> day of May, 2020.

Cumberland County Board of Commissioners  
By:

---

W. Marshall Faircloth, Chair

Attest:

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Candice H. White, Clerk to the Board

**CUMBERLAND COUNTY BOARD OF COMMISSIONERS**  
**PROPOSED DRAFT AMENDMENTS TO SESSION LAW 1993-413**

Amend S.L. 1993-413, Senate Bill 923, as follows:

Amend Section 8 by expanding the use of the proceeds to include new arts or entertainment facilities which are not affiliated with the existing facilities commonly known as the Crown Complex.

Sec. 8. Use of Proceeds. – The county shall transfer the proceeds of the prepared food and beverage tax to the Cumberland County Civic Center Commission, an agency of Cumberland County. The proceeds transferred to the Cumberland County Civic Center Commission shall be used (i) to provide for, when due, payments for the current fiscal year with respect to any financing for new arena facilities or for the expansion of the existing arena facilities, which may include off-street parking for use in conjunction with the facilities and (ii) to pay other costs of acquiring, constructing, maintaining, operating, marketing, and promoting the new arena or expanded arena facilities. The Cumberland County Civic Center Commission is authorized to acquire, construct, maintain, operate, market and promote any such arena, civic center, arts or entertainment facility that is approved by the Board of County Commissioners, whether or not such facility is affiliated with the existing civic center commonly known as the Crown Complex.

The Commission may contract with any person, agency, association, or nonprofit corporation to carry out the activities and programs for which the tax proceeds may be expended. All contracts entered into pursuant to this subsection shall require an annual financial audit of any funds expended and a performance audit of contractual obligations.

Amend Section 11 by removing the repeal requirement.

Sec. 11. Repeal. – A tax levied under this act may be repealed by a resolution adopted by the Cumberland County Board of Commissioners. ~~The Cumberland County Board of Commissioners shall repeal the tax when the new or expanded arena facilities for which the tax was imposed are constructed and any debt for those facilities has been paid.~~ Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that has attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.



## CLERK TO THE BOARD OF COMMISSIONERS

### MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: KELLIE BEAM, DEPUTY CLERK TO THE BOARD**

**DATE: 5/13/2020**

**SUBJECT: JOINT PLANNING BOARD (2 VACANCIES)**

#### **BACKGROUND**

The Joint Planning Board has the following two (2) upcoming vacancies:

Dr. Vikki Andrews – completing second term on June 30, 2020. Not eligible for reappointment. The Chairman and Vice Chairman of the Joint Planning Board, in consultation with the Planning Director, recommend **Kassandra Herbert**. (See attached)

**Lori Epler** – completing first term on June 30, 2020. Eligible for reappointment. Ms. Epler indicated she is willing to serve a second term. The Chairman and Vice Chairman of the Joint Planning Board, in consultation with the Planning Director, recommend the reappointment of **Lori Epler**. (See attached)

I have attached the current membership list and applicant list for this board

#### **RECOMMENDATION / PROPOSED ACTION**

**Nominate individuals to fill the two (2) vacancies above.**

#### **ATTACHMENTS:**

Description

Joint Planning Board Nomination Backup Information

Type

Backup Material

## **Joint Planning Board**

The Joint Planning Board has the responsibility for the development of a continuing comprehensive planning program for the entire county and each participating municipality in the county by working from the existing plans of each city and town in the county to improve and develop the same and incorporate such planning into a comprehensive plan extending throughout the county. In developing the continuing comprehensive planning program, the Joint Planning Board will study priorities and requests for special study effort provided by the participating governmental units. The Joint Planning Board also has the function of developing and maintaining subdivision control and zoning programs.

**Statutory Authorization:** NCGS 153A-391

### **Member Specifications:**

10 Members

- Appointed by the Board of Commissioners (4)
- Appointed by the towns of Spring Lake, Eastover, Linden, Stedman and Hope Mills (1 each)
- Appointed to represent the towns of Wade, Falcon and Godwin (1)

**Term:** 4 Years (County appointee is four years. Members appointed by municipalities serve from one to four years.)

**Compensation:** None

### **Duties:**

- Final approval of plat waiver requests in the County;
- Reviews, holds hearings and approves or makes recommendations on area studies, future land use plans, transportation improvement projects, zoning matters, and most land use issues throughout the County.

**Meetings:** First and third Tuesday of each month at 7:00 PM. Meeting times vary in length. Members also serve on subcommittees (Administrative, Comprehensive Planning, Codes and Nominating). These subcommittees meet on an as-needed basis. In addition, time is spent outside of the meetings to review various documents and plans on which the Board is required to vote.

**Meeting Location:** Historic Cumberland County Courthouse Hearing Room #3 130 Gillespie Street Fayetteville, NC

**Kellie Beam**

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**Subject:** FW: Joint Planning Board Applicant List

**From:** Rawls Howard <rhoward@co.cumberland.nc.us>

**Sent:** Tuesday, May 12, 2020 4:34 PM

**To:** Kellie Beam <kbeam@co.cumberland.nc.us>

**Subject:** RE: Joint Planning Board Applicant List

Hi Kellie:

Thanks for clarifying the appointment process. After discussion with the Chair and Vice-Chair given your information, the recommendation is for Kasandra Herbert and Lori Epler (for a second term).

Thanks.

**In Public Service,**



**Rawls Howard, AICP, CZO, CFM**

Director of Planning and Inspections

130 Gillespie St.

Fayetteville, NC 28301

Ph. (910) 678-7618 / Fax. (910) 678-7631

rhoward@co.cumberland.nc.us



**MAKE NC  
COUNT**  
C E N S U S 2 0 2 0





JOINT PLANNING BOARD  
4 Year Term  
(Representing the County)

**Bylaws specify that term of office shall be from July 1st until June 30th of the following year.**

<u>Name/Address</u>	<u>Date Appointed</u>	<u>Term</u>	<u>Expires</u>	<u>Eligible For Reappointment</u>
<u>Cumberland County Board of Commissioner Appointees:</u>				
Diane Wheatley (W/F) 9774 Ramsey Street Linden, NC 28356 980-0338/728-7126 <a href="mailto:ddwheatley@yahoo.com">ddwheatley@yahoo.com</a>	6/17	2nd	June/21 6/30/21	No
<i>(Cumberland County BOC Appointee)</i>				
J. Carl Manning (B/M) 328 Kimberwicke Drive Fayetteville, NC 28311 818-9810/436-2426 <a href="mailto:Kingdom.cdc@att.net">Kingdom.cdc@att.net</a>	6/17	2nd	June/21 6/30/21	No
<i>(Cumberland County BOC Appointee)</i>				
Dr. Vikki Andrews (B/F) 2913 Beringer Drive Fayetteville, NC 28306 964-5828 <a href="mailto:Carasel1908@gmail.com">Carasel1908@gmail.com</a>	6/16	2nd	June/20 6/30/20	No
<i>(Cumberland County BOC Appointee)</i>				
Lori S. Epler (W/F) PO Box 53787 Fayetteville, NC 28305 488-6343/483-4300 (work)/483-4052 <a href="mailto:lepler@lkanda.com">lepler@lkanda.com</a>	6/16	1st	June/20 6/30/20	Yes
<i>(Cumberland County BOC Appointee)</i>				
<u>Town of Hope Mills Appointee:</u>				
Patricia Hall 3511 Beechwood Street Hope Mills, NC 28348 424-3106/308-8663 <a href="mailto:Phall44@nc.rr.com">Phall44@nc.rr.com</a>	1/14	2 <sup>nd</sup>	June/20 6/30/20	No
Town of Hope Mills Clerk Jane Starling 5770 Rockfish Road Hope Mills, NC 28348 910-424-4555				

Town of Eastover Appointee:

Stan Crumpler 2569 Dunn Rd Eastover, NC 28312 797-4111/483-6087 <a href="mailto:mscrumpler@earthlink.net">mscrumpler@earthlink.net</a>	6/17	1 <sup>st</sup>	June/21 6/30/21	Yes
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Town of Eastover Clerk

Janie Faircloth  
3863 Dunn Road  
Eastover, NC 28312  
910-323-0707  
[townclerk@eastovernc.com](mailto:townclerk@eastovernc.com)

Town of Stedman Appointee:

Commissioner Jordan Stewart PO Box 79 Stedman, NC 28391 309-0313 <a href="mailto:jordan@boose-law.com">jordan@boose-law.com</a>	7/19	1 <sup>st</sup>	June/23 6/30/23	Yes
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Town of Stedman Clerk

Christy Horne  
5110 Front Street  
Stedman, NC 28391  
910-323-1892  
[jkersh@nc.rr.com](mailto:jkersh@nc.rr.com)

Town of Linden Appointee:

Thomas Lloyd PO Box 53142 Fayetteville, NC 28305 574-3177 <a href="mailto:thomasjlloyd@icloud.com">thomasjlloyd@icloud.com</a>	7/19	1 <sup>st</sup>	June/23 6/30/23	Yes
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Town of Spring Lake Appointee:

Jami McLaughlin 300 North Second Street Spring Lake, NC 28390 391-4870 <a href="mailto:Jamimclaughlin1@aol.com">Jamimclaughlin1@aol.com</a>	6/19	2 <sup>nd</sup>	June/23 6/30/23	No
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Meetings: 1<sup>st</sup> and 3<sup>rd</sup> Tuesday - 7:00 PM – Historic Cumberland County Courthouse, 130 Gillespie Street, Hearing Room #3

Contact: Laverne Howard, County Planning Department, 678-7610

Per Interlocal Agreement Dated Nov. 19, 2018:

*The parties hereto establish in Cumberland County one Joint Planning Board as authorized by the General Statutes of North Carolina and the same shall hereafter be continued under the terms of this agreement. The membership of the Joint Planning Board shall consist of equitable representation from each municipality and from the unincorporated areas of the County as follows:*



<u>Governmental Unit</u>	<u>Number of Members to be Appointed</u>
<i>Cumberland County Board of Commissioners</i>	<i>4</i>
<i>Eastover Town Council</i>	<i>1</i>
<i>Hope Mills Board of Town Commissioners</i>	<i>1</i>
<i>Aldermen of the Town of Linden</i>	<i>1</i>
<i>Spring Lake Board of Alderman</i>	<i>1</i>
<i>Stedman Board of Town Commissioners</i>	<i>1</i>
<i>Board of Commissioners of the</i>	
<i>Towns of Godwin, Falcon &amp; Wade</i>	<i>1</i>
	<hr/>
<i>TOTAL</i>	<i>10</i>

*The term of membership of the Joint Planning Board shall be for four years. No member shall serve more than two full terms, except that, upon recommendation of two-thirds of the Joint Planning Board it may recommend a third full term to the governing board making the appointment.*

**APPLICANTS FOR  
JOINT PLANNING BOARD**

<b><u>NAME/ADDRESS/TELEPHONE</u></b>	<b><u>OCCUPATION</u></b>	<b><u>EDUCATIONAL BACKGROUND</u></b>
<b>BLEVINS, MARY ELIZABETH (W/F)</b> 1442 SEABISCUIT DRIVE PARKTON, NC 28371 910-853-4539 <a href="mailto:THESHOEDIVA@YAHOO.COM">THESHOEDIVA@YAHOO.COM</a> Graduate-County Citizens' Academy: NO Graduate-Institute for Community Leadership: NO Graduate-Leadership Fayetteville: NO Graduate-United Way's Multi-Cultural Leadership Program: NO Graduate-other leadership academy: HOPE MILLS CITIZENS ACADEMY <b>CATEGORY: GENERAL PUBLIC</b>	<b>EXECUTIVE DIRECTOR</b> HOPE MILLS CREATIVE ARTS	<b>ASSOCIATES - ARTS</b>
<b>BROOKS, JEFFREY D (W/M)</b> 4700 MATCHWOOD CT FAYETTEVILLE NC 28306 822-2875/580-3088 <a href="mailto:JDPD08@GMAIL.COM">JDPD08@GMAIL.COM</a> Graduate-County Citizens' Academy: YES Graduate-Institute for Community Leadership: YES Graduate-Leadership Fayetteville: YES Graduate-United Way's Multi-Cultural Leadership Program: YES Graduate-other leadership academy: NO <b>CATEGORY: GENERAL PUBLIC</b>	<b>RETIRED FSU PROFESSOR</b>	<b>PHD MSW</b>
<b>HERBERT, KASANDRA (B/F)</b> 6323 ABERCARN WAY FAYETTEVILLE NC 28311 396-5731/922-0851 <a href="mailto:KASANDRA.HERBERT@HOTMAIL.COM">KASANDRA.HERBERT@HOTMAIL.COM</a> Graduate-County Citizens' Academy: NO Graduate-Institute for Community Leadership: NO Graduate-Leadership Fayetteville: NO Graduate-United Way's Multi-Cultural Leadership Program: NO Graduate-other leadership academy: NO <b>CATEGORY: GENERAL PUBLIC</b>	<b>AUDITOR/ACCOUNTANT</b> DEPT OF ARMY	<b>MBA-FINANCE BSBA-LOGISTICS</b>
<b>KING, BILLY R. (B/M)</b> 739 ASHFIELD DRIVE FAYETTEVILLE NC 28311 822-0892/494-1499/822-6676 NO EMAIL LISTED Graduate-County Citizens' Academy: NO Graduate-Institute for Community Leadership: NO Graduate-Leadership Fayetteville: NO Graduate-United Way's Multi-Cultural Leadership Program: NO Graduate-other leadership academy: NO <b>CATEGORY: GENERAL PUBLIC</b>	<b>INSURANCE AGENT</b> SELF EMPLOYED	<b>BS</b>

**APPLICANTS FOR  
JOINT PLANNING BOARD Page 2**

<b><u>NAME/ADDRESS/TELEPHONE</u></b>	<b><u>OCCUPATION</u></b>	<b><u>EDUCATIONAL BACKGROUND</u></b>
MULLINS, VICKIE M (W/F) 5905 TURNBULL ROAD FAYETTEVILLE NC 28312 910-322-3100 <a href="mailto:GIRLIMON1@AOL.COM">GIRLIMON1@AOL.COM</a> Graduate-County Citizens' Academy: YES Graduate-Institute for Community Leadership: YES Graduate-Leadership Fayetteville: NO Graduate-United Way's Multi-Cultural Leadership Program: NO Graduate-other leadership academy: NO <b>CATEGORY: GENERAL PUBLIC</b>	RETIRE FROM COOPERATIVE EXTENSION	COLLEGE-REC DEGREE
THOMPSON, DWIGHT (-/M) 3402 RUDLAND CT FAYETTEVILLE NC 28304 910-494-3959 <a href="mailto:DWIGHT.E.THOMPSON@GMAIL.COM">DWIGHT.E.THOMPSON@GMAIL.COM</a> Graduate-County Citizens' Academy: No Graduate-Institute for Community Leadership: No Graduate-Leadership Fayetteville: No Graduate-United Way's Multi-Cultural Leadership Program: No Graduate-other leadership academy: No <b>CATEGORY: GENERAL PUBLIC</b>	SOLDIER/IT SUPPORT FSU/ARMY	BA, MBA



## CLERK TO THE BOARD OF COMMISSIONERS

### MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: KELLIE BEAM, DEPUTY CLERK TO THE BOARD**

**DATE: 5/14/2020**

**SUBJECT: BOARD OF ADJUSTMENT (1 VACANCY)**

#### **BACKGROUND**

The Board of Adjustment has the following one (1) vacancy:

##### Regular Member:

Nathan Galbreath – Resigned. The Board of Adjustment recommends **Marva Lucas-Moore** to fill the unexpired term. Ms. Lucas-Moore is currently serving as an Alternate Member to the Board of Adjustment. (See attached)

I have attached the current membership and applicant list for this board.

#### **RECOMMENDATION / PROPOSED ACTION**

**Nominate individual to fill the one (1) vacancy above.**

#### **ATTACHMENTS:**

Description	Type
Board of Adjustment Nomination Backup Information	Backup Material

## **Board of Adjustment**

The Board of Adjustment is a "quasi-judicial" administrative body that conducts public hearings and/or reviews as listed under "duties" below. Appeals of this board's decisions are filed directly to Superior Court.

**Statutory Authorization:** NCGS 153A-345 County Code: Zoning Ordinance Article XVI

### **Member Specifications:**

10 Members

- 5 regular
- 5 alternate (Alternate members fill in for regular members as necessary and are often appointed to fill vacancies of the regular membership.)

**Term:** 3 Years

**Compensation:** None

### **Duties:**

- Conduct administrative reviews and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision, determination, refusal made by the Planning and Inspections Director or other administrative officials in the carrying out or enforcement of any provisions of the zoning ordinance;
- Hear, deny or approve applications for variances and special use permits from the terms of the zoning ordinance;
- Rule on matters concerning nonconforming uses;
- Hear and rule on appeals and variance requests from the County's Flood Damage Prevention Ordinance.

**Meetings:** Third Thursday of each month at 7:00 PM. The average length of a meeting varies. Each member spends approximately three hours per month in service to this board.

**Meeting Location:** Historic Cumberland County Courthouse, Hearing Room #3 130 Gillespie Street Fayetteville, NC



**Kellie Beam**

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**Subject:** FW: BOA member resigning

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**From:** Dena Barner  
**Sent:** Friday, April 17, 2020 11:14 AM  
**To:** Kellie Beam <[kbeam@co.cumberland.nc.us](mailto:kbeam@co.cumberland.nc.us)>  
**Subject:** RE: BOA member resigning

Good Morning Kellie – the BOA recommends Marva Lucas-Moore to replace Mr. Nathan Galbreath after April's meeting which we currently have one case for. She is currently serving as an Alternate to the Board of Adjustment.

Thank you

BOARD OF ADJUSTMENT  
3 Year Term

<u>Name/Address</u>	<u>Date Appointed</u>	<u>Term</u>	<u>Expires</u>	<u>Eligible For Reappointment</u>
Alfonso Ferguson Sr. (B/M) 3329 Eastgate Street Eastover, NC 28312 401-2313/483-1888	8/18	2nd	Aug/21 8/31/21	No
Winton McHenry (W/M) 3648 Lakeshore Drive Hope Mills, NC 28348 429-1101/308-3987	6/19	2nd	June/22 6/30/22	No
<b>VACANT</b> (Vacated by N. Galbreath)	9/19	1st	Sept/22 9/30/22	Yes
George Turner (W/M) 1012 Cain Road Fayetteville, NC 28303 484-4069/867-2116	9/18	2nd	Sept/21 9/30/21	No
Gregory Parks (W/M) 307 Devane Street Fayetteville, NC 28305 484-9666/483-8194	8/18	1st	Aug/21 8/31/21	Yes
<u>Alternate Members:</u> Robert E. Davis (B/M) 901 Kaywood Drive Fayetteville, NC 28311 910-488-1194	8/19	2nd	Aug/22 8/31/22	No
Stacy M. Long (W/M) 1909 Partridge Drive Fayetteville, NC 28304 919-896-8970/919-633-8244	8/19	2nd	Aug/22 8/31/22	No
Marva Lucas-Moore (B/F) 3014 Hampton Ridge Road Fayetteville, NC 28311 551-1904/227-9605 <a href="mailto:marva@lucasmoorerealtyinc.com">marva@lucasmoorerealtyinc.com</a>	6/19	1 <sup>st</sup> full term	June/22 6/30/22	Yes

<u>Name/Address</u>	<u>Date Appointed</u>	<u>Term</u>	<u>Expires</u>	<u>Eligible For Reappointment</u>
<u>Alternate Members Continued:</u>				
Quinsentina James (-/F) 2441 Canford Lane Fayetteville, NC 28304 910-364-4558 <a href="mailto:mqmlewis@aol.com">mqmlewis@aol.com</a>	9/18	1st	Sept/21 9/30/21	Yes
Linda Amos (B/F) 917 Bashlot Place Fayetteville, NC 28303 910-261-4003	10/19	1st	May/22 5/31/22	Yes
(serving unexpired term; eligible for one additional term)				

Meets 3<sup>rd</sup> Thursday of each month at 7:00 PM – Historic Cumberland County Courthouse, 130 Gillespie Street, Second Floor Hearing Room #3

Contact: Betty Lynd, Planning & Inspections Department, 678-7603



**APPLICANTS FOR  
BOARD OF ADJUSTMENT**

<b><u>NAME/ADDRESS/TELEPHONE</u></b>	<b><u>OCCUPATION</u></b>	<b><u>EDUCATIONAL BACKGROUND</u></b>
<b>BROOKS, DONALD (B/M)</b> 301 SOUTHLAND DRIVE FAYETTEVILLE NC 28311 910-826-6078 <a href="mailto:DONALDBROOKS959@GMAIL.COM">DONALDBROOKS959@GMAIL.COM</a> Graduate-County Citizens' Academy: NO Graduate-Institute for Community Leadership: NO Graduate-Leadership Fayetteville: NO Graduate-United Way's Multi-Cultural Leadership Program: YES Graduate-other leadership academy: GRADUATE EXECUTIVE LEADERSHIP PROGRAM <b>CATEGORY: GENERAL PUBLIC</b>	<b>RETIRED</b>	<b>BACHELORS</b>
<b>DICKENS, CATHY (-/F)</b> 1426 COBRA DRIVE FAYETTEVILLE NC 28303 910-286-0157 <a href="mailto:MAXINEDICKENS69@GMAIL.COM">MAXINEDICKENS69@GMAIL.COM</a> Graduate-County Citizens' Academy: NO Graduate-Institute for Community Leadership: NO Graduate-Leadership Fayetteville: NO Graduate-United Way's Multi-Cultural Leadership Program: NO Graduate-other leadership academy: NO <b>CATEGORY: GENERAL PUBLIC</b>	<b>DISTRICT SUPERVISOR SOIL AND WATER</b>	<b>HIGH SCHOOL</b>
<b>GUY, DAVID NICHOLSON III</b> 305 WOODCREST ROAD FAYETTEVILLE NC 28305 910-850-8004 <a href="mailto:DAVIDNGUY02@YAHOO.COM">DAVIDNGUY02@YAHOO.COM</a> Graduate-County Citizens' Academy: NO Graduate-Institute for Community Leadership: NO Graduate-Leadership Fayetteville: NO Graduate-United Way's Multi-Cultural Leadership Program: NO Graduate-other leadership academy: NO <b>CATEGORY: GENERAL PUBLIC</b>	<b>REAL ESTATE BROKER CONTRACTOR</b>	<b>BS-BUSINESS MANAGEMENT</b>
<b>MULLINS, VICKIE M (W/F)</b> 5905 TURNBULL ROAD FAYETTEVILLE NC 28312 910-322-3100 <a href="mailto:GIRLIMON1@AOL.COM">GIRLIMON1@AOL.COM</a> Graduate-County Citizens' Academy: YES Graduate-Institute for Community Leadership: YES Graduate-Leadership Fayetteville: NO Graduate-United Way's Multi-Cultural Leadership Program: NO Graduate-other leadership academy: NO <b>CATEGORY: GENERAL PUBLIC</b>	<b>RETIRED FROM COOPERATIVE EXTENSION</b>	<b>COLLEGE-REC DEGREE</b>

**APPLICANTS FOR**  
**BOARD OF ADJUSTMENT PAGE 2**

<b><u>NAME/ADDRESS/TELEPHONE</u></b>	<b><u>OCCUPATION</u></b>	<b><u>EDUCATIONAL BACKGROUND</u></b>
<b>RHODES, EVA P. (-/F)</b> 301 DUNLEITH PLACE FAYETTEVILLE NC 28311 443-326-2924 <a href="mailto:EVAPHR1161@COMCAST.NET">EVAPHR1161@COMCAST.NET</a> Graduate-County Citizens' Academy: NO Graduate-Institute for Community Leadership: NO Graduate-Leadership Fayetteville: NO Graduate-United Way's Multi-Cultural Leadership Program: NO Graduate-other leadership academy: NO <b>CATEGORY: GENERAL PUBLIC</b>	<b>RETIRED FEDERAL EMPLOYEE</b>	<b>COLLEGE LISTED</b>
<b>SILVERMAN, GARY A (W/M)</b> 1174 DERBYSHIRE ROAD FAYETTEVILLE NC 28314 910-574-9952 <a href="mailto:GSILVERMAN001@GMAIL.COM">GSILVERMAN001@GMAIL.COM</a> Graduate-County Citizens' Academy: NO Graduate-Institute for Community Leadership: NO Graduate-Leadership Fayetteville: NO Graduate-United Way's Multi-Cultural Leadership Program: NO Graduate-other leadership academy: US ARMY LEADERSHIP COURSES <b>CATEGORY: GENERAL PUBLIC</b>	<b>LT COLONEL US ARMY</b> <b>RETIRED/PT INSTRUCTOR</b>	<b>BS, AS</b>
<b>TWITTY, MARTELLE (B/F)</b> 6404 DAVIS BYNUM FAYETTEVILLE NC 28306 910-922-2014 <a href="mailto:MARTELLECOKE@GMAIL.COM">MARTELLECOKE@GMAIL.COM</a> Graduate-County Citizens' Academy: NO Graduate-Institute for Community Leadership: NO Graduate-Leadership Fayetteville: NO Graduate-United Way's Multi-Cultural Leadership Program: NO Graduate-other leadership academy: NO <b>CATEGORY: GENERAL PUBLIC</b>	<b>DENTAL HYGIENIST</b> <b>DAY AND NIGHT FAMILY DENTAL</b>	<b>DENTAL HYGIENE, BS</b>



## **CLERK TO THE BOARD OF COMMISSIONERS**

### **MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: KELLIE BEAM, DEPUTY CLERK TO THE BOARD**

**DATE: 5/15/2020**

**SUBJECT: FAYETTEVILLE-CUMBERLAND PARKS AND RECREATION ADVISORY  
COMMISSION (4 VACANCIES)**

#### **BACKGROUND**

The Fayetteville-Cumberland Parks and Recreation Advisory Commission has the following four (4) vacancies:

Steven Harper – completed second term. Not eligible for reappointment. The Fayetteville-Cumberland Parks and Recreation Advisory Commission does not have a recommendation at this time.

Antonio Gerald – Resigned. The Fayetteville-Cumberland Parks and Recreation Advisory Commission does not have a recommendation at this time.

William McNeill – The Fayetteville-Cumberland Parks and Recreation Advisory Commission does not have a recommendation at this time.

Stacy Carr – completing second term on June 30, 2020. Not eligible for reappointment. The Fayetteville-Cumberland Parks and Recreation Advisory Commission does not have a recommendation at this time.

I have attached the current membership list and applicant list for this board.

#### **RECOMMENDATION / PROPOSED ACTION**

**Nominate individuals to fill the four (4) vacancies above.**

**ATTACHMENTS:**

**Description**

Fayetteville-Cumberland Parks and Recreation Advisory Commission Nomination  
Backup Information

**Type**

Backup Material

### **Fayetteville-Cumberland Parks and Recreation Advisory Commission**

The Parks and Recreation Advisory Commission advises, informs and promotes the dedication and establishment of parks and recreation areas in all sections of Cumberland County with the ultimate aim of making neighborhood playgrounds and parks accessible to all citizens of the County.

**Statutory Authorization:** NCGS 160A-354

**Member Specifications:**

7 Members

**Term:** 3 Years

**Compensation:** None

**Duties:**

- Promotes studies and plans of the recreational needs of the County;
- Informs and advises the Board of County Commissioners and public of the needs for facilities and programs;
- Advises the Recreation Director in planning recreational programs, acquiring land and water areas and in accepting any grant, gift, bequest or donation of any personal or real properties offered or made available for recreational purposes.

**Meetings:** Last Tuesday of every month at 5:30 PM. Meetings last one to one and one-half hours with occasional committee meetings as needed.

**Meeting Location:** 121 Lamon Street Fayetteville, NC



FAYETTEVILLE-CUMBERLAND  
PARKS AND RECREATION ADVISORY COMMISSION  
3 Year Terms  
(Terms were initially 2 and 3 years)

<u>Name/Address</u>	<u>Date Appointed</u>	<u>Term</u>	<u>Expires</u>	<u>Eligible For Reappointment</u>
<b>VACANT</b> (Vacated by S. Harper)	6/16	2nd	June/19 6/30/19	No
Iva Marie Kelly (-/F) 1844 Gola Drive Fayetteville, NC 28301 910-488-5302 <a href="mailto:fkelly38@nc.rr.com">fkelly38@nc.rr.com</a>	1/20	2nd	June/22 6/30/22	No
<b>VACANT</b> (Vacated by A. Gerald)	6/16	1st	June/19 6/30/19	Yes
Harold Smelcer 3209 Boone Trail Fayetteville, NC 28306 910-425-1769 <a href="mailto:smelcerco@aol.com">smelcerco@aol.com</a>	1/20	2nd	June/22 6/30/22	No
<b>VACANT</b> (Vacated by W. McNeill)	6/16	2nd	June/19 6/30/19	No
Stacy Carr III (W/M) 560 Fred Hall Road Stedman, NC 28391 483-6856/813-5425 <a href="mailto:skipcarr@hotmail.com">skipcarr@hotmail.com</a>	6/17	2nd	June/20 6/30/20	No
Lee Spruill (W/M) 960 Ken Hancock Lane Stedman, NC 28391 309-0157/483-0191 <a href="mailto:vleespruill@gmail.com">vleespruill@gmail.com</a>	10/17	1st	Oct/20 10/31/20	Yes

Meetings: 1st Tuesday of every month at 5:30 PM – Parks and Recreation Admin Bldg. 121 Lamon Street  
Contact: Michael Gibson/Jessica Legette, City of Fayetteville, Phone 433-1547, Fax 433-1762

**APPLICANTS FOR**  
**FAYETTEVILLE-CUMBERLAND PARKS AND RECREATION ADVISORY COMMISSION**

<b>NAME/ADDRESS/TELEPHONE</b>	<b>OCCUPATION</b>	<b>EDUCATIONAL BACKGROUND</b>
BLUE, CARL (B/M) 1300 OAK KNOLLS DRIVE FAYETTEVILLE NC 28314 910-318-7941 <a href="mailto:CARLBLUE@CCS.K12.NC.US">CARLBLUE@CCS.K12.NC.US</a> Graduate-County Citizens' Academy: NO Graduate-Institute for Community Leadership: NO Graduate-Leadership Fayetteville: NO Graduate-United Way's Multi-Cultural Leadership Program: YES Graduate-other leadership academy: NO <b>CATEGORY: GENERAL PUBLIC</b>	YOUTH DEVELOPMENT COORDINATOR CC SCHOOLS	BS DEGREE
HERBERT, KASANDRA (B/F) 6323 ABERCARN WAY FAYETTEVILLE NC 28311 396-5731/922-0851 <a href="mailto:KASANDRA.HERBERT@HOTMAIL.COM">KASANDRA.HERBERT@HOTMAIL.COM</a> Graduate-County Citizens' Academy: NO Graduate-Institute for Community Leadership: NO Graduate-Leadership Fayetteville: NO Graduate-United Way's Multi-Cultural Leadership Program: NO Graduate-other leadership academy: NO <b>CATEGORY: GENERAL PUBLIC</b>	AUDITOR/ACCOUNTANT DEPT OF ARMY	MBA-FINANCE BSBA-LOGISTICS
HOYT, GEORGE (TREY) III 6086 MIDUS STREET HOPE MILLS, NC 28348 433-0001/723-6897/630-7620 <a href="mailto:TREYHOYT@CENTURYLINK.NET">TREYHOYT@CENTURYLINK.NET</a> Graduate-County Citizens' Academy: NO Graduate-Institute for Community Leadership: YES Graduate-Leadership Fayetteville: NO Graduate-United Way's Multi-Cultural Leadership Program: NO Graduate-other leadership academy: NO <b>CATEGORY: GENERAL PUBLIC</b>	PROFESSOR METHODIST UNIVERSITY	PHD MED
MULLINS, VICKIE M (W/F) 5905 TURNBULL ROAD FAYETTEVILLE NC 28312 910-322-3100 <a href="mailto:GIRLIMON1@AOL.COM">GIRLIMON1@AOL.COM</a> Graduate-County Citizens' Academy: YES Graduate-Institute for Community Leadership: YES Graduate-Leadership Fayetteville: NO Graduate-United Way's Multi-Cultural Leadership Program: NO Graduate-other leadership academy: NO <b>CATEGORY: GENERAL PUBLIC</b>	RETIRED FROM COOPERATIVE EXTENSION	COLLEGE-REC DEGREE



## **CLERK TO THE BOARD OF COMMISSIONERS**

### **MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: KELLIE BEAM, DEPUTY CLERK TO THE BOARD**

**DATE: 5/13/2020**

**SUBJECT: ABC BOARD (2 VACANCIES)**

#### **BACKGROUND**

At the Board of Commissioners' May 4, 2020 meeting, the following individuals were nominated to fill two (2) vacancies on the ABC Board:

#### **NOMINEE(S):**

**Paul Crenshaw** (reappointment)

**Tammy Sinclair Graham** (reappointment)

The current membership roster for the ABC Board is attached.

#### **RECOMMENDATION / PROPOSED ACTION**

Appoint individuals to fill two (2) vacancies on the ABC Board.

#### **ATTACHMENTS:**

Description

ABC Board Membership Roster

Type

Backup Material



## ABC BOARD

## 3 Year Term

<u>Name/Address</u>	<u>Date Appointed</u>	<u>Term</u>	<u>Expires</u>	<u>Eligible For Reappointment</u>
Paul Crenshaw 313 SpringBrooke Pl Fayetteville, NC 28305 223-2709/964-3811/222-1000 <a href="mailto:Pcrenshaw11@hotmail.com">Pcrenshaw11@hotmail.com</a>	6/18	1st	June/20 6/30/20	Yes
(serving unexpired term; eligible for one additional three-year term)				
Harold Lee Boughman Jr. 282 Skye Drive Fayetteville, NC 28303 484-4589/978-2293/223-1400 <a href="mailto:lee.boughman@abb-law.com">lee.boughman@abb-law.com</a>	6/18	1st	June/21 6/30/21	Yes
Alex Warner 4333 Legion Road Hope Mills, NC 28348 424-0030/424-5350/309-7777 <a href="mailto:carleensofhopemills@gmail.com">carleensofhopemills@gmail.com</a>	6/19	1st full term	June/22 6/30/22	No
Frances Jackson 5489 Robmont Drive Fayetteville, NC 28306 910-423-3649	6/19	2nd	June/22 6/30/22	No
Tammy Sinclair Graham 2951 Cosmo Place Apt H Fayetteville, NC 28304 797-1405/483-1382 <a href="mailto:tfgmom@gmail.com">tfgmom@gmail.com</a>	6/17	1st	June/20 6/30/20	Yes

Regular Meetings: 2nd Monday of the month at 6:00 PM in the conference room at the ABC office at 1705 Owen Drive, Fayetteville, NC 28304.

Contact: ABC Board Director David Horne  
PO Box 64957  
Fayetteville, NC 28306  
484-8167  
[carolyn.parker@cumberlandabc.com](mailto:carolyn.parker@cumberlandabc.com)



## **OFFICE OF THE COUNTY MANAGER**

### **MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: TRACY JACKSON, ASSISTANT COUNTY MANAGER FOR ENVIRONMENTAL AND COMMUNITY SAFETY**

**DATE: 5/6/2020**

**SUBJECT: AMENDMENT TO OWNER-ENGINEER AGREEMENT NUMBER 1 WITH MCGILL ASSOCIATES, P.A., FOR THE BRAGG ESTATES WATER AND SEWER DISTRICT AND ASSOCIATED BUDGET ORDINANCE AMENDMENT #200031**

#### **BACKGROUND**

The contract between McGill Associates, P.A. and Bragg Estates Water and Sewer District was executed in 2015 (attached for reference). The contract did not include preparation of plats for thirty easements and 1 plat for the purchase of the sewer pump station site which is now needed for the preparation of the easement documents so the project can move forward. A lump sum amount of \$25,000 is proposed as additional compensation for the plats. There is also a request to increase the consultant's fees and make an adjustment to the construction phase services per the terms of the contract for McGill Associates, P.A., because their standard rate has increased since the contract was executed in 2015. The lump sum rate increase for the construction phase services requested is \$18,345, for a total contract increase for this amendment of \$43,345.

USDA Rural Development approved this request by McGill Associates, P.A. and funds are available in the project budget.

#### **RECOMMENDATION / PROPOSED ACTION**

This item was heard at the May 14, 2020 Board of Commissioners' Agenda Session meeting, and the Board agreed to forward it as a Consent Agenda item for approval of the following actions at the May 18, 2020 Board of Commissioners' meeting and the May 18, 2020 Bragg Estates Water and Sewer District agenda:

1. Approve Amendment to Owner-Engineer Agreement No. 1 with McGill Associates, P.A. in the amount of \$43,345.

1. Approve **Budget Ordinance Amendment #200031** in the amount of \$43,345 for the Amendment to Owner-Engineer Agreement No. 1 with McGill Associates, P.A.

**ATTACHMENTS:**

Description	Type
Amendment Number 1	Backup Material
Orig McGill Contract for BE Proj	Backup Material

This is **EXHIBIT K**, consisting of [2] pages,  
referred to in and part of the **Agreement  
between Owner and Engineer for Professional  
Services** dated **June 15, 2015** .

**AMENDMENT TO OWNER-ENGINEER AGREEMENT  
Amendment No. 1**

The Effective Date of this Amendment is: \_\_\_\_\_.

Background Data

Effective Date of Owner-Engineer Agreement: June 15, 2015

Owner: Cumberland County, North Carolina

Engineer: McGill Associates, P.A.

Project: Bragg Estates Wastewater Collection System Expansion

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- X   Additional Services to be performed by Engineer
- Modifications to services of Engineer
- Modifications to responsibilities of Owner
- X   Modifications of payment to Engineer
- Modifications to time(s) for rendering services
- Modifications to other terms and conditions of the Agreement

Description of Modifications:

1. **Easement and Pump Station Plats** - Engineer shall provide plats exhibits for 30 easements and purchase of the sewer pump station site. Owner will be responsible for acquisition of easements including preparation of easement agreements, negotiations and payment of any acquisition costs and recording costs. A lump sum amount of **\$25,000** shall be considered additional compensation as follows:
  - a. 30 Plat Exhibits at \$800 each: \$24,000
  - b. 1 Pump Station Property Plat: \$1,000

2. **Lump Sum Hourly Rate Increases** - Due to the delay in the project proceeding and an increase in standard hourly rates, a lump sum amount of **\$3,540** shall be added to the compensation for the following remaining work elements by the amounts listed below:

- |                            |         |
|----------------------------|---------|
| a. Construction Phase      | \$2,590 |
| b. Post Construction Phase | \$950   |

3. **Lump Sum Hourly Rate Increases** - Due to the delay in the project proceeding and an increase in standard hourly rates, the compensation for Resident Project Representative Services shall be increased by **\$14,805**, with a new hourly rate of **\$90** per hour based on standard hourly rates.

Agreement Summary:

Original agreement amount:	<u>\$237,000.00</u>
Net change for prior amendments:	<u>\$0.00</u>
This amendment amount:	<u>\$ 43,345.00</u>
Adjusted Agreement amount:	<u>\$280,345.00</u>

Change in time for services (days or date, as applicable): \_\_\_\_\_

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.


OWNER:  
Cumberland County, North Carolina

ENGINEER:  
McGill Associates, P.A.

By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

By:   
Print  
name: \_\_\_\_\_

Principal

Title: \_\_\_\_\_

Date Signed: 3-31-2020

## BASIC FEE SCHEDULE

JANUARY 2020

PROFESSIONAL FEES	I	II	III	IV
Senior Principal	\$225			
Principal – Regional Manager – Director	\$190	\$205	\$210	\$215
Practice Area Lead	\$160	\$170	\$195	\$210
Senior Project Manager	\$170	\$185	\$195	\$200
Project Manager	\$155	\$165	\$175	\$180
Project Engineer	\$110	\$125	\$140	\$145
Engineering Associate	\$95	\$100	\$110	\$115
Planner- Consultant – Designer	\$100	\$115	\$135	\$150
Engineering Technician	\$90	\$105	\$115	\$120
CAD Operator – GIS Analyst	\$80	\$85	\$95	\$100
Construction Services Manager	\$130	\$145	\$155	\$160
Construction Administrator	\$95	\$110	\$120	\$125
Construction Field Representative	\$85	\$90	\$95	\$100
Environmental Specialist	\$85	\$95	\$100	\$105
Surveyor	\$90	\$95	\$100	\$105
Surveying Associate	\$70	\$75	\$80	\$85
Survey Technician	\$75	\$80	\$85	\$90
Survey Field Technician	\$60	\$65	\$70	\$75
Administrative Assistant	\$70	\$75	\$80	\$85

### 1. EXPENSES

- a. Mileage - \$0.65/mile
- b. Robotics/GPS Equipment - \$25/hr.
- c. Survey Drone - \$100/hr.
- d. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

### 2. ASSOCIATED SERVICES -

- a. Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus ten (10) percent.

Bragg Estates Wastewater Collection System Expansion  
Amendment To Owner-Engineer Agreement - Amendment No. 1

Employee Class	Hours Budgeted	Original Rate	Current Rate	Additional Costs
Construction Phase				
Principal	24	\$ 180.00	\$ 205.00	\$ 600.00
Project Engineer I	60	\$ 120.00	\$ 140.00	\$ 1,200.00
Engineering Technician I	6	\$ 75.00	\$ 90.00	\$ 90.00
Administrative Assistant I	70	\$ 60.00	\$ 70.00	\$ 700.00
				\$ 2,590.00
Post Construction Phase				
Principal	6	\$ 180.00	\$ 205.00	\$ 150.00
Project Engineer I	4	\$ 120.00	\$ 140.00	\$ 80.00
Engineering Technician I	8	\$ 75.00	\$ 90.00	\$ 120.00
Administrative Assistant I	20	\$ 60.00	\$ 70.00	\$ 200.00
CAD Operator I	40	\$ 70.00	\$ 80.00	\$ 400.00
				\$ 950.00
Resident Project Representative CFR II	987	\$ 75.00	\$ 90.00	\$ 14,805.00

This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

## **AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES**

Prepared by



Issued and Published Jointly by



**Cumberland County  
Contract No: 2016-020**



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**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of

June 15, 2015

("Effective Date") between

Cumberland County

("Owner") and

McGill Associates, P.A.

("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:  
Bragg Estates Wastewater Collection System Expansion

("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are for the Bragg Estates Water and Sewer District and generally identified as follows:

1. Preparation of a Preliminary Engineering Report for the proposed wastewater collection system extension in accordance with RUS Bulletin 1780-2. The report is intended to supplement an Application package to USDA for Rural Development Funding.
2. Preparation of an Environmental Report in accordance with RUS Bulletin 1794A-602 for the proposed wastewater collection system extension. This report is intended to supplement an Application package to USDA for Rural Development Funding.
3. Completion of the Preliminary Design and Final Design Phases of the project, and the pursuit of all regulatory permits from appropriate agencies.
4. Provide Bidding and Negotiation, Construction Phase, and Post-Construction Phase services for the proposed wastewater collection system extension based on the approved Final Design plans.

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

**1.01 Scope**

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER'S RESPONSIBILITIES**

**2.01 General**

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer's services;
  2. the presence at the Site of any Constituent of Concern; or
  3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

### ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

#### 3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

#### 3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- 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.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

### ARTICLE 4 – INVOICES AND PAYMENTS

#### 4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. **Invoices must include a breakdown of services provided.**

#### 4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
  - 2. 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.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

### ARTICLE 5 – OPINIONS OF COST

#### 5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity 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 Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

#### 5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

### 5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, 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.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
  - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
  - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
    - a. changes after the Effective Date to Laws and Regulations;
    - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
    - c. changes after the Effective Date to Owner-provided written policies or procedures.

- F. Engineer shall not be required to sign any document, no matter by who requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during

construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

### 6.03 Use of Documents

- A. ~~All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.~~ All Documents, information, and materials of any and every type prepared by the Engineer pursuant to this Agreement shall be jointly owned by the Engineer and the Owner as co-owner. Such Documents shall include but not be limited to data, Drawings, Specifications, reports, Record Drawings, estimates, summaries, change orders, responses to Contractor requests, and such other information and materials as may have been accumulated by the Engineer in performing the work under this Agreement, whether completed or in process. The Engineer shall assume no responsibility for the unintended use by others of any such Documents, information, or materials outside the scope of this Project which are not related to the scope of services described under this Agreement. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. ~~Owner~~ **Co-Owner** may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants ~~Owner~~ **Co-Owner** a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the ~~Owner~~ **Co-Owner**, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) ~~Owner~~ **Co-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~~ **Co-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~~ **Co-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~~ **Co-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~~ **Co-Owner** shall not create any rights in third parties.



- D. 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.

#### 6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer ~~shall~~ **may** jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

#### 6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in

other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. 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 that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.06 *Suspension and Termination*

##### A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

##### B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
  - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
  - b. by Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
    - 3) Engineer shall have no liability to Owner on account of such termination.

- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
  2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, 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. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
  2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive 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 Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

#### 6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment,

subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.

- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days' notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys' fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or 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.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, 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 this Agreement or the Project, from any cause or causes.

#### 6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

#### 6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

### ARTICLE 7 – DEFINITIONS

#### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
  - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall:  
(a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.



13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up,

and of which the services to be performed or furnished by Engineer under this Agreement are a part.

25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer ~~as an Additional Service~~ and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
  36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
  37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
  38. **Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service including USDA Rural Development.**
- B. *Day*:
1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### **8.01 Exhibits Included:**

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.

J. Exhibit J, Special Provisions.

K. Exhibit K, Amendment to Owner-Engineer Agreement. **(Not Included)**

#### 8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

#### 8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

#### 8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

#### 8.05 *Federal Requirements*

- A. **Agency Concurrence.** Signature of a duly authorized representative of Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.
- B. **Audit and Access to Records.** Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement,

for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

- C. ***Restrictions on Lobbying.*** Engineer and each Consultant shall comply with Restrictions on Lobbying if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. ***Suspension and Debarment.*** Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - lower tier transactions - to the Owner who will forward it the USDA, Rural Development processing office.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: Cumberland County

By: Kenneth S. Edge  
Print name: Kenneth S. Edge  
Title: Chairman  
Date Signed: 8.3.15

Engineer: McGill Associates, P.A.

By: Michael S. Apke  
Print name: Michael S. Apke, P.E.  
Title: Principal  
Date Signed: 5/14/15

Engineer License or Firm's Certificate No. (if required):  
C-0459

State of: North Carolina

Address for Owner's receipt of notices:  
117 Dick Street  
Fayetteville, North Carolina 28301

Address for Engineer's receipt of notices:  
5 Regional Circle, Suite A  
Pinehurst, North Carolina 28374

Designated Representative (Paragraph 8.03.A):  
Jeffery P. Brown, P.E.

Title: Engineer and Infrastructure Director  
Phone Number: 910-678-7633  
E-Mail Address: jbrown@co.cumberland.nc.us

Designated Representative (Paragraph 8.03.A):  
Michael S. Apke, P.E.

Title: Principal  
Phone Number: 910-295-3159  
E-Mail Address: mike.apke@mcgillengineers.com

**THIS INSTRUMENT HAS BEEN PRE-AUDITED  
IN THE MANNER REQUIRED BY LOCAL  
GOVERNMENT BUDGET AND FISCAL  
CONTROL ACT.**

Ericka Evans  
County Finance Director

**APPROVED FOR LEGAL SUFFICIENCY**

BY: see attached memo  
**County Attorney's Office**

**RICKEY L. MOOREFIELD**  
County Attorney



**PHYLLIS P. JONES**  
Assistant County Attorney

**ROBERT A. HASTY, JR.**  
Assistant County Attorney

**OFFICE OF THE COUNTY ATTORNEY**

5<sup>th</sup> Floor, New Courthouse • P.O. Box 1829 • Suite 551 • Fayetteville, North Carolina 28302-1829  
(910) 678-7762

**MEMORANNDUM**

TO: Amy Hall, Public Utilities  
FROM: Phyllis P. Jones *[Signature]*  
SUBJECT: Legal Review of the Engineering Agreement with McGill Associates for Bragg Estates  
DATE: July 13, 2015

No opinion is rendered as to § 6.06 D.2—*Payments Upon Termination* because the costs are not determinable from the face of the contract. No opinion is rendered as to the open-ended indemnity clause referenced in §6.11.B *Indemnification and Mutual Waiver* and the attached Exhibit I—"Limitations of Liability referenced therein. This contract is approved for legal sufficiency subject to the limitations stated above and to the contract being properly executed and pre-audited.



This is **EXHIBIT A**, consisting of [ 17 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

## **Engineer's Services**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

#### **A1.01 Study and Report Phase**

**A. Engineer shall:**

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
  - a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions.
  - b. ~~If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions. In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.~~
  - c. ~~If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [ ] **[insert specific number]** alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~
2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.
4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and

evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.

6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.
8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs. **The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency."**
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
10. When mutually agreed **and approved by the Agency**, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
14. Perform or provide the following other Study and Report Phase tasks or deliverables: **Provide an Environmental Report as defined at 7 CFR 1794 and RUS Bulletin 1794A-602 or other Agency approved format. The Environmental Report must be concurred in by the Agency.**

15. Furnish [ 1 ] review copies of the Report and any other Study and Report Phase deliverables to Owner within [ 60 ] days of the Effective Date and review it with Owner. Within [ 30 ] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
  16. ~~Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish [ ] copies of the revised Report and any other Study and Report Phase deliverables to the Owner within [ ] days of receipt of Owner's comments.~~ **Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within [ 30 ] days of receipt of Owner's and Agency's comments.**
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

#### A1.02 *Preliminary Design Phase*

- A. After acceptance by Owner **and concurrence by Agency** of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
  2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner **and Agency** during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
  3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
  4. Visit the Site as needed to prepare the Preliminary Design Phase documents.

5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
  6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
  7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
  8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable. **Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.**
  9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:  
[ NONE ].
  10. Furnish [ 1 ] review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within [ 120 ] days of authorization to proceed with this phase, and review them with Owner. Within [ 30 ] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
  11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner [ 1 ] copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within [ 30 ] days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

#### A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other

Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
9. Perform or provide the following other Final Design Phase tasks or deliverables: **The Engineer shall identify the building codes, and accessibility standards used in the design and indicate them on the drawings and specifications and certify that final drawings and specifications, comply with those standards.**
10. Furnish for review by Owner, its legal counsel, and Agency and other advisors, [ 1 ] copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within [ 60 ] days of authorization to proceed with the Final Design Phase, and review them with Owner. Within [ 30 ] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.

11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit [ 1 ] final copies of such documents to Owner within [ 60 ] days after receipt of Owner's comments and instructions.
  12. **Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer's Certificate of Final Plans and Specifications (Attachment GC-B) for this purpose.**
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), **and all final design phase deliverables have been accepted by Owner.**
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is [ 1 ]. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

#### A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.

2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents. **Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible.**
  3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
  4. Consult with Owner as to the qualifications of prospective contractors.
  5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
  6. ~~If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.~~ **The Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved "or equals" and substitutes. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.**
  7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
  8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
  9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: **Upon award of the construction contract, the Engineer shall furnish to Owner five (5) executed copies of the Contract Documents and one electronic copy of the signed documents, including drawings and specifications.**
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

#### A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700,



Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
4. *Pre-Construction Conference:* Participate in **and chair** a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* ~~If requested by Owner to do so,~~ maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:

- a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
  - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
  - c. **The visits described in Article A1.05.A9a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.**
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.

12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. **Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations.**
19. *Inspections and Tests:*
  - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or

approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.

- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
  - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
  - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose

responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. ~~Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.~~ **Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner.**
23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables.
  - a. **Upon substantial completion, the engineer shall provide a copy of the certificate of substantial completion to the Agency.**
25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will

not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

#### A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
  2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
  3. Perform or provide the following other Post-Construction Phase tasks or deliverables:  
[None ]
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

## PART 2 – ADDITIONAL SERVICES

#### A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements **not including the preparation of the Environmental Report defined under Basic Services**; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2 **but only if the Owner's request is made after completion of the Study and Report Phase.**
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
  - a. detailed consideration of operations, maintenance, and overhead expenses;
  - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
  - c. preparation of appraisals;
  - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
  - e. detailed quantity surveys of materials, equipment, and labor; and
  - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
  - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.

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Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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- b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
- 11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
- 12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
- 13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
- 14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
- 15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
- 16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
- 17. (Deleted)
- 18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
- 19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
- 20. Preparation of operation, maintenance, and staffing manuals.
- 21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
- 22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
- 23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.

24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

#### **A2.02    *Additional Services Not Requiring Owner's Written Authorization***

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
  1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
  2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; ~~services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project;~~ evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
  3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
  4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
  5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.

6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of [ 3 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

## **Owner's Responsibilities**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - 1. Property descriptions.
  - 2. Zoning, deed, and other land use restrictions.
  - 3. Utility and topographic mapping and surveys.

4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
  6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
  7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for 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. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. 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.
- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: [None]



This is **EXHIBIT C**, consisting of [ 8 ] pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated June 15, 2015.

**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-1: Basic Services – Lump Sum**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

**C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment**

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. A Lump Sum amount of \$[157,000] based on the following estimated distribution of compensation:

a. Study and Report Phase	\$[27,000]
b. Preliminary Design Phase	\$[42,000]
c. Final Design Phase	\$[52,000]
d. Bidding and Negotiating Phase	\$[10,000]
e. Construction Phase	\$[19,500]
f. Post-Construction Phase	\$[ 6,500]
  2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner **and Agency**.
  3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.
  4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges): [N/A]
  5. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding [12] months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted **with concurrence of the Owner and Agency.**



## **COMPENSATION PACKET RPR-2:**

### **Resident Project Representative – Standard Hourly Rates**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

#### **C2.04 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment**

##### **A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:**

1. **Resident Project Representative Services:** For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$[80,000 ] based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a [240] day construction schedule. **This amount includes an estimated \$74,000 in RPR services and \$6,000 in mileage and other reimbursables.**
2. **If rate(s) for RPR services is not indicated in Appendix Two of Exhibit C "Standard Hour/Rate Schedule", the Standard Hourly Rate for RPR services is \$75 per hour.**

##### **B. Compensation for Reimbursable Expenses:**

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of [1.1].
4. The Reimbursable Expenses Schedule will be adjusted annually (as of [TBD]) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred by the Owner and Agency.**

C. *Other Provisions Concerning Payment Under this Paragraph C2.04:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of [ 1.1 ].
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
  - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner **and Agency** written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at **no** cost.

## COMPENSATION PACKET AS-1: Additional Services – Standard Hourly Rates

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

### C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of [1.1].
4. The Reimbursable Expenses Schedule will be adjusted annually (as of June) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

C. *Other Provisions Concerning Payment for Additional Services:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of [1.1].

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at **no** cost.

This is **Appendix 1 to EXHIBIT C**, consisting of [ 1 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

### **Reimbursable Expenses Schedule**

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Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

Mileage - \$0.65 per mile

GPS Equipment - \$25.00 per hour

Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

Associated services required by the project such as soil analysis, biological surveys, archaeological surveys, etc. shall be at cost plus ten (10) percent.

This is **Appendix 2 to EXHIBIT C**, consisting of [ 1 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

## Standard Hourly Rates Schedule

### A. Standard Hourly Rates:

- Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
- The Standard Hourly Rates apply only as specified in Article C2.

### B. Schedule:

Hourly rates for services performed on or after the date of the Agreement are:

Firm Principal	\$ 180.00	CADD Operator I	\$ 70.00
Program Services Manager I	\$ 140.00	CADD Operator II	\$ 75.00
Program Services Manager II	\$ 155.00	CADD Operator III	\$ 80.00
Senior Project Manager I	\$ 155.00	Construction Services Manager I	\$ 110.00
Senior Project Manager II	\$ 165.00	Construction Services Manager II	\$ 120.00
Project Manager I	\$ 130.00	Construction Administrator I	\$ 85.00
Project Manager II	\$ 140.00	Construction Administrator II	\$ 95.00
Project Engineer I	\$ 100.00	Construction Administrator III	\$ 105.00
Project Engineer II	\$ 110.00	Construction Field Representative I	\$ 70.00
Project Engineer III	\$ 120.00	Construction Field Representative II	\$ 75.00
Engineering Associate I	\$ 80.00	Construction Field Representative III	\$ 80.00
Engineering Associate II	\$ 85.00	Planner I	\$ 85.00
Engineering Technician I	\$ 75.00	Planner II	\$ 95.00
Engineering Technician II	\$ 85.00	Planner III	\$ 105.00
Engineering Technician III	\$ 95.00	Surveyor I	\$ 85.00
Electrical Engineer I	\$ 100.00	Surveyor II	\$ 95.00
Electrical Engineer II	\$ 110.00	Surveying Associate I	\$ 70.00
Electrical Engineer III	\$ 120.00	Surveying Associate II	\$ 75.00
Electrical Engineering Associate I	\$ 80.00	Survey Technician I	\$ 55.00
Electrical Engineering Associate II	\$ 85.00	Survey Technician II	\$ 60.00
Electrical Engineering Technician I	\$ 75.00	Survey Technician III	\$ 65.00
Electrical Engineering Technician II	\$ 85.00	Administrative Assistant (I-III)	\$ 60.00
Electrical Engineering Technician III	\$ 95.00	Accounting Assistant (I-II)	\$ 75.00



This is **EXHIBIT D**, consisting of [ 5 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

## **Duties, Responsibilities, and Limitations of Authority of Resident Project Representative**

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

### **ARTICLE 1 - SERVICES OF ENGINEER**

#### **D1.01 Resident Project Representative**

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. **Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.**
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
  - 1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
  - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
  - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings

(but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
  - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
  - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
  - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
  - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
  - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected,



- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- ~~b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.~~
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.



ENGINEERS JOINT CONTRACT  
DOCUMENTS COMMITTEE

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**NOTICE OF ACCEPTABILITY OF WORK**

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**PROJECT: BRAGG ESTATES WASTEWATER COLLECTION SYSTEM EXPANSION**

**OWNER: CUMBERLAND COUNTY**

**CONTRACTOR:**

**OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:**

**EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:**

**ENGINEER: MCGILL ASSOCIATES, P.A.**

**NOTICE DATE:**

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**To:** \_\_\_\_\_  
**Owner**

**And To:** \_\_\_\_\_  
**Contractor**

**From:** \_\_\_\_\_  
**Engineer**

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, and the following terms and conditions of this Notice:

**CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK**

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

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Exhibit E – Notice of Acceptability of Work.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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Page 1

2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

This is **EXHIBIT F**, consisting of [ 2 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

### **Construction Cost Limit**

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Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

#### **F5.02    *Designing to Construction Cost Limit***

- A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of \$[1,540,000].
- B. A bidding or negotiating contingency of [10] percent will be added to any Construction Cost limit established.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then-established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit. **Engineer's determinations on types and quality of materials, equipment, and component systems to be included in the Drawings and Specifications are subject to approval by Agency in accordance with requirements of 7 CFR 1780, including open and free competition.**
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for

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Exhibit F – Construction Cost Limit.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

This is **EXHIBIT G**, consisting of [ 2 ] pages,  
referred to in and part of the **Agreement  
between Owner and Engineer for Professional  
Services** dated June 15, 2015.

## **Insurance**

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Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

### **G6.05 Insurance**

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
  - 1) Bodily injury, each accident: \$[500,000]
  - 2) Bodily injury by disease, each employee: \$[500,000]
  - 3) Bodily injury/disease, aggregate: \$[500,000]
- c. General Liability --
  - 1) Each Occurrence (Bodily Injury and Property Damage): \$[1,000,000]
  - 2) General Aggregate: \$[2,000,000]
- d. Excess or Umbrella Liability --
  - 1) Per Occurrence: \$[1,000,000]
  - 2) General Aggregate: \$[1,000,000]
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):  
\$[1,000,000]
- f. Professional Liability --
  - 1) Each Claim Made \$[2,000,000]
  - 2) Annual Aggregate \$[2,000,000]
- g. Other (specify): \$[N/A]

2. By Owner:

- a. Workers' Compensation: Statutory



b. ~~Employer's Liability~~

- 1) ~~Bodily injury, Each Accident~~ \$[ ]
- 2) ~~Bodily injury by Disease, Each Employee~~ \$[ ]
- 3) ~~Bodily injury/Disease, Aggregate~~ \$[ ]

c. General Liability --

- 1) General Aggregate: \$[1,000,000]
- 2) Each Occurrence (Bodily Injury and Property Damage): \$[1,000,000]

d. ~~Excess Umbrella Liability~~

- 1) ~~Per Occurrence:~~ \$[ ]
- 2) ~~General Aggregate:~~ \$[ ]

e. ~~Automobile Liability - Combined Single Limit (Bodily Injury and Property Damage):~~

\$[ ]

f. Other (specify): \$[N/A]

B. *Additional Insureds:*

- 1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

a. [None]  
Engineer

b. [None]  
Engineer's Consultant

c. [None]  
Engineer's Consultant

d. [ ]  
[other]

- 2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
- 3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

This is **EXHIBIT H**, consisting of [ 2 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

## **Dispute Resolution**

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Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

### **~~H6.08 Dispute Resolution~~**

~~A. **Mediation:** Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by [here insert name of mediator, or mediation service]. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.~~

**[or]**

~~A. **Arbitration:** All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the [insert the name of a specified arbitration service or organization here] rules effective at the Effective Date, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph H6.09.A will be specifically enforceable under prevailing law of any court having jurisdiction.~~

- ~~1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the [specified arbitration service or organization]. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.~~
- ~~2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$[ ] (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$[ ] (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$[ ] (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.~~
- ~~3. The rules of any arbitration shall be supplemented to include the following: The award rendered by the arbitrators shall be in writing, and shall include (a) a precise breakdown of~~

~~the award, and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.~~

- ~~4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.~~
- ~~5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Paragraph H6.09.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.~~
- A. The parties must resolve any claim, dispute or other matter in contention arising out of, or relating to, this Contract which involves \$15,000 or more through the following procedure. The parties shall first negotiate in good faith to reach an equitable settlement to the dispute. If a negotiated settlement cannot be reached within 10 business days, the parties shall submit to mediation. The parties shall select a mediator, licensed by either the North Carolina or federal courts and mutually agreeable to all parties in the dispute to conduct the proceedings which shall be held at the Owner's place of business. If the parties cannot select a mediator within 10 business days, then the Owner shall select a mediator (or, if the Owner is a party to the dispute, the Cumberland County Trial Court Administrator). The mediator's cost shall be equally shared by all parties to the dispute. If a mediated settlement cannot be reached, the final recourse to the aggrieved party is legal action instituted and tried in the General Court of Justice of North Carolina under North Carolina Law with venue for trial being Cumberland County. No party shall have a right to resort to litigation until mediation shall first have occurred and not been successful.**

**In accordance with North Carolina General Statute 143-135.26(12) and as a condition to this Contract, the prime contractor shall incorporate this dispute resolution clause in any and all contracts with first-tier subcontractors who in turn shall incorporate this clause in any contracts with lower-tier subcontractors.**

This is **EXHIBIT I**, consisting of [ 1 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

## **Limitations of Liability**

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Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

**A. *Limitation of Engineer's Liability***

1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, 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.
2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for 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 this Agreement or the Project, from any cause or causes, including but not limited to:

- B. *Indemnification by Owner:*** To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.



This is **EXHIBIT J**, consisting of [ 1 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2015.

### **Special Provisions**

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Paragraph(s) [ C2.01 ] of the Agreement is/are amended to include the following agreement(s) of the parties:

**1. Section C2.01 (Compensation For Basic Services) of the Agreement is amended to include the following agreement(s) of the parties:**

Cumberland County previously issued Purchase Order Number [Q1014] to McGill Associates, P.A. on [2/7/14] in the amount of \$27,000 for preparation of the Preliminary Engineering Report and Environmental Report for this project.

The total amount of Basic Services and Resident Project Representative Services in this Agreement, less the previous purchase order and payments is therefore [\$210,000].



**OFFICE OF THE COUNTY ATTORNEY**

**MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: COUNTY ATTORNEY**

**DATE: 5/15/2020**

**SUBJECT: APPROVAL OF ENGAGING OUTSIDE COUNSEL TO PROVIDE TITLE  
OPINION FOR EASEMENT PARCELS**

**BACKGROUND**

Upon completion of the engineering for the Bragg Estates sewer system, it was determined that easements would be required on approximately 30 parcels within the Bragg Estates Subdivision. The County Attorney's Office does not have the staff to complete this work at this time. County Attorney requests the Board to authorize the District to engage local real estate attorney, Rebecca Person, to do this work. Ms. Person has an active real estate practice and does title work for the PWC and NCDOT. She has agreed to do this work for a flat fee of \$500 per parcel. The county attorney has examined the title to some parcels in this subdivision and believes this to be a reasonable fee.

**RECOMMENDATION / PROPOSED ACTION**

County attorney recommends the Board authorizes the Bragg Estates Water and Sewer District to engage attorney Rebecca Person to complete the title work for the acquisition of sewer easements in the Bragg Estates Subdivision at a flat fee of \$500 per parcel.



**OFFICE OF THE COUNTY MANAGER**

**MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM:**

**DATE:**

**SUBJECT: MEETINGS**

**BACKGROUND**

**June 1, 2020 (Monday) - 9:00 AM**

**June 15, 2020 (Monday) - 6:45 PM**

**No Board of Commissioners' Meetings in July**





**OFFICE OF THE COUNTY MANAGER**

**MEMORANDUM FOR BOARD OF COMMISSIONERS AGENDA OF MAY 18, 2020**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM:**

**DATE:**

**SUBJECT: FY2021 BUDGET MEETINGS**

**BACKGROUND**

**FY2021 BUDGET MEETINGS**

<b>June 1, 2020 (Monday) - 9:00 AM</b>	<b>Budget Presentation</b>
<b>June 3, 2020 (Wednesday) - 5:30 PM</b>	<b>Budget Work Session</b>
<b>June 8, 2020 (Monday) - 7:00 PM</b>	<b>Budget Public Hearing</b>
<b>June 9, 2020 (Tuesday) - 5:30 PM</b>	<b>Budget Work Session</b>
<b>June 11, 2020 (Thursday) - 1:00 PM</b>	<b>Budget Work Session</b>
<b>June 17, 2020 (Wednesday) - 5:30 PM</b>	<b>Budget Work Session</b>

**RECOMMENDATION / PROPOSED ACTION**