



Agenda

Greenville City Council

January 9, 2012
6:00 PM
City Council Chambers
200 West Fifth Street

Assistive listening devices are available upon request for meetings held in the Council Chambers. If an interpreter is needed for deaf or hearing impaired citizens, please call 252-329-4422 (voice) or 252-329-4060 (TDD) no later than two business days prior to the meeting.

I. Call Meeting To Order

II. Invocation - Council Member Mercer

III. Pledge of Allegiance

IV. Roll Call

V. Approval of Agenda

- **Public Comment Period**

The Public Comment Period is a period reserved for comments by the public. Items that were or are scheduled to be the subject of public hearings conducted at the same meeting or another meeting during the same week shall not be discussed. A total of 30 minutes is allocated with each individual being allowed no more than 3 minutes. Individuals who registered with the City Clerk to speak will speak in the order registered until the allocated 30 minutes expires. If time remains after all persons who registered have spoken, individuals who did not register will have an opportunity to speak until the allocated 30 minutes expires.

VI. Consent Agenda

1. Minutes of the November 14, November 21, and December 5, 2011 City Council meetings
2. Resolution accepting dedication of rights-of-way and easements for Bostic and Burns Drives
3. Municipal Agreement with the North Carolina Department of Transportation for the design and construction of the South Tar River Greenway Phase 3 – Pitt Street to Moye Boulevard
4. Contract for on-call civil engineering services

5. Agreement for professional engineering services to serve as owner's representative for energy performance contracting
6. Resolution approving a lease agreement with the Greenville Industrial-Eppes High School Alumni Heritage Society for a portion of the C.M. Eppes Recreation Center
7. Ordinance and reimbursement resolution for Greenville Utilities Commission's Water Treatment Plant Facilities Master Plan
8. Ordinance amending the capital project budget for Greenville Utilities Commission's Water Treatment Plant Riverbank Stabilization & Raw Water Pumping Station Improvements Project

VII. New Business

9. Presentations by Boards and Commissions
 - a. Community Appearance Commission
 - b. Environmental Advisory Commission
10. Clark Street debris pile
11. PAL Program
12. Dream Park Master Plan
13. Resolution authorizing the sale of 806 Fleming Street to Adrian Barnhill
14. Budget ordinance amendment #6 to the 2011-2012 City of Greenville budget (Ordinance #11-038)

VIII. Review of January 12, 2012 City Council Agenda

IX. Comments from Mayor and City Council

X. City Manager's Report

XI. Closed Session

- To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, said laws rendering the information as privileged or confidential being the Personnel Privacy Statute and the Open Meetings Law
- To consider the qualifications, competence, performance, character, fitness, conditions of

appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee

- To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body

XII. Adjournment



City of Greenville, North Carolina

Meeting Date: 1/9/2012
Time: 6:00 PM

Title of Item: Minutes of the November 14, November 21, and December 5, 2011 City Council meetings

Explanation: Proposed minutes for the City Council meetings held on November 14, November 21, and December 5, 2011 are submitted for review and consideration for approval by the City Council

Fiscal Note: No direct cost to the City.

Recommendation: Review and approve the attached proposed minutes for the City Council meetings held on November 14, November 21, and December 5, 2011.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

- [Proposed Minutes of the November 14 2011 City Council Meeting 911934](#)
- [Proposed Minutes for the November 21 2011 City Council Meeting 912641](#)
- [Proposed Minutes for the December 5 2011 City Council Meeting 915266](#)

PROPOSED MINUTES
MEETING OF THE CITY COUNCIL
CITY OF GREENVILLE, NORTH CAROLINA
MONDAY, NOVEMBER 14, 2011



A regular meeting of the Greenville City Council was held on Monday, November 14, 2011 in the Council Chambers, located on the third floor at City Hall, with Mayor Patricia C. Dunn presiding. Mayor Dunn called the meeting to order at 6:00 pm, after which Council Member Joyner gave the invocation, followed by the Pledge of Allegiance.

Those Present:

Mayor Patricia C. Dunn; Mayor Pro Tem J. Bryant Kittrell, III; Council Member Marion Blackburn; Council Member Rose H. Glover; Council Member Max R. Joyner, Jr.; Council Member Calvin R. Mercer; Council Member Kandie Smith

Those Absent:

None

Also Present:

Wayne Bowers, City Manager; William J. Little, III, Assistant City Attorney; Carol L. Barwick, City Clerk and Polly Jones, Deputy City Clerk

APPROVAL OF THE AGENDA

Upon motion by Council Member Blackburn and second by Council Member Joyner, the agenda was approved as presented by unanimous vote.

PUBLIC COMMENT PERIOD

Mayor Dunn opened the public comment period at 6:04 pm and explained procedures to be followed by anyone who wished to speak.

Bob Ramey – No Address Given

Mr. Ramey expressed his appreciation to the Mayor and members of the City Council for their service to the City of Greenville. He stated he knows a little about city government and he feels the City Manager is doing an outstanding job. He then presented Mr. Bowers with an umbrella bearing a City of Greenville logo.



Dave Barham – No Address Given

Mr. Barham expressed concern over the recent incident involving the City's Sanitation workers in which they complained about lack of overtime, pay increases and respect. He stated he'd spoken to Ruth Eledge of Waters Consulting and Gerry Case, City Human Resources Director, both of whom indicated City Sanitation workers ranked ahead of similar employees in the private sector. Mr. Barham suggested perhaps public employees should be grateful to have jobs, particularly jobs with benefits.

Hearing no one else who wished to address the City Council, Mayor Dunn closed the public comment period at 6:06 pm.

CONSENT AGENDA

City Manager Wayne Bowers introduced items on the Consent Agenda, reading out the title of each as follows:

- First reading of an ordinance granting a taxicab franchise to Sam Tim Woolard d/b/a Around Town Shuttle
- Resolution accepting dedication of rights-of-way and easements for Langston West, Section 2 and Persimmon Place
- Municipal agreement with the North Carolina Department of Transportation for construction of a sidewalk along Charles Boulevard from Red Banks Road to Hyde Drive
- Municipal agreement with the North Carolina Department of Transportation for construction of the Green Mill Run Greenway Phase 2 Extension
- Amendments to the Assignment of Classes to Salary Grades and Ranges and position allocation
- Interlocal cooperative purchasing contract for rear-mounted aerial platform fire truck
- Authorization to submit application for EPA Brownfield Grant funds



- Grant of sanitary sewer easements to Greenville Utilities Commission for the Westside Sanitary Sewer Project
- Authorization for Greenville Utilities Commission to initiate condemnation actions for property/easement acquisition for the Westside Sanitary Sewer Project
- Resolution and deed of release to abandon an electrical easement at Pitt County Memorial Hospital
- Resolution and deed of release to abandon an electrical easement on Commerce Street
- Gas capital projects budget ordinance and reimbursement resolution for Greenville Utilities Commission's NC Highway 33 Main Extension and Old River Road Main Replacement Project
- Resolution of support to form a partnership with Pitt County Schools by adoption of South Greenville Elementary School

Council Member Joyner moved to approve all items on the Consent Agenda, seconded by Council Member Blackburn.

Council Member Glover asked for more information on the item to amend the assignment of classes to salary grades and ranges and position allocation.

Mr. Bowers stated there is a current vacancy in Public Works and the desire is to reclassify that position to one that would serve as a Contract Administrator. It would be assigned one pay grade higher than the current position.

There being no further discussion, the motion to approve the Consent Agenda passed by unanimous vote.

NEW BUSINESS

- Presentations by boards and commissions
 - Firefighter's Relief Fund Committee



Treasurer Will Franklin stated the Firefighter's Relief Fund was established in 1907 by the General Assembly to administer state supplemental retirement funds for retired firefighters. Additionally, the Relief Fund provides relief funding to firefighters in need and scholarship funding to children of firefighters or firefighters who return to school. The Committee is made up of five members, two of which are appointed by the City Council. One member is appointed by the Department of Insurance and the other two are active firefighters. The Committee is required to submit a financial report to the State Fireman's Association each year by June 30th, and this year's report closed with a balance of \$592,000 in the fund after having made payouts of \$5,000 to firefighters in need, \$17,000 in retirement benefits and \$1,500 for scholarships. Since that time, an additional \$54,000 has been received from the Department of Insurance.

- Public Transportation and Parking Commission

Chair Lisa Simmons stated the Public Transportation and Parking Commission was established in 1998 to investigate, review, and study the transit needs of the citizens of Greenville, on-street public parking policies throughout the city and the parking needs of the Uptown Area. The Commission consists of seven members and meets on the third Wednesday of each month, excluding July and December. Ms. Simmons stated accessibility for transportation and parking has been a high priority for the Commission this year, as well as the status of the intermodal transportation process, which has been reviewed at each of their meetings. A new site is currently under consideration, with the goal being to choose a location which will best serve both the current and future needs of the City. Ms. Simmons stated the Commission has worked on a partnership between the City and East Carolina University (ECU) to improve coordination between their respective bus services. She reported that the City's service, GREAT, acquired two hybrid buses in March, funded by Federal stimulus dollars, and both buses are fully ADA equipped. Two new bus routes have been established and one route expanded, with ridership being up 12%. Ms. Simmons said the Commission believes this not only due to economic trends, but also to the good service received by riders.

- Report by Pitt County-City of Greenville Airport Authority on audit corrective actions

Airport Authority Board Member Donald Taylor stated over the last twenty-two months, the Airport has been through nine separate audits on finances, management, safety, operations and compliance. During that period, the Pitt-Greenville Airport has undergone \$12 million in improvements with not a single penny of local, state



or federal funding being identified as misspent or misused. He said he is aware the City Council and many of Greenville's citizens have concerns about the State audit and indicated that Airport Director Jerry Vickers was prepared to give a detailed report on findings and corrective actions.

Mr. Vickers stated the Airport received the engagement letter on February 10th of this year stating they would be subjected to a fiscal control audit. Field visits began on February 21st and continued for approximately fifteen work days. An exit conference with the Airport Authority was held on June 22nd and the amended audit report was received on July 7th. The final report was released by the State Auditor on August 3rd.

The audit report included the following findings and recommendations:

- Deficiencies in the Airport's payroll process – no formal payroll agreement with the City of Greenville and insufficient oversight of the Director's pay
- Problems noted in former Director's compensation – sick leave incentive bonus not approved by Board and issues with vacation and sick leave accounting
- Former Director retroactively credited with sick leave – approved by the Board in 2006 as a good faith effort to correct an issue whereby former Director was not enrolled in the retirement system during first eight months of employment; however, the Board was not aware that the NC General Statutes prohibits retroactive award of sick leave, therefore 1,344 hours was determined ineligible for calculation of years of creditable service
- More oversight needed by the Board – insufficient documentation of closed meetings and subcommittee meetings, greater emphasis on formal policies and procedures and more oversight of Director (employment contract, performance appraisals and pay comparability analysis).

Mr. Vickers stated all findings of the audit have been fixed or are actively in the process of being fixed. The following corrective actions have been taken or are in process:

- Airport Board Policy Manual adopted
- New Personnel Policies scheduled for consideration and adoption in January 2012
- New Performance Appraisal System scheduled for consideration and adoption in February 2012
- New Board Orientation Program adopted and implemented
- Revised Airport Pay & Classification Plan scheduled for consideration and adoption in February 2012



- Annual market survey review of all salaries during budget preparation cycle
- All forms of employee compensation to be specifically approved by the Authority
- Authority will conduct an annual self-assessment
- Annual review of Director's performance based on measurable goals and outcomes

Council Member Blackburn stated she knew there was significant public interest in this issue and she was glad to learn the audit found no public funds misspent. She asked if Mr. Vickers could explain the source of confusion.

Mr. Vickers said he was perhaps not the best qualified to offer an explanation, having only served as Director for a short time, but in his understanding, the Board made a decision back in 1985 to mirror the City of Greenville's pay practices; in short, if the City does it, the Airport does it. The initial audit indicated cost of living adjustments were awarded to Airport personnel without approval because in their view, without a formal policy manual to state the Airport would follow the City's pay practices, the Board's approval was only valid for a year at a time.

Mayor Dunn asked what the Board's orientation would include.

Mr. Vickers stated it would cover the history of the airport, parliamentary procedure, expectations of the Board, the function of the Board and sessions with the Board's auditors.

Council Member Glover asked who currently serves as attorney to the Airport Authority.

Mr. Vickers stated Larry Graham is the Airport's Attorney.

- Presentation of Evans Street Gateway concept design

Senior Planner Carl Rees stated as part of its 2005-2006 Annual Work Plan, the Redevelopment Commission selected a consultant to develop a set of design guidelines for future streetscape improvement projects undertaken within the Revitalization Project areas. The goal of the design process was to create a unique and distinctive vision for public spaces within that area. Key factors considered in the process included access for vehicular, pedestrian and bicycle traffic; public utility location and improvements; street and gateway character; public art and wayfinding. The final deliverable from that process was the Center City-West Greenville Streetscape Master Plan, which was subsequently adopted by both the Redevelopment Commission and the City Council.



Initial projects selected for design and construction were a segment of West 5th Street running from Memorial Drive to Cadillac Street along with portions of Reade and Cotanche Streets. Based on cost estimates and prioritization developed as part of the master planning process, the Redevelopment Commission and City Council designated a segment of Evans Street running from the intersection of 5th Street to the intersection of 10th Street as the second phase of streetscape design and construction in the Uptown District. Rivers and Associates was engaged to carry out this effort.

Mr. Rees stated design and construction of this project is planned to coincide with design and construction of the 10th Street Connector Project, which will deliver hundreds of new vehicular trips per day to the Evans Street gateway and to the Uptown District. Based on input from the Steering Committee comprised of City staff, Uptown Greenville board members, and Greenville Utilities staff, along with input from a wide range of stakeholders, Rivers and Associates has developed a concept plan which represents the project team's vision for the corridor and calls for this section of Evans Street to become one of Greenville's great streets with a design that blends the area's rich architectural legacy with an emerging dynamic hub of services, creating a diverse, accessible, attractive place that is uniquely reflective of Greenville's rich history and future vision. Mr. Rees then introduced Mark Garner, a principal with Rivers and Associates, to discuss the Evans Street Gateway project in greater detail.

Mr. Garner stated work on the project began in late spring 2011 and continued throughout the summer. Several public meetings were held at the Greenville Museum of Art, and the Steering Committee has met a number of times to discuss what was feasible and viable from the City's perspective. Many initial concepts were evaluated and gradually eliminated until a final concept was selected. A presentation was made to the Redevelopment Commission and they approved it for recommendation to the City Council. Mr. Garner then introduced Project manager Myriah Shewchuk to further describe the project.

Ms. Shewchuk explained that a Streetscape is a makeover for a street to improve aesthetics and encourage people to walk, shop, chat, etc.

In the 2006 streetscape master plan, the community's vision for the portion of Evans Street between 5th Street and 10th Street was to have it come to life by being well-lit, walkable and beautiful. Ms. Shewchuk stated the proposed design strives to successfully blend the area's rich architectural legacy with an emerging dynamic hub of services, creating a diverse, accessible, attractive place that is uniquely reflective of Greenville's rich history and vision for the future.



Ms. Shewchuk said the 2006 plan did not include designated bike lanes. The new plan adds those and incorporates a “road diet” which reduces from two lanes traveling in each direction to one lane in each direction with a median between and turn lanes at intersections. There will be vegetation within the medians along with illuminated light columns to create an iconic gateway corridor. She then discussed design plans for each block and how the planted areas can be utilized as treatment areas for stormwater run-off.

Council Member Blackburn thanked Ms. Shewchuk for her presentation and stated it is wonderful to see the possibilities available for taking a bleak stretch of roadway and transforming it into something that incorporates vegetation, bike lanes and sidewalks, as well as the idea for managing run-off. She asked if downtown bond funding would cover project cost.

Mr. Rees stated it would.

Council Member Joyner asked how removing traffic lanes might affect traffic flow.

Ms. Shewchuk stated that according to the traffic impact assessment, it will not have a negative impact. She said she believes having lanes designated for bicycle traffic and sidewalks for pedestrian traffic should actually result in improved traffic flow compared to what is currently in place.

Mr. Rees stated for the amount of traffic currently traveling this area, there is probably a bit more roadway than what is actually needed. The City wants people to view this area as a destination; somewhere to park and get out of their vehicles. The proposed design will provide adequate flow for local traffic while avoiding the likelihood of it becoming another thoroughfare.

Mayor Pro-Tem Kittrell asked how the proposed plan would impact bus traffic and the intermodal site.

Mr. Rees stated the current direction for intermodal site was in the blocks between Cotanche and Evans as this plan was being developed and it provides for appropriate ingress and egress. There is currently bus traffic on Evans Street and it is anticipated that traffic will continue. Once the intermodal site is finalized, this plan can be tweaked as necessary.

Council Member Joyner asked if a cost has been determined.

Mr. Rees stated the project is still in very preliminary stages at present, but he would guess a cost of about \$1 million.



There being no further discussion, Council Member Mercer moved to approve the Evans Street Gateway Design concept. Council Member Blackburn seconded the motion, which passed by unanimous vote.

- Application for North Carolina Parks and Recreation Trust Fund grant for support of improvements to Dream Park

Recreation and Parks Director Gary Fenton stated conditions at the Dream Park are far from being ideal, just as they are at many of the City's recreation facilities. Recreation and Parks is in the process of developing a master plan for the Dream Park and the anticipated cost is around \$690,000, which is about twice what is currently budgeted. While a phased approach may be feasible, doing it all at once provides for the opportunity to apply for Parks and Recreation Trust Fund (PARTF) funding as was done with the Drew Steele Center. The department would like the City Council's approval to apply for a \$250,000 PARTF grant which, if successful, would require a minimum of \$250,000 in matching funds from the City. If the City Council approves, the department will prepare and submit the grant application. He stated if the City is able to put up greater than a 50% share, it may improve chances of securing the funding.

Council Member Joyner asked when the project would be complete if the grant is awarded. Mr. Fenton estimated Spring of 2013. Council Member Joyner encouraged Mr. Fenton to involve Lynn James from the Homeless Shelter located on the adjacent property in the grant application process, stating if she provided a letter of support it might help in securing the grant.

There being no further discussion, Council Member Mercer moved to approve the application for a NC PARTF grant to support improvements at the Dream Park. Council Member Blackburn seconded the motion, which passed by unanimous vote.

- Ordinance amending the concealed handgun ordinance

Assistant City Attorney Bill Little stated during the 2011 Session of the North Carolina General Assembly, a law was enacted which limited the existing authority of cities to regulate the carrying of a concealed handgun by a person having a permit to carry a concealed handgun. Session Law 2011-268 retained the authority for cities to prohibit, by the posting of signs, the carrying of a concealed handgun in a city building and its appurtenant premises but changed the authority relating to parks so that a city cannot prohibit the carrying of a concealed handgun in "parks" but can prohibit the carrying of a concealed handgun in "recreational facilities" which are defined by statute as including only a playground, an athletic field, a



swimming pool, and an athletic facility. This limitation on the authority of cities is effective December 1, 2011.

Mr. Little stated the enactment of this law requires the City to amend its current ordinance relating to the carrying of a concealed handgun to comply with the new law's limitation of its authority. A proposed ordinance has been drafted which addresses this change in the law and takes the approach of continuing with the prohibition in parks to the maximum extent permitted under the new law. This is accomplished by specifying all areas within City parks which comply with the statutory definition of recreational facilities (a playground, an athletic field, a swimming pool, and an athletic facility).

Mr. Little indicated Recreation and Parks Director Gary Fenton compiled a listing of recreational facilities with this intent in mind as the new law requires the ordinance to list each recreational facility for which the prohibition applies. Signs are required to be posted in order to provide the public with appropriate notification of the prohibition. Mr. Little reviewed the list of recreational facilities stated in the listing.

Mr. Little clarified that the City Council has the authority to prohibit concealed handguns in recreational facilities but it is not required to do so. The City Council has the option to not exercise this authority and, therefore, to allow the carrying of concealed handguns in recreational facilities.

If the City Council chooses not to amend the current ordinance to include specified recreational facilities, the current ordinance's prohibition relating to parks could not be enforced as of December 1, 2011. The remaining provisions relating to buildings and their appurtenant premises would remain in effect and could be enforced. The general rule established by the North Carolina General Statutes is that it is unlawful to carry a concealed handgun except when a person is on his own premises. An exception to the general rule is that a person with a concealed handgun permit may carry a concealed handgun unless "otherwise specifically prohibited by law". The places where a person with a concealed handgun permit is otherwise specifically prohibited by law from carrying a concealed handgun includes "premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises". However, unlike other property owners, cities and counties are not authorized to post all of their properties but may only post a prohibition against carrying a concealed handgun (1) on local government buildings and their appurtenant premises and (2) (as of December 1, 2011) on specifically identified recreational facilities. The Recreation and Parks Commission recommended approval of the proposed amended ordinance at its October 12, 2011 meeting.



Council Member Blackburn expressed concern that the State is limiting the City's authority in a way that puts Greenville's citizens at risk. She stated the Recreation and Parks Commission was very concerned about this as the City essentially has less authority over its property than a private property owner because it is no longer able to prohibit the carrying of concealed handguns on its greenways and trails and in its campgrounds.

Council Member Joyner asked how one obtains a permit to carry a concealed handgun. Mr. Little stated it is handled through the Sheriff's Department; an applicant is required to take a training course and undergoes a background check.

There being no further discussion, Council Member Joyner moved to approve the ordinance amending the concealed handgun ordinance to prohibit the carrying of concealed handguns in specified recreational facilities. Council Member Mercer seconded the motion, which passed by unanimous vote.

Council Member Blackburn then moved to include the prohibition of carrying concealed handguns on the City's greenways and trails and in City campgrounds to the City's next group of legislative action issues. The motion died for lack of a second.

- Selection of energy services company to provide energy savings performance contracting services

City Engineer Scott Godefroy stated the City received proposals from three companies for the City's guaranteed energy savings program improvement project. The purpose of the program is to evaluate and implement the most feasible project for the City that will reduce energy usage and expenditures, as well as update inefficient or outdated equipment. Proposals were received from three state pre-qualified companies: (1) Linc Services, LLC; Raleigh NC (2) Schneider Electric; Morrisville, NC and (3) Siemens; Morrisville, NC. All three companies were interviewed in October 2011 by a selection committee comprised of staff members from the Public Works and Recreation and Parks Departments. While each of the three firms is equally qualified to perform the work, staff considers Schneider Electric as the best firm to provide these services to the City and recommends that the City Council approve them as the best qualified firm for providing the City with a comprehensive and tailored approach to energy savings.

Mr. Godefroy stated per North Carolina General Statute 143-64.17, this program must be self-funding and the NC Local Government Commission must give final approval of this project. Once a company is selected, the next step it is enter into negotiations to perform an investment grade audit (IGA), which is more detailed engineering analysis of the



City's facilities. That audit will determine the scope of work for the most feasible performance contract project for the City.

Mr. Godefroy stated there is no cost involved in selecting a firm, but the IGA approval will have budgetary impacts. The City is responsible for the cost of preparing the IGA if it decides not to pursue the project. Ultimately, the dollars that are saved are used to fund the cost of the project.

Council Member Joyner asked about the contract period. Mr. Godefroy stated it would remain in effect until project completion, which could not be determined exactly until a project has been selected. Council Member Joyner stated he would like to slow the process down and have the three firms who bid to each make a presentation to the City Council because he feels too little information has been provided on which to base a decision.

Council Member Blackburn said she feels it would be highly unusual for the City Council to hear directly from bidders and as she sees this, it is simply an energy audit to identify cost-savings improvements for which the cost would be fully capitalized by the savings realized. She moved to approve the selection of Schneider Electric as the energy services company that will provide energy savings performance contracting services to the City. Council Member Mercer seconded the motion, which resulted in a tie vote with Mayor Pro-Tem Kittrell and Council Members Blackburn and Mercer voting to approve and Council Members Glover, Joyner and Smith voting against the motion. Mayor Dunn voted to approve the motion, thereby breaking the tie, and the motion was approved.

- Agreement and funding to participate in Pitt County's 700MHz radio system

Public Works Director Wes Anderson stated the City Manager briefed the City Council on this issue in June and the City essentially has two options: (1) purchase its own system or (2) partner with Pitt County, who will purchase the backbone of the system and allow the City to purchase its own radios and accessories. The partnering option is recommended and an interlocal agreement has been developed by attorneys for the City and the County to be effective on the date the system is first used for operational purposes. Under the agreement, the City would maintain its own equipment and the County would assume responsibility for providing the frequencies necessary for operation. The City would pay a monthly subscriber fee of \$10 per radio to the County.

Mr. Anderson recommended the City Council (1) waive competitive bidding requirements, (2) approve equipment purchases of approximately \$680,000 from Motorola Solutions, Lawrenceville, Georgia, pursuant to the same or more favorable prices, terms and conditions as set forth in its contract with Pitt County, (3) approve the interlocal agreement with Pitt County for use of its 700 MHz Radio System and (4)



approve the required transfer of funds for the New Technology for Public Safety capital project fund to a new radio purchase account.

Mayor Pro-Tem Kittrell moved to approve recommendations made by Mr. Anderson. Council Member Blackburn seconded the motion, which passed by unanimous vote.

- Possible modifications to sign regulations

Chief Planner Chris Padgett stated that, based on a request which originated with Council Member Max Joyner, staff was directed to develop options for possible modifications to the City's existing sign regulations. Options developed were presented to the City Council in September, at which time staff was further directed to solicit input from local sign companies. Mr. Padgett then summarized options and sign company input as follows:

Temporary Signs

- Current standard is to permit at a rate of one per lot, limited to six square feet in area, and permitted continuously (65 days per year)
- Possible modification would be to eliminate usage of temporary signs
- Three of four sign companies contacted opposed elimination of temporary signs, while one favored eliminating their use
- One sign company suggested the permitted size of temporary signs be increased to improve visibility
- One suggested temporary signs be supported by sturdy metal frames rather than wire frames for aesthetic improvement

Flags

- Current standard is that flags, with or without commercial messages, are permitted so long as each flag does not exceed 100 square feet in area. There is no limit on the number of flags per lot or business. A wind blade does not qualify as a flag.
- Possible modifications include (1) allowing wind blades, but limiting the number per lot or business, (2) limiting the number of flags with commercial messages per lot or business and (3) eliminating the use of flags with commercial messages
- All four sign companies contacted agreed that no distinction should be made between self-supportive flags and wind blades.
- Two of the four sign companies suggested that commercial flags should not be eliminated, but the number permitted should be limited.
- One sign company felt commercial flags should be limited or eliminated entirely.



- One sign company suggested that flags attached to light poles on private property should not be limited in number

Education

- The Code Enforcement Division currently distributes a brochure outlining the standards for temporary/permit exempt signs to individuals in the field. The Planning Division distributes materials outlining the standards for permanent signs to new businesses when they apply for a business license.
- A possible option would be to develop a unified "sign regulations brochure" to be distributed to all business license holders during the annual renewal process.
- Another option would be to require all businesses engaged in the production of signs to confirm in writing that they have received a copy of the City's sign regulations and have reviewed same.
- All four sign companies were in favor of requiring sign companies to review the ordinance and confirm that they have done so.
- Three of four were in favor of developing a unified or comprehensive sign regulations brochure and distributing it to businesses during the annual business license renewal process.
- One sign company owner did not favor development of a unified sign regulations brochure because he did not feel businesses would read it.

Following an extensive discussion of options presented, Council Member Joyner moved to maintain the current standards for temporary signs, refer consideration of flags to the Planning and Zoning Commission to develop an ordinance limiting the number of flags with commercial messages per lot or business, to develop a unified "sign regulations brochure" to be distributed to all business license holders during the annual renewal process and to require all businesses engaged in the production of signs to confirm in writing that they have received a copy of the City's sign regulations and have reviewed same. Mayor Pro-Tem Kittrell seconded the motion, which passed by a vote of 5 to 1 with Council Member Blackburn casting the dissenting vote. Council Member Blackburn stated she is against continuing to allow temporary signs, but she does support the other measures recommended and approved.

- Report on standards for portable temporary storage units

Chief Planner Padgett stated beginning in 2005, the availability and use of portable temporary storage units, typically called "PODS", within the city increased significantly. This was in part due to several companies that were established or expanded to carry and rent these units to individuals and businesses. Consequently, the City began getting numerous complaints about individuals renting and locating



portable temporary storage units in their front yards within residential neighborhoods. At that time, the City did not have regulations in place to address these temporary structures.

In March 2006, the City Council adopted Ordinance No. 06-25 which amended the zoning ordinance to include a new definition entitled "portable temporary storage unit" and to include minimum standards concerning the location, duration, frequency, number and use of units on residential and nonresidential lots. Adoption of this ordinance followed a six-month process, which included extensive communication with several companies that were actively renting these units within the City's planning and zoning jurisdiction. The City now receives far fewer complaints related to portable temporary storage units than it did prior to the development and adoption of standards to address them. The few complaints received recently have involved units being used by businesses located along commercial corridors. The standards adopted in 2006 prohibit these units from being used as permanent accessory structures on residential lots; however, the units may be used as permanent accessory structures on commercial lots so long as they meet the minimum requirements applicable to an accessory building and/or structure for the district in which they are proposed (i.e. setbacks, lot coverage, height, etc...). There is no limitation on the number of accessory structures that can be located on a lot with a commercial, industrial, or office primary use.

Mr. Padgett asked if the City Council wished to make any modification with regard to the standards for these units. Possibilities to be considered might include:

- Limiting the number of portable temporary storage units that can be used as permanent accessory structures on non-residential lots
- Limiting the number of portable temporary storage units that can be used as permanent accessory structures in the downtown commercial and downtown commercial fringe districts

Council Member Blackburn stated she could see some appropriateness of these units in warehouse/industrial areas, but feels they are inappropriate in office/residential areas.

Council Member Joyner asked what would happen to units already in place if the ordinance were modified. Mr. Padgett stated that really would depend on the action implemented by the City Council, but stated they could be grandfathered, or the City Council could establish a grace period allowing them a period of time to come into compliance.

Council Member Joyner asked if there would be public hearing on the matter. Mr. Padgett stated the City Council gives direction to develop modifications to the



existing ordinance, revisions would be presented to the Planning and Zoning Commission and a public hearing would be scheduled.

Council Member Joyner moved to direct the Planning Department to develop a modification to the existing ordinance which would limiting the number of portable temporary storage units that can used as permanent accessory structures in the downtown commercial and downtown commercial fringe districts. Council Member Blackburn seconded the motion and Council Member Glover offered a friendly amendment to add language requiring all portable temporary storage units on a property be painted the same color. Council Member Joyner and Council Member Blackburn accepted the friendly amendment to the original motion, which then passed by unanimous vote.

- 2011-2012 Capital Reserve Fund calculation and designations

City Manager Bowers stated historically following completion of the annual audit, the City Council considers a staff recommendation to transfer unassigned General Fund balance monies along with recommended capital improvement designations. Because of unpredictable sales tax revenue fluctuations and the impact the 2012 real estate property revaluation may have on the City's budget, staff recommends the City Council delay consideration at this time.

Council Member Mercer moved to approve the City Manager's recommendation. Council Member Blackburn seconded the motion, which passed by unanimous vote.

- Budget ordinance amendment #4 to the 2011-2012 City of Greenville budget (Ordinance #11-038); budget ordinance establishing the King George Road Bridge Capital Project; and budget ordinance establishing the FEMA - Hurricane Irene Project

City Manager Bowers presented an amendment to the 2011-2012 budget ordinance for consideration, citing the following reasons the amendment is needed:

- To appropriate contingency funds to install additional playground equipment at Kristin Drive approved by City Council on October 10, 2011 (\$27,105).
- To appropriate grant funds received from the US Department of Justice to purchase additional Taser electro-muscular disruption devices and replace uniform handgun holsters. These funds have been awarded as Justice Assistance Grant 2011 (\$80,163).
- To appropriate Controlled Substance Funds to continue making monthly lease payments on a Police Department vehicle for the remainder of the lease



- term (ten months.) This vehicle was formally used as a HITS grant vehicle, which ended on June 30, 2011 (\$4,856).
- To allocate contingency funds to offset an anticipated shortfall in fiscal year 2011-2012 sales tax. The projection for this fiscal year was based on distributions received prior to June 2011. Based on new projections as of the end of the last fiscal year, it is anticipated that the City will fall under budget unless an budget adjustment is approved (\$100,000).
 - To appropriate Powell Bill funds for the Melody Lane project to construct a new road connecting Dudley Street and Airport Road. (\$175,000).
 - To re-appropriate funds from fiscal year 2010-2011 to complete the traffic services building improvement (\$87,130).
 - To re-appropriate funds from fiscal year 2010-2011 to complete the Municipal Building roof replacement (\$265,506).
 - To appropriate donated funds to support a City Center BMX event (\$12,250).
 - To appropriate fund balance as provided in the approved 2011-2012 Capital Improvement Program for the Public Works Expansion and Relocation of Purchasing Division Project (\$200,000).

Mr. Bowers then presented an ordinance to establish a Capital Project Fund for the King George Road Bridge project. He stated this fund will record King George Road bridge replacement expenses and NCDOT reimbursements. Funds are expected to be reimbursed from the State at 80%. The City's required 20% match will be met using current year Powell Bill appropriations (Total - \$504,999).

Mr. Bowers also presented an ordinance to establish a Project Fund for FEMA-Hurricane Irene activity. He stated this fund will track activity for all expenses and reimbursements that relate to the capital activities for Hurricane Irene such as tree clearing, debris removal, and damage to city buildings. Funds are expected to be reimbursed from Federal (75%) and State (25%) Emergency Management.

Council Member Joyner stated he would like more information on taser usage and made a motion that Council Members be given a monthly usage report. Council Member Glover seconded the motion, which passed by unanimous vote.

Council Member Joyner then moved to approve the three ordinances presented for consideration. Council Member Blackburn seconded the motion, which passed by unanimous vote.

REVIEW OF NOVEMBER 17, 2011 CITY COUNCIL AGENDA



- The City Council did a cursory review of the November 17, 2011 City Council agenda and reviewed nominations for appointments to Boards and Commissions.

COMMENTS FROM MAYOR AND CITY COUNCIL

The Mayor and Members of the Council made general comments about past and future events.

CITY MANAGER'S REPORT

Upon request from the City Manager, Public Works Director Wes Anderson reported that the City had been given approval by FEMA to let a contract for removal of about 20 qualifying stumps that remain from Hurricane Irene. Once the contract is awarded, it should be possible to provide a timeline for completion of necessary work.

ADJOURNMENT

Council Member Blackburn moved to adjourn the meeting, seconded by Council Member Glover. There being no further discussion, the motion passed by unanimous vote and Mayor Dunn adjourned the meeting at 9:27 pm.

Respectfully submitted,

Carol L. Barwick, CMC
City Clerk

PROPOSED MINUTES
MEETING OF THE CITY COUNCIL
CITY OF GREENVILLE, NORTH CAROLINA
MONDAY, NOVEMBER 21, 2011



A regular meeting of the Greenville City Council was held on Monday, November 21, 2011 in the Council Chambers, located on the third floor at City Hall, with Mayor Patricia C. Dunn presiding. Mayor Dunn called the meeting to order at 6:00 pm, after which Mayor Pro-Tem Kittrell gave the invocation, followed by the Pledge of Allegiance.

Those Present:

Mayor Patricia C. Dunn; Mayor Pro Tem J. Bryant Kittrell, III; Council Member Marion Blackburn; Council Member Rose H. Glover; Council Member Max R. Joyner, Jr.; Council Member Calvin R. Mercer; Council Member Kandie Smith

Those Absent:

None

Also Present:

Wayne Bowers, City Manager; David A. Holec, City Attorney; Carol L. Barwick, City Clerk and Polly W. Jones, Deputy City Clerk

APPROVAL OF THE AGENDA

Upon motion by Council Member Joyner and second by Council Member Blackburn, the agenda was approved as presented by unanimous vote.

PUBLIC COMMENT PERIOD

Mayor Dunn opened the public comment period at 6:03 pm and explained procedures to be followed by anyone who wished to speak.

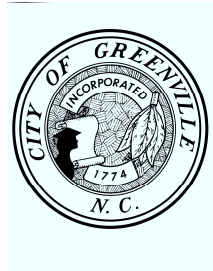
- Scott Hucks – Eastwood Neighborhood Association
Mr. Hucks expressed his appreciation to the City's elected officials, particularly Mayor Dunn and Mayor Pro-Tem Kittrell, whose service terms are coming to a close. He stated their hard work and dedication is much appreciated, particularly in the making of good, sound decisions on difficult issues.

Hearing no one else who wished to address the City Council, Mayor Dunn closed the public comment period at 6:05 pm.



SPECIAL RECOGNITION

City Manager Wayne Bowers read and presented a plaque to Mayor Pro-Tem Kittrell, which read as follows:



THE CITY OF GREENVILLE

NORTH CAROLINA

GRATEFULLY ACKNOWLEDGES

THE OUTSTANDING SERVICE

BY

J. BRYANT KITTRELL, III

Mayor Pro-Tem
December 2009 – December 2011

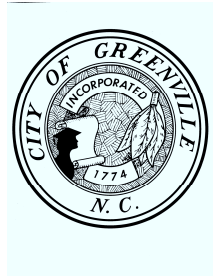
Council Member At-Large
December 2007 – December 2011

*Mayor Patricia C. Dunn
Council Member Kandie D. Smith
Council Member Max R. Joyner, Jr.*

*Council Member Rose H. Glover
Council Member Marion Blackburn
Council Member Calvin R. Mercer*



City Attorney Dave Holec read and presented a plaque to Mayor Dunn, which read as follows:



THE CITY OF GREENVILLE
NORTH CAROLINA
GRATEFULLY ACKNOWLEDGES
THE OUTSTANDING SERVICE

BY

PATRICIA “PAT” C. DUNN

Mayor

December 2007 – December 2011

Council Member At-Large

December 2001 – December 2007

Mayor Pro-Tem J. Bryant Kittrell, III
Council Member Max R. Joyner, Jr.
Council Member Kandie D. Smith

Council Member Rose H. Glover
Council Member Calvin R. Mercer
Council Member Marion Blackburn



COMMENTS FROM MAYOR AND CITY COUNCIL

Council Members Joyner, Smith, Mercer, Blackburn and Glover expressed their appreciation to Mayor Pro-Tem Kittrell and Mayor Dunn for their many contributions to the City during their time on the City Council. They expressed it had been a pleasure working with them as elected officials and indicated they looked forward to continued work with them as community leaders in the future.

Mayor Pro-Tem Kittrell and Mayor Dunn reflected on their tenure as elected officials and expressed appreciation to fellow Council Members, City staff and others who had been helpful to them during their service to the City.

CITY MANAGER'S REPORT

City Manager Bowers expressed his appreciation to Mayor Pro-Tem Kittrell and Mayor Dunn for their leadership, then invited all who were present to attend a reception in their honor in The Gallery immediately following the meeting.

Mr. Bowers stated he would also like to recognize Kathryn Kennedy, of The Daily Reflector, and express his appreciation for her fairness in reporting news for the City and from the City Council Meetings. Ms. Kennedy will be leaving the newspaper to accept another position.

ADJOURNMENT

Council Member Joyner moved to adjourn the meeting, seconded by Council Member Smith. There being no further discussion, the motion passed by unanimous vote and Mayor Dunn adjourned the meeting at 6:51 pm.

Respectfully submitted,

Carol L. Barwick, CMC
City Clerk

PROPOSED MINUTES
MEETING OF THE CITY COUNCIL
CITY OF GREENVILLE, NORTH CAROLINA
MONDAY, DECEMBER 5, 2011



A regular meeting of the Greenville City Council was held on Monday, December 5, 2011 in the Council Chambers, located on the third floor at City Hall, with Mayor Patricia C. Dunn presiding. Mayor Dunn called the meeting to order at 6:00 pm, after which Pastor Kenneth Battle, of New Covenant Community Church, gave the invocation. The Greenville Police Department Honor Guard presented the colors, after which Ms. Requita Demery sang the Star Spangled Banner. The Pledge of Allegiance was led by Miss Ava Thomas and Miss Holly Thomas.

Those Present:

Mayor Patricia C. Dunn; Mayor Pro Tem J. Bryant Kittrell, III; Council Member Marion Blackburn; Council Member Rose H. Glover; Council Member Max R. Joyner, Jr.; Council Member Calvin R. Mercer; Council Member Kandie Smith; Mayor-Elect Allen M. Thomas and Council Member Elect Dennis J. Mitchell

Those Absent:

None

Also Present:

Wayne Bowers, City Manager; David A. Holec, City Attorney; Carol L. Barwick, City Clerk and Polly W. Jones, Deputy City Clerk

CERTIFICATION OF ELECTION RESULTS

City Manager Wayne Bowers read the names of the individuals receiving the most votes for the Office of Mayor and the six seats on the Greenville City Council during the November 8, 2011 general election as certified by the Pitt County Board of Elections. The following individuals received the highest number of votes:

Allen M. Thomas – Mayor
Kandie Smith – Council Member, District #1
Rose H. Glover – Council Member, District #2
Marion Blackburn – Council Member, District #3
Calvin R. Mercer – Council Member, District #4
Max R. Joyner, Jr. – Council Member, District #5
Dennis J. Mitchell – Council Member At-Large



INSTALLATION CEREMONY

Judge Marvin Blount administered the Oath of Office to incoming elected officials, beginning with Mayor Allen M. Thomas and followed by Council Members Dennis J. Mitchell, Kandie Smith, Rose H. Glover, Marion Blackburn, Calvin R. Mercer and Max R. Joyner, Jr.

ELECTION OF MAYOR PRO-TEM

Mayor Thomas called for nominations for the selection of Mayor Pro-Tem.

Council Member Mercer nominated Council Member Mitchell, stating he feels the Council Member At-Large is the only member of the City Council, other than the Mayor, who has a mandate to represent the entire City. He said he feels the City Council should consider a rule change to make that an automatic selection in the future.

Council Member Mitchell nominated Council Member Glover.

Hearing no further nominations, Mayor Thomas declared that the nominations are closed. Mayor Thomas then called for a vote on the nomination of Council Member Mitchell for Mayor Pro-Tem. The vote was 2 to 4, with Council Members Mercer and Blackburn voting in favor and Council Members Smith, Glover, Joyner and Mitchell voting against.

Mayor Thomas then called for a vote on the nomination of Council Member Glover. The vote was 5 to 1 with Council Members Smith, Glover, Blackburn, Joyner and Mitchell voting in favor and Council Member Mercer voting against.

Mayor Thomas announced that Council Member Glover received a majority vote and was elected Mayor Pro-Tem.

COMMENTS FROM MAYOR AND CITY COUNCIL

Mayor Thomas and Members of the City Council thanked those who supported them in this year's election and expressed their enthusiasm for working together during the coming two years.



ADJOURNMENT

Council Member Joyner moved to adjourn the meeting, seconded by Council Member Blackburn. There being no further discussion, the motion passed by unanimous vote and Mayor Dunn adjourned the meeting at 6:20 pm.

Respectfully submitted,

Carol L. Barwick, CMC
City Clerk



City of Greenville, North Carolina

Meeting Date: 1/9/2012
Time: 6:00 PM

Title of Item: Resolution accepting dedication of rights-of-way and easements for Bostic and Burns Drives

Explanation: In accordance with the City's Subdivision regulations, right-of-ways and easements have been dedicated for Bostic and Burns Drives (Map Book 66 at Page 93). A resolution accepting the dedication of the aforementioned rights-of-way and easements is attached for City Council consideration. The final plat showing the rights-of-way and easements is also attached.

The streets identified in this request are in one of the last two developments of the original ten developments with unaccepted public streets that had expired sureties. The new owner of the remaining development with unaccepted public streets, Emerald Park, is working on the deficiencies so that the City will accept the streets for maintenance.

Fiscal Note: Funds for the maintenance of these rights-of-way and easements are included within the fiscal year 2011-2012 budget.

Recommendation: Adopt the attached resolution accepting dedication of rights-of-way and easements for Bostic and Burns Drives.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

[Bostic and Burns Drive](#)

[January 2012 Right of Way Resolution 914888](#)

RESOLUTION NO.
A RESOLUTION ACCEPTING DEDICATION TO THE PUBLIC OF
RIGHTS-OF-WAY AND EASEMENTS ON SUBDIVISION PLATS

WHEREAS, G.S. 160A-374 authorizes any city council to accept by resolution any dedication made to the public of land or facilities for streets, parks, public utility lines, or other public purposes, when the lands or facilities are located within its subdivision-regulation jurisdiction; and

WHEREAS, the Subdivision Review Board of the City of Greenville has acted to approve the final plats named in this resolution, or the plats or maps that predate the Subdivision Review Process; and

WHEREAS, the final plats named in this resolution contain dedication to the public of lands or facilities for streets, parks, public utility lines, or other public purposes; and

WHEREAS, the Greenville City Council finds that it is in the best interest of the public health, safety, and general welfare of the citizens of the City of Greenville to accept the offered dedication on the plats named in this resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville, North Carolina:

Section 1. The City of Greenville accepts the dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes offered by, shown on, or implied in the following approved subdivision plats:

Bostic and Burns Drive

Map Book 66

Page 93

Section 2. Acceptance of dedication of lands or facilities shall not place on the City any duty to open, operate, repair, or maintain any street, utility line, or other land or facility except as provided by the ordinances, regulations or specific acts of the City, or as provided by the laws of the State of North Carolina.

Section 3. Acceptance of the dedications named in this resolution shall be effective upon adoption of this resolution.

Adopted the 9th day of January, 2012.

Allen M. Thomas, Mayor

ATTEST:

Carol L. Barwick, City Clerk

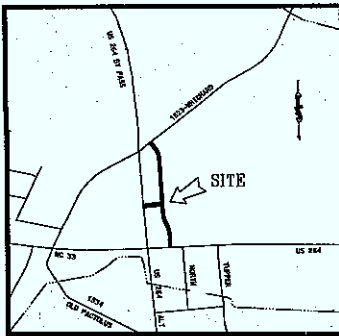
NORTH CAROLINA
PITT COUNTY

I, _____, Notary Public for said County and State, certify that Carol L. Barwick personally came before me this day and acknowledged that she is the City Clerk of the City of Greenville, a municipality, and that by authority duly given and as the act of the municipality, the foregoing instrument was signed in its name by its Mayor, sealed with the corporate seal, and attested by herself as its City Clerk.

WITNESS my hand and official seal this the 9th day of January, 2012.

Notary Public

My Commission Expires:



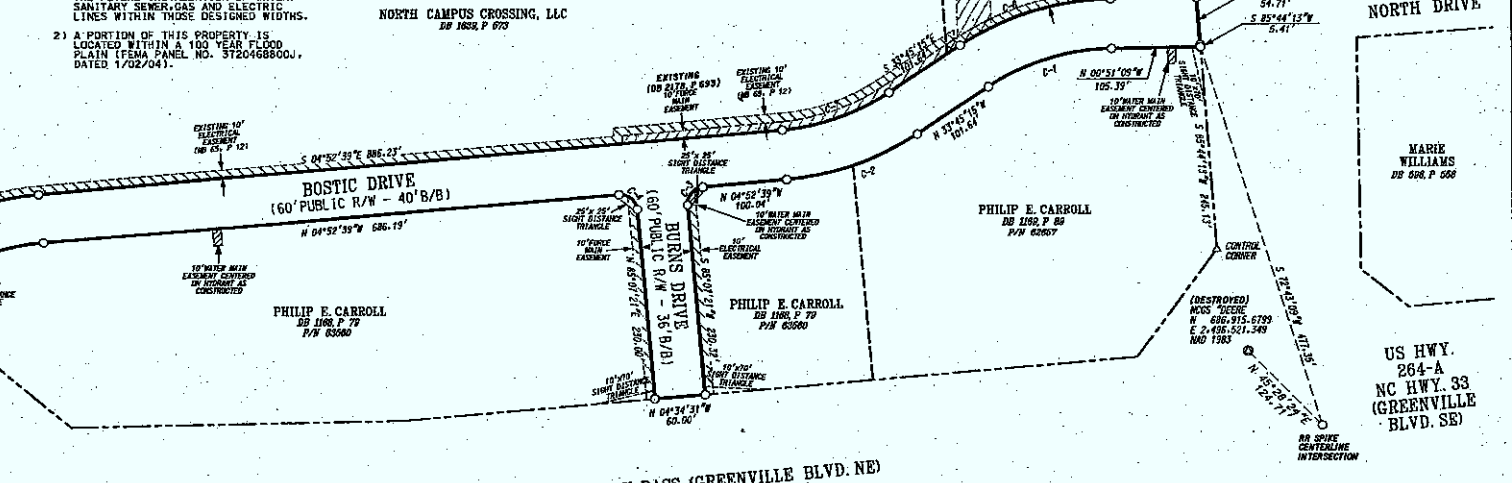
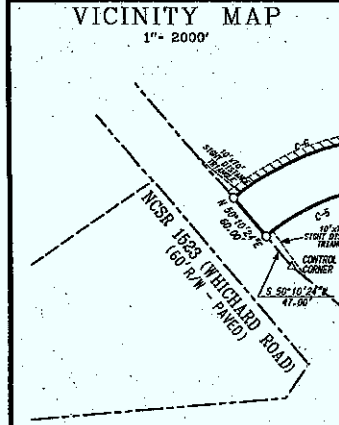
SITE DATA

AREA IN TOTAL TRACT.....2.5495 ACRES
 NUMBER OF LOTS CREATED.....0
 AREA IN COMMON AREA.....0.0 ACRES
 AREA IN PARKS,
 RECREATION AND THE LIKE.....0.0 ACRES

NOTES:

1) THE DESIGNATION NOTED OVER WATER, SANITARY SEWER, GAS OR ELECTRIC LINES ARE FOR THE PURPOSE OF ESTABLISHING WIDTH OF SAID EASEMENTS. THE EASEMENTS SHOWN ARE NOT EXCLUSIVE AND WILL PERMIT THE FUTURE INSTALLATION OF WATER, SANITARY SEWER, GAS AND ELECTRIC LINES WITHIN THOSE DESIGNED WIDTHS.

2) A PORTION OF THIS PROPERTY IS LOCATED WITHIN A 100 YEAR FLOOD PLAIN (FEMA PANEL NO. 3720468800), DATED 1/02/041.



US HWY. 264 BY-PASS (GREENVILLE BLVD. NE)
 (PUBLIC R/W VARIES - B/B VARIES)

I HEREBY CERTIFY THAT THIS SURVEY CREATES A SUBDIVISION OF LAND WITHIN A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES SUBDIVISIONS.

Carlton E. Parker
 CARLTON E. PARKER

I, CARLTON E. PARKER, CERTIFY THAT THIS MAP WAS DRAWN BY ME OR UNDER MY SUPERVISION FROM AN ACTUAL SURVEY BY ME OR UNDER MY SUPERVISION. THAT THE RATIO OF PRECISION AS CALCULATED FROM LATITUDES AND DEPARTURES IS 1:10,000+; THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION FOUND IN BOOK PAGE _____ THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS _____ DAY OF _____ A.D., 2006.

Carlton E. Parker
 CARLTON E. PARKER L-2980

APPROVED: *Andrew Thomas, Jr.*
 REVIEW OFFICER OF PITT COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

Andrew Thomas, Jr.
 REVIEW OFFICER DATE 04/20/06

NORTH CAROLINA, PITT COUNTY FILED FOR REGISTRATION THIS _____ DAY OF _____, 2006, AT _____ O'CLOCK _____ M., JUDY TART, REGISTER OF DEEDS.

BY: _____ REGISTER OF DEEDS

LEGEND

- = IRON STAKE SET UNLESS OTHERWISE NOTED.
- △ = EXISTING R/W MARKMENT

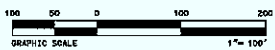
CURVE TABLE

COURSE	RADIUS	ARC LENGTH	CHORD	CHORD BEARING
C-1	270.00'	155.05'	152.82'	N 17°18'12"W
C-2	330.00'	169.35'	164.95'	N 10°18'57"W
C-3	20.00'	37.42'	26.26'	N 49°52'39"W
C-4	20.00'	31.42'	23.26'	N 40°07'21"E
C-5	270.00'	164.65'	162.15'	N 22°21'07"W
C-6	330.00'	201.25'	196.19'	S 22°17'07"E
C-7	270.00'	136.26'	134.84'	S 17°18'57"E
C-8	330.00'	189.50'	186.91'	S 17°18'57"E

NOTE:

ALL DISTANCES SHOWN ON THIS PLAT ARE HORIZONTAL FIELD DISTANCES. (NO GRID FACTORS APPLIED)

COMBINED FACTOR OF 0.999892887



MAP FOR RECORD

BOSTIC & BURNS DRIVE

REFERENCE MAP BOOK 40, PAGE 71

GREENVILLE PACTOLUS TOWNSHIP PITT COUNTY NORTH CAROLINA

OWNER: PHILIP E. CARROLL
 ADDRESS: 2510 SOUTH CHARLES BLVD. GREENVILLE, NC 27658
 PHONE: (252)752-1020

MALPASS & ASSOCIATES
 164 EAST ARLINGTON BLVD. SUITE D GREENVILLE, N.C. 27854
 (252) 756-1780

SURVEYED BY: JDC APPROVED BY: CEP
 DRAWN BY: KCW DATE: 04/25/06
 CHECKED BY: CEP SCALE: 1" = 100'

SOURCE OF TITLE

THIS IS TO CERTIFY THAT THE LAST INSTRUMENT(S) IN THE CHAIN OF TITLES OF THIS PROPERTY AS RECORDED IN THE PITT COUNTY REGISTRY AT GREENVILLE, NORTH CAROLINA IS:

DEED BOOK 1168 PAGE 79
 DEED BOOK 1169 PAGE 89

N.C. REGISTRATION NO. L-2980

OWNERS STATEMENT

THIS IS EVIDENCE THAT THIS SUBDIVISION IS MADE AT THE REQUEST OF:

OWNER: *Philip E. Carroll*
 SWORN AND SUBSCRIBED BEFORE ME THIS 16th DAY OF APRIL, 2006.
 NOTARY PUBLIC MY COMMISSION EXPIRES 2/16/2011

APPROVAL

THIS FINAL PLAT, NO. 06-44 WAS APPROVED BY THE SUBDIVISION REVIEW BOARD IN ACCORDANCE WITH TITLE 5, CHAPTER 5 OF THE GREENVILLE CITY CODE THE 16th DAY OF APRIL, 2006.

SIGNED: *Carlton E. Parker*
 CITY PLANNER

DEDICATION

THE UNDERSIGNED HEREBY ACKNOWLEDGE(S) THIS PLAT AND ALLOTMENT TO BE HIS FREE ACT AND DEED, AND HEREBY DEDICATES TO PUBLIC USE AS STREETS, PARKS, PLAYGROUNDS, OPEN SPACES AND EASEMENTS FOREVER. ALL AREAS AS SHOWN OR AS INDICATED ON SAID PLAT.

SIGNED: *Philip E. Carroll*
 ATTEST: _____



City of Greenville, North Carolina

Meeting Date: 1/9/2012
Time: 6:00 PM

Title of Item: Municipal Agreement with the North Carolina Department of Transportation for the design and construction of the South Tar River Greenway Phase 3 – Pitt Street to Moye Boulevard

Explanation: In late summer of 2011, the City of Greenville was awarded a discretionary grant from a United States DOT Transportation Community and System Preservation Program (TCSP) through a competitive application process. The City received \$907,609 of the \$1.2 million requested in the application. The grant was awarded to provide funding for constructing Phase 3 of the South Tar River Greenway from Pitt Street to Moye Boulevard. Currently, the South Tar River Greenway connects Town Common/Greene Street on the west end to the Green Mill Run Greenway in Green Springs Park on the east end. Phase 3 will construct approximately 1.4 miles of 10' wide paved multi use trail and will complete the connection from Pitt Street to Moye Boulevard. This project will complete the connection from East Carolina University's main campus to the Medical School Campus. Additionally, it will support commuters working at the City's other major employers, such as Pitt County Memorial Hospital and the City and County government offices.

The process to select a design consultant will begin immediately upon execution of the agreement by NCDOT. Construction is tentatively scheduled to start in fiscal year 2013-2014.

Fiscal Note: Additional funding was also awarded to the City for this project by the Pitt County Health Department. A grant of \$50,000 from the "Communities Putting Prevention to Work" (CPPW) program will provide a portion of the funding for route assessments and design. The Health Department's grant is a 100% grant with no City match required.


The City is required to provide a 20% local match for the TCSP grant (\$226,902). The project and the local match have been submitted for inclusion in the 2012-2013 Capital Improvement Program.

Total funding for this project is \$1,184,511.

Recommendation: Approve the attached Municipal Agreement with NCDOT for the design and construction of the South Tar River Greenway Phase 3 – Pitt Street to Moye Boulevard.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

 [Municipal Agreement for South Tar River Greenway Phase 3](#)

NORTH CAROLINA

**LOCALLY ADMINISTERED PROJECT -
FEDERAL**

PITT COUNTY

DATE: 10/17/2011

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: EB-5539

AND

WBS Elements: PE 45529.1.1

ROW 45529.2.1

CITY OF GREENVILLE

CON 45529.3.1

OTHER FUNDING: _____

FEDERAL-AID NUMBER: TCSP-0220(64)

CFDA #: 20.205

Total Funds [NCDOT Participation] \$907,609

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the City of Greenville, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, Section 1117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA – LU), establishes Transportation, Community, and Systems Preservation program funds, which require that federal funds be available for certain specified transportation activities; and,

WHEREAS, the City of Greenville has requested federal funding for South Tar River Greenway, Phase 3, hereinafter referred to as the Project, in Pitt County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of \$907,609 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved Transportation Improvement Program for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to this Agreement will be agreed upon in writing by all parties prior to being implemented.

Any increases to the funding amount will be agreed upon by all parties by means of a Supplemental Agreement.

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of preliminary engineering, right-of-way, and construction of a 10-ft wide asphalt paved multi-use trail with 2-ft wide granite screenings shoulders from the western terminus of the existing South Tar River Greenway at Pitt Street to Moye Boulevard.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Design
- Environmental Documentation
- ROW Acquisition
- Construction

as further set forth in this Agreement.

3. FUNDING

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall participate up to a maximum amount of Nine Hundred Seven Thousand Six Hundred Nine Dollars (\$907,609), as detailed below. The Municipality shall provide a local match, as detailed in the FUNDING TABLE below, and all costs that exceed the total estimated cost.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
High Priority Projects	\$907,609	80 %	\$226,902	20 %
Total Estimated Cost		\$1,134,511		

4. TIME FRAME

The Municipality, and/or its agent, shall complete pre-construction activities, to include Environmental Document, Right of Way Certification and final PS&E package, by July 31, 2013, in order to authorize construction funds prior to the end of the Federal Fiscal Year (September 30). In the event additional time is required to complete pre-construction activities, the

Department will accept a written request for an extension of time as long as authorization of construction funds can still occur in the same Federal Fiscal Year. Any extensions of time beyond the current Federal Fiscal Year will require a supplemental agreement.

The Municipality shall complete the Project by June 30, 2015. Completion for this Agreement is defined as completion of all construction activities, acceptance of the project, and submission of a final reimbursement package to the Department.

The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

5. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

6. PROFESSIONAL AND ENGINEERING SERVICES

The Municipality shall comply with the policies and procedures of this provision if Preliminary Engineering and/or Construction Contract Administration is an eligible expense.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 49 Code of Federal Regulations Part 18.36; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legsregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
- All Professional Services Firms shall be pre-qualified by the Department.

- If the proposed contract exceeds \$30,000, a pre-negotiation audit must be requested from the Department's External Audit Branch.

SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation. These provisions are incorporated into this Agreement by reference www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

WORK BY ENTITY

If the Professional and Engineering Services required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

7. PLANNING / ENVIRONMENTAL DOCUMENTATION

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.
- The Municipality shall advertise and conduct any required public hearings.

- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.
- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at www.ncleg.net/gascripts/Statues/Statutes.asp and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

8. DESIGN

CONTENT OF PLAN PACKAGE

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

9. RIGHT OF WAY / UTILITY AUTHORIZATION

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

10. PROJECT LIMITS AND RIGHT OF WAY (ROW)

SPONSOR PROVIDES ROW

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

ROW GUIDANCE

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp; and the North Carolina Department of Transportation Right of Way Manual.

APPRAISAL

If the costs of ROW acquisition are an eligible expense, the Municipality shall submit the appraisal to the Department's Right of Way Branch for review and approval in accordance with Departmental policies and procedures.

CLEARANCE OF PROJECT LIMITS / ROW

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain or are) to be installed within the ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

RELOCATION ASSISTANCE

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

11. UTILITIES

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

12. RIGHT OF WAY CERTIFICATION

The Municipality, upon acquisition of all right of way/property necessary for the Project, shall provide the Right of Way Agent, located at the Department's Local Right of Way Office, all required documentation (deeds/leases/easement/plans) to secure right of way certification from that office. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document and utilities in conflict with the project are relocated.

13. CONSTRUCTION AUTHORIZATION

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.
- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

14. CONTRACTOR PROCUREMENT

ADVERTISE FOR BIDS

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 49 of the Code of Federal Regulations, Part 18.36 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at

www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at www.ncleg.net/gascrpts/Statutes/Statutes.asp.

CONSTRUCTION CONTRACTOR REQUIREMENTS

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

AWARDING CONTRACT

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

DELAY IN PROCUREMENT

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for

documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

FORCE ACCOUNT

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm. North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at www.ncleg.net/gascripts/Statutes/Statutes.asp.

15. CONSTRUCTION

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

CONSTRUCTION CONTRACT ADMINISTRATION

The Municipality shall comply with the NCDOT Construction Manual as referenced at <http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/>, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

SIGNAGE

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

SITE LAYOUT

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design (www.usdoj.gov/crt/ada/stdspdf.htm).

RIGHT TO INSPECT

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

CONTRACTOR COMPLIANCE

The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

CHANGE ORDERS

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

SHOP DRAWINGS

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

16. CLOSE-OUT

Upon completion of the Project, the Municipality shall be responsible for the following:

FINAL INSPECTION

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

FINAL PROJECT CERTIFICATION

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

17. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the South Tar River Greenway, Phase 3, or as required by an executed encroachment agreement.

18. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- Design
- Environmental Documentation
- ROW Acquisition
- Construction

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 49 Code of Federal Regulations, Part 18 (www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm) and Office of Management and Budget (OMB) Circulars A-102 (www.whitehouse.gov/omb/circulars/index.html) "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm and by Office of Management and Budget (OMB) Circular A-87 (www.whitehouse.gov/omb/circulars/index.html) "Cost Principles for State, Local, and Indian Tribal Governments." Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

▪ WORK PERFORMED BEFORE NOTIFICATION

Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

▪ NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING

At no time shall the Department reimburse the Municipality costs that exceed the total federal funding.

▪ UNSUBSTANTIATED COSTS

The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

▪ WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of

\$907,609 available to the Municipality under this Agreement. If the cost of work done by the Department exceeds the funding award, the Department will bill the Municipality for the excess costs.

- **CONSTRUCTION ADMINISTRATION**

Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project. These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the approved appraised fair market value of the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in Office of Management and Budget (OMB) Circular A-87 (www.whitehouse.gov/omb/circulars/index.html) "Cost Principles for State, Local, and Indian Tribal Governments." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

BILLING THE DEPARTMENT

- **PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at <http://www.ncdot.gov/programs/Enhancement/ProjectAdministration/Forms/>.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

19. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

PROJECT RECORDS

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

20. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for High Priority Projects funds and obligations as approved by the Department under the terms of this Agreement.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS, EXCESS USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, or if the cost of work done by the Department exceeds the funding award, the Department will bill the Municipality.

TERMINATION OF PROJECT

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" (www.whitehouse.gov/omb/circulars/a133/a133.html) dated June 27, 2003 and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of

completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

REIMBURSEMENT BY MUNICIPALITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

USE OF POWELL BILL FUNDS

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

21. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

ATTEST: CITY OF GREENVILLE
BY: _____ BY: _____
TITLE: _____ TITLE: _____
DATE: _____

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Approved by _____ of the City of Greenville as attested to by the signature of _____ Clerk of the _____ on _____ (Date)

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

(SEAL)

(FINANCE OFFICER)

Federal Tax Identification Number

City of Greenville

Remittance Address:

DEPARTMENT OF TRANSPORTATION

BY: _____
(STATE HIGHWAY ADMINISTRATOR)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (Date)



City of Greenville, North Carolina

Meeting Date: 1/9/2012
Time: 6:00 PM

Title of Item: Contract for on-call civil engineering services

Explanation: In November 2011, the Public Works Department issued a request for qualifications for on-call civil engineering services. The purpose of the request was to obtain a contract with a firm for engineering services for low-cost projects or studies that the Department does not have the expertise to perform or cannot perform due to workload. The maximum value of this contract is \$200,000. Any work under this contract is issued through a work order. The City's purchasing manual states that architectural or engineering services contracts under \$10,000 can be approved by the Department Head. Greater than \$10,000 and less than \$30,000 can be approved by the City Manager, and all contracts for these services greater than \$30,000 are approved by City Council. These procedures are used by the City's departments to issue work orders against this contract. Any work order less than \$30,000 is approved by either the City Manager or Department Head as appropriate.

This is the second time the City is using an on-call contract to obtain engineering services. The first contract with The East Group expired in December 2011. Both Public Works and Community Development used this contract to obtain design and study services.

Four firms submitted qualifications on December 7, 2011. The four firms submitting qualifications were:

- The East Group
- Rivers and Associates, Inc
- Stroud Engineering, PA
- The Wooten Company

The most qualified firm was determined to be Rivers and Associates, Inc. The contract is for on-call services for a two-year period from the date the contract is executed. Staff, based on anticipated work load over the next two years, recommends a maximum value or authorization level of \$200,000. The authorization level is not a guarantee of work; it is a not to exceed amount. City

Council can increase the authorization at some point in the future if necessary to meet City requirements.

Fiscal Note:


Funds for each work order come from the requesting department's budget or from approved Capital Improvement Program projects.

Recommendation:

Award a contract for on-call civil engineering services to Rivers and Associates, Inc. in an amount not to exceed \$200,000.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

 [Contract with Rivers for On-Call Civil Engineering](#)

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

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

EJCDC 

ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

and

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A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 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 User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 – SERVICES OF ENGINEER.....	1
1.01 Scope	1
ARTICLE 2 – OWNER’S RESPONSIBILITIES.....	1
2.01 General	1
ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES.....	2
3.01 Commencement	2
3.02 Time for Completion	2
ARTICLE 4 – INVOICES AND PAYMENTS.....	2
4.01 Invoices	2
4.02 Payments	2
ARTICLE 5 – OPINIONS OF COST	3
5.01 Opinions of Probable Construction Cost.....	3
5.02 Designing to Construction Cost Limit.....	3
5.03 Opinions of Total Project Costs.....	3
ARTICLE 6 – GENERAL CONSIDERATIONS	4
6.01 Standards of Performance.....	4
6.02 Design Without Construction Phase Services.....	5
6.03 Use of Documents.....	5
6.04 Insurance	6
6.05 Suspension and Termination.....	7
6.06 Controlling Law	9
6.07 Successors, Assigns, and Beneficiaries	9
6.08 Dispute Resolution.....	9
6.09 Environmental Condition of Site.....	10
6.10 Indemnification and Mutual Waiver.....	10
6.11 Miscellaneous Provisions	11
ARTICLE 7 – DEFINITIONS.....	12
7.01 Defined Terms.....	12
ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS	15
8.01 Exhibits Included	15
8.02 Total Agreement	15
8.03 Designated Representatives	16
8.04 Engineer's Certifications	16



**ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE**

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

THIS IS AN AGREEMENT effective as of _____, _____ (“Effective Date”) between

City of Greenville, NC (“Owner”) and

Rivers & Associates, Inc. (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

On Call Civil Engineering Services to the City of Greenville, NC for a period of 2 years from the effective date of the contract.

("Project").

Engineer's Services under this Agreement are generally identified as follows:

Provide on call engineering services to supplement the Department of Public Work's Engineering Division for small low cost projects and studies.

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 Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services 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 are set forth 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, 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.

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 contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. ~~*Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.~~

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

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, "Construction Cost Limit," 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 collating the various cost categories which 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 Engineer's services.
- 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 employ 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. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement, provided to Engineer in writing. Engineer shall comply with such policies and procedures, 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. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom 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 documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint

Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.

- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor 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 contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific 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 Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. 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 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." 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, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance 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, property damage (other than to the Work itself), 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 and other 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 shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- 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 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- 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.

6.05 *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 Engineer's performance has been substantially delayed through no fault of Engineer.

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.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.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,
- a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.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 6.05, 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.E.
 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 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly

attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

6.07 *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 6.07.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, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted 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 Contractor, Subcontractor, Supplier, other 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 6.07.C shall appear in the Contract Documents.

6.08 *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 under law.
- B. ~~If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.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 under law.~~

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. 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.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents 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 Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- 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 30 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.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages 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 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 law, 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) 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, 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, 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. ~~*Percentage Share of Negligence:* To the fullest extent permitted by law, 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.~~
- E. *Mutual Waiver:* To the fullest extent permitted by law, 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 the Project.

6.11 *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 facsimile, 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 law, 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 provisions:
1. *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.
 2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 4. *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.
 5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
 6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. 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 properties; 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 pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
 7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which 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. §§1801 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.; and (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.

8. *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.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *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.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the 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.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely 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.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *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 agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *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 at the Site.
30. *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 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.
31. *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 Subcontractor.

32. *Total Project Costs* – The sum of the Construction Cost, 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 pursuant to Exhibit B of this Agreement.
33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

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.

[NOTE TO USER: If an exhibit is not included, indicate "not included" after the listed exhibit item]

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified 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 duly executed written instrument based 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 the Project 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 any thing 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.

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

Owner: _____

Engineer: _____

By: Allen M. Thomas

By: Donnie W. Brewer

Title: Mayor

Title: President

Date _____

Date _____

Signed: _____

Signed: _____

Engineer License or Firm's Certificate No. F0334

State of: North Carolina

Address for giving notices: _____

Address for giving notices: _____

1500 Beatty Street

Greenville, NC

Designated Representative (Paragraph 8.03.A):

Lisa Kirby

Title: Senior Engineer

Phone Number: 252-329-4467

Facsimile Number: 252-329-4535

E-Mail Address: lkirby@greenvillenc.gov

Designated Representative (Paragraph 8.03.A):

Durk Tyson

Title: Project Manager

Phone Number: 252-752-4135

Facsimile Number: 252-752-3974

E-Mail Address: dtyson@riversandassociates.com

APPROVED AS TO FORM:

David A. Holec, City Attorney

PRE-AUDIT CERTIFICATION:

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

Bernita W. Demery, CPA, Director of Financial Services

This is **EXHIBIT A**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Engineer's Services

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 This contract is for on-call services for two years from the effective date of the contract. The Engineer shall provide all or some of the basic services as set forth below when directed by task order:

1. Manage Capital Improvement Projects from inception through construction. In particular:

Develop and obtain approval of Scopes of Work for various types of City projects to include, but not limited to, road construction and repairs, stormwater system construction and repairs, bridge construction and repairs, bicycle and pedestrian facility construction and repairs, and building construction and repairs;

Develop Requests for Proposal;

Coordinate Selection Committees and participate in the selection process when there is not a conflict of interest;

Coordinate designs with customers, utility companies, and other interested parties;

Organize and manage public information meetings on proposed projects;

Review consultant plans, specifications, and contract documents for accuracy;

Coordinate corrections with consultants;

Monitor design and construction schedules and work with consultants and contractors to ensure assigned project stays within timeline;

Issue construction RFPs, review contractor proposals, and make recommendations for award;

Prepare City Council agenda items for award of design and construction contracts;

Monitor construction and verify payouts with the contractor as well as resolve any pay item discrepancies; and

Provide field inspections during construction and determine requirements for and prepare change orders.

Design bank stabilization projects for streams in the City's limits.

Design projects to repair storm water drainage systems in the City.

Design projects to construct streets.

Developing projects for installing sidewalks and bike lanes in the City

2. Conduct Staff Actions including but not limited to:

Conducting research on new standards for City's Manual of Standard Designs and Details (MSDD);

Researching City records to determine status of existing roads, rights-of-ways, and easements;

Analyzing road/drainage system failures to determine cause and corrective actions; and

Coordinate with residents in regard to complaints on existing infrastructure.

3. Other City Services:

City, through its City Manager, Assistant City Manager, Director of Public Works, or City Engineer may authorize the consultant to perform such selected services on an as needed basis.

4. The engineer shall implement measures to ensure that the Consultant does not obtain any advantage in responding to a Request for Proposal for a project in which the employee of the Consultant manages or otherwise has been involved with due to any Agreement between the City and the Consultant resulting from this Request for Proposal. At a minimum, the following procedures shall be implemented and adhered to:

a. During project development:

Employee of the Consultant cannot provide any information relating to any project that the Consultant has not previously or contemporaneously been provided to other consulting engineer firms.

- b. During preparation of and issuance of Design/Study RFP and selection of consulting engineer services:

No direct communication on the proposal between the employee of the Consultant assigned project management duties and the Consultant;

Any requests for information by the Consultant must be in writing addressed to the Director of Public Works to ensure any reply will be to all consulting engineer firms participating in the selection process; and

Employee of the Consultant may not discuss the selection process or the results for any consulting engineering services.

- c. A proposal submitted by the Consultant for a project in which the employee of the Consultant manages or otherwise has been involved due to any Agreement between the City and the Consultant resulting from this Request for Proposal will not be considered as a responsible proposal on the event the Director of Public Works determines that the Consultant has not implemented or adhered to the minimum procedures set forth above or otherwise has obtained an advantage in responding to the Request for Proposal.

5. Task Orders:

- a. The Engineer and owner will negotiate the anticipated project duration and staff hours and cost required to complete the project. The Owner will issue work to the Engineer under this contract by task order. The engineer will not begin work on the project until the task order is executed. The task order signature authority for the owner is:

Task orders less than \$10,000; the Director of Public Works
Task orders between \$10,000 and \$30,000 the City Manager.

The engineer is not authorized to exceed the funds identified on a task order.

6. Task orders issued under this contract will consist of the following four documents:

Exhibit A; to EJCDC E-500 Dated 2008. To identify the scope of work.
Exhibit B to EJCDC E-500 Dated 2008. To identify any owner's responsibilities
Exhibit C; Compensation Packet
Signature page

This is **EXHIBIT B**, consisting of ____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated ____, ____.

Owner's Responsibilities

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; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available 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. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the

- scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
 - F. 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.
 - G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
 - 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. 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, 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 moneys paid.
 - J. Place and pay for advertisement for Bids in appropriate publications.
 - K. 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 constructibility review.
 - L. 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.
 - M. 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.

- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, 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.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services: *[Here list any such additional services]*.
 - 1. 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.
- A. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 16 weeks. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

This is **EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-2: Negotiated lump Sum

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 –negotiated lump sump for each task ordert

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, as follows:

1. A negotiated lump sump for each task order issued to the Engineer.
2. In no event shall total compensation for services under Paragraph C2.01 be greater than \$ 200,000 without going to City Council for an increase in authorization level. ~~based on the following estimated distribution of compensation:~~
 - a. Study and Report Phase _____ \$ _____
 - b. Preliminary Design Phase _____ \$ _____
 - c. Final Design Phase _____ \$ _____
 - d. Bidding or Negotiating Phase _____ \$ _____
 - e. Construction Phase _____ \$ _____
 - f. Post Construction Phase _____ \$ _____
3. ~~Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.~~
4. ~~The total estimated compensation for Engineer’s services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer’s Consultants’ charges.~~
5. ~~The amounts billed for Engineer’s services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer’s Consultants’ charges.~~

6. ~~The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of ___) to reflect equitable changes in the compensation payable to Engineer.~~

~~C2.02—Compensation For Reimbursable Expenses~~

- ~~A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.~~
- ~~B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.~~
- ~~C. The amounts payable to Engineer for Reimbursable Expenses will be the Project related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of ____.~~

~~C2.03—Other Provisions Concerning Payment~~

- ~~A. 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 ____.~~
- ~~B. Factors. The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.~~

~~C. Estimated Compensation Amounts:~~

- ~~1. 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.~~
- ~~2. 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 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 either 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 the Engineer's services during the 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.~~

- D. 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 cost.

This is **EXHIBIT E**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
Owner

And To: _____
Contractor

From: _____
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above 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 terms and conditions set forth in this Notice.

By: _____

Title: _____

Dated: _____

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.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
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 under the Construction Contract referred to in this Notice, 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 and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referred to in this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT F**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Construction Cost Limit

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 \$_____.~~
- ~~B. A bidding or negotiating contingency of _____ 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.~~
- ~~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 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 damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.~~

This is **EXHIBIT G**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Insurance

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

G6.04 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
 - 1) Each Accident: \$100,000
 - 2) Disease, Policy Limit: \$500,000
 - 3) Disease, Each Employee: \$100,000
- 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) Each Occurrence: \$2,000,000
 - 2) General Aggregate: \$2,000,000
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
Each Accident \$1,000,000
- f. Professional Liability --
 - 1) Each Claim Made \$1,000,000
 - 2) Annual Aggregate \$2,000,000
- g. Other (specify):
\$ N/A

2. ~~By Owner:~~

a. ~~Workers' Compensation:~~ _____ Statutory

b. ~~Employer's Liability~~

- 1) ~~Each Accident~~ _____ \$ _____
- 2) ~~Disease, Policy Limit~~ _____ \$ _____
- 3) ~~Disease, Each Employee~~ _____ \$ _____

c. ~~General Liability~~

- 1) ~~General Aggregate:~~ _____ \$ _____
- 2) ~~Each Occurrence (Bodily Injury and Property Damage):~~ _____ \$ _____

d. ~~Excess Umbrella Liability~~ _____

- 1) ~~Each Occurrence:~~ _____ \$ _____
- 2) ~~General Aggregate:~~ _____ \$ _____

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

_____ Each Accident: _____ \$ _____

f. ~~Other (specify):~~ _____ \$ _____

B. *Additional Insureds:*

1. The following persons or entities are to be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:

- a. _____
Engineer

- b. _____
Engineer's Consultant

- c. _____
Engineer's Consultant

- 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 and property policies of insurance.

- 3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

This is **EXHIBIT H**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

[NOTE TO USER: Select one of the two alternatives provided]

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 *[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 *[here insert the name of a specified arbitration service or organization]* 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 H6.08.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 award rendered by the arbitrators shall be in writing, and shall include: (i) a precise breakdown of the award; and (ii) 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 H6.08.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.~~

This is **EXHIBIT I**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Limitations of Liability

Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties:

A. Limitation of Engineer's Liability

[NOTE TO USER: Select one of the three alternatives listed below for I6.10 A.1]

~~1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.~~

[or]

~~1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, 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 (hereafter "Owner's Claims"); shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then 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 such uninsured Owner's Claims shall not exceed \$ _____ [or]~~

- ~~1. *Engineer's Liability Limited to the Amount of \$ _____: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, 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 amount of \$ _____.*~~

~~*[NOTE TO USER: If appropriate and desired, include I6.10.A.2 below as a supplement to Paragraph 6.10, which contains a mutual waiver of damages applicable to the benefit of both Owner and Engineer]*~~

- ~~2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages: To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.10, 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 special, incidental, indirect, or consequential 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 any such damages caused by 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, and including but not limited to:*~~

~~*[NOTE TO USER: list here particular types of damages that may be of special concern because of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc. If the parties prefer to leave the language general, then end the sentence after the word "employees"]*~~

~~*[NOTE TO USER: the above exclusion of consequential and other damages can be converted to a limitation on the amount of such damages, following the format of Paragraph I6.10.A.1 above, by providing that "Engineer's total liability for such damages shall not exceed \$ _____."]*~~

~~*[NOTE TO USER: If appropriate and desired, include I6.10.A.3 below]*~~

- ~~3. *Agreement Not to Claim for Cost of Certain Change Orders: Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or*~~

~~part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement (“Covered Change Orders”). Accordingly, Owner agrees not to sue or to make any claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed _____% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that Owner would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents and without any other error or omission of Engineer related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term Engineer includes Engineer’s officers, directors, members, partners, agents, employees, and Consultants.~~

~~***[NOTE TO USER: The parties may wish to consider the additional limitation contained in the following sentence.]***~~

~~Owner further agrees not to sue or to make any claim directly or indirectly against Engineer with respect to any Covered Change Order not in excess of such percentage stated above, and Owner agrees to hold Engineer harmless from and against any suit or claim made by the Contractor relating to any such Covered Change Order.]~~

~~***[NOTE TO USER: Many professional service agreements contain mutual indemnifications. If the parties elect to provide a mutual counterpart to the indemnification of Owner by Engineer in Paragraph 6.10.A, then supplement Paragraph 6.10.B by including the following indemnification of Engineer by Owner as Paragraph 16.10.B.]***~~

~~B. *Indemnification by Owner:* To the fullest extent permitted by law, 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~~

~~emission 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 _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Special Provisions

Paragraph(s) ___ of the Agreement is/are amended to include the following agreement(s) of the parties:

NONE

This is **EXHIBIT K**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: _____
- b. Owner: _____
- c. Engineer: _____
- d. Project: _____

2. *Description of Modifications:*

[NOTE TO USER: Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform or furnish the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner are modified as follows:
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- e. The schedule for rendering services is modified as follows:
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

[List other Attachments, if any]

5. Agreement Summary (Reference only)

- a. Original Agreement amount: \$ _____
- b. Net change for prior amendments: \$ _____
- c. This amendment amount: \$ _____
- d. Adjusted Agreement amount: \$ _____

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. The Effective Date of this Amendment is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____



City of Greenville, North Carolina

Meeting Date: 1/9/2012
Time: 6:00 PM

Title of Item: Agreement for professional engineering services to serve as owner's representative for energy performance contracting

Explanation: The Investment Grade Audit (IGA) agreement with Schneider Electric, Inc. (the Energy Services Company (ESCO)) was approved at the December 8, 2011 Council meeting. The next order of business is the selection and approval of a professional services contract with an Owner's Representative to monitor and review the work being performed by Schneider Electric. This is required by State Statute as part of the process of obtaining a guaranteed Energy Savings Performance Contract (ESPC). As detailed in previous presentations, the infrastructure improvements are paid for with energy savings realized from the installation of new, more efficient equipment. Services provided by the third party representative will encompass education and outreach services, as well as technical oversight and quality control over Schneider Electric's development and implementation of the cost savings projects. Celtic Energy, Inc. (CEI) submitted a response to the City's Request for Proposals for the Owners Representative on August 19, 2011. Staff has reviewed their qualifications and conferred with Mr. Len Hoey, Engineering Manager for the State Energy Office, who concurred with the selection of CEI to provide professional services as the City's Owner's Representative for the ESPC. CEI will provide continuing third-party consulting services concurrent with the progress of the City's ESPC project development. The scope of their work includes:

- Review Schneider Electric's Proposal and attend IGA familiarization meeting, discuss Energy Conservation Measures (ECMs), Measurement and Verification (M&V) procedures, logistics, etc;
- Facilitate bi-weekly conference calls to review IGA progress (Assume 120 day IGA):
- Review Draft and Final IGA Reports;
- Evaluate the risk and cost of the performance measurement strategies according to the methodology described in the M&V procedures;
- Once the Final IGA Report is submitted, CEI will conduct an analysis of the report to ensure all questions and clarifications from the Draft were

addressed.

The following services are considered optional. If City Council authorizes the award of an Energy Services Agreement (ESA), the following services will be added to the professional services contract:

- Assist the City of Greenville in negotiation and execution of the ESA;
- Project Acceptance and Periodic Measurement & Verification of Energy Savings;

Fiscal Note:

The third-party consulting fee for the continuation of the Performance Contract will be \$30,000 for the standard services through project acceptance. At the end of the IGA, and prior to contract award, the Optional Services will be authorized at a cost of \$20,000, for a total contract amount of \$50,000. Payment for these services will be included in the Energy Services Contract Agreement. Depending upon completion of the IGA, \$30,000 is available through the Energy Efficiency Block Grant to pay for CEI's services through the development of an Energy Services Agreement.

Recommendation:

Approve Celtic Energy, Inc. as the owner's representative for energy performance contracting and their professional services proposal in an amount not to exceed \$50,000 and authorize the City Manager to execute the attached professional services contract.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

 [Proposal and Contract](#)



December 22, 2011

Scott P.M. Godefroy, P.E.
City Engineer
City of Greenville
Public Works Department
1500 Beatty Street
Greenville, NC 27834

RE: Owner's Representative for Energy Performance Contracting

Dear Scott:

I would like to thank you for selecting Celtic Energy to be the Owner's Representative Consultant for the City of Greenville's (COG) Energy Savings Performance Contracting (ESPC) program. We understand your project has kicked off with a smooth start and we look forward to assisting COG through the balance of the performance contracting process. It is our goal to become your valued advocate as the City's overall energy savings program progresses and expands during the coming years.

Based on COG's desire to successfully complete the ESPC project, we have prepared this fee proposal to provide COG with Third Party Consulting services. Our services will be targeted at providing education and outreach services, as well as technical oversight and quality control over the selected ESCo's (Schneider Electric) development and implementation of the cost savings projects. As we discussed in our last telephone conversation, it is been our experience that the earlier in the IGA development process we are engaged, the more value we provide, the less work the ESCo has to repeat, and ultimately saves all parties significant calendar time, and thus money.

The main objective of Celtic Energy's continued participation in this project will be to utilize our 140-plus combined years of experience in the energy industry to provide objective counsel on the many issues facing the City during the development and implementation of an energy savings performance contract. Our goal is to protect your interests while facilitating the execution of a successful cost savings contract and the resulting project.

The following pages contain our scope of work and fees for providing the Owner's Representative consulting services. We have based our scope and fees on the estimated \$2.5 million comprehensive project from Schneider Electric's initial proposal. If the project scope or costs change considerably, we would like the opportunity to modify our services and fees accordingly.



Scope of Work

Celtic Energy, Inc (CEI) will provide continuing Third Party Consulting services concurrent with the progress of the City’s ESPC project development. The following tasks will be completed:

1. Review Schneider Electric’s Proposal and attend IGA familiarization Meeting, discuss ECMs, M&V, logistics, etc.
 - 1.1. CEI will thoroughly review Schneider Electric’s proposal and all of its Appendices and Attachments. We will develop a list of issues we feel should be discussed with COG and Schneider Electric immediately, as well as issues that can be discussed as the IGA development progresses.
 - 1.2. CEI will assist the City in planning and facilitating an IGA Kickoff meeting. The purpose of this meeting is to introduce our staff, to review any changes to the scope of the Project, to discuss the City’s and the ESCo’s requirements and procedures for the IGA, and to establish timelines and milestones for Project development.
2. Facilitate Bi-Weekly Conference Calls to Review IGA progress (Assume 120 day IGA)
 - 2.1. Participate in Bi-weekly calls/meetings to track progress of the IGA. Review ESCo’s proposed scope of work, energy savings calculations, etc. This is also the time to discuss the details of the M&V strategies and the establishment of an energy baseline to use for measurement of savings and for meeting contract requirements.
3. Review Draft and Final IGA Reports
 - 3.1. Once each of the 30%, 60%, and 90% Draft IGA Reports are completed, Celtic Energy will conduct a detailed analysis of the report; prepare a list of questions, and clarifications for the ESCo to address. Celtic Energy will also check and independently run the ESCo’s energy simulation Baseline and ECM savings models to verify their accuracy. We will also review the City’s and State Energy Office’s comments, and combine them with ours to submit to the ESCo. We will follow-up with the ESCo until all of the questions have been answered to the satisfaction of CEI and the City.
 - 3.2. The development of a valid energy baseline and an appropriate M&V strategy is fundamental to the overall viability of the project. CEI has two North Carolina registered Professional Engineers, Chris Halpin and Maggie Selig, who will review the parameters and measurement strategies to determine if they are in line with appropriate measurement and verification (M&V) protocols and guidelines published by the American Society of Heating Refrigerating and Air Conditioning Engineers (ASHRAE), FEMP, and the International Performance Measurement and Verification Protocol (IPMVP) for each piece of equipment and/or system, without unnecessarily burdening the project with extra costs.

Specifically, CEI will evaluate the performance measurement strategies to ensure that the appropriate level of rigor and accuracy is used to protect the State and fulfill the intent of the legislative requirements.

- 3.3. CEI will evaluate the risk and cost of the performance measurement strategies according to the methodology described in the M&V Guidelines.
- 3.4. Once the Final IGA Report is submitted, Celtic Energy will conduct a brief analysis of the report to ensure all questions and clarifications from the Draft were addressed.

This point is a natural break in the ESPC project process. If COG does not proceed to contract with the ESCo, our services would end at this point. The following services will be considered optional. If COG does move forward with a successful IGA to executing an ESA, the following services can be added to our existing contract.

4. Assist COG negotiate and execute the Energy Services Agreement (ESA)
 - 4.1. Assist COG in final price and contract negotiations with ESCo
 - 4.2. Review proposed ESA, assist in making any final changes due to negotiations
 - 4.3. Assist COG staff prepare for and secure approval of the Mayor, City Council, City Attorney, State Construction Office, State Insurance Office, and State Energy Office.
5. Engineering and Economic Analysis, Reviews or Inspections during project design and construction phases.
 - 5.1. CEI will provide supporting quality assurance (QA) services during the project design phase as well as general project oversight services during construction to ensure that the project is designed and built as desired by the City. CEI will carefully review the submittals of designs, equipment and performance specifications and installation plans to ensure compliance with the ESCo proposal and State requirements.
 - 5.2. CEI will assist the City in developing an agenda for the Post-Award conference. The objectives will be to establish roles, responsibilities, expectations, timelines, and communication and site access protocols and the submittal review process. At the Post-Award Conference, CEI will ensure that proper arrangements have been made for regular inspections, commissioning, testing and balancing, training, acceptance criteria, operations and maintenance requirements; and that measurement and verification guidelines are met. CEI will assist the City in the development of the format for construction reports such as; progress reports, inspection reports, commissioning and test and balance reports, acceptance reports and punch-lists specifically related to performance contracting issues during the construction process.

6. Project Acceptance and Periodic Measurement & Verification of Energy Savings

6.1. Upon notification from the ESCo that all ECMs are installed and the project is completed, CEI will assist the City in performing the verification inspection of the equipment, to ensure compliance with the final M&V plan; During the first year of operation, CEI will review the first M&V report to ensure that the energy savings persist or if there are issues that they are identified early on for resolution.

Additional M&V Services: CEI is also proposing to assist the City with post project implementation annual reviews of the ESCo’s M&V Reports (as required by statute), with baseline adjustments (if warranted), or with other performance contract issue for the term, up to 20 years, of the contract period, in addition to our base services. However, since we are unsure of the full scope of the work at this point, we propose to provide COG with a separate fee proposal towards the end of the IGA development phase, when we understand the final composition of the ECMs and M&V Plans in effect at the time. This method will protect both COG and Celtic Energy from over or underestimating the value of these important services at this early stage of the project.

Fees and Logistics

We have developed our fee based on the expected scope of work resulting from the initial proposal submitted by the selected ESCo, Schneider Electric, and the knowledge that the scope will most likely increase once they fully investigate opportunities at the selected buildings throughout the city. Schneider Electric estimates a \$2 to \$3 Million project and we have based our fee based on the average of this estimate, \$2.5 Million. For large complex projects like this, we typically set our fee equivalent to about 2% of the estimated project costs. Celtic Energy shall be compensated on a fixed fee basis, including expenses. As shown in the table below.

Scope Item 1: Review Schneider Electric's proposal/ IGA Familiarization	\$5,000
Scope Item 2-3: Review Draft IGA submissions/progress calls	\$25,000
Subtotal:	\$30,000
Scope Item 4-6: Post- ESA Support	<u>\$20,000</u>
Total:	\$50,000

Therefore, CEI's Third-Party consulting fee for the continuation of the Performance Contract will be \$30,000 for the standard services through project acceptance, Tasks 1-3. There is a natural break at the end of the IGA, and prior to contract award, as mentioned in the scope section above. If the ESCo provides an unacceptable IGA, the relationship will end without a contract being negotiated or awarded. We’ve priced the Optional Services (Tasks 4-6) using the \$2.5M project cost above at \$20,000. *At the execution of*

the ESA, the final contract cost can be used to adjust our price for the “optional services.”

We believe that this fee is a fair and equitable amount for the technical expertise and qualified services CEI will provide the City of Greenville as it pursues its energy savings performance contract.

CEI consulting fees shall be billed monthly, based upon completed tasks, and will be due within 30 days.

If you have any questions or comments, please call me at your earliest convenience. If this proposal meets your requirements as described herein, please issue a Purchase Order or consulting agreement, and send a copy to me, along with the initial payment. Thank you and the rest of the City of Greenville selection Team for selecting Celtic Energy, and we will work very hard to exceed your expectations.

Best Regards,

Christopher F. Halpin

Christopher F. Halpin, PE, LEED, CEM, CEP, CMVP
President

CC: Maggie Selig
Agostino Dell’Oso
David Tine
Paul Popinchalk

**Engineers Joint Documents Committee
Design and Construction Related Documents
Instructions and License Agreement**

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The license is effective until terminated. You may terminate it at any time by destroying **EJCDC Design and Construction Related Documents** altogether with all copies, modifications and merged portions in any form. It will also terminate upon conditions set forth elsewhere in this Agreement or if you fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy **EJCDC Design and Construction Related Documents** along with all copies, modifications and merged portions in any form.

Limited Warranty:

EJCDC warrants the CDs and diskettes on which **EJCDC Design and Construction Related Documents** is furnished to be free from defects in materials and workmanship under

normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

There is no other warranty of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

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EJCDC's entire liability and your exclusive remedy shall be:

1. the replacement of any document not meeting EJCDC's "Limited Warranty" which is returned to EJCDC's selling agent with a copy of your receipt, or
2. if EJCDC's selling agent is unable to deliver a replacement CD or diskette which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

In no event will EJCDC be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use **EJCDC Design and Construction Related Documents** even if EJCDC has been advised of the possibility of such damages, or for any claim by any other party.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

General:

You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
General Counsel
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

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

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE



ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



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A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 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 User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 – SERVICES OF ENGINEER.....	1
1.01 Scope.....	1
ARTICLE 2 – OWNER’S RESPONSIBILITIES	1
2.01 General	1
ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES	2
3.01 Commencement	2
3.02 Time for Completion	2
ARTICLE 4 – INVOICES AND PAYMENTS.....	2
4.01 Invoices	2
4.02 Payments	2
ARTICLE 5 – OPINIONS OF COST	3
5.01 Opinions of Probable Construction Cost.....	3
5.02 Designing to Construction Cost Limit.....	3
5.03 Opinions of Total Project Costs	3
ARTICLE 6 – GENERAL CONSIDERATIONS	4
6.01 Standards of Performance.....	4
6.02 Design Without Construction Phase Services.....	5
6.03 Use of Documents.....	5
6.04 Insurance	6
6.05 Suspension and Termination	7
6.06 Controlling Law	9
6.07 Successors, Assigns, and Beneficiaries	9
6.08 Dispute Resolution.....	9
6.09 Environmental Condition of Site.....	10
6.10 Indemnification and Mutual Waiver	10
6.11 Miscellaneous Provisions	11
ARTICLE 7 – DEFINITIONS	12
7.01 Defined Terms	12
ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS.....	15
8.01 Exhibits Included	15
8.02 Total Agreement	15
8.03 Designated Representatives	16
8.04 Engineer's Certifications	16



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

THIS IS AN AGREEMENT effective as of _____ , _____ (“Effective Date”) between

_____ (“Owner”) and

_____ (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

_____ (“Project”).

Engineer's services under this Agreement are generally identified as follows:

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 Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to

Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services 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 are set forth 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, 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.

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 contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* ~~If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.~~

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

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, "Construction Cost Limit," 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 collating the various cost categories which 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 Engineer's services.
- 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 employ 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. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. provided to Engineer in writing. Engineer shall comply with such policies and procedures, 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. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom 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 documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint

Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.

- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor 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 contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific 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 Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. 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 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." 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, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance 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, property damage (other than to the Work itself), 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 and other 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 shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- 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 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- 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.

6.05 *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 Engineer's performance has been substantially delayed through no fault of Engineer.

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.
 - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.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,

- a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.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 6.05, 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.E.
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 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly

attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

6.07 *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 6.07.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, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted 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 Contractor, Subcontractor, Supplier, other 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 6.07.C shall appear in the Contract Documents.

6.08 *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 under law.
- B. ~~If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.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 under law.~~

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. 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.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents 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 Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- 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 30 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.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages 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 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 law, 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) 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, 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, 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. ~~*Percentage Share of Negligence:* To the fullest extent permitted by law, 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.~~
- E. *Mutual Waiver:* To the fullest extent permitted by law, 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 the Project.

6.11 *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 facsimile, 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 law, 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 provisions:
1. *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.
 2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 4. *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.
 5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
 6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. 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 properties; 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 pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
 7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which 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. §§1801 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.; and (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.

8. *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.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *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.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the 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.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely 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.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *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 agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *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 at the Site.
30. *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 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.
31. *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 Subcontractor.

32. *Total Project Costs* – The sum of the Construction Cost, 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 pursuant to Exhibit B of this Agreement.
33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

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.

[NOTE TO USER: If an exhibit is not included, indicate "not included" after the listed exhibit item]

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified 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 duly executed written instrument based 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 the Project 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 any thing 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.

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

Owner: _____	Engineer: _____
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____
Signed: _____	Signed: _____

Engineer License or Firm's
Certificate No. _____
State of: _____

Address for giving notices: _____ _____	Address for giving notices: _____ _____
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Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

Title: _____

Title: _____

Phone Number: _____

Phone Number: _____

Facsimile Number: _____

Facsimile Number: _____

E-Mail Address: _____

E-Mail Address: _____

This is **EXHIBIT A**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Engineer's Services

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 and available data.
2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate [insert specific number or list here] alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.
5. 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 those alternate solutions available to Owner which Engineer recommends. 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 summary of allowances for other items and services included within the definition of Total Project Costs.
6. Perform or provide the following additional Study and Report Phase tasks or deliverables: [here list any such tasks or deliverables]
7. Furnish ___ review copies of the Report and any other deliverables to Owner within ___ calendar days of the Effective Date and review it with Owner. Within ___ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.

8. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish ___ copies of the revised Report and any other deliverables to the Owner within ___ calendar days of receipt of Owner's comments.

B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.

A1.02 *Preliminary Design Phase*

A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and 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. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
3. 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.
4. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.
5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables: [here list any such tasks or deliverables]
6. Furnish ___ review copies of the Preliminary Design Phase documents and any other deliverables to Owner within ___ calendar days of authorization to proceed with this phase, and review them with Owner. Within ___ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.
7. Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner ___ copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within ___ calendar days after receipt of Owner's comments.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

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 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. 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 of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
 3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.
 4. Perform or provide the following additional Final Design Phase tasks or deliverables: [here list any such tasks or deliverables]
 5. Prepare and furnish bidding documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within ___ days of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.
 6. Revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and submit ___ final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within ___ calendar days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Paragraph A1.03.A.6 have been delivered to 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 _____. 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 bidding 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 and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.
2. Issue addenda as appropriate to clarify, correct, or change the bidding documents.
3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.
5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.
6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
7. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: [here list any such tasks or deliverables]

- 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 as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. 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. [If Engineer will not be providing the services of an RPR, then delete this Paragraph 2 by inserting the word "DELETED" after the paragraph title, and do not include Exhibit D.]
3. *Selecting Independent Testing Laboratory*: Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.
4. *Pre-Construction Conference*: Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
5. *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.
6. *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.
7. *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 Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the 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 Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to, 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 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 Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.

8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.
10. *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.
11. *Shop Drawings and Samples:* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the 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.
12. *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.
13. *Inspections and Tests:* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests,

and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the 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 Contract Documents. Engineer shall be entitled to rely on the results of such tests.

14. *Disagreements between Owner and Contractor:* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
15. *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. 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 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 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 Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
 - b. By recommending any 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 and the Contract Documents. 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 Contractor's Work in progress 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 moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, 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.

16. *Contractor's Completion Documents:* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.
 17. *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 Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
 18. *Additional Tasks:* Perform or provide the following additional Construction Phase tasks or deliverables: [here list any such tasks or deliverables].
 19. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.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.
- 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.C, 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.
- C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible

for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

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, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.
 2. Together with Owner or Owner's representative, visit the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.
 3. Perform or provide the following additional Post-Construction Phase tasks or deliverables:
[Here list any such tasks or deliverables]
- 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 furnish or obtain from others Additional Services of the types listed below.
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; 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 or to investigate 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 its 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 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 identified in Paragraph A1.01.A.4.
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.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. 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 constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
14. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
15. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.
16. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.

17. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.
18. Preparation of operation and maintenance manuals.
19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
21. Assistance in connection with the adjusting of Project equipment and systems.
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.
24. Overtime work requiring higher than regular rates.
25. Other 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 in advance that Engineer is will immediately commence 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 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 during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site

- of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
 6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
 7. Services during the Construction Phase rendered after the original date for completion of the Work referred to in A1.05.B.
 8. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.
 9. 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 _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Owner's Responsibilities

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; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available 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. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the

- scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
 - F. 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.
 - G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
 - 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. 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, 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 moneys paid.
 - J. Place and pay for advertisement for Bids in appropriate publications.
 - K. 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 constructibility review.
 - L. 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.
 - M. 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.

- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, 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.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services: *[Here list any such additional services]*.

1. Compensation for Basic Services (not including Resident Project Representative) (as described in Exhibit A, Part I)

Decision Question: Which method of compensation is to be used?

	Lump Sum	Standard Hourly Rates	Percentage of Construction Costs	Direct Labor Costs Times a Factor	Direct Labor Costs Plus Overhead Plus a Fixed Fee	Salary Costs Times a Factor
Use This Base Compensation Packet	Packet BC-1	Packet BC-2	Packet BC-3	Packet BC-4	Packet BC-5	Packet BC-6
Include This Appendix	N/A	Appendices 1 and 2	N/A	Appendix 1	Appendix 1	Appendix 1

2. Compensation for Resident Project Representative (as described in Exhibit A, Paragraph A1.05.A.2, and in Exhibit D)

Decision Question: Which method of compensation is to be used?

	Lump Sum	Standard Hourly Rates	Percentage of Construction Costs	Direct Labor Costs Times a Factor	Salary Costs Times a Factor
Use This RPR Compensation Packet	Packet RPR-1	Packet RPR-2	Packet RPR-3	Packet RPR-4	Packet RPR-5
Include This Appendix	N/A	Appendices 1 and 2	N/A	Appendix 1	Appendix 1

3. **Compensation for Additional Services (as described in Exhibit A, Part 2)**

Decision Question: Which method of compensation is to be used?

	Standard Hourly Rates	Direct Labor Costs Times a Factor	Salary Costs Times a Factor
Use This Additional Services Compensation Packet	Packet AS-1	Packet AS-2	Packet AS-3
Include This Appendix	Appendices 1 and 2	Appendix 1	Appendix 1

Example: If Basic Services (other than RPR) will be compensated using Lump Sum; RPR services using Direct Labor Times a Factor; and Additional Services using Standard Hourly Rates; then use Packet BC-1; Packet RPR-4; Packet AS-1; and Appendices 1 and 2 to form Exhibit C.

SUGGESTED FORMAT
(for use with E-500, 2008 Edition)

This is **EXHIBIT C**, consisting of _____ pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated _____, _____.

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

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 \$_____ based on the following estimated distribution of compensation:
 - a. Study and Report Phase \$_____
 - b. Preliminary Design Phase \$_____
 - c. Final Design Phase \$_____
 - d. Bidding and Negotiating Phase \$_____
 - e. Construction Phase \$_____
 - f. Post-Construction Phase \$_____
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.
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, overhead, profit, and Reimbursable Expenses.
4. 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.

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

This is **EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates

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) – Standard Hourly Rates 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. 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 services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants' charges, if any.
2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
3. The total compensation for services under Paragraph C2.01 is estimated to be \$_____ based on the following estimated distribution of compensation:
 - a. Study and Report Phase \$ _____
 - b. Preliminary Design Phase \$ _____
 - c. Final Design Phase \$ _____
 - d. Bidding or Negotiating Phase \$ _____
 - e. Construction Phase \$ _____
 - f. Post-Construction Phase \$ _____
4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.

5. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer's Consultants' charges.
6. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.
7. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of ____) to reflect equitable changes in the compensation payable to Engineer.

C2.02 *Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of _____.

C2.03 *Other Provisions Concerning Payment*

- A. 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 _____.
- B. Factors. The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. *Estimated Compensation Amounts:*

1. 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.
 2. 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 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 either 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 the Engineer's services during the 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.
- D. 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 cost.

This is **EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-3: Basic Services – Percentage of Construction Cost

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) – Percentage of Construction Cost 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. *General:* An amount equal to _____ percent of the Construction Cost. This amount includes compensation for Engineer’s Services and services of Engineer’s Consultants, if any. The percentage of Construction Cost noted herein accounts for labor, overhead, profit, and Reimbursable Expenses.
 2. As a basis for payment to Engineer, Construction Cost will be based on one or more of the following determinations with precedence in the order listed for Work designed or specified by Engineer:
 - a. For Work designed or specified and incorporated in the completed Project, the actual final price of the Construction Contract(s), as duly adjusted by change orders.
 - b. For Work designed or specified but not constructed, the lowest bona fide Bid received from a qualified bidder for such Work; or, if the Work is not bid, the lowest bona fide negotiated proposal for such Work.
 - c. For Work designed or specified but not constructed upon which no such Bid or proposal is received, Engineer’s most recent opinion of probable Construction Cost.
 - d. Labor furnished by Owner for the Project will be included in the Construction Cost at current market rates including a reasonable allowance for overhead and profit. Materials and equipment furnished by Owner will be included at current market prices.
 - e. For purposes of determining Construction Cost under this provision, no deduction is to be made from Construction Contract pricing on account of any penalty, liquidated damages, or other amounts withheld from payments to Contractor(s).

3. *Progress Payments:*

- a. The portion of the amounts billed for Engineer's services which is on account of the Percentage of Construction Cost will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.
- b. Upon conclusion of each phase of Basic Services, Owner shall pay such additional amount, if any, as may be necessary to bring total compensation paid during such phase on account of the percentage of Construction Cost to the following estimated percentages of total compensation payable on account of the percentage of Construction Cost for all phases of Basic Services:

Study and Report Phase	_____ %
Preliminary Design Phase	_____ %
Final Design Phase	_____ %
Bidding or Negotiating Phase	_____ %
Construction Phase	_____ %
	100%

- c. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.

This is **EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-4: Basic Services – Direct Labor Costs Times a Factor

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) – Direct Labor Costs Times a Factor 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. An amount equal to Engineer’s Direct Labor Costs times a factor of _____ for the services of Engineer’s personnel engaged on the Project, plus Reimbursable Expenses, estimated to be \$ _____, and Engineer’s Consultant’s charges, if any, estimated to be \$ _____.
2. Engineer’s Reimbursable Expenses Schedule is attached to this Exhibit C as Appendix 1.
3. The total compensation for services under Paragraph C2.01 is estimated to be \$ _____ based on the following distribution of compensation:
 - a. Study and Report Phase \$ _____
 - b. Preliminary Design Phase \$ _____
 - c. Final Design Phase \$ _____
 - d. Bidding or Negotiating Phase \$ _____
 - e. Construction Phase \$ _____
 - f. Post-Construction Phase \$ _____
4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See C2.03.C.2 below.

5. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3, incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultant's charges.
6. The portion of the amounts billed for Engineer's services which are related to services rendered on a Direct Labor Costs times a Factor basis will be billed based on the applicable Direct Labor Costs for the cumulative hours charged to the Project by Engineer's principals and employees multiplied by the above-designated factor, plus Reimbursable Expenses and Engineer's Consultant's charges incurred during the billing period.
7. Direct Labor Costs means salaries and wages paid to employees but does not include payroll-related costs or benefits.
8. The Direct Labor Costs and the factor applied to Direct Labor Costs will be adjusted annually (as of ___) to reflect equitable changes to the compensation payable to Engineer.

C2.02 Compensation for Reimbursable Expenses

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of ____.
- D. The Reimbursable Expenses Schedule will be adjusted annually (as of ___) to reflect equitable changes in the compensation payable to Engineer.

C2.03 *Other Provisions Concerning Payment*

- A. 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 _____.
- B. *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.
- C. *Estimated Compensation Amounts:*
 - 1. 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.
 - 2. 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 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 either 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.
 - 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 cost.

This is **EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-5: Basic Services – Direct Labor Costs Plus Overhead Plus a Fixed Fee

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) – Direct Labor Costs Plus Overhead Plus a Fixed Fee 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. An amount equal to Engineer’s Direct Labor Costs plus overhead for the services of Engineer’s personnel engaged directly on the Project, plus Reimbursable Expenses estimated to be \$_____, plus Engineer’s Consultant’s charges, if any, estimated to be \$_____, plus a fixed fee of \$_____.
2. Engineer’s Reimbursable Expenses Schedule is attached to this Exhibit C as Appendix 1.
3. The total compensation for services under Paragraph C2.01 is estimated to be \$_____ based on the following estimated distribution of compensation:
 - a. Study and Report Phase \$_____
 - b. Preliminary Design Phase \$_____
 - c. Final Design Phase \$_____
 - d. Bidding or Negotiating Phase \$_____
 - e. Construction Phase \$_____
 - f. Post-Construction Phase \$_____
4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See Paragraph C2.03.C.2 below.

5. The total estimated compensation for Engineer's services, included in the breakdown by phases as noted in Paragraph C2.01.A.3, incorporates all labor, overhead, fixed fees, Reimbursable Expenses, and Engineer's Consultant's charges.
6. The portion of the amounts billed for Engineer's services will be based on the applicable Direct Labor Costs for the cumulative hours charged to the Project during the billing period by Engineer's employees plus overhead, Reimbursable Expenses, Engineer's Consultant's charges, and the proportionate portion of the fixed fee.
7. Direct Labor Costs means salaries and wages paid to employees but does not include payroll-related costs or benefits.
8. Overhead includes the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto; the cost of general and administrative overhead which includes salaries and wages of employees engaged in business operations not directly chargeable to projects, plus non-Project operating costs, including but not limited to, business taxes, legal, rent, utilities, office supplies, insurance, and other operating costs. Overhead shall be computed as a percentage of Direct Labor Costs. Fixed fee is the lump sum amount paid to Engineer by Owner as margin or profit and will only be adjusted by an amendment to this agreement.
9. Direct Labor Costs and Overhead applied to Direct Labor Costs will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Engineer.

C2.02 Compensation for Reimbursable Expenses

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges, reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of _____.
- D. The Reimbursable Expenses Schedule will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Engineer.

C2.03 *Other Provisions Concerning Payment*

- A. 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 _____.
- B. *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.
- C. *Estimated Compensation Amounts:*
 - 1. 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.
 - 2. 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 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 either 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.
- D. 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 cost.

This is **EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-6: Basic Services – Salary Costs Times a Factor

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) – Salary Costs Times a Factor 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. An amount equal to Engineer’s Salary Costs times a factor of _____ for all Basic Services by principals and employees engaged directly on the Project, plus Reimbursable Expenses, estimated to be \$_____, and Engineer’s Consultant’s charges, if any, estimated to be \$_____.
2. Engineer’s Reimbursable Expenses Schedule is attached to this Exhibit C as Appendix 1.
3. The total compensation for services under Paragraph C2.01 is estimated to be \$_____ based on the following assumed distribution of compensation:
 - a. Study and Report Phase \$_____
 - b. Preliminary Design Phase \$_____
 - c. Final Design Phase \$_____
 - d. Bidding or Negotiating Phase \$_____
 - e. Construction Phase \$_____
 - f. Post-Construction Phase \$_____
4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also Paragraph C2.03.C.2 below.

5. The total compensation for Engineer's services, included in the breakdown by phases as noted in Paragraph C2.01.A.3, incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultant's charges.
6. The portion of the amounts billed for Engineer's services will be based on the applicable Salary Costs for the cumulative hours charged to the Project incurred during the billing period by Engineer's principals and employees multiplied by the above designated factor, plus Reimbursable Expenses and Engineer's Consultant's charges.
7. Salary Costs means salaries and wages paid to Engineer's employees plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto.
8. The Salary Costs and the factor applied to Salary Costs will be adjusted annually (as of ___) to reflect equitable changes in the compensation payable to Engineer.

C2.02 Compensation for Reimbursable Expenses

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of ____.
- D. The Reimbursable Expenses Schedule will be adjusted annually (as of ___) to reflect equitable changes in the compensation payable to Engineer.

C2.03 *Other Provisions Concerning Payment*

- A. 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 _____.
- B. *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.
- C. *Estimated Compensation Amounts:*
 - 1. 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.
 - 2. 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 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 either 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.
- D. 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 cost.

**COMPENSATION PACKET RPR-1:
Resident Project Representative – Lump Sum**

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

C2.04 Compensation for Resident Project Representative Basic Services – Lump Sum 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, if any, under Paragraph A1.05 of Exhibit A, the Lump Sum amount of \$_____. The Lump Sum includes compensation for the Resident Project Representative's services, and for the services of any direct assistants to the Resident Project Representative. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses related to the Resident Project Representative's Services.

2. *Resident Project Representative Schedule:* The Lump Sum amount set forth in Paragraph C2.04.A.1 above is based on full-time RPR services on an eight-hour workday Monday through Friday over a ___ day construction schedule. Modifications to the schedule shall entitle Engineer to an equitable adjustment of compensation for RPR services.

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

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 A1.05A 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 \$_____ based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a ___ day construction schedule.

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 following categories: transportation 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 and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. 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 _____.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of ___) to reflect equitable changes in the compensation payable to Engineer.

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_____.
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 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 either 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 cost.

**COMPENSATION PACKET RPR-3:
Resident Project Representative – Percentage of Construction Cost**

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

C2.04 Compensation for Resident Project Representative Basic Services – Percentage of Construction Cost Method of Payment

A. Owner shall pay Engineer for:

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative under Paragraph A1.05 of Exhibit A of the Agreement, an amount equal to _____ percent of the Construction Cost. This amount includes compensation for Resident Project Representative's services, and those of any assistants to the Resident Project Representative. The percentage of Construction Cost noted herein accounts for labor, overhead, profit, and Reimbursable Expenses. The total compensation under this Paragraph is estimated to be \$_____, based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a ___ day construction schedule.
2. As a basis for payment to Engineer, Construction Cost will be based on one or more of the following determinations with precedence in the order listed for Work designed or specified by Engineer.
 - a. For Work designed or specified and incorporated in the completed Project, the actual final price of the Construction Contract(s), as duly adjusted by change orders.
 - b. For Work designed or specified but not constructed, the lowest bona fide Bid received from a qualified bidder for such Work; or, if the Work is not Bid, the lowest bona fide negotiated proposal for such Work.
 - c. For Work designed or specified but not constructed upon which no such Bid or proposal is received, Engineer's most recent opinion of probable Construction Cost.
 - d. Labor furnished by Owner for the Project will be included in the Construction Cost at current market rates including a reasonable allowance for overhead and profit. Materials and equipment furnished by Owner will be included at current market prices.
 - e. For purposes of determining Construction Cost under this provision, no deduction is to be made from Construction Contract price on account of any penalty, liquidated damages, or other amounts withheld from payments to Contractor(s).

**COMPENSATION PACKET RPR-4:
Resident Project Representative – Direct Labor Times a Factor**

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

C2.04 Compensation for Resident Project Representative Basic Services – Direct Labor Costs Times a Factor Method of Payment

A. Owner shall pay Engineer for:

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative under Paragraph A1.05.A.2 of Exhibit A of the Agreement, an amount equal to Engineer's Direct Labor Costs times a factor of _____ for the services of Engineer's personnel engaged directly in resident Project representation, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$_____, based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a ___ day construction schedule.

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 following categories: transportation 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 and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other 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 _____.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Engineer.

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 _____.
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 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 either 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 cost.

**COMPENSATION PACKET RPR-5:
Resident Project Representative – Salary Costs Times a Factor**

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

**C2.04 Compensation for Resident Project Representative Basic Services – Salary Costs Times a Factor
Method of Payment**

A. Owner shall pay Engineer for:

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative, if any, under Paragraph A1.05.A.2 of Exhibit A, an amount equal to the Engineer's Salary Costs times a factor of _____ for services of Engineer's personnel engaged directly in resident Project representation, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$_____, based upon RPR services on an eight-hour workday, Monday through Friday, over a ____ day construction schedule.

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 following categories: transportation 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 and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. 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 or 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 _____.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Engineer.

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

5. 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 _____.
6. *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.
7. *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 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 either 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 the 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.
8. 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 cost.

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

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 following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. 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 _____.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of ___) to reflect equitable changes in the compensation payable to Engineer.

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 _____.

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 cost.

**COMPENSATION PACKET AS-2:
Additional Services – Direct Labor Costs Times a Factor**

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

C2.05 Compensation for Additional Services – Direct Labor Costs Times a Factor Method of Payment

A. Owner shall pay Engineer for Additional Services 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 of the Agreement, 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 Engineer's Direct Labor Costs times a factor of _____, 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 following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for and 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 _____.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of ___) to reflect equitable changes in the compensation payable to Engineer.

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 _____.

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 cost.

**COMPENSATION PACKET AS-3:
Additional Services – Salary Costs Times a Factor**

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

C2.05 Compensation for Additional Services – Salary Costs Times a Factor Method of Payment

A. Owner shall pay Engineer for Additional Services 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 Engineer's personnel times the Engineer's applicable Salary Costs times a factor of _____, 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 following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for and 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 Additional Services, the latter multiplied by a factor of _____.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Engineer.

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 _____.

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 cost.

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

Reimbursable Expenses Schedule

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:

Fax	\$_____ /page
8"x11" Copies/Impressions	_____ /page
Blue Print Copies	_____ /sq. ft.
Reproducible Copies (Mylar)	_____ /sq. ft.
Reproducible Copies (Paper)	_____ /sq. ft.
Mileage (auto)	_____ /mile
Field Truck Daily Charge	_____ /day
Mileage (Field Truck)	_____ /mile
Field Survey Equipment	_____ /day
Confined Space Equipment	_____ /day plus expenses
Resident Project Representative Equipment	_____ /month
Specialized Software	_____ /hour
CAD Charge	_____ /hour
CAE Terminal Charge	_____ /hour
Video Equipment Charge	_____ /day, \$_____ /week, or \$_____ /month
Electrical Meters Charge	_____ /week, or \$_____ /month
Flow Meter Charge	_____ /week, or \$_____ /month
Rain Gauge	_____ /week, or \$_____ /month
Sampler Charge	_____ /week, or \$_____ /month
Dissolved Oxygen Tester Charge	_____ /week
Fluorometer	_____ /week
Laboratory Pilot Testing Charge	_____ /week, or \$_____ /month
Soil Gas Kit	_____ /day
Submersible Pump	_____ /day
Water Level Meter	_____ /day, or \$_____ /month
Soil Sampling	_____ /sample
Groundwater Sampling	_____ /sample
Health and Safety Level D	_____ /day
Health and Safety Level C	_____ /day
Electronic Media Charge	_____ /hour
Long Distance Phone Calls	at cost
Mobile Phone	_____ /day
Meals and Lodging	at cost

[Note to User: Customize this Schedule to reflect anticipated reimbursable expenses on this specific Project]

This is **Appendix 2 to EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. 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.
2. 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:

Billing Class VIII	\$ _____/hour
Billing Class VII	_____/hour
Billing Class VI	_____/hour
Billing Class V	_____/hour
Billing Class IV	_____/hour
Billing Class III	_____/hour
Billing Class II	_____/hour
Billing Class I	_____/hour
Support Staff	_____/hour

This is **EXHIBIT D**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

[Note to User: Delete this Exhibit D if Engineer will not be providing Resident Project Representative Services under Paragraph A1.05.A.2]

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:

D1.01 Resident Project Representative

- C. 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.
- D. Through RPR's observations of Contractor’s work in progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor’s work in progress, supervise, direct, or have control over Contractor’s 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 contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor’s work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor’s performing and furnishing of its work. The Engineer (including RPR) neither guarantee the performances of any contractor nor assumes responsibility for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in Paragraph A1.05 of Exhibit A of the Agreement are applicable.
- E. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* 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. RPR’s dealings in matters pertaining to the Contractor’s work in progress shall in general 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, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the intent of the 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.
5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which 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 for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made;

and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.

9. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *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 notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
12. *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.
13. *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.
14. *Completion:*
- a. Participate in visits to the Project to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
 - b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor, and prepare a final list of items to be completed and deficiencies to be remedied.
 - c. Observe whether all items on the final 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).

F. Resident Project Representative shall not:

- 1. Authorize any deviation from the 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.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
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.

This is **EXHIBIT E**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
Owner

And To: _____
Contractor

From: _____
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above 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 terms and conditions set forth in this Notice.

By: _____

Title: _____

Dated: _____

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.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
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 under the Construction Contract referred to in this Notice, 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 and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor’s performance under the Construction Contract referred to in this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT F**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Construction Cost Limit

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 \$_____.
- B. A bidding or negotiating contingency of _____ 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.
- 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 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 damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

This is **EXHIBIT G**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Insurance

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

G6.04 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
 - 1) Each Accident: \$ _____
 - 2) Disease, Policy Limit: \$ _____
 - 3) Disease, Each Employee: \$ _____
- c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$ _____
 - 2) General Aggregate: \$ _____
- d. Excess or Umbrella Liability --
 - 1) Each Occurrence: \$ _____
 - 2) General Aggregate: \$ _____
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
Each Accident \$ _____
- f. Professional Liability --
 - 1) Each Claim Made \$ _____
 - 2) Annual Aggregate \$ _____
- g. Other (specify): \$ _____

2. By Owner:

- | | |
|--|-----------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | |
| 1) Each Accident | \$ _____ |
| 2) Disease, Policy Limit | \$ _____ |
| 3) Disease, Each Employee | \$ _____ |
| c. General Liability -- | |
| 1) General Aggregate: | \$ _____ |
| 2) Each Occurrence (Bodily Injury and Property Damage): | \$ _____ |
| d. Excess Umbrella Liability -- | |
| 1) Each Occurrence: | \$ _____ |
| 2) General Aggregate: | \$ _____ |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): | |
| Each Accident: | \$ _____ |
| f. Other (specify): | \$ _____ |

B. *Additional Insureds:*

1. The following persons or entities are to be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:

a. _____
Engineer

b. _____
Engineer's Consultant

c. _____
Engineer's Consultant

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 and property policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

This is **EXHIBIT H**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

[NOTE TO USER: Select one of the two alternatives provided]

~~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 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 here insert the name of a specified arbitration service or organization 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 H6.08.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 award rendered by the arbitrators shall be in writing, and shall include: (i) a precise breakdown of the award; and (ii) 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 H6.08.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.~~

This is **EXHIBIT I**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Limitations of Liability

Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties:

A. Limitation of Engineer's Liability

[NOTE TO USER: Select one of the three alternatives listed below for 16.10 A.1]

~~1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.~~

~~{or}~~

~~1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, 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 (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then 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 such uninsured Owner's Claims shall not exceed \$ _____ {or}~~

1. ~~Engineer's Liability Limited to the Amount of \$ _____: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, 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 amount of \$ _____.~~

~~**[NOTE TO USER: If appropriate and desired, include I6.10.A.2 below as a supplement to Paragraph 6.10, which contains a mutual waiver of damages applicable to the benefit of both Owner and Engineer]**~~

2. ~~Exclusion of Special, Incidental, Indirect, and Consequential Damages: To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.10, 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 special, incidental, indirect, or consequential 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 any such damages caused by 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, and including but not limited to:~~

~~**[NOTE TO USER: list here particular types of damages that may be of special concern because of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc. If the parties prefer to leave the language general, then end the sentence after the word "employees"]**~~

~~**[NOTE TO USER: the above exclusion of consequential and other damages can be converted to a limitation on the amount of such damages, following the format of Paragraph I6.10.A.1 above, by providing that "Engineer's total liability for such damages shall not exceed \$ _____."]**~~

~~**[NOTE TO USER: If appropriate and desired, include I6.10.A.3 below]**~~

3. ~~Agreement Not to Claim for Cost of Certain Change Orders: Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or~~

~~part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement (“Covered Change Orders”). Accordingly, Owner agrees not to sue or to make any claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed _____% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that Owner would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents and without any other error or omission of Engineer related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term Engineer includes Engineer’s officers, directors, members, partners, agents, employees, and Consultants.~~

~~**[NOTE TO USER: The parties may wish to consider the additional limitation contained in the following sentence.]**~~

~~Owner further agrees not to sue or to make any claim directly or indirectly against Engineer with respect to any Covered Change Order not in excess of such percentage stated above, and Owner agrees to hold Engineer harmless from and against any suit or claim made by the Contractor relating to any such Covered Change Order.]~~

~~**[NOTE TO USER: Many professional service agreements contain mutual indemnifications. If the parties elect to provide a mutual counterpart to the indemnification of Owner by Engineer in Paragraph 6.10.A, then supplement Paragraph 6.10.B by including the following indemnification of Engineer by Owner as Paragraph 16.10.B.]**~~

~~B. **Indemnification by Owner:** To the fullest extent permitted by law, 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 _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Special Provisions

Paragraph(s) ____ of the Agreement is/are amended to include the following agreement(s) of the parties:

This is **EXHIBIT K**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. _____

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: _____
- b. Owner: _____
- c. Engineer: _____
- d. Project: _____

2. *Description of Modifications:*

[NOTE TO USER: Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform or furnish the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner are modified as follows:
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- e. The schedule for rendering services is modified as follows:
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

[List other Attachments, if any]

5. Agreement Summary (Reference only)

- a. Original Agreement amount: \$ _____
- b. Net change for prior amendments: \$ _____
- c. This amendment amount: \$ _____
- d. Adjusted Agreement amount: \$ _____

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. The Effective Date of this Amendment is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____



City of Greenville, North Carolina

Meeting Date: 1/9/2012
Time: 6:00 PM

Title of Item: Resolution approving a lease agreement with the Greenville Industrial-Eppes High School Alumni Heritage Society for a portion of the C.M. Eppes Recreation Center

Explanation: The Greenville Industrial-Eppes High School Alumni Heritage Society has been utilizing a portion of the Eppes Recreation Center for the C.M. Eppes Cultural Center and has requested permission to extend its existing lease. The Recreation and Parks Commission continues to believe that this is an appropriate and desirable use for this space and supports the renewal of the lease for an additional three-year term. At its December 14, 2011 meeting, the Recreation and Parks Commission unanimously approved the request for lease renewal.

Fiscal Note: One dollar to be received as an annual lease payment.

Recommendation: Approve the attached resolution that extends the current lease agreement with the Greenville Industrial-Eppes High School Alumni Heritage Society for a portion of the C.M. Eppes Recreation Center, through January 31, 2015.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

[Resolution - Lease for Greenville Industrial-Eppes Alumni Society](#)

[Lease with GREENVILLEINDUSTRIAL-EPPES ALUMNI SOCIETY](#)

RESOLUTION 12-
RESOLUTION APPROVING LEASE AGREEMENT WITH
GREENVILLE INDUSTRIAL-EPPES HIGH SCHOOL ALUMNI HERITAGE SOCIETY

WHEREAS, North Carolina General Statute 160A-272 authorizes the City Council of the City of Greenville to approve a lease of property for a term of less than ten (10) years for any property owned by the City for such terms and upon such conditions as City Council may determine; and

WHEREAS, City Council does hereby determine that the property herein described will not be needed by the City for the three (3) year term of the lease.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby approve the Lease Agreement with the Greenville Industrial-Eppes High School Alumni Heritage Society, for a portion of the C.M. Eppes Center, consisting of three rooms, for a term of three (3) years commencing on February 1, 2012, and terminating on January 31, 2015, for the annual rental sum of one dollar, and does further authorize the City Manager to execute said Lease Agreement.

This the 9th day of January, 2012.

Allen M. Thomas, Mayor

ATTEST:

Carol L. Barwick, City Clerk

**NORTH CAROLINA
COUNTY OF PITT**

**LEASE
AGREEMENT**

THIS LEASE AGREEMENT, made and entered into this the ____ day of January, 2012, by and between the City of Greenville, a North Carolina municipal corporation, Party of the First Part and hereinafter referred to as LESSOR, and Greenville Industrial-Eppes High School Alumni Heritage Society, a North Carolina non-profit corporation, Party of the Second Part and hereinafter referred to as LESSEE;

Subject to the terms and conditions of this Lease Agreement, LESSOR does hereby let and lease unto the LESSEE, and LESSEE does hereby lease from the LESSOR, the following described premises located in Greenville, North Carolina:

A portion of the C.M. Eppes Recreation Center consisting of three rooms as delineated on the attached map, labeled as Exhibit A, and herein incorporated by reference.

The terms and conditions of this Lease Agreement are as follows:

1. Term.

The term of this Lease Agreement is for three (3) years, commencing on the 1st day of February, 2012, and expiring on the 31st day of January, 2015.

2. Rent.

The annual rent shall be ONE DOLLAR, and shall be paid by the first day of February of each year. Rent payments shall be delivered to the Director of Financial Services of the City of Greenville, P.O. Box 7207, Greenville, NC 27835.

3. Use of Leased Premises.

The leased premises shall be used by LESSEE as a location to display, honor, and celebrate the history associated with the original use of the Eppes Recreation Center as an educational facility and the faculty and students associated with the educational facility. LESSEE shall make no other use of the leased premises without the prior written consent of the LESSOR. LESSEE shall be responsible, at its expense, for all costs associated with conducting its activities. LESSEE shall not use the leased premises between the hours of 11 p.m. and 7 a.m.

4. Activities Report.

LESSOR and LESSEE understand and agree that the leased premises will be actively used by the LESSEE. The LESSEE shall keep a daily log of the activities conducted on the leased premises. Within ten (10) days of a written notice from the LESSOR to the LESSEE requesting a copy of the daily log and a written summary of the activities, the LESSEE shall provide the LESSOR a copy of the daily log with a written summary of the activities conducted on the leased premises since the commencement of the term of this Lease Agreement.

5. Signage.

LESSEE may install identifying signage on the exterior and hallway doors of the leased premises with the approval by the LESSOR of the size, location, and installation method. **Item # 6**

6. Repairs and Maintenance.

LESSEE agrees to accept the leased premises in its current condition. LESSEE shall be responsible, at its expense, for all maintenance and repairs, both major and minor, to the leased premises except that the LESSOR shall be responsible for the maintenance and repair of the roof and the exterior walls of the leased premises. The LESSEE shall at its sole cost and expense, be responsible for keeping the leased premises in a good, clean, neat, attractive, pleasant and sanitary condition at all times.

7. Alterations And Improvements.

No alterations or improvements shall be made to the leased premises without the prior written consent of the LESSOR.

8. Utilities.

LESSOR shall be responsible for providing and paying for all electricity, lighting, heating, water, air conditioning, and sewer used by LESSEE in connection with the occupancy of the leased premises. The LESSEE shall be responsible for the telephone charges and all other charges for utilities used by LESSEE in connection with the occupancy of the leased premises.

9. Insurance.

The LESSEE will at all times during the term of this LEASE, at its own cost and expense, insure and keep in effect insurance on the leased premises against claims for personal injury or property damage under a policy of general liability insurance with a combined single limit of not less than \$1,000,000 with the LESSOR named as an additional named insured, written by an insurance company or companies authorized to do business in the State of North Carolina. The LESSEE shall provide the LESSOR with a certificate of insurance evidencing said coverage.

10. Damage or Destruction by Fire or Other Casualty.

In the event that the building located on the leased premises is destroyed by fire or other casualty or act of God, then this Lease Agreement shall terminate as of the time of such destruction without action on the part of either the LESSOR or the LESSEE. In the event that the building located on the leased premises is so damaged by fire, other casualty, or act of God that more than 50% of the floor space of the building cannot reasonably be used by LESSEE in the conduct of its activities, or the building is so damaged by fire or other casualty or act of God that it cannot, in the LESSOR's opinion, be economically repaired, then either party shall have the option to terminate this Lease Agreement by the provision of written notice to the other party.

12. Assignment and Subletting.

LESSEE may not assign or transfer this Lease Agreement or sublet the leased premises or any part of the leased premises without the prior written consent of the LESSOR.

13. Indemnity.

The LESSEE agrees to indemnify and save harmless the LESSOR and its officers and employees from and against any and all claims and demands whether from injury to person, loss of life, or damage to property, occurring on or within the demised premises.

14. Surrender on Termination.

Upon the termination of this Lease Agreement for any reason, the LESSEE shall yield and deliver peaceably to the LESSOR possession of the leased premises and any alterations, additions, and improvements made by LESSEE thereto, promptly and in good condition, order, and repair, except for reasonable wear and tear and acts of God.

15. Default.

If LESSEE shall neglect to pay any annual installment of rent when due, or shall neglect to do and perform any other matter agreed to be done, and shall remain in default for a period of thirty (30) days after receiving written notice from LESSOR calling attention to the non-payment or default, LESSOR may declare this Lease Agreement terminated and take possession of the leased premises without prejudice to any other legal remedy it may have on account of such default. If LESSOR neglects to do or perform any matter agreed to be done in this Lease Agreement and shall remain in default for a period of thirty (30) days after written notice from the LESSEE calling attention to such default, the LESSEE may declare this Lease Agreement terminated without prejudice to any other legal remedy it may have on account of such default.

16. Liens.

The LESSEE agrees that it will not permit the claim of any contractor, sub-contractor, mechanic, laborer or materialmen to become and remain a lien on the leased property or upon the right, title or interest of the LESSEE created by this Lease Agreement after the indebtedness secured by such lien shall become due unless the same is in the process of actually being contested in good faith on the part of the LESSEE and in any event the LESSEE will protect, indemnify and save harmless the LESSOR from and in respect of any and all such claims.

17. Access.

LESSEE will be able to secure and restrict access to the leased premises when not in use for its activities. Notwithstanding the foregoing, LESSOR and LESSOR's officers and employees shall have full access to enter the leased premises anytime to examine the condition thereof or make repairs, additions or alterations as may be necessary for the safety, preservation or improvement of the property which the LESSOR, in its sole discretion, determines to make or for any other purpose which the LESSOR deems appropriate as it relates to the physical facility and equipment.

18. Quiet Enjoyment.

LESSOR agrees that LESSEE, upon payment of rent and performing the agreements in this Lease Agreement may peacefully and quietly have, hold and enjoy the said leased premises on all the terms of this Lease Agreement.

19. Notices.

Any notice provided for herein shall be deemed to have been served sufficiently if mailed by first class mail to the City Manager, for notices to the LESSOR, or to the President, for notices to the LESSEE, at the addresses set forth below.

LESSOR:

City Manager
City of Greenville
P.O. Box 7207
Greenville, NC 27835

LESSEE:

President
Greenville Industrial- Eppes High School
Alumni Heritage Society
P.O. Box 93
Greenville, NC 27835

20. Legal and Regulatory Duties.

The LESSEE shall observe all applicable local, state, and federal laws and regulations as they pertain to LESSEE's use and occupation of the leased premises. LESSEE shall indemnify and hold harmless the LESSOR from and against any liability arising from such laws or regulations caused by LESSEE's use or occupation of the leased premises.

21. Entire Agreement.

This Lease Agreement is the only agreement between the parties hereto with respect to the subject matter hereof and contains all of the terms agreed upon, and there are no other agreements, oral or written, between the parties hereto with respect to the subject matter thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed in duplicate originals as of the day and year first above written.

CITY OF GREENVILLE

GREENVILLE INDUSTRIAL-
EPPES HIGH SCHOOL
ALUMNI HERITAGE SOCIETY

BY: _____
Wayne Bowers, City Manager

BY: _____
, President

**NORTH CAROLINA
PITT COUNTY**

I, _____, a Notary Public in and for the aforesaid County and State, do hereby certify that Wayne Bowers, City Manager for the City of Greenville, personally appeared before me on this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and Notarial Seal, this the _____ day of _____, 2012.

Notary Public

My Commission expires: _____.

**NORTH CAROLINA
PITT COUNTY**

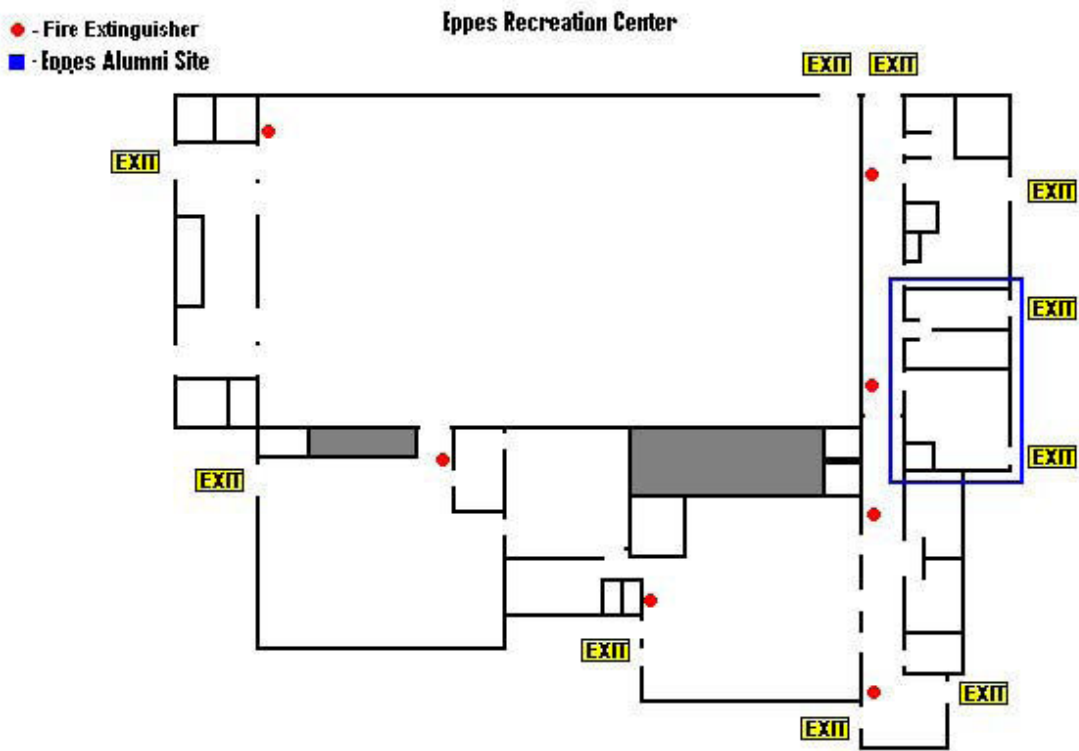
I, _____, a Notary Public in and for the aforesaid County and State, do hereby certify that _____, President, for Greenville Industrial-Eppes High School Alumni Heritage Society, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and Notarial Seal, this the _____ day of _____, 2012.

Notary Public

My Commission expires: _____.

Exhibit A





City of Greenville, North Carolina

Meeting Date: 1/9/2012
Time: 6:00 PM

Title of Item: Ordinance and reimbursement resolution for Greenville Utilities Commission's Water Treatment Plant Facilities Master Plan

Explanation: Greenville Utilities Commission (GUC) typically updates its Water Treatment Plant Master Plan every ten to fifteen years. The current Master Plan was completed in 1996 and is due for an update. Greenville Utilities Water Treatment Plant is rated at 22.5 million gallons per day (MGD). Last year, several new water use records were set, including an average day demand of 11.4 MGD and a single day record of over 17.5 MGD in July of 2010.

The proposed project consists of a comprehensive assessment of the Greenville Utilities Water Treatment Plant (WTP), as well as an evaluation of long-term water supplies and the development of strategies to meet future system demands. Consultant services shall include, but are not limited to, a thorough evaluation of the WTP process operations and operational efficiency; plant expansion possibilities; current site limitations, etc.; development of long-term water supply strategies incorporating GUC's existing water supply well, Aquifer Storage and Recovery well and the identification of potential future water sources; and development of a phased Capital Improvements Plan (CIP) including specific projects recommended to accommodate future demands, meet future regulatory requirements, and to improve reliability, water quality, and operational efficiency.

GUC selected the firm of HDR Engineering, Inc. of the Carolinas to enter into contract negotiations to perform the proposed work based on their team's qualifications and experience on similar projects. These negotiations resulted in a proposed contract to develop the needed Master Plan in the amount of \$487,731. The proposed budget includes funds for the engineering services contract plus a project contingency. The anticipated duration for performance of this work is 12-18 months. The project is to be funded by long-term financing.

The Greenville Utilities Commission Board approved the Capital Project Budget and the reimbursement resolution for the Water Treatment Plant Facilities Master

Plan at its regular meeting held on December 15, 2011, and recommends similar action by City Council.

Fiscal Note: No costs to the City.

Recommendation: Approve the attached ordinance and reimbursement resolution relating to the Greenville Utilities Commission Water Treatment Plant Facilities Master Plan.

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Attachments / click to download

[Reimbursement Resolution WTP Facilities Master Plan](#)

[Ordinance WCP 114 Water Treatment Facilities Master Plan](#)

ORDINANCE NO. ____-____

FOR WATER CAPITAL PROJECT BUDGET
WATER TREATMENT PLANT FACILITIES MASTER PLAN

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES ORDAIN:

Section 1. Revenues. Revenues of Water Capital Project Budget, Water Treatment Plant Facilities Master Plan, is hereby established to read as follows:

Revenue:

Long Term Financing	<u>\$550,000</u>	
Total Revenue		<u><u>\$550,000</u></u>

Section 2. Expenditures. Expenditures of the Water Capital Project Budget, Water Treatment Plant Facilities Master Plan, is hereby established to read as follows:

Expenditures:

Project Cost	<u>\$550,000</u>	
Total Expenditures		<u><u>\$550,000</u></u>

Section 3. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the _____ day of _____, 20__

Allen M. Thomas, Mayor

ATTEST:

Carol L. Barwick, City Clerk

RESOLUTION NO. ____ - __

**RESOLUTION DECLARING THE INTENTION OF THE
CITY COUNCIL OF THE CITY OF GREENVILLE
TO REIMBURSE THE CITY FROM THE PROCEEDS
OF A DEBT FINANCING FOR CERTAIN EXPENDITURES
MADE AND TO BE MADE IN CONNECTION WITH THE ACQUISITION
AND CONSTRUCTION OF CERTAIN CAPITAL IMPROVEMENTS**

WHEREAS, the City of Greenville, North Carolina (the "City") has paid, beginning, December 15, 2011, which date is no more than 60 days prior to the date hereof, certain expenditures in connection with the acquisition and construction of certain improvements (the "Improvements") more fully described in Exhibit A attached hereto, consisting of improvements to its electric, gas, sanitary sewer and water systems (collectively, the "System"); and

WHEREAS, the City Council of the City (the "City Council") has determined that those moneys previously advanced no more than 60 days prior to the date hereof to pay such expenditures in connection with the acquisition and construction of the Improvements (the "Expenditures") are available only on a temporary period and that it is necessary to reimburse the City for the Expenditures from the proceeds of an issue of debt (the "Debt");

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL as follows:

Section 1. The City Council hereby declares its intent to reimburse the City from the proceeds of the Debt for the Expenditures made on and after December 15, 2011, which date is no more than 60 days prior to the date hereof. The City Council reasonably expects on the date hereof that it will reimburse the City for the Expenditures from the proceeds of a like amount of the Debt.

Section 2. Each Expenditure was or will be either (a) of a type chargeable to capital account under general federal income tax principles (determined as of the date of the Expenditures), (b) the cost of issuance with respect to the Debt, (c) a non-recurring item that is not customarily payable from current revenues of the System, or (d) a grant to a party that is not related to or an agent of the City so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the City.

Section 3. The principal amount of the Bonds estimated to be issued to reimburse the City for Expenditures for the Improvements is estimated to be \$550,000.

Section 4. The City will make a reimbursement allocation, which is a written allocation by the City that evidences the City's use of proceeds of the Debt to reimburse an Expenditure no later than 18 months after the later of the date on which such Expenditure is paid or the Improvements are placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The City recognizes that exceptions are available for certain "preliminary expenditures," costs of issuance, certain de minimis amounts, (expenditures by "small issuers" based on the year of issuance and not the year of expenditure), and expenditures for construction projects of at least 5 years.

Section 5. The resolution shall take effect immediately upon its passage.

Adopted this the ____ day of _____, 20 ____.

Allen M. Thomas, Mayor

ATTEST:

Carol L. Barwick, City Clerk

EXHIBIT A

THE IMPROVEMENTS

The Improvements referenced in the resolution include, but are not limited to, all operating and capital expenditures associated with the preparation of a Master Plan for the Greenville Utilities Water Treatment Plant (WTP). The project will include a comprehensive assessment of the Greenville Utilities WTP, as well as an evaluation of long term water supplies and the development of strategies to meet future system demands.



City of Greenville, North Carolina

Meeting Date: 1/9/2012
Time: 6:00 PM

Title of Item: Ordinance amending the capital project budget for Greenville Utilities Commission's Water Treatment Plant Riverbank Stabilization & Raw Water Pumping Station Improvements Project

Explanation: The banks of the Tar River, adjacent to the Water Treatment Plant, had to be cleared and excavated for the construction of the Raw Water Intake Project. Upon completion of the project, the riverbank was restored in accordance with all permit requirements. However, a destructive infestation of army worms on the restored vegetation and historically unusual high water events occurred during and after completion of construction. The destruction of the vegetation and the high water events have accelerated riverbank erosion and scour in the area of the new intakes, as well as changed the river flow mechanics to the extent that action needs to be taken to protect the newly installed intakes.

In the 12 years prior to construction of the new intakes, there were 6 high water events above elevation of 10 feet, or 1 every 2 years. During the construction and in the first few months thereafter, there were 8 high water events above elevation of 10 feet over a period of 6 months. These riverbank flooding events have caused severe erosion of the riverbank, which now threatens the integrity of the new intake structure. They are also affecting the location of the channel (thalweg) from which raw water is withdrawn. The objectives of the proposed work along and in the river are to ensure the protection of the raw water intakes, protect the existing channel alignment, and stabilize the riverbank with armored, articulated matting.

Greenville Utilities Commission's (GUC) staff has worked with consultant, Brown and Caldwell, and Dr. Jacob Odgaard, Professor of Civil and Environmental Engineering at the University of Iowa, to develop the proposed project. Dr. Odgaard is an internationally recognized expert in environmental fluid mechanics, hydraulic structures, river engineering, and river mechanics. He has designed and implemented numerous successful riverbank and channel protection/relocation projects.

In addition, in accordance with the Water Treatment Plant Master Maintenance

Plan schedule, it is necessary to replace certain existing equipment in the Raw Water Pump Station facility that has reached the end of its useful life. To ensure raw water pumping station reliability and redundancy, it is proposed to replace 20-30 year old equipment such as valves and pumps. To date, \$3,402,577 of stimulus funding and SRF loan funds have been used for the project. This leaves a balance of \$3,241,703 in available SRF loan funds. GUC has requested, and the State has approved, the use of \$1,442,000 of this balance for the proposed project. This item also includes a resolution to apply for a \$264,500 grant from the NCDENR Water Resources Grant Program which will be used to reduce the SRF loan amount. The GUC Board of Commissioners approved the amendment to the capital project budget at its December 15, 2011 regular meeting and recommends similar action by City Council.

Fiscal Note: No costs to the City.

Recommendation: Approve the attached ordinance adopting the amendment to the capital project budget for GUC's Water Treatment Plant Riverbank Stabilization & Raw Water Pumping Station Improvements Project.

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 [Ordinance - WCP -99](#)

ORDINANCE NO. ____ - _____
AMENDING ORDINANCE NO. 08-29
FOR WATER CAPITAL PROJECT BUDGET
WATER TREATMENT PLANT RAW WATER PUMP STATION IMPROVEMENTS

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES ORDAIN:

Section 1. The Water Capital Project Budget is amended, so that as amended, it shall read as follows:

	Current Budget	Change	Proposed Revised
Revenue:			
ARRA Principal Forgiveness Grant	1,471,076	\$0	1,471,076
State Revolving Fund 0% Interest Loan	1,471,076	\$0	1,471,076
State Revolving Fund Loan	460,425	\$1,442,000	1,902,425
	\$3,402,577	\$1,442,000	\$4,844,577

Expenditures:

Project Cost	\$3,402,577	\$1,442,000	\$5,094,682
	\$3,402,577	\$1,442,000	\$4,844,577

Section 2. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the _____ day of _____, 20__

Allen M. Thomas, Mayor

ATTEST:

Carol L. Barwick, City Clerk



City of Greenville, North Carolina

Meeting Date: 1/9/2012
Time: 6:00 PM

Title of Item: Presentations by Boards and Commissions

- a. Community Appearance Commission
- b. Environmental Advisory Commission

Explanation: The Community Appearance Commission and the Environmental Advisory Commission are scheduled to make their annual presentations to City Council at the January 9, 2012 City Council meeting.

Fiscal Note: N/A

Recommendation: Receive the annual presentations from the Community Appearance Commission and the Environmental Advisory Commission

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City of Greenville, North Carolina

Meeting Date: 1/9/2012
Time: 6:00 PM

Title of Item: Clark Street debris pile

Explanation: East Carolina University used its property located on Clark Street between 11th Street and 12th Street to store vegetative debris removed from other campus properties following the damage caused by Hurricane Irene. During the November 14, 2011 City Council meeting, some Council Members expressed concerns about this property becoming a dumping area for ECU on a continuing basis. These concerns were conveyed to ECU officials in the attached email. The response from ECU is also attached.

During the December 8, 2011 City Council meeting, Council Member Joyner requested that a discussion of the use of this property be placed on a January City Council meeting agenda. ECU Vice Chancellor for Administration and Finance Rick Niswander will attend the meeting to respond to questions.

Fiscal Note: No fiscal impact to the City.

Recommendation: Discuss the use of property located on Clark Street between 11th Street and 12th Street by East Carolina University.

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 [Clark St. Debris Info](#)

Wayne Bowers

From: Wayne Bowers
Sent: Tuesday, December 27, 2011 5:29 PM
To: 'Max Ray Joyner, Jr.'
Cc: Allen M. Thomas; 'Calvin Mercer'; Dennis Mitchell; Kandie Smith; 'Marion Blackburn'; 'Max Joyner'; 'Rose Glover'
Subject: RE: Clark Street Debris Pile

Max:

As you requested at the last City Council meeting, this item will be scheduled for discussion at the January 9, 2012 City Council meeting.

Wayne

From: Max Ray Joyner, Jr. [<mailto:max@maxjoynerjr.com>]
Sent: Tuesday, December 27, 2011 2:47 PM
To: Wayne Bowers
Subject: RE: Clark Street Debris Pile

Wayne,

Their response is unacceptable and I would like to further discuss with the council either at regular council meeting or planning session0-please schedule

From: Wayne Bowers [<mailto:WBowers@greenvillenc.gov>]
Sent: Thursday, December 08, 2011 2:17 PM
To: 'Niswander, Rick'
Cc: 'Bagnell, William Everett'; Allen M. Thomas; Calvin Mercer; Dennis Mitchell; Kandie Smith; Marion Blackburn; 'Max Joyner'; Rose Glover
Subject: RE: Clark Street Debris Pile

Rick:

Thank you for the thorough report concerning the Clark Street debris pile. I have observed the progress being made on removing the debris left from Hurricane Irene. Also I appreciate your response concerning the future use of this property.

I am providing a copy of your response to the Mayor and Council in order that they will be informed of ECU's use of this property.

Wayne

Wayne Bowers
City Manager
City of Greenville, NC
P.O. Box 7207
Greenville, NC 27835-7207
252-329-4432

From: Niswander, Rick [<mailto:NISWANDERF@ecu.edu>]
Sent: Thursday, December 08, 2011 12:10 PM
To: Wayne Bowers
Cc: Bagnell, William Everett
Subject: RE: Clark Street Debris Pile

Wayne:

We appreciate the patience of the City as we have worked to mulch the tree debris on our property on Clark Street. As you may know, we decided early on that we wanted to mulch as much of the tree debris as we could so we could use/recycle the mulch on campus and not have to take the material to the dump. Ecologically, the mulching approach is far superior to the dumping approach.

The process of awarding a bid was more lengthy than we wished, but the mulching process is progressing and is roughly 75% complete. Our contractor has encountered a number of mechanical breakdowns that have slowed the progress to completion. Barring additional mechanical failures or weather delays, we expect to complete work by the end of next week.

Prior to Irene, we never used this location to store or dump vegetative material, or anything else for that matter. Irene was an extraordinary event that affected ECU, the City, and all of Eastern North Carolina. Because of the situation, we believed (and still believe) that we had no viable alternative to using the site on an emergency basis. While it has taken us longer than any of us would have liked to complete the mulching process, in retrospect, we would not change the initial decision given the situation that presented itself.

I can commit that, consistent with past practice and in the normal course of events, we will not use the site for dumping of vegetative or other material. However, I cannot and will not commit to what we may need to do in an emergency situation resulting from a hurricane or other disaster.

Feel free to share this with the City Council as you see fit.

Rick

Dr. Frederick (Rick) Niswander, Ph.D., CPA
Vice Chancellor for Administration and Finance
Spilman 106
East Carolina University
Greenville, NC 27858
252-328-6975
252-328-4835 (FAX)

From: Wayne Bowers [<mailto:WBowers@greenvillenc.gov>]
Sent: Thursday, December 01, 2011 1:01 PM
To: Niswander, Rick
Cc: Bagnell, William Everett
Subject: Clark Street Debris Pile

Rick:

Thanks to you and Bill Bagnell for getting the Hurricane Irene debris pile removed through your tub grinding process. I drove by the site this morning and substantial progress is being made.

During the November 14th City Council meeting, some City Council Members expressed concern about the Clark Street site becoming a dumping area for ECU on a continuing basis. My understanding is that the debris was placed at this location on a one time basis as an expedient way to address the large volume of materials that had to be removed from campus following Hurricane Irene.

In order that I can inform the City Council of your intentions, please confirm that ECU has no plans to continue to use the Clark Street property as a dump site for vegetative materials once the Hurricane Irene debris has been removed.

Wayne Bowers
City Manager
City of Greenville, NC
P.O. Box 7207
Greenville, NC 27835-7207
252-329-4432

This e-mail is for the intended recipient only.
If you have received it by mistake please let us know by reply and then delete it from your system; access, disclosure, copying, distribution or reliance on any of it by anyone else is prohibited.
If you as intended recipient have received this e-mail incorrectly, please notify the sender (via e-mail) immediately.

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If you as intended recipient have received this e-mail incorrectly, please notify the sender (via e-mail) immediately.

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.1873 / Virus Database: 2102/4667 - Release Date: 12/08/11



City of Greenville, North Carolina

Meeting Date: 1/9/2012
Time: 6:00 PM

Title of Item: PAL Program

Explanation: Council Member Mercer requested that the City Council discuss the PAL (Police Athletic League) Program.

Fiscal Note: Funds for the PAL Program are contained in the Police Department budget.

Recommendation: Discuss the PAL Program.

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Attachments / [click to download](#)



City of Greenville, North Carolina

Meeting Date: 1/9/2012
Time: 6:00 PM

Title of Item: Dream Park Master Plan

Explanation: Dream Park is a 2.4 acre park in west Greenville that predominately serves the residents of the Higgs Brothers neighborhood. In terms of size, it is classified as a "Mini Park" by National Recreation and Parks Association (NRPA) standards (1-4 acres), but in terms of facilities it does not meet the minimum criteria of a "Mini Park," nor does it address many park needs for the surrounding west Greenville community.

Dream Park was conceived in the mid 1990's as a part of the "Weed and Seed" program. The initial effort resulted primarily in open greenspace with only the most basic playground amenities; the site had limited recreational value resulting in little use. The new Master Plan proposes a much more vibrant recreation area and was developed with consideration of stakeholder input. The proposed renovations include an entry plaza and promenade walk, a spray-ground, improved multipurpose field, picnic shelter, an upgraded playground unit, and community gardens. The planned improvements will become one more important factor in this ongoing neighborhood redevelopment and contribute to the overall revitalization of the general area.

To ensure citizen input for the master plan, the Recreation and Parks Department hosted a series of public meetings. As a result, the developed plan emphasizes:

1. Maximizing programming space by exploring shared land use with Greenville Community Shelter and the American Legion,
2. Providing park elements and programs for youth and seniors,
3. Providing a family friendly park that serves the neighborhood as well as the west Greenville community, and
4. Keeping the community engaged with the design and development process.

At the December 14, 2011 Recreation and Parks Commission meeting, Commissioners adopted the Dream Park Master Plan and recommended that City

Council adopt the plan as well. A copy of the plan is attached.

Fiscal Note:

No cost for adoption, but the estimated cost for implementing the full Dream Park Master Plan is \$784,900. The proposed project, however, is designed so that it can be separated into phases, thus spreading out development and associated costs. The Recreation and Parks Department will apply for a \$250,000 PARTF grant in January 2012 to fund a portion of the project. (A park master plan is required for funding, and the application receives additional credit if the plan is adopted by "the local governing board.")

Recommendation:

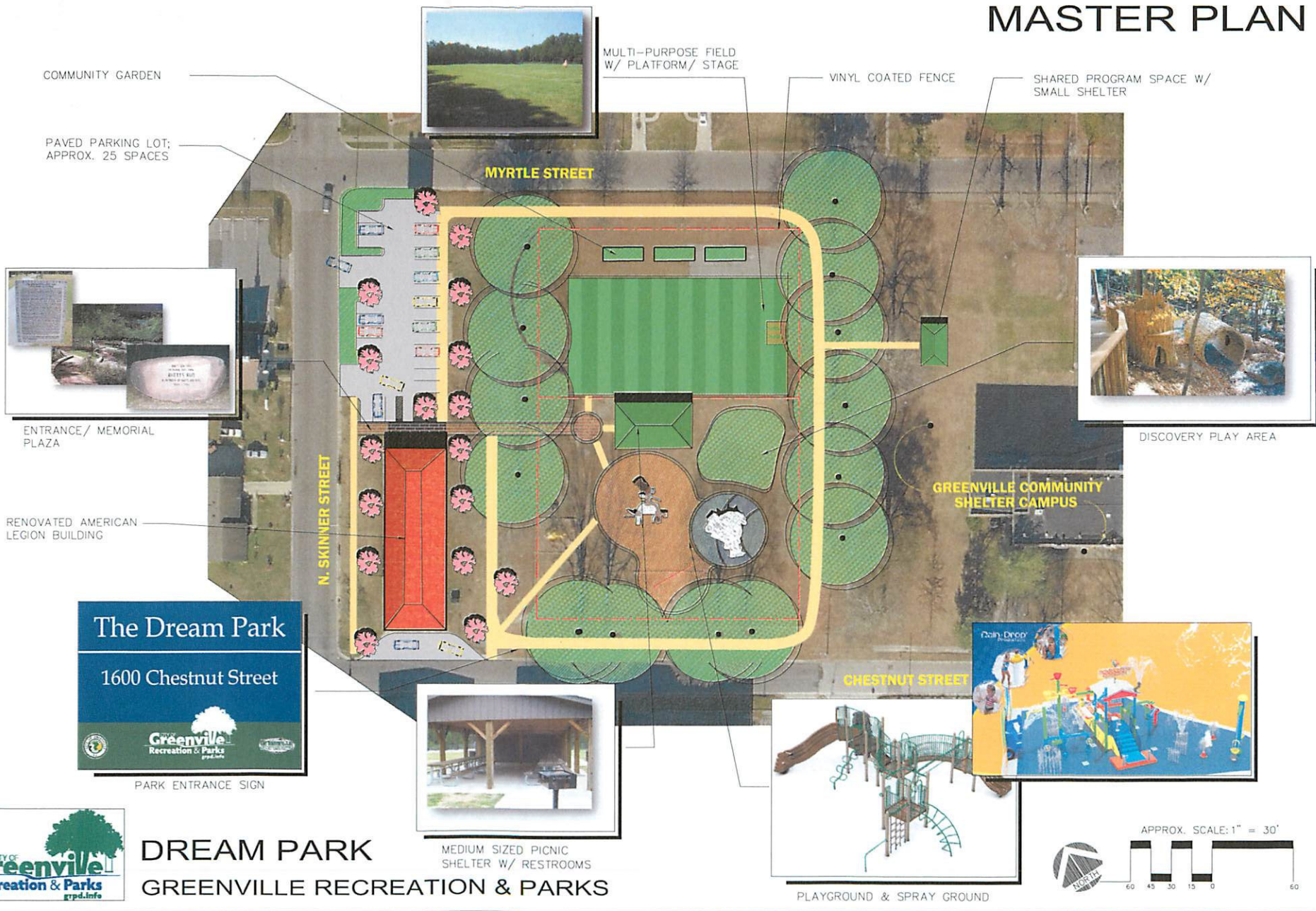
Adopt the Dream Park Master Plan and incorporate it by reference into the City of Greenville's Comprehensive Recreation and Parks Master Plan.

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 [Dream Park Master Plan](#)

MASTER PLAN



The Dream Park
 1600 Chestnut Street

CITY OF Greenville
 Recreation & Parks
 rpd.info

PARK ENTRANCE SIGN



DREAM PARK
 GREENVILLE RECREATION & PARKS





City of Greenville, North Carolina

Meeting Date: 1/9/2012
Time: 6:00 PM

Title of Item: Resolution authorizing the sale of 806 Fleming Street to Adrian Barnhill

Explanation: This requested action is to authorize the sale of property owned by the City of Greenville at 806 Fleming Street to Mr. Adrian Barnhill. Mr. Willie Pridgen, father of Mr. Barnhill, made the initial inquiry about the acquisition of 806 Fleming Street. Mr. Pridgen owns and resides at 808 Fleming Street, and his family once owned 806 Fleming Street. Mr. Barnhill provided a sealed bid of \$2,550 within the specified bid period. City Council established the Fair Market Value for the property at \$2,545 during its October 13, 2011, meeting.

The property has limited use because of its size. Mr. Barnhill is aware of this and has indicated that the family plans to combine it with the 808 Fleming Street property for use by the family to maintain the family home site.

Fiscal Note: Estimated legal fees of \$500.

Recommendation: Approve the attached resolution authorizing the sale of 806 Fleming Street to Mr. Adrian Barnhill and authorize staff to execute documents related to the sale of the property.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

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- [barnhill letter](#)
- [806 Fleming map](#)
- [Resolution to Sell 806 Fleming Street to Adrian Barnhill 913889](#)

RESOLUTION NO. 12-____
RESOLUTION AUTHORIZING THE SALE OF CERTAIN REAL PROPERTY
AT 806 FLEMING STREET TO ADRIAN BARNHILL

WHEREAS, the City of Greenville has received an offer to purchase and redevelop 806 Fleming Street, further identified as Pitt County Parcel number 22141; and,

WHEREAS, the City Council at its October 13, 2011 meeting, established fair market value of the parcel for \$2,545 and authorized staff to advertise the availability of the parcel for sealed bids; and,

WHEREAS, the City of Greenville made available said parcel for interested buyers from November 7, 2011 until November 28, 2011; and,

WHEREAS, the City of Greenville is authorized pursuant to North Carolina General Statute 160A-268 to dispose of properties by means of sealed bids; and,

WHEREAS, Mr. Adrian Barnhill was the sole bidder for the property located at 806 Fleming Street, having submitted a bid in the amount of \$2,550, along with the required 5% deposit; and,

WHEREAS, the City Council, at its January 9, 2012 meeting, considered the offer submitted by Adrian Barnhill for 806 Fleming Street, held in accordance with the provisions G.S. 160A-268;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby approve the sale of the property located at 806 Fleming Street to Adrian Barnhill for \$2,550, said amount being not less than the fair market value of said property.

BE IT FURTHER RESOLVED by the City Council of the City of Greenville that the Mayor and City Clerk be and are hereby authorized to execute the deed and any other necessary documents to accomplish the conveyance of said property to said person.

This the 9th day of January, 2012.

Allen M. Thomas, Mayor

ATTEST:

Carol L. Barwick, City Clerk

Adrian Barnhill
2610 NE Falcon Wood Drive
Blue Springs, MO 64014
615-497-6615

November 21, 2011

City of Greenville
Housing Division of the Community Development Department
201 W. 5th Street, 3rd Floor
Greenville, NC 27834
Attn: Greenville City Council

Dear City Council Members,

Thank you for the information regarding the empty lot at 806 Fleming Street. I would like to make a bid for that property.

My family's ancestral home, 808 Fleming Street, is adjacent to the vacant lot. It is my desire to preserve my family's native Greenville heritage by purchasing the property at 806 Fleming Street and maintaining it as an addition to our own to accommodate family gatherings. I am, therefore, placing a bid in the amount of \$2550 for the property at 860 Fleming Street.

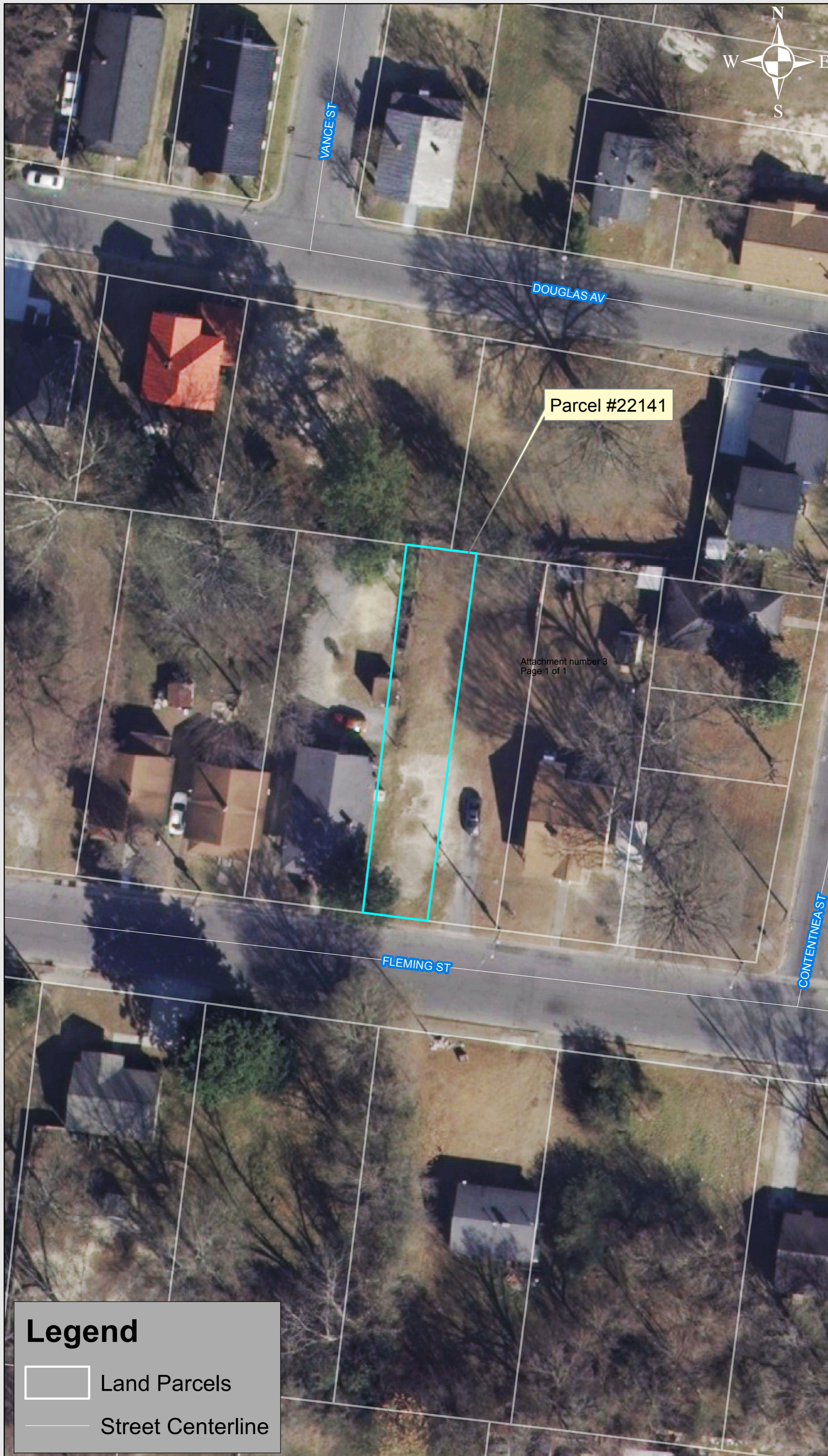
Sincerely,



Adrian Barnhill



Parcel Number: 22141



ID	55312
PIN	22141
Account No.	
Owner	GREENVILLE CITY OF
Owner Address 1	PO BOX 7207
Owner Address 2	
Owner Address 3	
City, State and Zip	GREENVILLE NC 27835
Municipality (Inside City of:)	GREENVILLE
Legal Description	806 FLEMING*MUNFORD-HIGGS
Physical House No.	806
Physical Street Prefix	
Physical Street Name	FLEMING
Physical Street Type	ST
Deed Book	
Deed Page	
Use Code	
Township	GREENVILLE
Census Tract	7.01
Fire Tax District	GREENVILLE
Rescue Tax District	
Year Built	
Heated Square Footage	
Total Square Footage	
Sales Price	
Sales Month and Year	
Current Tax Value	\$2,545
Current Building Value	
Current Land Value	\$2,545
Current Other Features Value	
Prior Tax Value	\$10,830
Prior Building Value	\$9,270
Prior Land Value	\$1,440
Prior Other Features Value	\$120
Elementary School	SOUTH GREENVILLE ES
Middle School	C M EPPES MS
High School	J H ROSE HS
Historic District Information	
Local Historic District	
Name	
Style	



City of Greenville, North Carolina

Meeting Date: 1/9/2012
Time: 6:00 PM

Title of Item: Budget ordinance amendment #6 to the 2011-2012 City of Greenville budget (Ordinance #11-038)

Explanation: Attached is an amendment to the 2011-2012 budget ordinance for consideration at the January 9, 2012, City Council meeting. For ease of reference, a footnote has been added to each line item of the budget ordinance amendment, which corresponds to the explanation below:

A To transfer funds budgeted in Capital Reserve for Sidewalk Construction - DOT Projects to pay expenses for the NC 43 Sidewalk Construction Project. City Council approved the NCDOT Municipal Agreement for this project at the January 11, 2010 meeting using Powell Bill funds. However, use of the Capital Reserve funds designated for NCDOT sidewalk projects is appropriate, and this action will leave Powell Bill funds available for other roadway projects. The final project invoice was received by the City in November 2011 (\$137,191).

B To reappropriate funds appropriated in the prior year to continue grant work for the Urban Search and Rescue Equipment Training, COPS Technology, and Brownfield Assessments (\$350,222).

Fiscal Note: The budget ordinance amendments affect the following funds: increase General Fund by \$487,431 and increase the Capital Reserve Fund by 137,191:

<u>Fund Name</u>	<u>Original Adopted Budget</u>	<u>Proposed Amendment</u>	<u>Adjusted Budget</u>
General	\$ 77,995,190	\$ 487,413	\$78,482,603
Capital Reserve Fund	200,000	137,191	337,191

Recommendation: Approve the attached budget ordinance amendment #6 to the 2011-2012 City of Greenville budget (Ordinance #11-038)

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 [Budget Amendment FY 2011 2012 902782](#)

ORDINANCE NO. -
CITY OF GREENVILLE, NORTH CAROLINA
Ordinance (#6) Amending the 2011-2012 Budget (Ordinance No. 11-038)

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA , DOES ORDAIN:

Section I: Estimated Revenues and Appropriations. **General Fund**, of Ordinance 11-038, is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	ORIGINAL 2011-2012 BUDGET		#6 Amended 1/9/12	Total Amendments	Amended 2011-2012 Budget
ESTIMATED REVENUES					
Property Tax	\$ 29,813,308		\$ -	\$ -	\$ 29,813,308
Sales Tax	14,350,430		-	(100,000)	14,250,430
Utilities Franchise Tax	5,974,803		-	-	5,974,803
Other Unrestricted Intergov't Revenue	2,475,028		-	-	2,475,028
Powell Bill	2,032,692		-	-	2,032,692
Restricted Intergov't Revenues	2,149,013	B	350,222	690,149	2,839,162
Building Permits	733,701		-	-	733,701
Other Licenses, Permits and Fees	2,858,088		-	-	2,858,088
Rescue Service Transport	2,652,260		-	-	2,652,260
Other Sales & Services	1,042,183		-	-	1,042,183
Other Revenues	295,641		-	36,500	332,141
Interest on Investments	1,884,450		-	-	1,884,450
Transfers In GUC	4,986,085		-	-	4,986,085
Other Financing Sources	1,062,537	A	137,191	817,191	1,879,728
Appropriated Fund Balance	3,079,408		-	1,649,136	4,728,544
TOTAL REVENUES	\$ 75,389,627		\$ 487,413	\$ 3,092,976	\$ 78,482,603

APPROPRIATIONS					
Mayor/City Council	\$ 431,749		\$ -	\$ -	\$ 431,749
City Manager	1,116,824		-	77,130	1,193,954
City Clerk	308,883		-	-	308,883
City Attorney	455,445		-	-	455,445
Human Resources	2,708,693		-	-	2,708,693
Information Technology	3,214,564		-	(4,100)	3,210,464
Fire/Rescue	12,944,364	B	57,650	131,663	13,076,027
Financial Services	2,299,332		-	(8,036)	2,291,296
Recreation & Parks	6,334,925		-	83,741	6,418,666
Police	22,536,036	B	184,301	311,303	22,847,339
Public Works	9,191,938		-	128,500	9,320,438
Community Development	1,730,349	B	108,271	232,710	1,963,059
OPEB	250,000		-	-	250,000
Contingency	150,000		-	(51,625)	98,375
Indirect Cost Reimbursement	(601,354)		-	-	(601,354)
Capital Improvements	6,347,428	A	137,191	1,860,069	8,207,497
Total Appropriations	\$ 69,419,176		487,413	\$ 2,761,355	\$ 72,180,531

OTHER FINANCING SOURCES					
Debt Service	\$ 4,209,487		\$ -	\$ -	\$ 4,209,487
Transfers to Other Funds	1,760,964		-	331,621	2,092,585
	\$ 5,970,451		\$ -	\$ 331,621	\$ 6,302,072
TOTAL APPROPRIATIONS	\$ 75,389,627		\$ 487,413	\$ 3,092,976	\$ 78,482,603

Section II: Estimated Revenues and Appropriations. **Capital Reserve Fund**, of Ordinance 11-038, is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	ORIGINAL 2011-2012 BUDGET		Amended 1/9/12	Total Amendments	Amended 2011-2012 Budget
ESTIMATED REVENUES					
Appropriated Fund Balance	\$ 200,000	A	\$ 137,191	\$ 137,191	\$ 337,191
TOTAL REVENUES	\$ 200,000	\$ -	\$ 137,191	\$ 137,191	\$ 337,191

APPROPRIATIONS

Transfer to General Fund	\$	200,000	A	\$	137,191	\$	137,191	\$	337,191
Total Expenditures	\$	200,000		\$	137,191	\$	137,191	\$	337,191

TOTAL APPROPRIATIONS \$ 200,000 \$ 137,191 \$ 137,191 \$ 337,191

Section III: All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section IV: This ordinance will become effective upon its adoption.

Adopted this 9th day of January, 2012.

Allen M. Thomas

ATTEST:

Carol L. Barwick, City Clerk