



Agenda

Greenville City Council

October 7, 2024

6:00 PM

City Hall Council Chambers, 200 West 5th 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 Tonya Foreman

III. Pledge of Allegiance

IV. Roll Call

V. Approval of Agenda

VI. Special Recognitions

1. Maple Street Fire Hero - Mr. Eddie Anderson
2. Cardiac Save at Wintergreen School

VII. 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.

VIII. Consent Agenda

3. Resolution Providing for Greenville to Become a Member of the American Flood Coalition
4. Municipal Agreement with North Carolina Department of Transportation for the North-South Connector Project
5. Resolution Accepting Dedication of Rights-of-Way and Easements for West Arlington Commercial Park
6. Resolution Declaring Police Canine Nitro as Surplus and Authorizing His Disposition to Officer Robert Parker
7. Request by Police Department to Upgrade Animal Protective Services Officer from a Part-Time Employee to a Full-Time Employee
8. Request by Police Department to Utilize Asset Forfeiture Funds to Purchase Equipment
9. Authorization for the IT Department to Renew the Microsoft 365 Agreement
10. Contract Award to The East Group for On-Call Engineering/Architectural Services
11. Agreement for Electric Vehicle Charging Station for Wildwood Park
12. Approval to Purchase New Additional Vehicles for Public Works Department Transit Division
13. Contract Award to ETA Phi Systems, Inc. (DBA “ETA Transit”) for Passenger Information System and Electronic Fare Collection System Products and Services
14. Contract Award to Eneco East LLC to Replace HVAC AAON Units #6 and #7 and In-Line Duct Humidifiers at City Hall
15. Various Tax Refunds Greater Than \$100

IX. New Business

16. Presentations by Boards and Commissions
 - a. Historic Preservation Commission
 - b. Human Relations Council
 - c. Greenville Youth Council
17. Contract Award for Professional Services for the Greenville MPO 2024 Pavement Condition Survey and Asset Inventory Project
18. Update on Environmental and Climate Justice Community Change Grant Application
19. Ordinance to Amend the Manual of Fees to Add Fees to Engineering Fees

20. Budget Ordinance Amendment #3 to the 2024-25 City of Greenville Budget (Ordinance #24-038), Capital Projects Funds (Ordinance #17-024), Special Revenue Grant Fund (Ordinance #11-003), Engineering Capital Projects Fund (Ordinance #20-019), Capital Project Management Fund (Ordinance #24-040), and the newly established Opioid Settlement Fund.

X. Review of October 10, 2024, City Council Agenda

XI. City Manager's Report

XII. Comments from Mayor and City Council

XIII. Adjournment



City of Greenville, North Carolina

Meeting Date: 10/07/2024

Title of Item: Resolution Providing for Greenville to Become a Member of the American Flood Coalition

Explanation: The American Flood Coalition (AFC) is a nonpartisan group driving transformational adaptation to protect communities from higher seas, stronger storms, and more frequent flooding. AFC currently has over 420 members across 21 states and the District of Columbia. Attached is a resolution providing for the City of Greenville to become a member.

Flooding impacts every community across the country and spans multiple Congressional committees. AFC pushes for solutions that are both transformational and accessible. Through their work in Congress and with federal agencies, they focus on:

- Fixing federal data,
- Simplifying flood programs,
- Empowering proactive planning, and
- Ensuring military readiness.

Most recently, the City of Greenville was the recipient of \$2,000,000 in funding for the St. Andrews Stream Restoration and Drainage Improvement Project. This funding was made available through the 2023 Disaster Relief and Mitigation Fund (DRMF). The DRMF was authorized by the 2023 Appropriations Act, providing \$30 million in funding availability to support the development of more resilient communities across North Carolina. The AFC worked to make these funds available for communities like Greenville.

Fiscal Note: No cost to the City.

Recommendation: City Council approve resolution providing for Greenville to become a member of the American Flood Coalition.

ATTACHMENTS

[Attachment A-Resolution_US_Flood_Coalition_Membership.docx](#)

RESOLUTION NO. ___-24

RESOLUTION OF THE GREENVILLE CITY COUNCIL PROVIDING FOR
GREENVILLE TO BECOME A MEMBER OF THE AMERICAN FLOOD COALITION

WHEREAS, proactively investing to prevent flooding is a wiser use of resources than spending on flooding recovery, as exemplified by FEMA research showing that \$1 of spent on disaster prevention saves up to \$7 in recovery costs;

WHEREAS, national coordination and support are necessary for communities to fully address the challenge of flooding and sea level rise, and the American Flood Coalition provides a platform advocating for national solutions to flooding and sea level rise that invest in and protect our coastal communities;

WHEREAS, the American Flood Coalition is a no-cost forum for best practices and source of support in developing local and state-level responses to flooding and sea level rise that will enhance the City of Greenville’s resilience effort;

WHEREAS, flooding and sea level rise are important issues that our residents deserve to understand and the American Flood Coalition provides opportunities and tools to communicate with residents on flooding challenges and solutions;

WHEREAS, joining the American Flood Coalition will aid the City of Greenville’s efforts to protect against flooding without requiring any financial support or dues from the City;

WHEREAS, the City of Greenville has continually strived to improve flood prevention and resiliency through projects like Town Creek Culvert and St. Andrews Stream Restoration and Drainage Improvements;

WHEREAS, the Greenville City Council finds that joining the American Flood Coalition will promote the welfare of Greenville residents and ensure the prosperity of the economy by accelerating solutions to sea level rise and flooding.

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

The City recognizes the need to advance national solutions to sea level rise and flooding and will work as a member of the American Flood Coalition to safeguard the welfare of the City of Greenville residents.

Adopted this 7th of October, 2024.

P.J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk



City of Greenville, North Carolina

Meeting Date: 10/07/2024

Title of Item: Municipal Agreement with North Carolina Department of Transportation for the North-South Connector Project

Explanation: The City of Greenville was awarded \$2,500,000 in federal funds for the North-South Connector project through the Highway Infrastructure Program (HIP). To receive these funds, the City must execute a municipal agreement with NCDOT. A copy of the agreement is included as Attachment A.

The project will construct over one mile of greenway trail along North Greene Street between the Town Common and Mumford Road, increasing connectivity and accessibility of north Greenville communities to Downtown, ECU, and the Town Common. This will be accomplished by utilizing the outside north-bound lane on the Greene Street Bridge.

Fiscal Note: Total project cost is estimated to be \$4,000,000. The additional \$1,500,000 above the federal funds was previously appropriated by Council to initiate design.

Recommendation: City Council approve the municipal agreement with NCDOT to receive federal funds for the North-South Connector Project in the amount of \$2,500,000.

ATTACHMENTS

[Attachment A-North-South Connector Municipal Agreement.pdf](#)

NORTH CAROLINA

**LOCALLY ADMINISTERED PROJECT -
FEDERAL**

PITT COUNTY

DATE: 9/19/2024

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: BO-2418

AND

WBS Elements: PE 51133.1.1

ROW 51133.2.1

CITY OF GREENVILLE

CON 51133.3.1

OTHER FUNDING: _____

FEDERAL-AID NUMBER: 5113301

CFDA #: 20.205

Total Funds [NCDOT Participation] \$2,500,000

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, the Infrastructure Investment and Jobs Act (IIJA) allows for the allocation of federal funds to be available for certain specified transportation activities; and,

WHEREAS, the Municipality has requested federal funding for North-South Connector, 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 \$2,500,000 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 scope, funding, responsibilities, or time frame 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 construction of a greenway/sidepath using the existing road and sidewalk along North Greene Street from 1st Street to Mumford Road in Greenville.

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

- Design
- Environmental Documentation
- ROW Acquisition
- Utility Relocation
- Construction

as further set forth in this Agreement.

3. FUNDING

PROGRAMMING AND AUTHORIZATION OF FEDERAL FUNDS

The funding currently programmed for the project in the State Transportation Improvement Program (STIP) is High Priority Projects. The funding source may be modified with the coordination and approval of the respective Metropolitan Planning Organization (MPO) and/or the Department prior to authorization of funds. The Department will authorize and reimburse federal funding based on the type of federal funding that is programmed in the STIP at the time of the authorization request. The Department will notify the Municipality of the type of federal funds authorized by issuing a Technical Amendment – Funds Authorization letter. A modification in the source of funds will have no effect on project responsibilities outlined in this agreement.

REIMBURSEMENT FOR ELIGIBLE ACTIVITIES

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall reimburse 80% of eligible expenses incurred by the Municipality up to a maximum amount of Two Million Five Hundred Thousand Dollars (\$2,500,000), as detailed below. The Municipality shall provide the non-federal match, as detailed in the FUNDING TABLE below, and all costs that exceed the total available funding. The City of Greenville will self-fund the remaining \$875,000.00, and a total liability of \$1,500,000.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
High Priority Projects Program	\$2,500,000	80%	\$625,000	20%
Subtotal	\$2,500,000	80%	\$625,000	20%
Additional Local Participation			\$875,000	100%
Total Estimated Cost			\$4,000,000	

WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the Municipality under this Agreement. The Department will set aside, but is not limited to, ten percent (10%) of the total available funding, or \$312,500, to use towards the costs related to review and oversight of this Project. These costs may include but are not limited to: review and approval of plans, environmental documents, contract proposals, and engineering estimates; performance of any phase of work, for example, contract administration or construction engineering and inspection; oversight of any phases; or any other items as needed to ensure the Municipality's appropriate compliance with state and federal regulations.

In the event that the Department does not utilize all the set-aside funding, then those remaining funds will be available for reimbursement to the Municipality at the above reimbursement rate. For all costs of work performed on the Project, whether incurred by the Municipality or by the Department, the Municipality shall provide the non-federal match. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the total available funding.

4. PERIOD OF PERFORMANCE

The Municipality has five (5) years to complete all work outlined in the Agreement from the date of authorization of Federal funds for the initial phase of work. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department may allow up to three additional months for submission of final reimbursement package by the Municipality, without entering into a supplemental agreement.

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 the Municipality is requesting reimbursement for the Preliminary Engineering contract or the Construction Contract Administration / Construction Engineering and Inspection contract.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64.31; 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 in the Work Codes advertised.
- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

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.

- 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 Design, Planning, Contract Administration and/or Construction Engineering and Inspection 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)

The Municipality shall comply with the policies and procedures of this provision regardless of whether the Municipality is requesting reimbursement for the Right of Way phase of the Project.

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

The Municipality shall submit the appraisal to the Department 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 Department's ROW, or follow other applicable approval process, for utilities within the Municipality's 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 / UTILITY / RAILROAD CERTIFICATION

The Municipality, upon acquisition of all right of way/property necessary for the Project, relocation of utilities, and coordination with the railroad shall provide the Department all required documentation (deeds/leases/easement/plans/agreements) to secure certification. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document; utilities in conflict with the project are relocated, or a plan for their relocation during construction has been approved; and coordination with the railroad (if applicable) has occurred and been documented.

13. CONTRACT PROPOSAL AND ENGINEER'S ESTIMATE

CONTRACT PROPOSAL

The Municipality shall develop a contract proposal that will be advertised for bids. The proposal shall comply with NCDOT Specifications and Standard Drawings as applicable to the Project. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, but not be limited to: FHWA 1273, Buy America, Davis-Bacon Wage Rates, Non-discrimination, DBE Assurances, Contractor Certification regarding suspension and debarment, and other provisions as required by the Department.

ENGINEER'S ESTIMATE

The Municipality shall develop an itemized engineer's estimate to show items referenced to the NCDOT Standard Specifications, if applicable, along with units and unit price. The engineer's estimate will be used as the basis for comparing bids received.

14. 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.

15. 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 2 of the Code of Federal Regulations, Part 200 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/gascripts/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 <https://connect.ncdot.gov/projects/Contracts/Pages/LGA-Projects.aspx>.

- 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.

16. 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.

RETAINAGE

The Municipality shall not retain any portion of a payment due the contractor.

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.

17. 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.

18. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the North-South Connector, or as required by an executed encroachment agreement. The City of Greenville, at no expense or liability to the Department, shall assume all maintenance responsibilities for the North-South Connector project; however, the Parties agree to enter into a supplemental agreement to further define maintenance responsibilities, once the full scope of the project has been developed.

19. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- Design
- Environmental Documentation
- ROW Acquisition
- Utility Relocation
- Construction

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 (www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." 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. 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 funding per this Agreement and any Supplemental Agreements.

- **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 \$2,500,000 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the total available funding.

- **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 agreed upon just compensation for 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 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." 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

<https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx>.

- **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.

20. 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.

21. 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 the 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

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, 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 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," Subpart F – Audit Requirements, 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.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

FACSIMILE SIGNATURES

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

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, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

22. 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.

L.S. 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.

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: _____

(CHIEF ENGINEER)

DATE: _____

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



City of Greenville, North Carolina

Meeting Date: 10/07/2024

-
- Title of Item:** Resolution Accepting Dedication of Rights-of-Way and Easements for West Arlington Commercial Park
- Explanation:** In accordance with the City's Subdivision regulations, rights-of-way and easements have been dedicated for West Arlington Commercial Park (Map Book 85 at Pages 181-183). A resolution (Attachment A) 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 (Attachment B).
- Fiscal Note:** Funds for the maintenance of these rights-of-way and easements are included within the fiscal year 2024-2025 budget.
- Recommendation:** City Council adopt the attached resolution accepting dedication of rights-of-way and easements for West Arlington Commercial Park.
-

ATTACHMENTS

- [Attachment A-W Arlington Comm Pk Resolution.doc](#)
- [Attachment B-West Arlington Commercial Park BK85 PG181-183.pdf](#)

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

WHEREAS, G.S. 160D-806 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:

West Arlington Commercial Park

Map Book 85 at Pages 181-183

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 7th day of October, 2024.

P. J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk

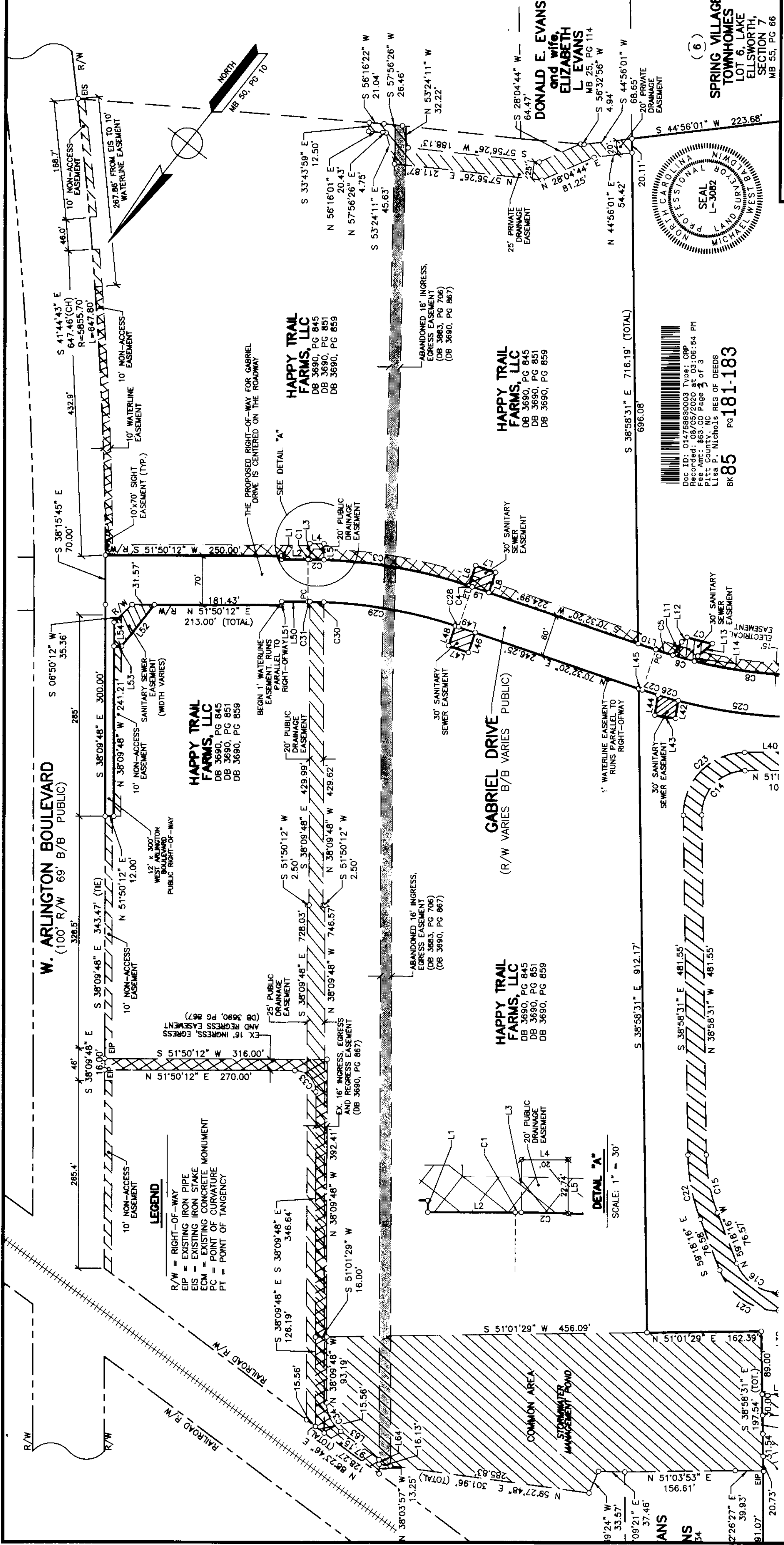
NORTH CAROLINA
PITT COUNTY

I, _____, Notary Public for said County and State, certify that Valerie Shiuwegar 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 7th day of October, 2024.

Notary Public

My Commission Expires:



CERTIFICATION
 I, MICHAEL W. BALDWIN, CERTIFY THAT UNDER MY DIRECT SUPERVISION FROM AN ACTUAL FIELD SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK SEE PAGE REFERENCE ETC.) (OTHER); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOK REFERENCE BY THE SURVEYOR. THIS SURVEY IS CALLED BY THE TITLE AND PART OF THE DEED TO WHICH THIS MAP WAS ATTACHED IN ACCORDANCE WITH GS 47-30.3. MY SEAL IS IN THE CENTER OF THIS LINE.
 REGISTERED PROFESSIONAL SURVEYOR
 MICHAEL W. BALDWIN
 STATE OF NORTH CAROLINA
 SEAL L-3082

REVIEW OFFICER'S CERTIFICATE
 I, *Bradleigh Seewan*, REVIEW OFFICER OF PITT COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATE IS REFERRED COMPLETES ALL STATUTORY REQUIREMENTS FOR RECORDING.
 DATE: 6/5/20
 REVIEW OFFICER

LINE TABLE

COURSE	BEARING	DISTANCE
L33	N 51°01'12" E	10.82
L34	S 38°09'48" E	33.79
L35	N 18°03'40" W	12.42
L36	N 04°34'45" W	48.66
L37	N 18°15'15" W	42.48
L38	N 29°14'24" W	28.36
L39	N 27°52'35" W	40.86
L40	N 20°22'29" W	42.83
L41	N 08°02'12" E	19.30
L42	N 56°36'46" W	7.73
L43	S 88°23'46" W	87.66
L44	N 38°09'48" W	6.65

LINE TABLE

COURSE	BEARING	DISTANCE
L40	S 51°01'31" W	71.21
L41	S 38°09'48" E	49.06
L42	N 28°25'18" W	25.96
L43	N 60°38'14" E	29.86
L44	S 29°20'46" E	29.16
L45	N 70°32'20" E	5.68
L46	N 19°27'40" W	30.00
L47	N 70°32'20" E	30.00
L48	S 19°27'40" E	29.96
L49	N 51°01'29" E	24.07
L50	S 51°01'12" E	37.36
L51	N 38°09'48" W	5.00
L52	N 00°09'05" W	74.62

LINE TABLE

COURSE	BEARING	DISTANCE
L27	S 38°09'31" E	10.38
L28	S 78°51'31" W	30.51
L29	N 38°43'03" W	56.77
L30	N 54°27'55" W	65.73
L31	N 04°38'47" W	25.97
L32	N 17°50'04" E	13.79
L33	N 07°19'28" E	33.86
L34	N 51°02'57" E	15.72
L35	N 53°45'51" E	16.27
L36	N 51°01'29" E	120.35
L37	S 51°01'29" W	45.65
L38	S 38°09'48" W	117.50
L39	N 51°01'32" E	20.85

LINE TABLE

COURSE	BEARING	DISTANCE
L14	N 04°45'46" W	8.92
L15	S 38°09'48" E	57.70
L16	N 51°01'29" E	184.07
L17	S 54°20'36" E	16.72
L18	N 28°47'08" E	25.96
L19	N 38°09'31" W	18.82
L20	S 51°01'29" W	7.51
L21	N 51°01'29" E	7.91
L22	N 38°09'31" W	74.50
L23	S 70°32'20" W	26.84
L24	S 38°09'48" E	99.24
L25	S 70°41'16" E	18.54
L26	S 20°11'32" W	31.95

LINE TABLE

COURSE	BEARING	DISTANCE
L1	N 38°09'48" W	5.00
L2	S 51°01'12" E	37.47
L3	S 38°09'48" E	22.41
L4	S 51°01'12" W	20.00
L5	S 38°09'48" E	22.74
L6	S 19°27'40" E	30.02
L7	S 70°32'20" W	30.00
L8	N 19°27'40" W	24.87
L9	S 70°32'20" W	26.84
L10	S 70°32'20" W	30.50
L11	S 04°45'46" E	22.71
L12	S 11°36'29" W	10.02
L13	N 11°36'29" E	27.80

NOTARY PUBLIC
 NATANIEL WELLS
 PITT COUNTY, NC
 SEAL L-3082

CLOSURE CHECK BOUNDARY
 CHECKED: JGG DATE: 06/08/2020

DEDICATION
 THE UNDERSIGNED HEREBY ACKNOWLEDGES 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 SHOWN BY REFERENCE TO ANY AND PLAT.
 SIGNED: *[Signature]*
 ATTEST: *[Signature]*

APPROVAL
 THIS FINAL PLAT NO. 20-20 WAS APPROVED BY THE SUBDIVISION REVIEW BOARD IN ACCORDANCE WITH TITLE 9, CHAPTER 5 OF THE GREENVILLE CITY CODE ON THE 5th DAY OF August 2020.
 SIGNED: *[Signature]*
 CITY PLANNER

OWNERS STATEMENT
 THIS IS EVIDENCE THAT THIS SUBDIVISION IS MADE AT THE REQUEST OF THE OWNER.
 SWORN AND SUBSCRIBED BEFORE ME, 2020.
 THIS 21st DAY OF August
 NOTARY PUBLIC
 MY COMMISSION EXPIRES: 08/21/2024

SOURCE OF TITLE
 THIS IS TO CERTIFY THAT THE LAST INSTRUMENT(S) IN THE CHAIN OF TITLE(S) OF THE PROPERTY AS RECORDED IN THE PITT COUNTY REGISTER AT GREENVILLE, NORTH CAROLINA, IS DEED BOOK 3690 PAGE 845 DEED BOOK 3690 PAGE 851 DEED BOOK 3690 PAGE 851
 NC REGISTRATION NO. L-3082

WEST ARLINGTON COMMERCIAL PARK
 LOTS 9 & 10, SECTION 1
 REFERENCE: DEED BOOK 3690, PAGE 845, DEED BOOK 3690, PAGE 851 & DEED BOOK 3690, PAGE 859 OF THE PITT COUNTY REGISTER OF DEEDS GREENVILLE, GREENVILLE TOWNSHIP, PITT COUNTY, N.C.
 OWNER: HAPPY TRAIL FARMS, LLC
 ADDRESS: P.O. BOX 1863 GREENVILLE, NC 27835
 PHONE: (252) 916-9028
 LICENSE C-3488
Baldwin Design Consultants, PA
 ENGINEERING - SURVEYING - PLANNING
 1700 WEST ARLINGTON BOULEVARD GREENVILLE, NC 27835
 SURVEYED: JDP APPROVED: MMB
 DRAWN: JGG DATE: 06/08/2020
 CHECKED: MMB SCALE: 1" = 100'

FINAL PLAT
 A PORTION OF TAX PARCEL #48327
 A PORTION OF TAX PARCEL #4677-35-5898
 A PORTION OF TAX PARCEL #07220
 A PORTION OF TAX MAP #4677-25-8496
 A PORTION OF TAX MAP #07248
 A PORTION OF TAX MAP #4677-26-9117
 SHEET 3 OF 3



City of Greenville, North Carolina

Meeting Date: 10/07/2024

Title of Item: Resolution Declaring Police Canine Nitro as Surplus and Authorizing His Disposition to Officer Robert Parker

Explanation: The Greenville Police Department (GPD) plans to retire K-9 Nitro, who has served at GPD for eleven (11) years. K-9 Nitro and Officer Robert Parker have been partners for 11 years, and Officer Parker has expressed interest in caring for Nitro for the remainder of his life.

It has been the practice for many years to allow the handler to purchase the assigned K-9 upon retirement if the handler wishes to do so. Approval of the attached resolution declaring K-9 Nitro as surplus and authorizing his disposition to Officer Parker will allow the purchase in accordance with North Carolina General Statutes relating to surplus property.

Fiscal Note: To meet the requirements of North Carolina General Statutes, Officer Parker will be charged \$1.00 to retain Nitro.

Recommendation: Staff recommends approval of this resolution and transfer of K-9 Nitro to Officer Robert Parker for the remainder of his life.

ATTACHMENTS

[COG-1198497-Resolution K9 Nitro.doc](#)

RESOLUTION NO. _____-24
RESOLUTION DECLARING A POLICE CANINE AS SURPLUS
AND AUTHORIZING HIS DISPOSITION TO OFFICER ROBERT PARKER

WHEREAS, K-9 Nitro, a police canine for the Greenville Police Department, has retired;

WHEREAS, K-9 Nitro is twelve (12) years old and has been in service with the Greenville Police Department for eleven (11) years, which is the recommended service time for K-9s;

WHEREAS, Officer Robert Parker has been K-9 Nitro's handler for the last eleven (11) years and has requested that Nitro be released to his care for the remainder of Nitro's life; and

WHEREAS, North Carolina General Statute 160A-267 permits City Council to authorize the disposition of property valued at less than thirty thousand dollars (\$30,000) by private sale;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that K-9 Nitro be and is hereby declared surplus to the needs of the City and is authorized to be conveyed to Officer Robert Parker for one dollar (\$1.00).

This the 7th day of October, 2024.

P. J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk



City of Greenville, North Carolina

Meeting Date: 10/07/2024

Title of Item: Request by Police Department to Upgrade Animal Protective Services Officer from a Part-Time Employee to a Full-Time Employee

Explanation: The Animal Protective Services (APS) Unit has seen an increase in calls for service. Upgrading one part-time APS Officer position to full-time will allow the unit to adequately cover peak and non-peak times improving customer service and response. The additional full-time officer will increase the number of personnel available for the call duty rotation, providing needed relief to the current staff. APS officers are currently on call every four weeks; the additional person will increase that to every five weeks. With the additional APS Officer, each Police Zone will be staffed with an APS Officer and one officer will be able to roam and assist in any zone which requires extra attention based on calls for service. An additional full-time officer will also allow for more versatile scheduling to include evening and weekend hours.

Fiscal Note: Upgrading this position to full-time will cost an additional amount of approximately \$32,200 covering salary and benefits, for a total expenditure of \$49,000.

Recommendation: Staff recommends approval to upgrade one part-time APS position to a full-time position.



City of Greenville, North Carolina

Meeting Date: 10/07/2024

Title of Item: Request by Police Department to Utilize Asset Forfeiture Funds to Purchase Equipment

Explanation: The Police Department is seeking approval to use Asset Forfeiture Funds to purchase equipment for the department. The following is a description of the proposed expenditures requested from the Forfeiture account:

- Cameras and mapping recording devices

In order to enhance our investigative capabilities. This includes essential cameras, mapping recording devices and the software necessary to ensure our operations remain effective in critical investigations. (\$32,644)

- Nikon Cameras

The Special Investigation and Forensic Unit need updated cameras to ensure high quality documentation and evidence gathering. These cameras will play a critical role in supporting the unit's ability to perform precise and timely operations. (\$21,131)

- Copsicle Community Engagement Trailer

A community engagement trailer designed to improve outreach efforts. The Copsicle serves as a mobile connection point for officers and citizens, fostering positive interactions and reinforcing community bonds. (\$15,325)

- Crime Scene Barrier

This specialized crime scene barrier will help improve the safety and security at crime scenes. This will allow us to properly secure scenes, ensuring the integrity of investigations and the protection of the public. (\$4,957)

- Shelving and Storage System

As part of our ongoing commitment to maintaining secure and accessible storage for high-risk evidence, we are requesting funding for an additional weapons storage enclosure. The system features locking roll-up doors, ensuring that all weapons and high-risk evidence are stored safely and meet CALEA standards. (\$27,889)

- Elliptical and Treadmill

The funds will be used to purchase gym equipment, including an elliptical machine and a treadmill, to enhance our fitness program and ensure that our officers are physically prepared to meet the demands of the job. (\$7,000)

- Rifles and Accessories

Funding will replace aging rifles and acquire necessary accessories, which are crucial for ensuring officer and public safety during critical incidents. (\$48,732)

- Crime Scene and Crash Reconstruction Computer

This system, complete with specialized software, will allow our team to streamline operations and ensure that critical data and intelligence are managed efficiently. (\$6,986)

- LIDAR System

State of the art LIDAR equipment will significantly improve our traffic enforcement efforts by providing precise speed measurements. This tool is to update our current equipment to help ensure public safety on the roads by enabling more accurate speed monitoring and enforcement. (\$4,668)

- Ice Dispenser

We are requesting the purchase of a new ice dispenser to replace the broken unit. (\$5,659)

Fiscal Note: The total anticipated expenditure from the Asset Forfeiture account is \$174,991.

Recommendation: Staff recommends approval to use Asset Forfeiture funds to purchase the requested equipment.



City of Greenville, North Carolina

Meeting Date: 10/07/2024

Title of Item: Authorization for the IT Department to Renew the Microsoft 365 Agreement

Explanation: In 2006, the City entered into a Microsoft Enterprise Agreement (EA) with a 3-year term. This agreement allowed the City to upgrade Microsoft software products purchased through the years, rather than paying the market upgrade price. We paid a reduced yearly fee for the right to upgrade any Microsoft product we own anytime during the 3-year term. The agreement renewed in 2009, 2012, 2015, 2018 and 2021. This renewal covers the 3-year term beginning in 2024.

With the renewal of the 3-year term in 2021, we updated to the Microsoft 365 licensing model. Microsoft 365 simplifies the licensing process allowing us the flexibility to add/remove services as needed. It covers all of our existing Microsoft products including Office, Teams, PowerBI, SharePoint, SQL, Windows server and desktop operating systems. Microsoft 365 provides access to secure, cloud-based productivity tools for all City employees. As an example, 700+ City employees now have access to Teams for instant chat, video communications and collaboration, email access from anywhere, 100-Gigabyte mailboxes, as well as a Terabyte per user of cloud-based storage.

As Cyber Security remains a top priority, an additional built-in feature of Microsoft 365 is Multi-Factor Authentication (MFA). When accessing email, Teams, and other online resources, MFA provides a significant layer of protection against cyber criminals. In addition, cyber insurance providers now require MFA as a condition of coverage. MFA protects against cyber criminals by ensuring that our users are who they say they are.

As an added benefit, licensed City employees will be able to install and use Microsoft 365 products on up to five devices. Further, access to online training and web tutorials is also available. Renewing this agreement provides real-time feature and security enhancements, and greater access to productivity tools, secure storage, and greater mobility through secure cloud-based software.

Fiscal Note: FY 25-26 (Year 1) - \$402,409.34
FY 26-27 (Year 2) - \$402,409.34
FY 27-28 (Year 3) - \$402,409.34

Recommendation: Authorize renewal of the attached Microsoft Agreement.

ATTACHMENTS

[SHI Microsoft EA Quote-25202512.pdf](#)



Pricing Proposal
 Quotation #: 25202512
 Reference #: Microsoft EA#67905282-Renewal
 Created On: 8/16/2024
 Valid Until: 10/31/2024

NC-City of Greenville

Robert Hudson

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All Prices are in US Dollar (USD)

Product	Qty	Your Price	Total
1 Visio Professional Per Device Microsoft - Part#: D87-01159 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	41	\$108.20	\$4,436.20
2 Visual Studio Enterprise+MSDN Per User Microsoft - Part#: MX3-00117 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	1	\$1,054.10	\$1,054.10
3 Visual Studio Pro+MSDN Per User Microsoft - Part#: 77D-00111 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	10	\$302.30	\$3,023.00
4 CIS Suite Datacenter 2-Core Microsoft - Part#: 9GS-00135 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	156	\$163.80	\$25,552.80
5 CIS Suite Standard 2-Core Microsoft - Part#: 9GA-00313 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	208	\$35.30	\$7,342.40
6 SQL Server Enterprise Core ALng SA 2L Microsoft - Part#: 7JQ-00343 Contract Name: Microsoft Software - Enterprise Agreement	8	\$2,430.79	\$19,446.32

Contract #: 208C
 Coverage Term: 11/1/2024 – 10/31/2025
Note: EA#67905282-Renewal;See Payment Schedule Below:

7	SQL Server Standard 2-Core Microsoft - Part#: 7NQ-00292 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	31	\$634.00	\$19,654.00
8	Windows Remote Desktop Services User CAL Microsoft - Part#: 6VC-01254 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	331	\$23.80	\$7,877.80
9	Windows Server External Connector Microsoft - Part#: R39-00396 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	1	\$325.20	\$325.20
10	M365 G3 Unified FSA GCC Renewal Microsoft - Part#: AAD-34700 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	718	\$331.20	\$237,801.60
11	M365 G5 GCC Sub Per User Microsoft - Part#: AAL-45735 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	20	\$616.22	\$12,324.40
12	Defender O365 P1 GCC Per User Microsoft - Part#: 3GU-00001 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	718	\$18.50	\$13,283.00
13	M365 Copilot Sub Add-on Microsoft - Part#: EP2-24658 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	20	\$368.55	\$7,371.00
14	Azure prepayment - US Gov Microsoft - Part#: J5U-00001 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	1	\$1,228.50	\$1,228.50
15	Entra ID P2 Gov Sub Per User Microsoft - Part#: MQN-00001	3	\$83.54	\$250.62

Contract Name: Microsoft Software - Enterprise Agreement
 Contract #: 208C
 Coverage Term: 11/1/2024 – 10/31/2025
Note: EA#67905282-Renewal;See Payment Schedule Below:

16	M365 F3 Unified GCC Per User Microsoft - Part#: AAD-63092 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	220	\$84.60	\$18,612.00
17	M365 G5 Security GCC Sub Per User Microsoft - Part#: 8ZZ-00001 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	30	\$129.73	\$3,891.90
18	Power Apps Premium GCC Microsoft - Part#: SEL-00001 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	30	\$216.30	\$6,489.00
19	Power Automate GCC Per User Microsoft - Part#: SFR-00001 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	3	\$162.20	\$486.60
20	Power BI Premium USL GCC Per User Microsoft - Part#: 6U1-00004 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	3	\$183.80	\$551.40
21	Power BI Pro GCC Per User Microsoft - Part#: DDJ-00001 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	120	\$92.40	\$11,088.00
22	Project P1 GCC Per User Microsoft - Part#: PF1-00002 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	1	\$92.40	\$92.40
23	Teams AC with Dial Out US/CA GCC AddOn Microsoft - Part#: NYH-00001 Contract Name: Microsoft Software - Enterprise Agreement Contract #: 208C Coverage Term: 11/1/2024 – 10/31/2025 Note: EA#67905282-Renewal;See Payment Schedule Below:	938	\$0.00	\$0.00
24	Teams Premium GCC	3	\$75.70	\$227.10

Microsoft - Part#: WFK-00004
Contract Name: Microsoft Software - Enterprise Agreement
Contract #: 208C
Coverage Term: 11/1/2024 – 10/31/2025
Note: EA#67905282-Renewal;See Payment Schedule Below:

*Tax	\$28,168.65
Total	\$430,577.99

*Tax is estimated. Invoice will include the full and final tax due.

Additional Comments

Payment Schedule:
Year 1:\$402,409.34
Year 2:\$402,409.34
Year 3:\$402,409.34
Total:\$1,207,228.02

Hardware items on this quote may be updated to reflect changes due to industry wide constraints and fluctuations.

Please note, if Emergency Connectivity Funds (ECF) will be used to pay for all or part of this quote, please let us know as we will need to ensure compliance with the funding program.

Thank you for choosing SHI International Corp! The pricing offered on this quote proposal is valid through the expiration date listed above. To ensure the best level of service, please provide End User Name, Phone Number, Email Address and applicable Contract Number when submitting a Purchase Order. For any additional information including Hardware, Software and Services Contracts, please contact an SHI Inside Sales Representative at (888) 744-4084. SHI International Corp. is 100% Minority Owned, Woman Owned Business. TAX ID# 22-3009648; DUNS# 61-1429481; CCR# 61-243957G; CAGE 1HTF0

The products offered under this proposal are resold in accordance with the terms and conditions of the Contract referenced under that applicable line item.



City of Greenville, North Carolina

Meeting Date: 10/07/2024

Title of Item: Contract Award to The East Group for On-Call Engineering/Architectural Services

Explanation: The current on-call agreement with The East Group to provide Engineering/Architectural Services expired on September 09, 2024. In July 2024, the City issued a Request for Qualifications to contract with a firm to provide these services once the existing on-call contract expired.

An evaluation team comprised of staff from the Engineering Department, Public Works Department, and the Project Management Department reviewed a total of 6 Statements of Qualifications from firms interested in providing these services for the next two (2) years. The total compensation for the contract shall not exceed \$850,000. The evaluation team selected The East Group as the most qualified firm who responded to the RFQ.

The scope of work in this On-Call Agreement includes but is not limited to design services for emergency repairs, design services related to new or existing buildings, parks or other facilities, design services for repair of storm water drainage systems, geotechnical engineering services, surveying services, environmental permitting and more. The Project Management Department will manage the On-Call Services Agreement which is for two (2) years with an option to renew.

Fiscal Note: Funds for each task order come from the budget of the department initiating the task order or from approved Capital Improvement Program projects. The maximum value of the contract is \$850,000 over the term of the contract.

Recommendation: Award the On-call Engineering/Architectural Services Contract to The East Group with a not-to-exceed amount of \$850,000.

ATTACHMENTS

[EJCDC 505_TEG On-Call Agreement_2024_unsigned.pdf](#)

**AGREEMENT BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES—
TASK ORDER EDITION**

Prepared by



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**AGREEMENT BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES—TASK ORDER EDITION**

MAIN AGREEMENT

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES—TASK ORDER EDITION

MAIN AGREEMENT

This Main Agreement is a part of the Agreement between **City of Greenville** (Owner) and **The East Group, P.A.** (Engineer). Other terms used in the Agreement are defined in Article 7.

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Main Agreement sets forth the general terms and conditions that apply to all duly executed Task Orders.

Owner and Engineer further agree as follows:

ARTICLE 1—SERVICES OF ENGINEER

1.01 General

- A. Engineer's services will be detailed in a duly executed Task Order for each Specific Project, or for a portion of a Specific Project.
- B. The Main Agreement is not a commitment by Owner to issue any Task Orders.
- C. Engineer will not be obligated to perform any prospective Task Order unless and until (1) Owner and Engineer agree to the particulars of the assignment, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters, and include such particulars in the Task Order, and (2) Owner and Engineer both sign the Task Order.
- D. Each duly executed Task Order will be subject to the terms and conditions of (a) this Main Agreement; (b) the Main Agreement's exhibits; (c) any executed written amendments of the Main Agreement (see Exhibit C); (d) the specific Task Order itself; (e) the specific Task Order's exhibits; and (f) any amendments or modifications of the specific Task Order.

1.02 Task Order Procedure

- A. The general recommended format of a Task Order is presented in the accompanying Task Order Form. Commonly-used Task Order exhibits are presented in the accompanying Exhibits to Task Order document.
- B. Each specific Task Order will indicate:
 - 1. Project Background Data;
 - 2. Specific services to be performed by Engineer ("Scope"), including key deliverables;
 - 3. Additions or Modifications to Owner's Responsibilities;
 - 4. Task Order Schedule;

Main Agreement.

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5. Engineer's Compensation for Task Order; and
 6. Primary Subconsultants, if any.
- C. With respect to the Engineer's scope of services under a specific Task Order, each specific Task Order will either (1) be accompanied by and incorporate an Exhibit A, "Engineer's Services Under Task Order," and Exhibit B, "Deliverables Schedule," prepared for the specific Task Order, or (2) state a customized scope of services and deliverables schedule in the Task Order document itself or in an attachment.
- D. Upon signature of the Task Order by both parties (but no earlier than the Effective Date of the specific Task Order), Engineer will commence performance and furnish, or cause to be furnished, the services authorized by the Task Order.
- E. Task Orders may be amended as set forth in Paragraph 8.05.B of this Main Agreement.

1.03 Management of Engineering Services

- A. All phases of Engineer's services under each Task Order will include management of Engineer's Specific Project responsibilities, including but not limited to the following management tasks, whether separately tracked and itemized or included as being incidental to other phase and scope task items.
1. Develop and submit an Engineering Services Schedule. The Engineering Services Schedule will:
 - a. be consistent with and serve as a supplement to the Schedule of Deliverables set forth in Exhibit B to Task Order.
 - b. be updated on a regular basis, and as required to reflect any programmatic decisions by Owner.
 - c. include, but not be limited to, an anticipated sequence of tasks; estimates of task duration; interrelationships among tasks; milestone meetings and submittals; anticipated schedule of construction; and other pertinent Project events.
 2. Develop and submit detailed work plans from Exhibit A to Task Order tasks.
 3. Coordinate services within Engineer's internal team, and with Subconsultants and Engineer's Subcontractors.
 4. Prepare for and participate in meetings with consultants and contractors working on other parts of the Specific Project that may affect, or be affected by, Engineer's services or resulting construction.
 5. Prepare and submit **monthly** engineering services progress reports to the Owner. Include a summary of services performed in period, expected progress in next period, percent completion of current tasks, and a description of major issues or concerns.
 6. Special Invoicing: In addition to, or as a substitute for, Engineer's standard invoicing, for each invoice provide the specified additional information or documentation, following the invoicing procedures indicated: **Not Applicable**
 7. Conduct ongoing management tasks, including:

- a. Maintaining communications records and files pertaining to or arising from Engineer's services;
 - b. With respect to Engineer's services and other directly relevant parts of the Specific Project, prepare for and participate in periodic progress meetings with Owner to discuss progress, schedule, budget, issues, potential problems and their resolution; and
 - c. Preparing agendas prior to and minutes following all Engineer-led meetings.
- B. Unless a different standard is expressly set forth in a specific Task Order, in all phases of Engineer's services, Engineer shall prepare draft and final Drawings in accordance with **Engineer's CAD standards** using **Civil 3-d or Revit** software.
- C. The source documents for the draft and final Specifications in all phases of Engineer's services will be **Engineer's standard specifications**, unless a different source document is expressly identified in the specific Task Order.
- 1.04 Sequencing and Coordination
- A. For each Task Order, the Work to be designed or specified by Engineer, upon which the Engineer's scope has been established, will be performed or furnished under one prime Construction Contract, unless specified otherwise in the Task Order.
- B. If the Work designed or specified by Engineer under a specific Task Order is to be performed or furnished under more than one prime Construction Contract, or if Engineer's services are to be separately sequenced with the work of one or more of Owner's consultants or contractors (such as in the case of fast-tracking), then:
- 1. the Task Order's Deliverables Schedule will account for the need to sequence and properly coordinate Engineer's services as applicable to the Work under the Construction Contracts; or
 - 2. If the Task Order does not address such sequencing and coordination, then Owner and Engineer will jointly develop a schedule for sequencing and coordination of services prior to commencement of final design services; this schedule is to be prepared and included in or become an amendment to the authorizing Task Order, whether the work under such contracts is to proceed concurrently or sequentially.

ARTICLE 2—OWNER'S RESPONSIBILITIES

2.01 Application of Owner's Responsibilities

- A. The responsibilities of Owner set forth in Article 2 apply to each Specific Project and each specific Task Order. Supplemental responsibilities of Owner applicable only to a specific Task Order may be stated in the specific Task Order.

2.02 Project Information

- A. To the extent Owner has not already provided the following, or has new, additional, or revised information from that previously provided, Owner shall provide Engineer with information and data needed by Engineer in the performance of the Specific Project, including Owner's:

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1. design objectives and constraints;
 2. space, capacity, and performance requirements;
 3. flexibility and expandability needs;
 4. design and construction standards;
 5. budgetary limitations; and
 6. any other available information pertinent to the Specific Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- B. Following Engineer's assessment of initially-available information and data and upon Engineer's request, Owner shall obtain, furnish, or otherwise make available (if necessary through retention of specialists or consultants) such additional information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services under the Task Order; or, with consent of Engineer, Owner may authorize the Engineer to obtain or provide all or part of such additional information as Additional Services. Such additional information or data may include the following:
1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 3. Surveys, Mapping, and Utility Documentation.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Specific Project, the Site, and adjacent areas.
 7. Data or consultations as required for the specific Task Order but not otherwise identified in this Agreement.
- C. Owner shall examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- D. If a specific Task Order requires Engineer to assist Owner in collating the various cost categories that comprise Total Project Costs, Owner shall furnish to Engineer data as to Owner's anticipated costs for services to be provided to Owner by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice).

- E. Owner shall advise Engineer if any invention, design, process, product, or device that Owner has requested, required, or recommended for inclusion in the Drawings or Specifications prepared or furnished under a Task Order will be subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights.
- F. Owner shall inform Engineer as to whether Engineer's assistance is requested with respect to Owner's evaluation of the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A to Task Order.
- G. Owner shall inform Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Specific Project.

2.03 Owner's Instructions Regarding Bidding and Construction Contract Documents

- A. Owner shall give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable) and Owner's construction contract practices and requirements, and furnish to Engineer (or give specific directions requesting Engineer to use copies already in Engineer's possession) the following:
 - 1. Owner's standard contract forms, general conditions (if other than the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in draft Construction Contract Documents;
 - 2. insurance and bonding requirements;
 - 3. protocols for electronic transmittals during bidding and construction;
 - 4. Owner's safety and security programs applicable to Contractor and other Constructors;
 - 5. diversity and other social responsibility requirements;
 - 6. bidding and contract requirements of funding, financing, or regulatory entities;
 - 7. other specific conditions applicable to the procurement of construction or contract documents;
 - 8. any other information necessary for Engineer to assist Owner in preparing, for each Specific Project, bidding-related documents (or requests for proposals or other construction procurement documents) and Construction Contract Documents.
- B. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise) and other engineering or technical matters.
 - 1. Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Owner shall place and pay for advertisements for Bids in appropriate publications.

2.04 Owner-Furnished Services

- A. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, Owner shall obtain, as required for each Specific Project:
 - 1. Accounting, bond and financial advisory services (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 - 2. Legal services, including attorney review of proposed Construction Contract Documents, legal services required by Owner, legal services needed as a result of issues raised by Contractor, and Project-related legal services reasonably requested by Engineer.
 - 3. Auditing services, including those needed by Owner to ascertain how or for what purpose Contractor has used money paid to it.
- B. Owner shall provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Owner shall provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- C. Owner shall acquire or arrange for acquisition of the Site(s) and any temporary or permanent rights of access, easements, or property rights needed for each Specific Project.
- D. With respect to the portions or phases of each Specific Project designed or specified by Engineer, Owner shall provide, obtain, or arrange for:
 - 1. all required reviews, approvals, consents, and permits from governmental authorities having jurisdiction, and
 - 2. such reviews, approvals, and consents from others as may be necessary for completion of each portion or phase of the Specific Project.
- E. Owner may delegate to a Contractor or others the responsibilities set forth in Paragraphs 2.04.C and D.

2.05 Owner's General Responsibilities

- A. Owner shall inform Engineer of the policies, procedures, and requirements of Owner that are applicable to Engineer's performance of services under this Agreement and under each Task Order.
- B. Owner will provide Engineer with Owner's budget for each Specific Project, including type and source of funding to be used and will promptly inform Engineer if the budget or funding sources change.

- C. Owner shall inform Engineer in writing of any safety or security programs that are applicable to the personnel of Engineer, its Subconsultants, and Engineer's Subcontractors, as they visit the Site or otherwise perform services under this Agreement and under each Task Order.
- D. Owner shall 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 this Agreement and under each Task Order.
- E. Owner shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance of its services.
- F. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement or any Task Order. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement or any Task Order, subject to any express limitations or reservations applicable to the furnished items.
- G. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer's services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.
- H. Owner shall advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to a Specific Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- I. If Owner designates a construction manager, site representative, or any individual or entity other than, or in addition to, Engineer to represent Owner at the Site, then Owner shall define and set forth, in an exhibit to the governing Task Order, the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- J. Owner shall:
 - 1. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
 - 2. Primarily communicate with Engineer's Subcontractors and Subconsultants through the Engineer.
 - a. Promptly inform Engineer of the substance of any communications between Owner and Engineer's Subcontractors or Subconsultants.

Main Agreement.

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- b. Refrain from directing the services of Engineer's Subcontractors or Subconsultants.
- 3. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of each Task Order, as required.
- 4. Perform or provide the following:
 - a. All other Owner responsibilities expressly identified in any Task Order, not otherwise set forth in this Agreement.

2.06 Payment

- A. Owner shall pay Engineer as set forth in each Task Order, pursuant to the applicable terms of Article 4.

ARTICLE 3—TERM AND TIMES FOR RENDERING SERVICES

3.01 Term

- A. This Agreement will be effective and applicable to Task Orders issued hereunder for **two (2)** years from the Effective Date of the Agreement.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

3.02 Commencement

- A. Engineer is authorized to begin rendering services under a Task Order as of the Effective Date of the Task Order.

3.03 Time for Completion

- A. The Effective Date of the Task Order and the times for completing services or providing deliverables will be stated in each Task Order.
- 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, will be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of a Specific Project, or of Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.
- D. If the Contract Times to complete the Work under a Construction Contract are extended beyond the period stated in the governing Task Order, Owner will pay Engineer for the additional services during the extension based on the Standard Hourly Rates Method of Payment.
- E. If Engineer fails, for reasons within the control of Engineer, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages to the extent, if any, resulting from such failure by Engineer.

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; the terms of any progress reporting and special invoicing requirements in Paragraph 1.03, or as otherwise required in Exhibit A to the Task Order; and with the applicable terms of Appendix 1 to Main Agreement, Reimbursable Expenses Schedule, and Appendix 2 to Main Agreement, Standard Hourly Rates Schedule. 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. Disputed Invoices: If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion, subject to the terms of Article 4. After a disputed item has been resolved, Engineer shall include the agreed-upon amount on a new invoice.
- C. Failure to Pay: If Owner fails to make any undisputed payment due Engineer 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 7 days' written notice to Owner, suspend services under this Agreement until Owner has paid in full amounts due. Owner waives any and all claims against Engineer for any such suspension.
- D. Sales or Use Taxes: If after the Effective Date of a Task Order any governmental entity takes an action that imposes additional sales or use taxes on Engineer's services or compensation under the Task Order, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement will be in addition to the compensation to which Engineer is entitled under the terms of this Main Agreement and the specific Task Order.

4.03 Basis of Compensation

- A. The bases of compensation (compensation methods) for Basic Services (including if applicable the bases of compensation for individual phases of Basic Services) and for Additional Services must be identified in each specific Task Order (Task Order Form, Paragraph 6). Owner shall pay Engineer for services in accordance with the applicable basis of compensation.
- B. The three following bases of compensation are used for services under Task Orders, as identified in each specific Task Order:
 - 1. Lump Sum (plus any expenses expressly eligible for reimbursement)

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2. Standard Hourly Rates (plus any expenses expressly eligible for reimbursement)
 3. ~~Direct Labor Costs Times a Factor (plus any expenses expressly eligible for reimbursement)~~
- C. The terms and conditions applicable to each of the three compensation methods are set forth in Paragraph 4.04.
- 4.04 Explanation of Compensation Methods
- A. Lump Sum
1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
 2. The Lump Sum will include compensation for Engineer's services and services of Engineer's Subcontractors and Subconsultants, if any. The Lump Sum constitutes full and complete compensation for Engineer's services in the specified category, including labor costs, overhead, profit, expenses (other than those expenses expressly eligible for reimbursement, if any), and Engineer's Subcontractor and Subconsultant charges.
 3. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of the services in the specified category (see Appendix 1 for rates or charges):
 - a. **Permit Fees**
 4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services completed during the billing period to the Lump Sum.
- B. Standard Hourly Rates
1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph 4.05 below, and Appendix 1.
 2. Standard Hourly Rates 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.
 3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Agreement as Appendices 1 and 2.
 4. The total estimated compensation for the specified category of services will be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, and reimbursable expenses (including Engineer's Subcontractor and Subconsultant charges, if any).
 5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus

reimbursable expenses (including Engineer's Subcontractor and Subconsultant charges, if any).

6. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually to reflect equitable changes in the compensation payable to Engineer.

C. ~~Direct Labor Costs Times a Factor~~

1. ~~For the specified category of services, the Owner shall pay Engineer an amount equal to Engineer's Direct Labor Costs times a factor of [Factor] for the services of Engineer's employees engaged on the Specific Project. Direct Labor Costs means salaries and wages paid to employees but does not include payroll-related costs or benefits. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph 4.05 below, and Appendix 1.~~
2. ~~Engineer's Reimbursable Expenses Schedule is attached to this Exhibit as Appendix 1.~~
3. ~~The total estimated compensation for the specified category of services must be stated in the Task Order. This total estimated compensation incorporates all labor, overhead, profit, and reimbursable expenses (including Consultant's charges, if any).~~
4. ~~The amounts billed will be based on the applicable Direct Labor Costs for the cumulative hours charged to the specified category of services on the Specific Project during the billing period times the above-designated Factor, plus reimbursable expenses (including Engineer's Subcontractor and Subconsultant charges, if any).~~
5. ~~The Reimbursable Expenses Schedule, Direct Labor Costs, and the factor applied to Direct Labor Costs will be adjusted annually to reflect equitable changes in the compensation payable to Engineer.~~

4.05 Reimbursable Expenses

- A. Under the Lump Sum method basis of compensation to Engineer, unless expressly indicated otherwise the Lump Sum amount includes the following categories of expenses: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; and Engineer's Subcontractor and Subconsultant charges. These expenses are not reimbursable under the Lump Sum method, unless expressly indicated otherwise in Paragraph 4.04.A.3 above.
- B. Expenses eligible for reimbursement under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods of compensation include the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Task Order:
 1. Transportation (including mileage), lodging, and subsistence incidental thereto;
 2. Providing and maintaining field office facilities including furnishings and utilities;
 3. Toll telephone calls, mobile phone services, and courier services; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items;

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4. Consultant charges; and
 5. Other expenses identified in Appendix 1.
- C. Reimbursable expenses reasonably and necessarily incurred in connection with services provided under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods must be paid at the rates set forth in Appendix 1, Reimbursable Expenses Schedule, subject to the factors set forth below.
 - D. The amounts payable to Engineer for reimbursable expenses will be the Project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external reimbursable expenses allocable to the Specific Project, the latter multiplied by a factor of **1.10**.
 - E. Whenever Engineer is entitled to compensation for the charges of its Consultants, those charges will be the amount billed by such Consultants to Engineer times a factor of **1.10**.
 - F. The external reimbursable expenses and Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

4.06 Other Provisions Concerning Payment

A. Estimated Compensation Amounts

1. Engineer's estimate of the amounts that will become payable for 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 in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination for Owner's convenience of Engineer's services under the Task Order. Upon notice, Owner and Engineer will promptly 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 under the Task Order 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 will be paid for all services rendered.

B. **Maximum Total Compensation Amount**

1. **Total compensation, in aggregate, for all duly executed Specific Project Task Orders shall not exceed Eight hundred fifty thousand dollars (\$850,000) without amendment to this agreement.**

ARTICLE 5—OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. Engineer's opinions of probable Construction Cost (if any) are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 Opinions of Total Project Costs

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

ARTICLE 6—GENERAL CONSIDERATIONS

6.01 Standards of Performance

- A. **Standard of Care:** The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. **Technical Accuracy:** Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. **Engineer's Subcontractors and Subconsultants:** Engineer may retain such Engineer's Subcontractors and Subconsultants 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 may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. **Compliance with Laws and Regulations, and Policies and Procedures**
 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in

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Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date of the Task Order to Laws and Regulations,
 - b. the receipt by Engineer after the Effective Date of the Task Order of Owner-provided written policies and procedures, and
 - c. changes after the Effective Date of the Task Order to Owner-provided written policies or procedures.
- F. General Conditions of Construction Contract: The general conditions for any construction contract documents prepared hereunder are to be the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract, prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in this Agreement.
- G. Copies of Drawings and Specifications: If Engineer is required to prepare or furnish Drawings or Specifications under a specific Task Order, Engineer shall deliver to Owner at least one complete electronic copy of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations, and one complete printed copy, duly signed and sealed.
- H. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant conditions whose existence the Engineer cannot ascertain within the authorized scope of Engineer's services. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to Engineer in any way contingent upon Engineer signing any such document.
- I. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- J. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- K. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer.
- L. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- M. Engineer's services do not include providing legal advice or representation.

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- N. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- O. While at the Site, Engineer, its Subconsultants, and Engineer's Subcontractors, and their employees and representatives will comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 Ownership and Use of Documents

- A. All Documents are instruments of service, and Engineer owns the Documents, including all associated copyrights and the right of reuse at the discretion of the Engineer. Engineer shall continue to own the Documents and all associated rights whether or not the Specific Project is completed.
 - 1. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Specific Project.
 - 2. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations:
 - a. Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 - b. 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 Subconsultants;
 - c. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants 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
 - d. ~~such limited license to Owner shall not create any rights in third parties.~~

~~OR [alternative to 6.02.A]:~~

- ~~A. All Documents are instruments of service, and Engineer owns the Documents, including all associated copyrights and the right of reuse at the discretion of the Engineer, subject to the following provisions:~~

1. ~~Upon receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents for a Specific Project and subject to the explicit exclusions in this Paragraph 6.02.A, Engineer and any Subconsultants will grant to Owner the ownership of the Documents for that Specific Project, including all associated copyrights and the right of reuse.~~
 2. ~~When requested by Owner, Engineer will perform any clerical or administrative acts reasonably necessary to confirm or record the transfer of Engineer's interests in the Documents to the Owner, and Owner will reimburse the Engineer for its costs to comply with the transfer request.~~
 3. ~~Engineer shall have and retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in any design elements (including but not limited to standard details, drawings, plans, specifications, methodologies, and engineering computations) used in the Documents, but developed by Engineer or its Subconsultants previous to or independent of this Agreement ("Previously/Independently Created Works"). Engineer shall provide appropriate verification of such previous or independent development upon Owner's request.~~
 4. ~~Upon receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents for a Specific Project, Engineer will issue to Owner a royalty-free, nonexclusive and irrevocable license to use such Previously/Independently Created Works on that Specific Project or on any extension of that Specific Project.~~
 5. ~~Owner acknowledges that the Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project or Specific Project, or for any other use or purpose, without written verification or adaptation by Engineer.~~
 6. ~~Any such use or reuse, or any modification of the Documents for a Specific Project, 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.~~
 7. ~~Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents for a Specific Project without written verification, completion, or adaptation by Engineer.~~
 8. ~~Such limited license to Owner shall not create any rights in third parties.~~
 9. ~~Nothing herein limits the Engineer's right of use or reuse of Previously/Independently Created Works or any of Engineer's non-Documents work product.~~
- B. 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.

- C. Engineer shall inform Owner if Engineer is aware of any invention, design, process, product, or device specified in the Drawings, Specifications, or other Documents that is subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights. If Engineer's good-faith inclusion in the Drawings, Specifications, or other Documents of new, innovative, or non-standard technologies, for the benefit of Owner and the Project, results in third-party claims of infringement or violation of intellectual property rights, then Owner and Engineer shall share equally the costs of defending against, settling, or paying such claims.
- D. Engineer will obtain Owner's consent, which will not be unreasonably withheld, prior to releasing any publicity, including news and press releases, promotional publications, award and prize competition submittals, and other advertising regarding the subject matter of this Agreement. Nothing herein will limit the Engineer's right to include information in statements of qualifications and proposals to others accurately describing its participation and participation of employees in the Project.

6.03 Electronic Transmittals

- A. To the fullest extent practical, Owner and Engineer agree to transmit, and accept, all correspondence, Documents, text, data, drawings, information, and graphics related to each Specific Project, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with Exhibit F, Electronic Documents Protocol (EDP).
 - 1. Compliance with the EDP by Engineer shall be considered a Basic Service and no direct or separate compensation will be paid to Engineer for such compliance, unless provisions for separate compensation are expressly set forth in the EDP or in a specific Task Order.
 - 2. Engineer's costs directly attributable to changes in Engineer's Electronic Documents obligations, after the effective date of this Agreement, necessitated by revisions to Exhibit F, delayed adoption of Exhibit F, or implementation of other Electronic Documents protocols, will be compensated as Additional Services.
- B. If this Agreement does not include Exhibit F, or a specific Task Order expressly excludes the application of Exhibit F or otherwise does not establish or include protocols for transmittal of Electronic Documents by Electronic Means, then Owner and Engineer may operate without specific protocols or may jointly develop such protocols at a later date.
- C. Except as stated otherwise in Exhibit F (if included in this Agreement), when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents, or from those established in applicable protocols.
- D. This Agreement (including the EDP) is not intended to create obligations for Owner or Engineer with respect to transmittals to or from third parties, except as expressly stated in the EDP.

6.04 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G.

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- B. Additional Insureds: The Engineer's commercial general liability, automobile liability, and umbrella or excess liability policies, must:
1. include and list as additional insureds Owner, and any individuals or entities identified as additional insureds in Exhibit G;
 2. include coverage for the respective officers, directors, members, partners, and employees of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations); and
 4. not seek contribution from insurance maintained by the additional insured.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer, its Subconsultants, and Engineer's Subcontractors to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project. Owner shall give Engineer access to any certificates of insurance and copies of endorsements and policies obtained by Owner from Contractor.
- D. Engineer shall deliver certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates must be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
1. Upon request by Owner or any other insured, Engineer shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subconsultants and Engineer's Subcontractors. In any documentation made available for review under this provision, Engineer may redact (a) any confidential premium or pricing information and (b) any wording specific to projects or jurisdictions other than those applicable to this Agreement.
- E. All construction contracts entered into by Owner with respect to a Specific Project must require builder's risk or similar property insurance.
- F. All policies of property insurance relating to a Specific Project, including but not limited to any builder's risk or similar policy, must allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer, its Subconsultants, or Engineer's Subcontractors. Owner and Engineer waive all rights against each other, Contractor, Engineer's Subcontractors and Subconsultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any such builder's risk or similar policy and any other property insurance relating to the Specific Project. Owner and Engineer shall take appropriate measures in other Specific Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

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- G. All policies of insurance must contain a provision or endorsement that the coverage afforded will not be canceled, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the primary insured must promptly forward a copy of the notice to the other party to this Agreement and replace the coverage being cancelled or reduced to conform to the requirements of this Agreement.
- H. At any time, Owner may request that Engineer, or Engineer's Subcontractors or Subconsultants, 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 Engineer's Subcontractors or Subconsultants 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 Engineer's services under a specific Task Order for up to 90 days upon 7 days' written notice to Engineer.
- 2. By Engineer: Engineer may, after giving 7 days' written notice to Owner, suspend services under a Task Order:
 - a. if Owner has failed to pay Engineer for invoiced services and expenses under that Task Order, as set forth in Paragraphs 4.02.B and 4.02.C;
 - b. in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.09.D; or
 - c. if persistent circumstances beyond the control of Engineer have prevented it from performing its obligations under the Task Order.
- 3. A suspension under a specific Task Order, whether by Owner or Engineer, does not affect the duty of the two parties to proceed with their obligations under other Task Orders.

B. Termination for Cause—Task Order

- 1. Either party may terminate a Task Order for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement and the specific Task Order, through no fault of the terminating party.
 - a. Notwithstanding the foregoing, the Task Order will not terminate under Paragraph 6.05.B.1 if the party receiving such notice begins, within 7 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 will extend up to, but in no case more than, 60 days after the date of receipt of the notice.

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2. In addition to its termination rights in Paragraph 6.05.B.1, Engineer may terminate a Task Order for cause upon 7 days' written notice:
 - a. if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional;
 - b. if the Engineer's services under the Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control; or
 - c. as the result of the presence at or adjacent to the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.09.E.
 3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.
- C. Termination for Cause—Main Agreement: In the case of a default by Owner in its obligation to pay Engineer for its services under more than one specific Task Order, Engineer may request immediate payment of all amounts invoiced on other Task Orders, and may invoice Owner for continued services on such Task Orders on a two-week billing cycle, with payment due within one week of an invoice. If Owner fails to make such payments, then upon 7 days' notice Engineer may terminate this Main Agreement and all Task Orders.
- D. Termination for Convenience by Owner: Owner may terminate a Task Order or this Main Agreement for Owner's convenience, effective upon Engineer's receipt of notice from Owner.
- E. Effective Date of Termination: If Owner terminates the Main Agreement for cause or convenience, Owner 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. Engineer shall be entitled to compensation for such tasks.
- F. Payments Upon Termination: 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 that have been performed or furnished in accordance with this Main Agreement and the specific Task Order, and all reimbursable expenses incurred through the effective date of termination. Upon making such payment, Owner will have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.02.A.
1. If Owner has terminated a Task Order for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the Documents will be resolved in accordance with the dispute resolution provisions of this Main Agreement or as otherwise agreed in writing.
 2. If Owner has terminated the Main Agreement for convenience, or if Engineer has terminated a Task Order for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Subcontractors or Subconsultants, and other

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related close-out costs, using methods and rates for Additional Services as set forth in this Main Agreement.

6.06 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 6.06.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 Main Agreement and any Task Order issued under this Main Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Main Agreement, or in any Task Order, without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Main Agreement or any Task Order.
- C. Unless expressly provided otherwise in this Main Agreement:
 - 1. All duties and responsibilities undertaken pursuant to this Main Agreement or any Task Order will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 2. Nothing in this Main Agreement or in any Task Order will be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.06.C will appear in all Construction Contracts associated with this Main Agreement and its Task Orders.

6.07 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 mediation.
- B. 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 Main Agreement or any Task Order hereunder, or to any breach of this Main Agreement or any Task Order (“Disputes”) to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process will be conducted on a confidential basis, and must be completed within 120 days.
- C. If the parties fail to resolve a dispute through mediation under Paragraph 6.07.B, then either or both may invoke the applicable dispute resolution procedures of Exhibit H. If Exhibit H is not included, or if no applicable dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.08 Controlling Law; Venue

- A. This Main Agreement and all Task Orders (unless expressly stated otherwise) are to be governed by the Laws and Regulations of the state in which the principal office of the Owner is located: **North Carolina**.
- B. Venue for any exercise of rights at law will be the state court having jurisdiction at the location of Owner's principal office; or at the choice of either party, and if federal jurisdictional requirements can be met, in federal court in the district in which Owner's principal office is located.

6.09 Environmental Condition of Site

- A. With respect to each specific Task Order, Specific Project, and Site (unless indicated otherwise in a specific Task Order), Owner represents to Engineer that, as of the Effective Date of the Task Order, to the best of Owner's knowledge, no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. Undisclosed Constituents of Concern. For purposes of this Paragraph 6.09, the presence at or adjacent to the Site of Constituents of Concern that were not disclosed to Engineer pursuant to Paragraph 6.09.A, in such quantities or circumstances that such Constituents of Concern may present a danger to persons or property exposed to them, will be referred to as "undisclosed" Constituents of Concern.
 - 1. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of this Agreement or the Construction Contract, are not undisclosed Constituents of Concern.
 - 2. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under a Task Order are not undisclosed Constituents of Concern.
 - 3. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under another professional services contract for Owner, or as part of the work under a construction or remediation contract, are not undisclosed Constituents of Concern if Engineer has been informed of the general scope of such contract.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate authorities having jurisdiction if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that for all Task Orders the Engineer's scope of services does not include any services related to undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, or if encountered, uncovered, or revealed Constituents of Concern are present in substantially greater quantities or substantially different locations than disclosed or anticipated, or if investigative or remedial action, or other professional services, are necessary or required by applicable Laws and Regulations with respect to such Constituents of Concern, then Engineer may, at its option and without liability for direct, consequential, or any other damages, suspend performance of services on the portion of the Specific Project adversely affected

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thereby until such portion of the Specific Project is no longer so affected; and Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.

- E. If the presence at a Site of undisclosed Constituents of Concern, or of Constituents of Concern in substantially greater quantities or in substantially different locations than disclosed or anticipated, adversely affects the performance of Engineer's services under a specific Task Order, then:
 - 1. if the adverse effects do not preclude Engineer from completing its Specific Project services in general accordance with the Task Order on unaffected or marginally affected portions of the Specific Project, Engineer may accept an equitable adjustment in its compensation or in the time of completion, or both; and the Task Order will be amended to reflect changes necessitated by the presence of such Constituents of Concern; or
 - 2. if the adverse effects are of such materiality to the overall performance of Engineer that it cannot complete its Specific Project services without significant changes to the scope of services, time of completion, and compensation, then Engineer may terminate the Task Order for cause on 7 days' written notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and will 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 Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to a Specific Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, Subconsultants, or Engineer's Subcontractors. 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. Environmental Indemnification: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, Subconsultants, and Engineer's Subcontractors from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under a Site, provided that:

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1. any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and
 2. nothing in this paragraph obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- C. No Defense Obligation: The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- D. Percentage Share of Negligence: To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, will 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 Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, any Task Order, or a Specific Project, from any cause or causes. Such excluded damages include but are not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and cost of capital.

6.11 Records Retention

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

6.12 Miscellaneous Provisions

- A. Notices: Any notice required under this Main Agreement or a Task Order will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line. All notices must be effective upon the date of receipt.
- B. Survival: Subject to applicable Laws and Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Main Agreement or in a Task Order will survive completion or termination for any reason.
- C. Severability: Any provision or part of the Main Agreement or any Task Order held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Engineer.

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- D. No Waiver: A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.
- E. Accrual of Claims: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Main Agreement and any Task Order will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer's services do not include Construction Phase services, or the Specific Project is not completed, then no later than the date of Owner's last payment to Engineer under the applicable Task Order.

ARTICLE 7—DEFINITIONS

7.01 Defined Terms

- A. Wherever used in this Agreement (as defined herein), terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 - 1. Addenda—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. Additional Services—The services to be performed for or furnished to Owner by Engineer in accordance with Article 2 of Exhibit A of a specific Task Order.
 - 3. Agreement—This written contract for professional services between Owner and Engineer, including the Main Agreement, all exhibits and appendices to the Main Agreement identified in Paragraphs 8.01 and 8.02, all duly executed amendments, and all Task Orders, including all exhibits and duly executed amendments to such Task Orders.
 - a. Main Agreement—See definition at Paragraph 7.01.A.28 below.
 - 4. Application for Payment—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 - 5. Basic Services—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of a specific Task Order.
 - 6. Bidding/Proposal Documents—Documents related to the selection of the Contractor, including advertisements or invitations to bid; requests for proposals; instructions to bidders or proposers, including any attachments such as lists of available Site-related documents; bid forms; bids; proposal forms; proposals; bidding requirements; and qualifications documents.
 - 7. Change Order—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.

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8. Change Proposal—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
9. Constituents of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
10. Construction Contract—The entire and integrated written contract between the Owner and Contractor concerning the Work.
11. Construction Contract Documents—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract. See also definition of “Front-End Construction Contract Documents” below.
12. Construction Contract Price—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
13. Construction Contract Times—The number of days or the dates by which Contractor must: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
14. Construction Cost—The cost to Owner of the construction of those portions of a Specific Project designed or specified by or for Engineer under a Task Order, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
15. Constructor—Any person or entity (not including the Engineer, its employees, agents, representatives, or Subconsultants, or Engineer’s Subcontractors), performing or supporting construction activities relating to a Specific Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, design-builders, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
16. Contractor—The entity or individual with which Owner enters into a Construction Contract.
17. Documents—All documents expressly identified as deliverables in this Main Agreement or in any Task Order, whether in printed or Electronic Document form, required to be provided or furnished by Engineer to Owner. Such specifically required deliverables may

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include, by way of example, Drawings, Specifications, data, reports, building information models, and civil integrated management models.

18. Drawings—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. Effective Date of the Main Agreement—The date indicated in this Main Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Main Agreement is signed and delivered by the last of the two parties to sign and deliver.
20. Effective Date of the Task Order—The date indicated in a specific Task Order on which the Task Order becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
21. Electronic Document—Any Specific Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
22. Electronic Means—Electronic mail (email), upload/download from a secure Specific Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Agreement. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
23. Engineer—The individual or entity named as such in this Main Agreement.
24. Engineer’s Subcontractor—An individual, firm, vendor, or other entity having a contract with Engineer to furnish general services, equipment, or materials with respect to a Specific Project as an independent contractor.
25. Field Order—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
26. Front-End Construction Contract Documents—Those Construction Contract Documents whose primary purpose is to establish legal and contractual terms and conditions, typically including the Owner-Contractor agreement, bonds, general conditions, and supplementary conditions. The term excludes the Drawings and Specifications, and any Construction Contract Documents delivered or issued after the effective date of the Construction Contract.
27. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

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28. Main Agreement—The portion of the Agreement containing the general terms and conditions of the contract between Owner and Engineer, applicable to all Task Orders, including but not limited to provisions regarding task order procedures, Owner responsibilities, invoice and payment procedures, standard of care, ownership of documents, suspension and termination, and definitions.
29. Owner—The individual or entity named as such in this Main Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning Specific Projects.
30. Record Drawings—Drawings depicting the completed Specific Project, or a specific portion of the completed Specific Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
31. Resident Project Representative—As authorized by a specific Task Order, the representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of the RPR. The duties and responsibilities of the RPR (if any) will be as set forth in each Task Order.
32. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
33. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
34. Site—Lands or areas to be indicated in the Construction Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
35. Specifications—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
36. Specific Project—A specifically identified and defined total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under a specific Task Order are a part.
37. Subconsultant—An individual, design firm, consultant, or other entity having a contract with Engineer to furnish professional services with respect to a Specific Project as an independent contractor.

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38. 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.
39. Submittal—A written or graphic document, prepared by or for Contractor, which the Construction Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Construction Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
40. Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
41. Supplier—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
42. Task Order—A document executed under this Main Agreement by Owner and Engineer (including incorporated exhibits and amendments if any), stating the scope of services, Engineer's compensation, times for performance of services, and other relevant information.
43. Total Project Costs—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Specific Project, including Construction Cost and all other Specific Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties and private utilities (including relocation if not part of Construction Cost), Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Specific Project, and the cost of other services to be provided by others to Owner.
44. Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light,

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heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

45. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

46. Work Change Directive—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. Terminology

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8—EXHIBITS AND APPENDICES TO MAIN AGREEMENT; TASK ORDER FORM; EXHIBITS TO TASK ORDER; SPECIAL PROVISIONS

8.01 Exhibits to Main Agreement

The following exhibits are incorporated by reference and included as part of this Main Agreement, and as such are applicable to all Task Orders:

- A. Exhibit A—Engineer's Services Under Task Order
- B. Exhibit B—Task Order Deliverables Schedule
- C. Exhibit C—Amendment to Main Agreement
- D. Exhibit D—Duties, Responsibilities, And Limitations of Authority of Resident Project Representative Under Task Order
- E. Exhibit E—EJCDC C-626 Notice of Acceptability of Work (Form)
- F. Exhibit F—Electronic Documents Protocol (EDP)
- G. Exhibit F—Attachment 1: Software Requirements for Electronic Document Exchange
- H. Exhibit G—Insurance
- I. Exhibit H—Dispute Resolution
- J. Exhibit I—Limitations of Liability
- K. Exhibit J – Special Provisions
- L. Exhibit K - Task Order Form

8.02 Appendices to Main Agreement

- A. The following appendices are incorporated by reference and made a part of this Main Agreement:
 - 1. Appendix 1—Reimbursable Expenses Schedule
 - 2. Appendix 2—Standard Hourly Rates Schedule

8.03 Resource Documents: Task Order Form and Exhibits to Task Order

- A. The parties acknowledge the accompanying documents, “Part 3 of 4: Task Order Form” and “Part 4 of 4: Exhibits to Task Order.” These documents are a resource for the parties’ use when a specific Task Order is issued. To the extent practical and applicable to a Specific Project, the parties will use the Task Order Form and Exhibits to Task Order as the basis for preparing the specific Task Order and its exhibits. The Task Order Form and Exhibits to Task Order are not a part of this Main Agreement or binding on the parties except to the extent they serve as the basis for a duly executed Task Order and its exhibits.

8.04 Executed Task Orders and Their Exhibits

- A. When a specific Task Order is duly executed by Owner and Engineer, the Task Order and its exhibits become an integral part of the Agreement, governed by the Main Agreement and its exhibits.

8.05 Total Agreement; Amendments to Main Agreement and Task Orders

- A. This Agreement (as defined herein) constitutes the entire contractual agreement between Owner and Engineer and supersedes all prior written or oral understandings.
- B. Amendments:
 - 1. This Main Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Such written instruments should be based whenever possible on the format of Exhibit C to this Main Agreement.
 - 2. Amendments and modifications to a Task Order may be made by execution of a new, expressly related Task Order, or by execution of a written amendment to the Task Order.
 - 3. Nothing in any Task Order will be construed as revising or modifying the terms and conditions of the Main Agreement or its exhibits, except as expressly stated in such Task Order.

8.06 Designated Representatives

- A. With the execution of this Main Agreement, Engineer and Owner shall each designate a specific individual to act as representative under the Main Agreement. Such an individual must have authority to execute Task Orders, transmit instructions, receive information, and render decisions with respect to this Main Agreement, on behalf of the party that the individual represents.
- B. With the execution of each Task Order, Engineer and Owner shall each designate a specific individual to act as representative with respect to the Task Order. Such individual must have authority to transmit instructions, receive information, and render decisions with respect to the specific Task Order, on behalf of the party that the individual represents.

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8.07 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 8.07:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.08 Conflict of Interest

- A. Nothing in this Agreement will be construed to create or impose any duty on the part of Engineer that would be in conflict with Engineer's paramount obligations to the public health, safety, and welfare under the professional practice requirements governing Engineer, its Subconsultants, and all licensed professionals employed by Engineer or its Subconsultants.
- B. If during the term of this Agreement a potential or actual conflict of interest arises or is identified:
 - 1. Engineer and Owner together will make reasonable, good faith efforts to avoid or eliminate the conflict of interest; to mitigate any adverse consequences of the conflict of interest; and, if necessary and feasible, to modify this Agreement to address the conflict of interest and its consequences, such that progress under the Agreement may continue.
 - 2. Such efforts will be governed by applicable Laws and Regulations and by any pertinent Owner's policies, procedures, and requirements (including any conflict of interest resolution methodologies) provided to Engineer under Paragraph 2.04.A of this Agreement.

This Main Agreement's Effective Date is _____.

Owner:

City of Greenville, NC
(name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: P.J. Connelly
(typed or printed)

Title: Mayor
(typed or printed)

Attach evidence of authority to sign.

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:

City of Greenville
200 West Fifth Street
Greenville, NC 27858

Designated Representative:

Name: Mark Nottingham, AICP
(typed or printed)

Title: City Projects & Development Manager
(typed or printed)

Address:

City of Greenville, NC
2000 Cedar Lane
Greenville, NC 27858

Phone: 252-329-4242

Email: mnottingham@greenvillenc.gov

Engineer:

The East Group, P.A.
(name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: Keith House, PE
(typed or printed)

Title: President
(typed or printed)

Attach evidence of authority to sign.

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:

The East Group, P.A.
324 Evans Street
Greenville, NC 27858

Designated Representative:

Name: Myriah Shewchuk, PLA
(typed or printed)

Title: Contract Manager
(typed or printed)

Address:

The East Group, P.A.
324 Evans Street
Greenville, NC 27858

Phone: 252-758-3746

Email: myriah.shewchuk@eastgroup.com

Main Agreement.

EJCDC® E-505, Agreement between Owner and Engineer for Professional Services—Task Order Edition.
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APPROVED AS TO FORM:

BY: _____
City Attorney or Designee (Designee means Assistant City Attorney)

PRE-AUDIT CERTIFICATION:

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

BY: _____ **Date:** _____
Jacob A. Joyner, Director of Financial Services

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Article 1 of the Main Agreement, Services of Engineer, is supplemented to include the following provisions:

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

ARTICLE 1—BASIC SERVICES

1.01 Management of Engineering Services

A. See Main Agreement, Paragraph 1.03.

1.02 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner’s requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a. If Owner has already identified one or more potential solutions to meet its Specific Project requirements, then proceed with the study and evaluation of the Owner-identified potential solutions listed here:
 - 1) **[List the specific potential solutions to be studied and evaluated here].**
 - b. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner’s requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer’s study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.
 - c. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify **[insert specific number]** alternative solutions potentially

available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.

2. Identify potential solution(s) to meet Owner's Specific Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Specific Project requirements.
4. Visit the Site, or potential Specific Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Assess initially available Specific Project information and data, including the Baseline Information set forth at the beginning of this Exhibit A.
6. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Specific Project-related information and data, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Specific Project requirements, and preparation of a related report.
7. After consultation with Owner, recommend the solution(s) which in Engineer's judgment meet Owner's requirements for the Specific Project.
8. Identify, consult with, and analyze requirements of authorities having jurisdiction to permit or approve construction or operation of the portions of the Specific Project to be designed or specified by Engineer, including but not limited to impacts and mitigating measures identified in previously prepared environmental assessments for the Specific Project provided to the Engineer or being concurrently prepared for Owner by others.
9. Advise the Owner of any need for Owner to provide data or services of the types described in Article 2 of the Agreement, for use in Specific Project design, or in preparation for Contractor selection and construction.
10. Assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface conditions at the Site; innovative design, contracting, or procurement strategies; project delivery method; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph will be referred to in Exhibit A as "Specific Project Strategies, Technologies, and Techniques."
11. Assist Owner in identifying opportunities for enhancing the sustainability of the Specific Project, and pursuant to Owner's instructions, plan for the inclusion of sustainable features in the design.
12. Review with Owner the thresholds established in applicable codes, standards, and design criteria specifically governing the ability of the proposed facilities or improvements to perform, and to absorb or avoid damage without suffering complete or substantial failure. As part of the review, identify additional risk assessment studies or tools that are available to evaluate the susceptibility of the facilities or improvements to natural and man-made events beyond the applicable established thresholds. Upon Owner request, as an additional service, perform additional risk assessment studies or tools to further evaluate system resiliency beyond the applicable established thresholds.

13. Utilities, including Underground Facilities
 - a. Review any utility mapping and surveys and other utilities documentation made available by Owner. Take note of observable utilities during Site visit.
 - b. Identify, in a preliminary manner and to the extent determinable by such mapping or other information provided by Owner, and by observations at the Site, those utilities (whether above-ground utilities of any type, or Underground Facilities) likely to be affected by the Specific Project construction and additional utility facilities or extensions that will be needed to serve the Specific Project.
 - c. If the impact on existing utilities or the need for additional utility facilities or extensions cannot reasonably be determined in a preliminary manner from mapping or other information provided by Owner, or such information was not available from Owner, then assist Owner in evaluating the need to either obtain additional utility mapping and utility documentation during the Study and Report Phase, or undertake other alternative approaches and contingencies to account for utility uncertainties in this phase.
 - d. Advise Owner of additional utility documentation and coordination needed during the design and construction phases to adequately assess, mitigate, and manage the impact of the Specific Project (including any additional utility facilities or extensions needed to serve the Specific Project) on existing utilities.
 - e. Use ASCE 38, “Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data” as a means to advise the Owner regarding the extent and identification and mapping of existing Underground Facilities during the design and construction phases.
 - 1) If Owner has retained a land surveyor, utility engineer, or utility consultant, collaborate with such individuals or entities regarding the application of ASCE 38.
14. Inquire regarding survey methodologies and technologies that would aid in addressing Owner’s Specific Project requirements. Develop a scope of work and survey limits for any topographic and other surveys necessary for design. For recommended survey deliverables, specify a) required technical specifications; b) pertinent datum; c) survey limits, and d) formats of deliverables. Collaborate with land surveyor, when separately retained by Owner or third party, to develop such scope of work.
15. Prepare a report (the “Report”) which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer’s recommended solution(s).
 - a. For each recommended solution, Engineer will separately tabulate Total Project Cost, itemizing those items and services included within the definition of Total Project Costs.
 - b. Engineer will meet with Owner to discuss the draft Report and receive Owner’s comments.

16. Perform or provide the following other Study and Report Phase tasks or deliverables:
 - a. **[List any such tasks or deliverables here].**
 17. Furnish the Report and any other Study and Report Phase deliverables to Owner pursuant to the requirements of the Deliverables Schedule in Exhibit B, and review the deliverables with Owner.
 18. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and submit revised deliverables pursuant to the Deliverables Schedule.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the final Report (as revised) and any other Study and Report Phase deliverables.

1.03 Preliminary Design Phase

- A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables (if Engineer's services under this Agreement included Study and Report Phase services); selection by Owner of a recommended solution; issuance by Owner of any instructions for use of Specific Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design, or enhanced resiliency of the design; indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Specific Project desired by Owner; and any necessary changes, refinements, and supplementation of the Baseline Information set forth at the beginning of this Exhibit A, Engineer and Owner shall discuss, resolve, and document in writing any necessary revisions to Engineer's scope of services, compensation (through application of the provisions regarding Additional Services, or otherwise), and the time for completion of Engineer's services, resulting from the selected solution, related Specific Project Strategies, Technologies, or Techniques, sustainable design and resiliency instructions, specific modifications to the Specific Project, or changes, refinements, or supplementation of the Baseline Information.
- B. Upon written authorization from Owner, Engineer shall:
1. Review and assess all available Specific Project information and data, including any pertinent reports or studies (whether prepared by Engineer or others) and any related instructions from Owner.
 2. Based on the threshold review and assessment of available information and data, advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer any additional information and data, for Engineer's use in the preparation of a Preliminary Design Phase Report.
 3. Prepare a Preliminary Design Phase Report in the following format: **[specify the format that is appropriate to the scope of the design and sufficient for Owner's purposes—ranging from a consolidated and comprehensive narrative report to an assemblage of required documents].**
 4. The Preliminary Design Phase Report will consist of final design criteria, preliminary drawings, a preliminary list of expected specifications, and written descriptions of the Specific Project. The Preliminary Design Phase Report will consider the following

matters to the extent applicable to the Specific Project and as necessary to establish the basis of design for proceeding to final design and construction:

- a. The Specific Project concept, intent, performance criteria, desired outcomes, Owner's standards and Owner directed improvements and facility elements as established in the Study and Report Phase and as expressly set forth in the Baseline Information section of this Exhibit A (collectively the "Specific Project Goals").
 - b. Recommended appropriate design criteria for each primary portion and significant discipline of the design necessary to address the Specific Project Goals.
 - c. Site conditions and characterization as known at the time of, or to be determined during, the Preliminary Design Phase, including topography; subsurface information; Constituents of Concern; cultural, historical, and archaeological resources at the Site; wetlands information; and evaluations of flora and fauna that may be affected by the Specific Project.
 - d. The time schedule for completion of the Specific Project in accordance with Specific Project Goals, including any recommended changes to the time required to complete the Final Design Phase (as set forth in Exhibit B, Deliverables Schedule) and estimated schedule(s) for construction.
 - e. Identification of major items of materials and equipment, rationale for selection with consideration of quality, suitability, pricing, sourcing, regulatory, and bidding issues affecting recommended selection.
 - f. Revised opinions of probable Construction Cost.
 - g. The impact of Specific Project Strategies, Technologies, and Techniques, sustainable features, and enhanced resiliency selected by Owner for inclusion in the Specific Project on the Specific Project Goals, schedule and probable Construction Cost, including impact of multiple prime construction contracts, separate procurement of materials or equipment, and other alternate project delivery methods when the Specific Project Goals necessitate and Owner authorizes;
 - h. Construction Phase quality assurance and quality control needs affecting development of Drawings and Specifications and other Final Design and Bidding Phase documents.
 - i. The effect of permits and authorizations by other entities and utility coordination needs on the Specific Project.
 - j. Other matters and information pertinent to addressing the Specific Project Goals.
5. In preparing the Preliminary Design Phase Report, use any specific applicable Specific Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features and enhanced resiliency, as appropriate, pursuant to Owner's instructions.
 6. Visit the Site as needed to prepare the Preliminary Design Phase Report.
 7. If at any point in the Preliminary Design Phase it becomes apparent to Engineer that additional reports, data, information, or services of the types described in Article 2 are

necessary, then so advise Owner, and assist Owner in obtaining such reports, data, information, or services.

8. Above-Ground Utilities

- a. Review above-ground utilities information obtained from Owner and from observations at the Site.
- b. Make recommendations regarding any further identification, investigation, and mapping of above-ground utilities at or adjacent to the Site, for Engineer's design purposes or otherwise.
- c. Account for above-ground utilities, based on available information, when advancing design during the Preliminary Design Phase.

9. Underground Facilities

- a. Review Underground Facilities data furnished by Owner. Assist Owner in reducing and managing risks associated with Underground Facilities by working together with Owner to jointly establish a procedure ("Underground Facilities Procedure") for the further identification, investigation, and mapping of Underground Facilities at or adjacent to the Site, using ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as a basis for establishing such Underground Facilities Procedure.
- b. Such Underground Facilities Procedure must take into account the Site and the nature of the Specific Project.
- c. Use the Underground Facilities Procedure to aid in the performance of design services:
 - 1) Account for Underground Facilities, based on available information, when advancing the design during the Preliminary Design Phase.
 - 2) The Underground Facilities Procedure will include a plan to keep Underground Facilities information current as Engineer proceeds with the provision of design services, and to add new or relocated Underground Facilities information to the base utility or Site drawings.
 - 3) To manage the potential impact of design changes on Underground Facilities, Engineer shall work together with Owner to modify or reapply the Underground Facilities Procedure as the design progresses and changes.

10. Mitigation of Utilities Conflicts

- a. Identify potential conflicts between the Specific Project (including existing and new facilities and structures) and above-ground utilities and Underground Facilities as reviewed in Exhibit A Paragraphs 1.03.B.8 and 9 above, and advise Owner regarding the need for resolution of such conflicts with utility and Underground Facilities owners and permit agencies. Identify the potential need for the relocation of existing above-ground utilities and Underground Facilities.
- b. Update the Underground Facilities Procedure as necessary for any Underground Utilities conflicts and relocations.

- c. Working together with Owner, jointly identify which specific parties or other entities will be responsible for implementation of the various specific parts of the Underground Facilities Procedure (including those parts that address resolution of Underground Facilities conflicts), and for resolution of above-ground utilities conflicts. Such identification will take into account Owner’s authority and standing, as owner of the Site, with respect to Underground Facilities and above-ground utilities.
 - 1) To the extent that Owner and Engineer agree that in addition to performing the design-related obligations set forth in Exhibit A Paragraphs 1.03.B.8 and 9, Engineer will also implement any non-design part of the Underground Facilities Procedure (including resolution of Underground Facilities conflicts), or undertake resolution of above-ground utilities conflicts, such additional duties will be Additional Services under Article 2 of this Exhibit A.

11. Surveys, Topographic Mapping, and Utility Documentation

- a. Coordinate with Owner’s utility engineer, utility consultant, or land surveyor for the necessary field surveys, topographic mapping, and utility documentation required for Engineer’s design purposes, or by the Underground Facilities Procedure.
- b. If no scope of work and procedure for utility documentation has been established, selected, or authorized, then at a minimum Engineer will contact utility owners and obtain available information. Except as otherwise provided in this Agreement, Owner acknowledges that the information gathered from utility owners may be incorrect, incomplete, outdated, or otherwise flawed, and as to Engineer, bidders, and Contractor, the Owner accepts all associated risks. Owner reserves all associated rights as to recourse against the sources of such flawed information and against third parties.

12. Prepare initial draft of a comprehensive permit document that identifies Owner’s permit duties, Engineer’s permit duties, and Contractor’s permit duties, and the schedule for permitting activities.

13. Continue to assist Owner with Specific Project Strategies, Technologies, and Techniques that Owner has chosen to implement in Exhibit A Paragraph 1.03.A.

14. Obtain Owner’s instructions regarding Owner’s procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner’s construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner’s Bidding/Proposal Documents and Front-End Construction Contract Documents.

- a. Also obtain copies of Owner’s standard Bidding/Proposal Documents and Front-End Construction Contract Documents (if other than the EJCDC 2018 Construction Series documents), and any other related documents or content for Engineer to include in drafts of the Specific Project-specific Bidding/Proposal Documents and Front-End Construction Contract Documents, when applicable.

- b. Review Owner’s instructions regarding procurement, bidding and contracting of construction services with respect to effects on the Specific Project design, schedule and construction and address as needed in the Preliminary Design Phase deliverables.
 - 15. Prepare the Preliminary Design Phase Report. This Report will consist of, as appropriate, separate or combined submittals in whole or summary, the Preliminary Design Phase documents listed in Exhibit A Paragraph 1.03.B.4, and Engineer’s findings and recommendations for advancing the Specific Project to the Final Design Phase (including Engineer’s findings and recommendations, if any, regarding permitting, utilities, and Underground Facilities). The submittal will be in the format of a report, or otherwise organized and assembled for ease and practicality of use.
 - a. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and on the basis of information furnished by Owner, assist Owner in tabulating the various cost categories which comprise Total Project Costs.
 - b. Engineer will meet with Owner to discuss the draft Preliminary Design Phase submittal and receive Owner’s comments.
 - 16. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
 - a. **[List any such tasks or deliverables here].**
 - 17. Furnish the Preliminary Design Phase Report, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner pursuant to the requirements of the Deliverables Schedule in Exhibit B, and review the deliverables with Owner.
 - 18. Revise the Report and any other deliverables in response to Owner’s comments, as appropriate, and submit revised deliverables pursuant to the Deliverables Schedule.
- C. Engineer’s services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Preliminary Design Phase Report (as revised) and associated documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

1.04 Final Design Phase

- A. After acceptance by Owner of the Preliminary Design Phase Report and any other Preliminary Design Phase deliverables; issuance by Owner of any instructions for specific modifications or changes in the scope, extent, character, or design requirements of the Specific Project desired by Owner; and any necessary changes, refinements, and supplementation of the Baseline Information set forth at the beginning of this Exhibit A, Engineer and Owner shall discuss, resolve, and document any necessary revisions to Engineer’s scope of services, compensation (through application of the provisions regarding Additional Services, or otherwise), and the time for completion of Engineer’s services, resulting from specific modifications to the Specific Project, or changes, refinements, or supplementation of the Baseline Information.
 - 1. 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 **[Enter**

- number of contracts]**. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.
2. If more than one prime construction contract is to be awarded for the Work designed or specified by Engineer, then Owner shall define and set forth (in an exhibit to this Agreement, or in a subsequent document) the duties, responsibilities, and limitations of authority of a person or entity that will have authority and responsibility for coordinating the activities among the various prime Contractors, and any resulting changes in the duties, responsibilities, and authority of Engineer.
 3. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime construction contract, or if Engineer's services are to be separately sequenced with the work of one or more separate design professional consultants or 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/Proposal, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable under such separate prime construction contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such construction contracts is to proceed concurrently.
- B. Upon written authorization from Owner, Engineer shall prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor, in accordance with the Preliminary Design Phase Report (as revised) and other Preliminary Design Phase deliverables. As part of the preparation of the Drawings and Specifications, Engineer shall prepare interim drafts and final Drawings and Specifications as follows, pursuant to the Deliverables Schedule in Exhibit B:
1. First Final Design Phase draft of all Drawings and Specifications.
 2. Second Final Design Phase draft of all Drawings and Specifications, addressing Owner comments and including appropriate design advancement.
 3. Final Drawings and Specifications that address Owner comments; complete the design; are suitable for estimating and pricing by prospective Contractors; and are complete and ready for construction.
- C. In preparing the Specifications (and any bidding, contract, or other documents that are part of Engineer's scope of services), Engineer shall obtain from Owner or Owner's legal counsel any relevant constraints such as requirements for use of domestic steel and iron, other domestic purchasing requirements, statutory restrictions on utilizing proprietary specifying methods, and the like, and comply with or account for such constraints in drafting Specifications, Bidding/Proposal Documents, and other Specific Project documents.
- D. Engineer shall prepare or assemble draft Bidding/Proposal Documents and Front-End Construction Contract Documents as follows:
1. Such documents will be based on the 2018 EJCDC Construction Documents, and on the specific bidding or Contractor selection-related instructions and forms, contract forms, text, or other content received from Owner.

2. When Engineer is required to use other than the 2018 EJCDC Construction Documents, then as required in the Preliminary Design Phase Owner will furnish to Engineer a copy of the required documents to be used for the Specific Project's Bidding/Proposal Documents and Front-End Construction Contract Documents. Prior to the first Final Design Phase submittal, Engineer will review the bidding and contracting documents furnished by Owner and provide comments to Owner. Engineer will meet with Owner to discuss Engineer's comments. Owner will consider Engineer's recommendations to revise Owner's documents for the Specific Project.
 3. Engineer will furnish to Owner, for review by Owner's legal counsel, the draft Bidding/Proposal Documents and Front-End Construction Contract Documents. Owner and Owner's legal counsel must transmit to Engineer, in a timely manner, one coordinated set of comments and revisions to the draft documents.
- E. During the Final Design Phase the Engineer shall continue to account for above-ground utilities and Underground Facilities as the design advances and is finalized. This may include:
1. performing the services assigned to Engineer under the Underground Facilities Procedure described in Exhibit A Paragraph 1.03 above, including but not limited to the design-related tasks in Exhibit A Paragraph 1.03.B.9.
 2. addressing required and proposed activities or mitigations identified in the analysis of utilities and by the Underground Facilities Procedure as having an impact on the final design, and considering such in preparing the Drawings and Specifications.
- F. Engineer shall perform or furnish the following other Final Design Phase services:
1. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 2. Assist with or prepare applications for permits and approvals, as follows:
 - a. Update comprehensive permit document created in Preliminary Design Phase for Final Design detail.
 - b. Prepare the following applications for Owner's submittal to authorities having jurisdiction over the construction or operation of the Specific Project:
 - 1) **[identify specific permit or approval applications]**.
 - c. Confer with Owner regarding revisions, if any, to the application(s), and make appropriate revisions to the application(s) for Owner's resubmittal to the authority having jurisdiction.
 - d. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of the authorities having jurisdiction listed above, including applications for review or approval of the final design.
 - e. Identify and indicate in the Construction Contract Documents the permits and approvals for which Contractor will be responsible, including work permits, building permits, and other permits and approvals that will be Contractor's responsibility; and, in addition, indicate those permits initially obtained by Owner for which Contractor will be a co-permittee, together with associated requirements.

- f. Unless expressly indicated otherwise, Engineer's scope and budget includes attending one meeting or conference call with each permit and approval-issuing agency to discuss the Specific Project and receive the agency's comments on the application.
 - g. Engineer does not guarantee issuance of any required permit or approval.
 - h. Fees charged by authorities having jurisdiction for such permits or approvals are the responsibility of Owner.
3. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost. Furnish to Owner an updated opinion of probable Construction Cost with the interim and final deliverables of the Drawings and Specifications.
 4. After consultation with Owner, include in the Front-End Construction Contract Documents any Electronic Document Protocol addressing specific protocols for the transmittal of Specific Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Specific Project website.
 5. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
 6. Review the preliminary schedule for the Construction Phase and advise Owner when initial understanding of the Construction Contract Times must or should be revised, and furnish Owner with recommendations on revisions to the proposed Construction Contract Times.
 7. Engineer's project manager and other appropriate staff will participate in the following meetings and conference calls:
 - a. First draft design review meeting at Owner's office.
 - b. Second draft design review meeting at Owner's office.
 - c. **[Indicate others as appropriate for the Specific Project].**
 - d. Engineer will prepare and distribute minutes of each such meeting and conference call, indicating attendees, topics discussed, decisions made, and action items for follow-up.
 8. Perform or provide the following other Final Design Phase activities or deliverables:
 - a. **[List any such tasks or deliverables here].**
- G. Engineer shall complete the Final Design Phase as follows:
1. Pursuant to the requirements of the Deliverables Schedule in Exhibit B, furnish for review by Owner, its legal counsel, and other advisors, the final Drawings and Specifications (as set forth in Exhibit A Paragraph 1.04.B.3 above); assembled drafts of other Construction Contract Documents including the draft Front-End Construction Contract Documents; the draft Bidding/Proposal Documents; the most recent opinion of probable Construction Cost; and any other Final Design Phase deliverables, and review the deliverables with Owner.

2. Revise the final Design Phase deliverables in response to Owner's comments, as appropriate, and submit revised deliverables pursuant to the Deliverables Schedule.
3. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications; assembled drafts of the Front-End Construction Contract Documents; the draft Bidding/Proposal Documents; and any other Final Design Phase deliverables, as revised.

1.05 Bidding/Proposal Phase

- A. After acceptance by Owner of the final Drawings and Specifications; assembled drafts of other Construction Contract Documents, including the draft Front-End Construction Contract Documents; the draft Bidding/Proposal Documents; the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and any other Final Design Phase deliverables, and upon written authorization by Owner to proceed, Engineer shall:
 1. Assist Owner in advertising for and obtaining bids or proposals for the Work; assist Owner in issuing assembled Bidding/Proposal Documents and proposed Construction Contract Documents to prospective contractors; if applicable, maintain a record of prospective contractors to which documents have been issued; attend pre-bid conferences, if any; and receive and process contractor deposits or charges, if any, for the issued documents.
 - a. **[List method (such as Owner's procurement website, commercial plan room or web service, distribution by Engineer, etc.) that Owner will use for distributing Bidding Documents here]**
 2. Prepare and issue addenda as appropriate to clarify, correct, or change the issued documents.
 3. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Exhibit A Paragraph 2.01.A.2.
 4. Attend the bid opening; prepare bid tabulation sheets; and assist Owner in evaluating bids or proposals, assembling final Construction Contracts for the Work for execution by Owner and Contractor, and in preparing notices of award to be issued by Owner for such contracts.
 5. Provide information or assistance needed by Owner in the course of any review of bids, proposals, or negotiations with prospective contractors.
 6. Consult with Owner as to the qualifications of prospective contractors.
 7. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.

9. Perform or provide the following other Bidding/Proposal Phase tasks or deliverables:
 - a. **[List any such tasks or deliverables here].**
10. The Bidding/Proposal Phase will be considered complete upon award of Construction Contracts for the Work and commencement of the Construction Phase, or upon cessation of negotiations with prospective contractors.

1.06 Construction Phase

- A. After completion of the Final Design Phase and concurrent with the Bidding/Proposal Phase, and after issuance by Owner of any instructions for specific modifications or changes in the scope, extent, character, design, schedule, number of prime construction contracts, and other construction requirements of the Specific Project during the Construction Phase desired by Owner, the Engineer and Owner shall discuss, resolve, and document any necessary revisions to Engineer's scope of services or compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from specific modifications to the Specific Project.
 1. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A Paragraph 1.06, as duly modified. With the exception of such expressly required services, Engineer shall have no design, Submittal (including Shop Drawing) review, or other obligations during construction, and Owner assumes all responsibility for providing or arranging for all other necessary Construction Phase administrative, engineering, and professional services.
 2. Owner waives all claims against Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants, and Engineer's Subcontractors, that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A. Notwithstanding the foregoing waiver, Engineer shall be responsible for any professional opinions and interpretations provided by Engineer to Owner during the Construction Phase or Post-Construction Phase, including interpretations or clarifications of the Construction Contract Documents.
- B. Upon successful completion of the Bidding/Proposal Phase, and upon written authorization from Owner, Engineer shall provide the following services:
 1. General Administration of Construction Contract: Consult with Owner and act as Owner's representative as provided in this Agreement and the Construction Contract. Unless otherwise set forth in the scope of Basic Services (as duly modified), the extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2018) or other construction general conditions specified in this Agreement. Except as otherwise provided in the Construction Contract, Owner's communications to Contractor will be issued through Engineer.
 - a. If the responsibilities of Engineer as set forth in the Construction Contract are greater than those Construction Phase services expressly required of Engineer in Exhibit A Paragraph 1.06, as duly modified, then Owner shall either (1) expand the scope of the Construction Phase services to match those of the Construction Contract, and compensate Engineer for any related increases in the cost to provide

Construction Phase services, pursuant to the provisions for compensating Additional Services, or (2) identify a qualified individual or entity (other than Engineer) responsible for the additional responsibilities in the Construction Contract.

- b. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, or if Owner requires Engineer's services for construction that extends longer than the anticipated Construction Contract Times, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services, pursuant to the provisions for compensating Additional Services.
 - c. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional.
2. Field Office: **[Delete or edit as applicable to the Specific Project]** Engineer and Resident Project Representative (if any) will be based in a field office at the Site. The field office will be furnished and maintained at Owner's expense, and will include reasonable furnishings, all required temporary utilities (including internet service) and facilities, and be secured for Engineer's (and RPR's) exclusive use.
 3. Resident Project Representative (RPR): Provide the services of an RPR at the Site to assist 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 RPR services under the specific Task Order, then delete this Paragraph 3 by inserting the word "DELETED" after the paragraph title; do not include Exhibit D as an exhibit to the specific Task Order; and do not include RPR compensation in Paragraph 7 of the Exhibit specific Task Order.]**
 4. Selection of Independent Testing Laboratory: Assist Owner in the selection of an independent testing laboratory to perform required testing services.
 5. Pre-Construction Conference: Participate in a pre-construction conference prior to commencement of Work at the Site; prepare and distribute agenda for the conference and prepare and distribute minutes of such conference.
 6. Electronic Transmittal Protocols: If the Construction Contract does not establish protocols for transmittal of Electronic Documents by Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
 7. Original Documents: If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

8. Schedules: Receive, review, and, and, subject to the criteria of the Construction Contract, 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. Advise Contractor in writing of Engineer's comments or acceptance of schedules.
 - a. Schedules will be acceptable to Engineer as to form and substance:
 - 1) Progress Schedule: if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2) Contractor's Schedule of Submittals: if it provides a workable arrangement for reviewing and processing the required Submittals.
 - 3) Contractor's Schedule of Values: if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
9. 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.
10. Permits: Provide Owner with copies of technical information and supporting data previously obtained or developed by Engineer for Owner's use, or for Owner to provide to Contractor, in obtaining required permits and licenses delegated to Contractor by Owner.
11. 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 the Work, 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, including its RPR, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by its RPR, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work. Engineer will make a report of Engineer's visit, summarizing Engineer's general observations and any significant findings.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to by this Agreement and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of

Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Specific Project as a functioning whole as indicated in the Construction Contract Documents. Engineer will not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor will Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

12. Defective Work: If, on the basis of Engineer's observations or as indicated in documentation available to Engineer, Engineer believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, Engineer will promptly issue written notice to Contractor (with copy to Owner) of such defective Work. Such notice will communicate the scope, extent (to Engineer's understanding) of defect, and associated provisions of the Construction Contract Documents.
 - a. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting the defective Work in accordance with the provisions of the Construction Contract Documents. Engineer shall give notice to Contractor regarding whether the defective Work should be repaired, replaced, or will be accepted by Owner.
 - b. However, Engineer's authority to provide this information to Owner or Engineer's decision to exercise or not exercise such authority will not give rise to a duty or responsibility of the Engineer to Contractors, Subcontractors, material and equipment suppliers, their agents or employees, or any other person(s) or entities performing any of the Work, including but not limited to any duty or responsibility for Contractors' or Subcontractors' safety precautions and programs incident to the Work.
13. Compatibility with Design Concept: If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Specific Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
14. Clarifications and Interpretations: Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents.

With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

15. Non-reviewable Matters: If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (a) the performance or acceptability of the Work under the Construction Contract Documents, (b) the design (as set forth in the Drawings, Specifications, or otherwise), or (c) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
16. Field Orders: Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
17. 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.
18. Change Proposals and Claims
 - a. Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal.
 - b. Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
19. Differing Site Conditions: Respond to any notice from Contractor of differing site conditions, including conditions relating to Underground Facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use subject to limitations of Engineer's obligations under this Agreement.
20. Contractor's Submittals: Review and approve or take other appropriate action with respect to required Contractor Submittals, but only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Construction Contract Documents, and for compatibility with the design concept of the completed Specific Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's Submittal schedule that Engineer has accepted.
21. Substitutes and "Or-equals": Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Exhibit A Paragraph 2.01.A.2.

22. Inspections and Tests

- a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining whether the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
- b. Reply to Contractor requests for written concurrence that specific portions of the Work that are to be inspected, tested, or approved may be covered.
- c. Issue written requests to Contractor that specific portions of the Work remain uncovered.
- d. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
- e. Pursuant to the terms of the Construction Contract, require additional inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.

23. Contractor's Applications for Payment: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set offs) based on the provisions for set offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, within the limits of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the

purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

24. Contractor's Completion Documents: Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Exhibit A Paragraph 1.06.B.20. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents will be to check that Contractor has submitted a complete set of those documents that Contractor is required to submit.
25. Substantial Completion: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, visit the Site in company with Owner and Contractor to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
26. Other Tasks: Perform or provide the following other Construction Phase tasks or deliverables:
 - a. **[List any such tasks or deliverables here].**
27. Completion and Acceptability of the Work: After notice from Contractor that the Work is complete:
 - a. visit the Site with Owner and Contractor to determine if the Work is in fact complete and acceptable;
 - b. notify Contractor of any part of the Work that is found during the visit to be incomplete or defective, and subsequently confirm that Contractor has corrected any such deficiencies;
 - c. follow the procedures in the Construction Contract regarding review and response to Contractor's application for final payment and accompanying documentation; and

- d. if Engineer is satisfied that the Work is complete and acceptable, provide a notice to Owner and Contractor using EJCDC® C-626, Notice of Acceptability of Work (attached as Exhibit E), stating that the Work is acceptable (subject to the provisions of the Notice and this Exhibit A) within the limits of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
28. Standards for Certain Construction-Phase Decisions: Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- C. Duration of Construction Phase: The Construction Phase will commence with the execution of the first Construction Contract for the Specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractor. If the Specific Project involves more than one prime contract as indicated in Exhibit A Paragraph 1.04.A.1, 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.

1.07 Post-Construction Phase

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
 - 1. Together with Owner, visit the Specific Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 - 2. Together with Owner, visit the Specific Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 - 3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
 - a. **[List any such tasks or deliverables here].**
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate 12 months after the commencement of the Construction Contract's correction period.

ARTICLE 2—ADDITIONAL SERVICES

2.01 Additional Services Not Requiring Owner’s Written Authorization

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Paragraph 7 of the governing Task Order.
1. Substantive design and other technical services in connection with Work Change Directives, Change Proposals, and Change Orders to reflect changes requested by Owner.
 2. Services essential to the orderly progress of the Bidding/Proposal and Construction Phases and not wholly quantifiable prior to those Phases or otherwise dependent on the actions of prospective individual bidders or contractors and including:
 - a. making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than “or equal” items;
 - b. 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 Specific Project;
 - c. evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract; and
 - d. providing to the Contractor or Owner additional or new information not previously prepared or developed by the Engineer for their use in applying for or obtaining required permits and licenses, in responding to agency comments on such applications, or in the administration of any such permits or licenses.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
 5. Implement coordination of Engineer’s services with other parts of the Specific Project that are not planned or designed by Engineer or its Subconsultants, unless Owner furnished to Engineer substantive information about such other parts of the Specific Project prior to the parties’ entry into this Agreement, in the Baseline Information section of this Exhibit A, or otherwise in Exhibit A; if such substantive information has been so provided, coordination of Engineer’s services will be part of Basic Services.

6. Implement the specific parts of an Underground Facilities Procedure that are assigned to Engineer, or above-ground utilities tasks that are assigned to Engineer as the Specific Project progresses (but not including the design-related services already assigned to Engineer as a Basic Service).
7. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
8. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
9. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
10. 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.
11. To the extent the Specific Project is subject to Laws and Regulations governing public or government records disclosure or non-disclosure, Engineer will comply with provisions applicable to Engineer, and Owner will compensate Engineer as Additional Services for Engineer's costs to comply with any disclosure or non-disclosure obligations beyond those identified in the Basic Services.
12. Services directly attributable to changes in Engineer's Electronic Documents obligations after the effective date of the Agreement.

2.02 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Paragraph 7 of the governing Task Order.
 1. Obtain or provide specified additional Specific Project-related information and data to enable Engineer to complete its Basic and Additional Services.
 2. Preparation of special and customized reporting, invoicing, and related support documentation in addition to that identified to be provided under Basic Services.
 3. 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 Specific Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Specific 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 Specific Project.
 4. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.

5. Services resulting from significant changes in the scope, extent, or character of the portions of the Specific Project designed or specified by Engineer, or the Specific Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
6. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Exhibit A Paragraph 1.02.A.1.
7. Services required as a result of Owner's providing incomplete or incorrect Specific Project information to Engineer.
8. Providing renderings or models for Owner's use, including development, management, and other services in support of building information modeling or civil integrated management.
9. Undertaking investigations and studies including, but not limited to:
 - a. All-hazards risk assessments and other studies to evaluate the feasibility of enhancing the resiliency of the design;
 - b. detailed consideration of operations, maintenance, and overhead expenses;
 - c. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Specific Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - d. preparation of appraisals;
 - e. with respect to proprietary systems or processes requiring licensing, providing services necessary to assist Owner in obtaining such licensing.
 - f. detailed quantity surveys of materials, equipment, and labor; and
 - g. audits or inventories required in connection with construction performed or furnished by Owner.
10. Furnishing services of Subconsultants or Engineer's Subcontractors for other than Basic Services.
11. Providing data or services of the types described in Article 2, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
12. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Exhibit A Paragraph 1.04.A.1.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.

13. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Article 1 of Exhibit A).
14. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
15. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents); preparing pre-qualification procedures and documents, and participating in pre-qualifying prospective Bidders; and preparing Construction Contract Documents for alternate bids.
16. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
17. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all addenda and any amendments negotiated by Owner and Contractor.
18. Services to assist Owner in developing or modifying protocols for transmittal of Electronic Documents by Electronic Means after the effective date of this Agreement, either by revising or adapting Exhibit F to the Specific Project or implementing other Electronic Documents protocols among Specific Project participants.
19. Any services by Engineer in connection with Owner or Engineer providing a Document to a Requesting Party under Exhibit F Paragraph 1.01.D (see Exhibit F, Electronic Documents Protocol), or any other distribution of a Document to a third party. Such services may include but are not limited to preparing the data contained in the requested Document in a manner deemed appropriate by Engineer; creating or otherwise preparing and distributing the Document in a format necessary to respond to Owner's direction or decision to provide the Document to a requesting party, including Contractor, in a format other than that required for deliverables from Engineer to Owner; and services in connection with obtaining required releases from the third parties to which the Documents will be distributed. Compensation for these Additional Services is not contingent upon Owner's reimbursement from the requesting party.
20. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
21. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
22. Supplementing Record Drawings with information regarding the completed Specific Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
23. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.

24. Preparation of operation, maintenance, and staffing manuals.
25. Protracted or extensive assistance in refining and adjusting of Specific Project equipment and systems (such as initial startup, testing, and balancing).
26. Assistance to Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
27. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related recordkeeping.
28. Preparing to serve or serving as a consultant or witness for, or producing documents for or on behalf of, Owner in any litigation, arbitration, mediation, lien or bond claim, or other legal or administrative proceeding involving the Specific Project (but not including disputes between Owner and Engineer).
29. Overtime work requiring higher than regular rates.
30. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Exhibit A Paragraph 1.06.B.9; any type of property surveys or related engineering services needed for the transfer of interests in real property; providing construction and property surveys to replace reference points or property monuments lost or destroyed during construction; and providing other special field surveys.
31. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
32. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
33. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

EXHIBIT B—TASK ORDER DELIVERABLES SCHEDULE

Paragraphs 2.04.E, 3.02.A, and Exhibit A of the Main Agreement are supplemented by the following paragraph and table.

Under the governing Task Order the Engineer shall furnish Documents to Owner as required in Column 2 of the following table (and as further described in Exhibit A), according to the schedule in Column 4. Owner shall comment or take other identified actions with respect to the Documents as indicated in Column 2 (and as further described in Exhibit A), according to the schedule in Column 4.

Party	Action	Exhibit A Reference	Schedule
Engineer	Submit [number] review copies of the Report and other Study and Report Phase deliverables to Owner.	1.02.A.17	Within [number] days of the Effective Date.
Owner	Submit comments regarding the Report and other Study and Report Phase deliverables to Engineer.	1.02.A.18	Within [number] days of the receipt from Engineer of the Report and other Study and Report Phase deliverables.
Engineer	Submit [number] copies of the revised Report and other Study and Report Phase deliverables to Owner.	1.02.A.18	Within [number] days of the receipt of Owner's comments regarding the Report and other Study and Report Phase deliverables.
Engineer	Submit [number] review copies of the Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	1.03.B.17	Within [number] days of Owner's authorization to proceed with Preliminary Design Phase services.
Owner	Submit comments regarding Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Engineer.	1.03.B.18	Within [number] days of the receipt from Engineer of Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.
Engineer	Submit [number] copies of the revised Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	1.03.B.18	Within [number] days of the receipt of Owner's comments regarding the Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.
Engineer	Submit [number] copies of the first Final Design Phase draft of Drawings and Specifications to Owner.	1.04.B.1	Within [number] days of Owner's authorization to proceed with Final Design Phase services.
Owner	Submit comments and instructions regarding the first Final Design Phase draft of Drawings and Specifications to Engineer.	1.04.B.1	Within [number] days of the receipt of the first final Design Phase drafts of Drawings and Specifications from Engineer.
Engineer	Submit [number] copies of the second Final Design Phase drafts of Drawings and Specifications to Owner.	1.04.B.2	Within [number] days of the receipt of Owner's comments and instructions regarding the first Final Design Phase drafts of Drawings and Specifications.

Exhibit B - Task Order Deliverables Schedule

Exhibits to Task Order. EJCDC® E-505, Agreement between Owner and Engineer for Professional Services—Task Order Edition.
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Party	Action	Exhibit A Reference	Schedule
Engineer	Submit [number] of copies of draft Bidding/Proposal and Front-End Construction Contract Documents, as required, and any other Final Design Phase deliverables (other than Drawings and Specifications) to Owner.	1.04.D.3; 1.04.F.8	Concurrent with submittal to Owner of the second Final Design Phase drafts of Drawings and Specifications.
Owner	Submit comments and instructions regarding the second Final Design Phase drafts of Drawings and Specifications to Engineer.	1.04.B.2	Within [number] days of the receipt from Engineer of the second Final Design Phase drafts of Drawings and Specifications.
Engineer	Submit [number] copies of the final, completed, pricing-ready and construction-ready Drawings and Specifications to Owner.	1.04.B.3 and 1.04.G.1	Within [number] days of the receipt of Owner's comments and instructions regarding the second Final Design Phase drafts of Drawings and Specifications.
Owner	Submit comments and instructions regarding the final, completed, pricing-ready and construction-ready Drawings and Specifications to Engineer.	1.04.G.2	Within [number] days of the receipt from Engineer of the final, completed, pricing-ready and construction-ready Drawings and Specifications.
Owner	Submit comments and instructions regarding drafts of Bidding/Proposal and Front-End Construction Contract Documents, and any other Final Design Phase deliverables (other than Drawings and Specifications) to Engineer.	1.04.D.3; 1.04.F.8	Concurrent with Owner's submittal of comments and instructions regarding the final, completed, pricing-ready and construction-ready Drawings and Specifications.
Engineer	Submit to Owner: [number] copies of the revised final, completed, pricing-ready and construction-ready Drawings and Specifications; and [number] of copies of assembled Bidding/Proposal and Front-End Construction Contract Documents, and any other Final Design Phase deliverables.	1.04.G.2; 1.04.G.3	Within [number] days of receipt of Owner's final comments and instructions regarding the regarding the final, completed, pricing-ready and construction-ready Drawings and Specifications, the Bidding/Proposal and Front-End Construction Contract Documents, and any other Final Design Phase deliverables.
Engineer	Submit [number] copies of Bidding/Proposal Phase deliverables (if any) identified in Exhibit A Paragraph 1.05.A.9.a to Owner.	1.05.A.9.a	Within [number] days of written authorization by Owner to proceed with Bidding/Proposal Phase services.
Engineer	Submit [number] copies of Construction Phase deliverables (if any) identified in Exhibit A Paragraph 1.06.B.26.a to Owner.	1.06.B.26.a	Within [number] days of [applicable benchmark event such as commencement of the Construction Contract Times]

Exhibit B - Task Order Deliverables Schedule

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Party	Action	Exhibit A Reference	Schedule
Engineer	Submit [number] copies of Post-Construction Phase deliverables (if any) identified in Exhibit A Paragraph 1.07.A.3.a to Owner.	1.07.A.3.a	Within [number] days of Substantial Completion.

EXHIBIT C—AMENDMENT TO MAIN AGREEMENT

AMENDMENT TO MAIN AGREEMENT

Amendment No. **[Enter Amendment Number]**

Owner: **[Name of Owner]**
Engineer: **[Name of Engineer]**
Effective Date of Agreement: **[Effective Date of Main Agreement]**

Nature of Amendment: (Check those that apply)

- Modifications to responsibilities of Owner
- Modifications of payment to Engineer
- Modifications to term of Main Agreement
- Modifications to other terms and conditions of the Main Agreement

Description of Modifications:

[Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.]

Owner and Engineer hereby agree to modify the above-referenced Main Agreement as set forth in this Amendment. The Effective Date of the Amendment is **[Enter Effective Date of Amendment]**.

Owner <hr/> <p style="text-align: center;">(typed or printed name of organization)</p> By: <hr/> <p style="text-align: center;">(individual's signature)</p> <p>(Attach evidence of authority to sign.)</p> Date: <hr/> <p style="text-align: center;">(date signed)</p> Name: <hr/> <p style="text-align: center;">(typed or printed)</p> Title: <hr/> <p style="text-align: center;">(typed or printed)</p>	Engineer <hr/> <p style="text-align: center;">(typed or printed name of organization)</p> By: <hr/> <p style="text-align: center;">(individual's signature)</p> <p>(Attach evidence of authority to sign.)</p> Date: <hr/> <p style="text-align: center;">(date signed)</p> Name: <hr/> <p style="text-align: center;">(typed or printed)</p> Title: <hr/> <p style="text-align: center;">(typed or printed)</p>
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EXHIBIT D—DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF AUTHORITY OF RESIDENT PROJECT REPRESENTATIVE UNDER TASK ORDER

ARTICLE 1—RESIDENT PROJECT REPRESENTATIVE SERVICES

Article 1 of the Main Agreement, Services of Engineer, and Exhibit A, Engineer's Services Under Task Order, are supplemented to include Exhibit D Paragraphs 1.01, 1.02, and 1.03, as follows:

1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to observe progress and quality of the Work. 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.
- B. The RPR will provide full-time representation [**revise if representation will be less than full time**].
- C. Subject to the scope of RPR's observations of the Work, which may include field checks of materials and installed equipment, Engineer shall endeavor to identify defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, inspect, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A Paragraph 1.06 are applicable.

1.02 Duties and Responsibilities of RPR

- A. The duties and responsibilities of the RPR are as follows:
 1. General: RPR's dealings in matters pertaining to the Work in general will be with Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

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

removed and replaced, or accepted as provided in the Construction Contract Documents.

- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work.
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. 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. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.
- f. Nothing in this Agreement will be construed to require RPR to conduct inspections.

11. Records

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Proposals, Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Proposals, Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, 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. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.

- d. Record and maintain accurate, up-to-date lists of the company names and points of contact for Contractors, Subcontractors, and major Suppliers of materials and equipment.
 - e. Maintain records for use in preparing Project documentation.
 - f. Upon completion of the Work, furnish original set of all RPR Project documentation to designated recipients.
12. Reports
- a. Furnish 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 responses to or make recommends on Change Proposals, Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
 - d. Immediately inform appropriate parties of the occurrence of any Site accidents, emergencies, natural catastrophes endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.
13. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
14. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
15. Completion
- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
 - b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
 - c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

1.03 Limitations of Authority

A. Resident Project Representative shall not:

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

NOTICE OF ACCEPTABILITY OF WORK (EJCDC® C-626 2018)

Owner: _____ Owner's Project No.: _____
Engineer: _____ Engineer's Project No.: _____
Contractor: _____ Contractor's Project No.: _____
Project: _____
Contract Name: _____
Notice Date: _____ Effective Date of the Construction Contract: _____

The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract is acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents ("Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated **[date of professional services agreement]** ("Owner-Engineer Agreement"). This Notice of Acceptability of Work (Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree:

1. This Notice has been prepared 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 Engineer's professional opinion.
3. This Notice has been prepared 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 the Owner-Engineer Agreement, 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 Owner-Engineer Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to otherwise comply with the Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

Engineer

By (signature): _____
Name (printed): _____
Title: _____

EXHIBIT F—ELECTRONIC DOCUMENTS PROTOCOL (EDP)

ARTICLE 1—ELECTRONIC DOCUMENTS PROTOCOL (EDP)

Paragraph 6.03 of the Main Agreement is supplemented by the following Exhibit F Paragraph 1.01 and Exhibit F—Attachment 1: Software Requirements for Electronic Document Exchange:

1.01 Electronic Documents Protocol

A. Electronic Transmittals: The parties shall conform to the following provisions together referred to as the Electronic Documents Protocol ("EDP" or "Protocol") for exchange of electronic transmittals. References to "Project" will mean the Specific Project, or the facilities program or other combination of projects undertaken with Engineer's involvement, as the case may be.

1. Basic Requirements

- a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents by Electronic Means using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Agreement.
- b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.
- c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Agreement.
- d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between the Owner and Engineer and any third party for any portion of the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with Owner, Engineer, or any Contractor or other entity directly contracted with the Owner to furnish Project-related services. Nothing herein will modify the requirements of the Agreement and applicable Construction Contract Documents regarding communications between and among the individual third parties and their respective subcontractors and consultants, except to the extent that any respective subcontractor or consultant exchanges Electronic Documents with the Owner or Engineer.
- e. When transmitting Electronic Documents, the transmitting Party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving Party's use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.
- f. Nothing herein negates any obligation (1) in the Agreement to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; (2) to comply with any

Exhibit F—Electronic Documents Protocol (EDP).

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applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or (3) to comply with any notice requirements limiting or otherwise modifying the acceptance of Electronic Documents for such notice.

2. System Infrastructure for Electronic Document Exchange

- a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions ("System Infrastructure") at its own cost and sufficient for complying with the EDP requirements. With the exception of minimum standards set forth in this EDP and any explicit system requirements specified by attachment to this EDP, it will be the obligation of each party to determine, for itself, its own System Infrastructure.
 - 1) The maximum size of an e-mail attachment for exchange of Electronic Documents under this EDP is **10 MB**. Attachments larger than that may be exchanged using large file transfer functions or physical media.
 - 2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.
- b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology ("IT") for maintaining operations of its System Infrastructure during the Project, including coordination with the party's individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.
- c. Each party will operate and maintain industry-standard, industry-accepted, ISO-standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as CD/DVD/flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it will not be liable to the other party for any breach of system security.
- d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties will cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Engineer, not reasonably anticipated under the original EDP, Engineer shall be entitled to compensation as Additional Services for its costs associated with the revisions to the EDP, delayed adoption of this exhibit, or implementation of other Electronic Documents protocols.
- e. Each party is responsible for its own back-up and archive of documents sent and received during the term of any Project contract/agreement under this EDP, unless

this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the Parties may rely for document archiving during the specified term of operation of such project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of project documents, as each party deems necessary for its own purposes, after the term of contract, or termination of the project document archive, if one is established.

- f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.
- g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.
- h. The ~~Owner~~ ~~Engineer~~ ~~Name Other Third Party~~ will operate a Project information management system (also referred to in this EDP as "Project Website") for use of ~~Owner, Engineer, Contractors~~, during the Project for exchange and storage of Project-related communications and information. Except as otherwise provided in this EDP or the General Conditions, use of the Project Website by the Parties as described in this paragraph will be mandatory for exchange of Project documents, communications, submittals, and other Project-related information. The following conditions and standards will govern use of the Project Website: **[modify in sufficient detail below the operational requirements for the website below].**
 - 1) ~~Describe the period of time during which the Project Website will be operated and be available for reliance by the Parties.~~
 - 2) ~~Provide any minimum system infrastructure, software licensing and security standards for access to and use of the Project Website.~~
 - 3) ~~Describe the types and extent of services to be provided at the Project Website (such as large file transfer, email, communication and document archives, etc.).~~
 - 4) ~~Include any other Project Website attributes that may be pertinent to the use of the facility by Project-related parties and evaluation by those parties of the functionality and cost of such use.~~
 - 5) ~~Engineer's related compensation and reimbursement: [specify, or indicate not applicable. See Guidance Notes 2 and 3 above.]~~

B. Software Requirements for Electronic Document Exchange; Limitations

- 1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.

- a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.
 2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.
 3. Software and data formats for exchange of Electronic Documents will conform to the requirements set forth in the following Attachment 1 to this EDP, including software version, if listed.
- C. Format and Distribution of Deliverables
1. By definition, "Documents" as used in this Agreement are documents expressly identified as deliverables from Engineer to Owner. Exhibit A of each specific Task Order identifies various Documents that Engineer is required to deliver to Owner as part of Engineer's services; Exhibit B of each specific Task Order is a schedule of such Documents. Engineer will transmit such Documents to Owner in the formats identified in Attachment 1 to this Protocol. If no specific format is identified for a deliverable Document, the format will be Portable Document Format (PDF).
 2. If a Document will be distributed to third parties, such as prospective bidders and contractors, reviewing agencies, or lenders, the transmittal format for distribution will be as identified in Attachment 1 to this Protocol; provided, however, that if a format for distribution of a specific Document is expressly stated in a specific Exhibit A, then the Exhibit A format will take precedence. If no specific format is identified for distribution of a deliverable Document to third parties, the format will be Portable Document Format (PDF).
 - a. If a format for Document distribution other than Portable Document Format (PDF) is specified, Owner shall first obtain a written, signed release from each third party to which the deliverable Document is distributed, establishing agreement to the following conditions:
 - 1) The content included in the Electronic Documents prepared by or for Engineer and covered by the request was prepared as an internal working document for Engineer's purposes solely, and is being provided to the third party on an "AS IS" basis without any warranties of any kind, including, but not limited to any implied warranties of fitness for any purpose. As such, the third party is advised and acknowledges that the content may not be suitable for the third party's application, or may require substantial modification and independent verification by the third party. The content may include limited resolution of models; not-to-scale schematic representations and symbols; use of notes to convey design concepts in lieu of accurate graphics; approximations; graphical simplifications; undocumented intermediate revisions; and other devices that may affect subsequent reuse.

- 2) Electronic Documents containing text, graphics, metadata, or other types of data that are provided to the Requesting Party are only for the convenience of the third party. Any conclusion or information obtained or derived from such data will be at the third party's sole risk and the third party waives any and all claims against Engineer or Owner arising from the use of the Electronic Documents covered by the request, or of any data contained in such Electronic Documents.
 - 3) The third party shall indemnify and hold harmless Owner, Engineer, and Engineer's Subcontractors and Subconsultants, from all claims, damages, losses, and expenses, including attorneys' fees and defense costs arising out of or resulting from the third party's use, adaptation, or distribution of any Electronic Documents provided under the request.
 - 4) The third party agrees not to sell, copy, transfer, forward, give away or otherwise distribute this information (in source or modified file format) to any third party without the direct written authorization of Engineer, unless such distribution is specifically identified in the request and is limited to the third party's subcontractors and consultants. The third party warrants that subsequent use by the third party's subcontractors and subconsultants will comply with all terms of the Construction Contract Documents and any specific instructions or conditions established by Owner.
- b. If Engineer is required to assist or participate in obtaining such releases from third parties, such services will be categorized as Additional Services.
3. Owner may release (or direct Engineer to release) an Electronic Document version of a Document prepared by or for Engineer, including but not limited to a deliverable Document as set forth in Exhibit F Paragraph 1.01.C, in a format other than those identified in Exhibit F Paragraph 1.01.B or 1.01.C of the Electronic Documents Protocol, or elsewhere in the Agreement, only if (a) a Contractor or other Project-related party (Requesting Party) makes a good faith request for such release, (b) Owner determines in its sole discretion that such release is prudent and will be beneficial to the Project, and (c) Owner obtains Requesting Party's written consent to the four conditions set forth in Exhibit F Paragraph 1.01.C.2.a.1-4 above.
 4. Any services by Engineer in connection with Owner or Engineer providing a Document to a Requesting Party under this Exhibit F Paragraph 1.01.D are Additional Services. Such services may include but are not limited to preparing the data in a manner deemed appropriate by Engineer. Owner may require reimbursement from the Requesting Party for the cost of such Additional Services, but compensation by Owner to Engineer for the Additional Services is not contingent upon Owner obtaining reimbursement from the Requesting Party.

EXHIBIT F—ATTACHMENT 1: SOFTWARE REQUIREMENTS FOR ELECTRONIC DOCUMENT EXCHANGE

Item	Electronic Documents	Transmittal Means	Data Format	Note (1)
a.1	General communications, transmittal covers, meeting notices, and responses to general information requests for which there is no specific prescribed form.	Email	Email	
a.2	Meeting agendas; meeting minutes; RFI's and Responses to RFI's; and Construction Contract administrative forms.	Email w/Attach	PDF	(2)
a.3	Contractor's Submittals (Shop Drawings, "Or Equal" requests, Substitute requests, documentation accompanying Sample submittals and other Submittals) to Owner and Engineer; and, Owner's and Engineer's Responses to Contractor's Submittals, Shop Drawings, Correspondence, and Applications for Payment	Email w/Attach	PDF	
a.4	Correspondence; Interim and Final Versions of reports, layouts, Specifications, Drawings, maps, calculations and spreadsheets, Construction Contract, Bidding/Proposal Documents, and Front-End Construction Contract Documents.	Email w/ Attach or LFE	PDF	(3)
a.5	Layouts, plans, maps, and Drawings to be submitted to Owner by Engineer for future use and modification	Email w/ Attach or LFE	DWG	
a.6	Correspondence, reports, and specifications to be submitted by Engineer to Owner for future word processing use and modification	Email w/ Attach or LFE	DOC	
a.7	Spreadsheets and data to be submitted to Owner by Engineer for future data processing use and modification	Email w/ Attach or LFE	EXC	
a.8	Database files and data to be submitted to Owner for future data processing use and modification	Email w/ Attach or LFE	DB	
Notes				
(1)	All exchanges and uses of transmitted data are subject to the appropriate provisions of the Agreement and Construction Contract.			
(2)	Transmittal of written notices is governed by requirements of the Agreement and Construction Contract.			
(3)	Transmittal of Bidding/Proposal Documents and Front-End Construction Contract Documents will be in manner selected by Owner in Exhibit A, Paragraph 1.05.A.1.a. Unless otherwise expressly stated, these documents and the Construction Contract will be transmitted in PDF format, including transmittals to bidders and Contractor.			
Key				
EMAIL	Standard Email formats (.htm, .rtf, or .txt). Do not use stationery formatting or other features that impair legibility of content on screen or in printed copies.			
LFE	Agreed upon Large File Exchange method (FTP, CD, DVD, hard drive.)			
PDF	Portable Document Format readable by Adobe® Acrobat Reader Version [number] or later.			
DWG	Autodesk® AutoCAD. dwg format Version [number].			
DOC	Microsoft® Word. docx format Version [number].			
EXC	Microsoft® Excel .xlsx or .xml			
DB	Microsoft® Access .mdb			

EXHIBIT G—INSURANCE

ARTICLE 1—INSURANCE

Paragraph 6.04 of the Main Agreement, Insurance, is supplemented to include the following Exhibit G Paragraphs 1.01 and 1.02:

1.01 Insurance Policies and Limits

- A. In accordance with Paragraph 6.04.A of the Main Agreement, the insurance that Engineer must procure and maintain, and the policy limits of such insurance, are as follows:

Coverage	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Employer's Liability	
Each accident	\$100,000
Each employee	\$100,000
Policy limit	\$500,000
Commercial General Liability	
General Aggregate	\$2,000,000
Personal and Advertising Injury	\$
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000
Automobile Liability	
Bodily Injury	
Each Person	\$
Each Accident	\$
Property Damage	
Each Accident	\$
Or	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$
Excess or Umbrella Liability	
Each Occurrence	\$2,000,000
General Aggregate	\$2,000,000
Professional Liability	
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000
Unmanned Aerial Vehicle Liability Insurance	
Each Claim	\$
General Aggregate	\$
Other Insurance [Specify]	
Each Claim	\$
General Aggregate	\$

- B. In accordance with Paragraph 6.04.C of the Main Agreement, the insurance that Owner must procure and maintain, and the policy limits of such insurance, are as follows:

Coverage	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Employer's Liability	
Each accident	\$
Each employee	\$
Policy limit	\$
Commercial General Liability	
General Aggregate	\$
Personal and Advertising Injury	\$
Bodily Injury and Property Damage—Each Occurrence	\$
Automobile Liability	
Bodily Injury	
Each Person	\$
Each Accident	\$
Property Damage	
Each Accident	\$
Or	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$
Excess or Umbrella Liability	
Each Occurrence	\$
General Aggregate	\$
Unmanned Aerial Vehicle Liability Insurance	
Each Claim	\$
General Aggregate	\$
Other Insurance [Specify]	
Each Claim	\$
General Aggregate	\$

1.02 Additional Insureds

- A. Owner shall cause Engineer, its Subconsultants, and its Engineer's Subcontractors to be listed as additional insureds on any of Owner's general liability policies that are applicable to the Project. The following individuals or entities are to be listed on Owner's general liability policies of insurance (and on Contractor's policies required under Paragraph 6.04.D of the Main Agreement) as additional insureds:

Name of Additional Insured	Address
[Engineer]	[Engineer's Corporate Address]
[Engineer's Subconsultant]	[Subconsultant's Corporate Address]
[Engineer's Subconsultant]	[Subconsultant's Corporate Address]
[Other Additional Insured]	[Other Additional Insured's Corporate Address]

- B. During the term of this Main Agreement the Engineer shall notify Owner of any other Subconsultant or Engineer's Subcontractor to be listed as an additional insured on Owner's and applicable Contractor's general liability policies of insurance.
- C. The Owner must be listed on Engineer's general liability policy as provided in Paragraph 6.04.B.
- D. For applicable Contractor's general liability policies of insurance, the additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
- E. For applicable Contractor's general liability policies of insurance, Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for Engineer, Subconsultants, and other design professional additional insureds.

EXHIBIT H—DISPUTE RESOLUTION

ARTICLE 1—DISPUTE RESOLUTION METHOD

Paragraph 6.07 of the Agreement, Dispute Resolution, is supplemented to include the following Exhibit H Paragraph 1.01:

1.01 Arbitration

- A. ~~Method for Resolution of Disputes: All Disputes between Owner and Engineer that have not been resolved by negotiations or mediation will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Exhibit H Paragraph 1.01). This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.~~
- B. ~~Arbitration Provisions~~
 - 1. ~~Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the selected arbitration administrator. 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. ~~The arbitrator(s) must be licensed engineers, architects, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Agreement. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.~~
 - 3. ~~If the applicable arbitration rules require a preliminary mediation, but the parties have already participated in mediation with respect to the Dispute, then the second mediation is not required.~~
 - 4. ~~The rules of any arbitration must be supplemented to include the following: The award rendered by the arbitrators must be in writing, and include (a) a precise breakdown of the award, and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.~~
 - 5. ~~The award rendered by the arbitrators will be consistent with this Agreement and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.~~
 - 6. ~~The arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Agreement expressly permits them to do so.~~

7. ~~The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party of the right to present evidence or cross-examine witness. In such event, the other party will be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.~~
8. ~~Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Agreement. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.~~
9. ~~If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner, Subconsultants to the Engineer, or Engineer's Subcontractors (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 Exhibit H Paragraph 1.01 nor in the provision of such contract consenting to joinder will create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.~~

EXHIBIT I—LIMITATIONS OF LIABILITY

ARTICLE 1—LIMITATIONS OF LIABILITY

Paragraph 6.10 of the Agreement is supplemented to include Exhibit I Paragraph(s) **[specify 1.01, Mutual Indemnification; 1.02, Limitation of Engineer's Liability; or both]:**

1.01 Mutual Indemnification

- A. ~~Indemnification by Owner: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants, and Engineer's Subcontractors, 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, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.~~

1.02 Limitation of Engineer's Liability

- A. ~~Engineer's Liability Limited to Stated Amount, or Amount of Engineer's Compensation: To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's Subcontractors, officers, directors, members, partners, agents, employees, and Subconsultants, to Owner and anyone claiming by, through, or under Owner for any and all injuries, claims, losses, expenses, costs, or damages whatsoever (including but not limited to direct, indirect, special, incidental, punitive, exemplary, or consequential damages) arising out of, resulting from, or in any way related to the Project, to Engineer's or its Subconsultants' or Engineer's Subcontractor's services, or to this Agreement, from any cause or causes whatsoever, 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 Subconsultants, or Engineer's Subcontractors, will not exceed the total amount of \$**[Enter Amount]** or the total compensation received by Engineer under this Agreement, whichever is greater. Higher limits are available for an additional fee.~~
- B. ~~Engineer's Liability Limited to Amount of Engineer's Compensation: To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, Subconsultants, and Engineer's Subcontractors, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever (including but not limited to direct, indirect, special, incidental, punitive, exemplary, or consequential damages) 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,~~

Exhibit I – Limitations of Liability.

Exhibits to Main Agreement. EJCDC® E-505, Agreement between Owner and Engineer for Professional Services—Task Order Edition.
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~~indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, Subconsultants, or Engineer's Subcontractors, will not exceed the total compensation received by Engineer under this Agreement.~~

- C. ~~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 Laws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, Subconsultants, and Engineer's Subcontractors to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever (including but not limited to direct, indirect, special, incidental, punitive, exemplary, or consequential damages) 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, Subconsultants, or Engineer's Subcontractors (hereafter "Owner's Claims"), will be limited to (1) responsibility for payment of all or the applicable portion of any deductibles, either directly to the Engineer's insurers or in settlement or satisfaction, in whole or in part, of Owner's Claims, and (2) 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 applicable insurance policies up to the amount of insurance required under this Agreement.~~
- ~~1. Such limitation will not be reduced, increased, or adjusted on account of legal fees paid, or costs and expenses of investigation, claims adjustment, defense, or appeal.~~
 - ~~2. 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, Subconsultants, and Engineer's Subcontractors, to Owner and anyone claiming by, through, or under Owner, for any and all such uninsured Owner's Claims will not exceed \$[Enter Amount].~~

EXHIBIT J—SPECIAL PROVISIONS

ARTICLE 1—TYPICAL WORK

Work for which the Owner may require the services of the Engineer may include, but are not limited to:

1. Design services for emergency repairs for city infrastructure;
2. Design services for work related to new or existing buildings, parks, or other facilities;
3. Design services for project related site plans;
4. Design services for repair of storm water drainage systems;
5. Design services for projects to construct streets, sidewalks, and bike lanes;
6. Geotechnical engineering services;
7. Surveying services;
8. Environmental permitting services;
9. Capacity Analysis (Roadway Links, Signalized and Unsignalized Intersections, Roundabouts);
10. Traffic Signal Design;
11. Traffic Signal Operations (Phasing, Timing, Interconnection/Coordination);
12. Signing, Pavement Marking, and Traffic Control Plans for Highway Improvements;
13. Traffic Management Plans;
14. Miscellaneous Traffic Studies, Safety Investigations, and Traffic Engineering Field Work Support;
15. Transportation Planning;
16. Obtaining right-of-way or easements for projects;
17. Research City records to determine status of existing roads, rights-of-way, and easements;
18. Analyze road/drainage system failures to determine cause and corrective actions.

ARTICLE 2—E-VERIFY COMPLIANCE

By submitting a proposal, Engineer acknowledges that compliance with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes is required by the Contractor and its Subcontractors by North Carolina law and the provisions of the Contract Documents. The Engineer represents that the Engineer and its Subcontractors are in compliance with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Article 2 of Chapter 64 of the North Carolina General Statutes requires employers, that transact business in the State of North Carolina and employ 25 or more employees in the State of North Carolina, to electronically verify the legal employment status of an employee through the federal E-Verify program after hiring the employee to work in the State of North Carolina.

ARTICLE 3—IRAN DIVESTMENT ACT

As a result of the Iran Divestment Act of 2015 (Act), Article 6E, N.C. General Statute § 147-86.55, the State Treasurer published the Final Divestment List (List) which includes the final companies and persons engaged in investment activities in Iran and will be updated every 180 days. The list can be found at

<https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx>.

By submitting the Proposal, the Engineer certifies that, as of the date of this bid, it is not on the then current List created by the State Treasurer. The Contractor must notify the Department immediately if, at any time before the award of the contract, it is added to the List.

As an ongoing obligation, the Contractor must notify the Department immediately if, at any time during the contract term, it is added to the List. Consistent with § 147-86.59, the Contractor shall not contract with any person to perform a part of the work if, at any time the subcontract is signed, that person is on the then-current List.

During the term of the Contract, should the Department receive information that a person is in violation of the Act as stated above, the Department will take action as appropriate and provided for by law, rule or contract.

ARTICLE 4—FEDERAL REQUIREMENTS

This Contract may be funded in whole or in part with federal funding. As such, federal laws, regulations, policies and related administrative practices apply to this Contract on services where federal funding applies. The most recent of such federal requirements, including any amendments made after the execution of this Contract shall govern the Contract, unless the federal government determines otherwise. This section identifies the federal requirements that may be applicable to this contract. The Vendor is responsible for complying with all applicable provisions, updates or modifications that occur in the future relating to these clauses.

The federal requirements contained in the most recent version of the Uniform Administrative Requirements for federal awards (Uniform Rules) codified at 2.C.F.R., Part 200, including any certifications and contractual provisions required by any federal statutes or regulation referenced therein to be included in this contract are deemed incorporated into this contract by reference and shall be incorporated into any sub-agreement or subcontract executed by the Vendor pursuant to its obligations under this Contract. The Engineer and its sub-consultants, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the original contract then in effect and with all applicable federal, state, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to Work to be performed under this contract.

No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Engineer, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts

The Engineer acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Engineer's actions pertaining to this contract.

Access to Records

The following accesses to records requirements apply to this contract:

The Engineer agrees to provide the City of Greenville, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Engineer which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Engineer agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Engineer agrees to provide City access to construction or other work sites pertaining to the work being completed under the contract.

Changes

Any change in the contract cost, modification, change order, or constructive change must be allowable, allocable, within the scope of its funding, grant or cooperative agreement, and reasonable for the completion of project scope. All changes and/or amendments to the contract will be outlined in detail, formalized in writing, and signed by the authorized representative of each party. Engineer's failure to do so shall constitute a material breach of the contract.

~~Termination for Convenience (General Provision) The City may terminate this contract, in whole or in part, at any time by written notice to the Engineer when it is in the City's best interest. The Engineer shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Engineer shall promptly submit its termination claim to the City to be paid the Engineer. If the Engineer has any property in its possession belonging to the City, the Engineer will account for the same, and dispose of it in the manner the City directs.~~

Termination for Default [Breach or Cause] (General Provision)

~~If the Engineer does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Engineer fails to perform in the manner called for in the contract, or if the Engineer fails to comply with any other provisions of the contract, the City may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Engineer setting forth the manner in which the Engineer is in default. The Engineer will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.~~

~~If it is later determined by the City that the Engineer had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Engineer, the City, after setting up a new delivery of performance schedule, may allow the Engineer to continue work, or treat the termination as a termination for convenience.~~

Opportunity to Cure (General Provision)

The City in its sole discretion may, in the case of a termination for breach or default, allow the Engineer ten calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

~~If Engineer fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) calendar after receipt by Engineer of written notice from the City setting forth the nature of said breach or default, the City shall have the right to terminate the Contract without any further obligation to Engineer. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Engineer and its sureties for said breach or default.~~

Waiver of Remedies for any Breach

~~In the event that the City elects to waive its remedies for any breach by Engineer of any covenant, term or condition of this Contract, such waiver by the City shall not limit the City's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.~~

Equal Opportunity

During the performance of this contract, the Engineer agrees as follows:

The Engineer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

The Engineer will, in all solicitations or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

The Engineer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Engineer's commitments under this section, 3 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

1. The Engineer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
2. The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,

regulations, and orders.

3. In the event of the Engineer's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Engineer may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
4. The Engineer will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Engineer will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Engineer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

Energy Conservation

The Engineer agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state conservation plan issued in compliance with the Energy Policy and Conservation Act.

Suspension and Debarment

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Engineer is required to verify that none of the Engineer, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Engineer is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

Suspension and Debarment Certification

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

ARTICLE 5—GRANT GUIDELINES

The Consultant/Contractor agrees to perform the assigned services in compliance with guidelines established by the State of North Carolina for Parks and Recreation Trust Fund (PARTF) Projects.

Defined Terms of Article 5 – Grant Guidelines

Wherever used in this Article (as defined herein), terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:

“Grantee” is the “Owner”. Owner is the individual or entity named as such in this Main Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning Specific Projects.

Section I. Eligible Project Costs and Fiscal Management

1. PARTF assistance for land acquisition will be based on the fair market value of real property or the sales price, whichever is less. Value must be based upon an independent appraisal by a licensed appraiser holding a general or residential certification from the North Carolina Appraisal Board. The Department shall review the appraisal as to content and valuation. Approval of appraised amounts rests with the Department. The Grantee agrees to begin development on PARTF acquired land within five (5) years of the date this contract is signed by the Department and Grantee in order to allow general public access and use.
2. Payment shall be made in accordance with the contract documents as described in the Scope of Work. Payment for work performed will be made upon receipt and approval of invoice(s) from the Grantee documenting the costs incurred in the performance of work under this contract. Invoices may be submitted to the Contract Administrator quarterly. Final invoices must be received by the Department within forty-five (45) days after the end of the contract period or contract completion, whichever occurs first. Accounting records should be based on generally accepted local government accounting standards and principles. Records shall be retained for a period of five (5) years following project completion, except those records shall be retained beyond five

(5) year period if audit findings have not been resolved. All accounting records and supporting documents will clearly show the number of the contract and PARTF project to which they are applicable. The State Auditor shall have access to persons and records as a result of all contracts and grants entered into by state agencies and or political subdivisions in accordance with General Statute 147- 64.7.

3. The Grantee agrees to refund to the Department, subsequent to audit of the project's financial records, any costs disallowed or required to be refunded to the Department on account of audit exceptions.

Section II. Project Execution

1. The Grantee may not deviate from the scope of the project without approval of the Department. When one of the conditions in the contract changes, including but not limited to the project scope, a revised estimate of costs, a deletion or additions of items, or need to extend the contract period, the Grantee must submit in writing a request to the Department for approval.
2. The Grantee shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Grantee represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of or have any individual contractual relationship with the Department.
3. In the event the Grantee subcontracts for any or all of the services covered by the contract:
 - a. The Grantee is not relieved of any of the duties and responsibilities provided in this contract;
 - b. The subcontractor agrees to abide by the standards contained herein or to provide such information as to allow the Grantee to comply with these standards; and,
 - c. The subcontractor agrees to allow state and federal authorized representatives access to any records pertinent to its role as a subcontractor.
4. In accordance with Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, the grantee agrees not to subcontract with any vendors debarred or suspended by the State of North Carolina and shall not knowingly enter into any lower tier covered transactions with a person or vendor who is debarred, suspended or declared ineligible.
5. The Grantee agrees to comply with all applicable federal, state and local statutory provisions governing purchasing, construction, land acquisition, fiscal management, equal employment opportunity and the environment including but not limited to the following:

Local Government Budget and Fiscal Control Act (G.S. 159-7 to 159-42); Formal Contracts, Informal Contracts and Purchasing (including but not limited to G.S. 44A-26, G.S. 87-1 to 87.15.4, G.S. 133.1 to 133-40, G.S. 143-128 to G.S.143-135; Uniform

Relocation Assistance Act (G.S. 133-5 to 133-18); Conflict of Interest (G.S. 14-234); Contractors Must use E-Verify (G.S. 143-48.5); Americans With Disabilities Act of 1990 (P.L. 101-336) and ADA Accessibility Guidelines; N.C. State Building Code; and the North Carolina Environmental Policy Act (G.S. 113A-1 to G.S. 113A-12), and Sales Tax Refund (G.S. 105-164.14(c)).

6. The Grantee agrees it provides a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988 (43 CFR Part 12, Subpart DJ).
7. The Grantee agrees to permit periodic audits and site inspections by the Department to ensure work progress in accordance with the approved project, including a close-out inspection upon project completion. After project completion, the Grantee agrees to conduct grant contract compliance inspections at least once every five (5) years and to submit a Department provided inspection report to the Department.
8. The Grantee agrees to operate and maintain the project site so as to appear attractive and inviting to the public, kept in reasonably safe repair and condition, and open for public use at reasonable hours and times of the year, according to the type of facility and area.
9. The Grantee agrees not to discriminate against any person on the basis of race, sex, color, national origin, age, residency, or ability in the use of any property or facility acquired or developed pursuant to this agreement.
10. The Grantee certifies that it:
 - (a) Has neither used nor will use any appropriated funds for payment to lobbyists;
 - (b) Will disclose the name, address, payment details, and purposes of any agreement with lobbyists whom Grantee or its sub-tier contractor(s) or sub-grantee(s) will pay with profits or non-appropriated funds on or after December 22, 1989; and,
 - (c) Will file quarterly updates about the use of lobbyists if material changes occur in their use.

Section III. Project Termination and Applicant Eligibility

1. If through any cause, the Grantee fails to fulfill in a timely and proper manner the obligations under this contract, the Department shall thereupon have the right to terminate this contract by giving written notice to the Grantee of such termination and specifying the reasons thereof. In that event, the Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed in an amount which bears the same ratio to the total compensation as the services

actually performed bear to the total services of the Grantee covered by this contract.

2. Failure by the Grantee to comply with the provisions and conditions set forth in the formal application, PARTF administrative rules and this agreement shall result in the Department declaring the Grantee ineligible for further participation in PARTF, in addition to any other remedies provided by law, until such time as compliance has been obtained to the satisfaction of the Department.

Section IV. Attestation and Execution

N.C.G.S. §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 (Contractor) 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.

In witness whereof, the Department and the Grantee have executed the Agreement in duplicate originals, one of which is retained by each of the parties.

TASK ORDER NO. [___]

This is Task Order No. [____],
consisting of ___ pages.

In accordance with Paragraph 1.01, Main Agreement, of the Agreement Between Owner and Engineer for Professional Services—Task Order Edition dated [date], Owner and Engineer agree as follows:

1. TASK ORDER DATA

a.	Effective Date of Task Order:	
b.	Owner:	
c.	Engineer:	
d.	Specific Project (title)	
e.	Specific Project (description):	
f.	Related Task Orders Supplemented by this Task Order: Superseded by this Task Order:	

2. BASELINE INFORMATION

Baseline Information. Owner has furnished the following Specific Project information to Engineer as of the Effective Date of the Task Order. Engineer's scope of services has been developed based on this information. As the Specific Project moves forward, some of the information may change or be refined, and additional information will become known, resulting in the possible need to change, refine, or supplement the scope of services.

Specific Project Title:

Type and Size of Facility:

Description of Improvements:

Expected Construction Start:

Prior Studies, Reports, Plans: _____

Facility Location(s): _____

Current Specific Project Budget: _____

Funding Sources: _____

Known Design Standards: _____

Known Specific Project Limitations: _____

Specific Project Assumptions: _____

Other Pertinent Information: _____

3. SERVICES OF ENGINEER (“SCOPE”)

A. The specific Basic Services to be provided or furnished by Engineer under this Task Order are:

[Select one of the following options and delete the others.]

Exhibit A to Task Order, “Engineer's Services for Task Order,” as attached to this specific Task Order. **[Attach a scope of services exhibit labeled “Exhibit A.” This exhibit will often be based on E-505’s published Exhibit A to Task Order, as modified for the specific Task Order; or at the user’s option the exhibit may consist of an attached custom-drafted scope of services, or a scope of services set out in a separate document such as a letter or proposal.]**

[or]

as follows: **[Directly insert customized scope of services here.]**

B. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order, with the exception of Resident Project Representative Services, if any, which are compensated separately.

1. If the Scope established in Paragraph 2.A above includes RPR services, then Exhibit D to Task Order is expressly incorporated in this Task Order by reference.

C. Additional Services: Services not expressly set forth as Basic Services in Paragraph 3.A above, and necessary services listed as not requiring Owner's written authorization, or requiring additional effort in an immediate, expeditious, or accelerated manner as a result of unanticipated construction events or Specific Project conditions, **[if more clarity is needed, identify specific situations qualifying as additional effort, such as those described in Exhibit A to Task Order, Paragraph 2.01]** are Additional Services, and will be compensated by the method indicated for Additional Services in this Task Order. All other Additional

Services require mutual agreement and may be authorized by amending the Task Order as set forth in Paragraph 8.05.B.2 of the Main Agreement, with compensation for such other Additional Services as set forth in the amending instrument.

4. DELIVERABLES SCHEDULE

- A. In submitting required Documents and taking other related actions, Engineer and Owner will comply with Exhibit B to Task Order, attached to this specific Task Order.

5. ADDITIONS TO OWNER'S RESPONSIBILITIES

- A. Owner shall have those responsibilities set forth in Article 2 of the Main Agreement, and the following supplemental responsibilities that are specific to this Task Order: **[State any supplementary Owner responsibilities applicable to this Task Order here.]**

6. TASK ORDER SCHEDULE

- A. In addition to any schedule provisions provided in Exhibit B or elsewhere, the parties shall meet the following schedule: **[Indicate "Not Applicable" if the schedule in Exhibit B, as modified for the specific Task Order, is sufficient.]**

Date	Action / Milestone	Comment

7. ENGINEER'S COMPENSATION

- A. The terms of payment are set forth in Article 4 of the Main Agreement.
- B. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
1. Basic Services	\$[]	[]
a. Phase or Subtask 1	\$[]	[]
b. Phase or Subtask 2	\$[]	[]
c. Phase or Subtask 3	\$[]	[]
d. Phase or Subtask 4*	\$[]	[]
2. Resident Project Representative Services*	\$[]	[]

TOTAL COMPENSATION (items 1 and 2)	\$([REDACTED])	
3. Additional Services under Section 2.D above	(N/A)	[REDACTED]

*Based on a [number]-month continuous construction period.

- C. Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Subconsultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

8. ENGINEER'S PRIMARY SUBCONSULTANTS FOR TASK ORDER, AS OF THE EFFECTIVE DATE OF THE TASK ORDER:

- A. [Identify primary Subconsultants]

9. EXHIBITS AND ATTACHMENTS:

- A. Exhibit A to Task Order—Engineer's Services Under Task Order
- B. Exhibit B to Task Order—Task Order Deliverables Schedule
- C. Exhibit D to Task Order—Duties, Responsibilities, and Limitations of Authority of Resident Project Representative Under Task Order
- D. Exhibit E to Task Order-EJCDC® C-626, Notice of Acceptability of Work (Form)
- E. Other:

Execution of this Task Order by Owner and Engineer makes it subject to the terms and conditions of the Main Agreement and its exhibits and appendices, which Main Agreement, exhibits, and appendices are incorporated by this reference.

OWNER:

ENGINEER:

By:

By:

Print Name:

Print Name:

Title:

Title:

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

State of:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name:

Name:

Title:

Title:

Address:

Address:

E-Mail:

E-Mail:

Phone:

Phone:

Date:

Date:

Exhibit K -Task Order Form.

EJCDC® E-505, Agreement between Owner and Engineer for Professional Services—Task Order Edition.
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Page 5 of 6

APPROVED AS TO FORM:

BY: _____
City Attorney or Designee (Designee means Assistant City Attorney)

PRE-AUDIT CERTIFICATION:

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

BY: _____ **Date:** _____
Jacob A. Joyner, Director of Financial Services

APPENDIX 1: REIMBURSABLE EXPENSES SCHEDULE

Reimbursable Expenses are subject to review and adjustment on an annual basis. Rates and charges for Reimbursable Expenses as of the Effective Date of the Main Agreement are:



Corporate Rate Schedule
Effective
January 1, 2024 through December 31, 2024

Corporate Office
324 Evans St
Greenville
NC 27858
Tel 252.758.3746
Fax 252.830.3954

Raleigh Office
4325 Lake Boone Trail
Suite 311
Raleigh
NC 27607
Tel 919.784.9330
Fax 252.830.3954
www.eastgroup.com

Category	Rates	Category	Rates
Principal	\$220	Senior Construction Inspector	\$120
Associate	\$200	Construction Inspector	\$100
Senior Engineer	\$180	Senior Project Administrator	\$80
Engineer	\$160	Project Administrator	\$70
Senior Engineer Intern	\$125	Helper/Technical Assistant	\$50
Engineer Intern	\$115	3D Scanner Technician	\$100
Senior Project Manager (PM III)	\$180	Specialist III	\$130
Project Manager II	\$165	Specialist II	\$120
Project Manager I	\$150	Specialist I	\$110
Senior Architect	\$180	Professional Land Survey (PLS II)	\$145
Architect	\$160	Professional Land Survey (PLS I)	\$130
Senior Landscape Architect	\$180	Land Survey Intern	\$110
Landscape Architect	\$160	Senior Survey Cad Technician	\$100
Designer V	\$150	Survey Cad Technician	\$90
Designer IV	\$140	Survey Party Chief	\$120
Designer III	\$130	Survey Technician	\$95
Designer II	\$120	3 Man Survey Party	\$180
Designer I	\$110	2 Man Survey Party	\$155
BIM Manager	\$150	3 Man Construction Survey Party	\$190
Senior Drafter (Cad)	\$100	2 Man Construction Survey Party	\$170
Drafter (Cad)	\$90		

Pricing for 3D Scanning Service

3D Scanner Labor:	\$100 per hour
3D Scanner Daily Rate:	\$1,000 per day
3D Scanner Weekly Rate:	\$3,700 per week

Reimbursables

Mileage:	Will be charged according to IRS published rates
Expenses:	Cost plus 10% (reproductions, meals, lodging, fees, consultants, etc.)

ENGINEERING
ARCHITECTURE
SURVEYING
TECHNOLOGY

APPENDIX 2: STANDARD HOURLY RATES SCHEDULE

A. Standard Hourly Rates

1. Standard Hourly Rates are set forth in this Appendix 2 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 the Agreement and the governing Task Order.
3. The Standard Hourly Rates are subject to annual adjustment.

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



Corporate Rate Schedule Effective

January 1, 2024 through December 31, 2024

Corporate Office
324 Evans St
Greenville
NC 27858
Tel 252.758.3746
Fax 252.830.3954

Raleigh Office
4325 Lake Boone Trail
Suite 311
Raleigh
NC 27607
Tel 919.784.9330
Fax 252.830.3954
www.eastgroup.com

Category	Rates	Category	Rates
Principal	\$220	Senior Construction Inspector	\$120
Associate	\$200	Construction Inspector	\$100
Senior Engineer	\$180	Senior Project Administrator	\$80
Engineer	\$160	Project Administrator	\$70
Senior Engineer Intern	\$125	Helper/Technical Assistant	\$50
Engineer Intern	\$115	3D Scanner Technician	\$100
Senior Project Manager (PM III)	\$180	Specialist III	\$130
Project Manager II	\$165	Specialist II	\$120
Project Manager I	\$150	Specialist I	\$110
Senior Architect	\$180	Professional Land Survey (PLS II)	\$145
Architect	\$160	Professional Land Survey (PLS I)	\$130
Senior Landscape Architect	\$180	Land Survey Intern	\$110
Landscape Architect	\$160	Senior Survey Cad Technician	\$100
Designer V	\$150	Survey Cad Technician	\$90
Designer IV	\$140	Survey Party Chief	\$120
Designer III	\$130	Survey Technician	\$95
Designer II	\$120	3 Man Survey Party	\$180
Designer I	\$110	2 Man Survey Party	\$155
BIM Manager	\$150	3 Man Construction Survey Party	\$190
Senior Drafter (Cad)	\$100	2 Man Construction Survey Party	\$170
Drafter (Cad)	\$90		

Pricing for 3D Scanning Service

3D Scanner Labor:	\$100 per hour
3D Scanner Daily Rate:	\$1,000 per day
3D Scanner Weekly Rate:	\$3,700 per week

ENGINEERING

Appendix 2: Standard Hourly Rates Schedule.

Exhibits to Main Agreement. EJCDC® E-505, Agreement between Owner and Engineer for Professional Services—Task Order Edition.
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City of Greenville, North Carolina

Meeting Date: 10/07/2024

Title of Item: Agreement for Electric Vehicle Charging Station for Wildwood Park

Explanation: The City of Greenville is currently constructing a new parking lot at Wildwood Park as part of the Parks and Recreation Trust Fund (PARTF) project at the park. The project includes a restroom, small playground, and access off Blue Heron Drive which will lead to a new gravel parking lot. Infrastructure for an electric vehicle charging station is included in the project's scope for the additional parking lot.

As part of the project, staff negotiated an agreement with Blink Network, LLC to install and maintain a single dual-port electric vehicle charging station at no cost to the City. The City will receive 20% of the net revenue generated from the charging station. Blink will provide the charging station at no additional charge and will be responsible for all service and replacement of equipment as needed. This agreement has an initial term of seven (7) years.

The Wildwood Park PARTF improvements are currently underway and will be completed by the end of the calendar year.

Fiscal Note: The City of Greenville will receive 20% of the net revenue from the electric vehicle charging station. The City is responsible for the expenses related to the infrastructure install which is included in the Wildwood Park PARTF Project currently underway.

Recommendation: Approve the agreement with Blink Network, LLC to install, operate, and maintain an electric vehicle charging station at Wildwood Park.

ATTACHMENTS

[Blink-EV Charging Agreement](#)

EXCLUSIVE ELECTRIC VEHICLE CHARGING SERVICES AGREEMENT

BETWEEN:

<p>BLINK NETWORK, LLC</p> <p>An Arizona limited liability company</p> <p>5081 Howerton Way, Suite A Bowie, MD 20715 Tel: (305) 521-0200 Fax: (305) 521-0201: Email: sales@blinkcharging.com</p> <p style="text-align: right;">(hereinafter “Provider”)</p>	<p>AND</p>	<p>Client’s Name _____ EIN _____</p> <p>A _____</p> <p>Client’s State of Incorporation _____</p> <p>Address _____</p> <p>Address _____</p> <p>Client’s Business Address _____</p> <p>Tel: _____</p> <p>Email: _____</p> <p style="text-align: right;">(hereinafter “Client”)</p>
---	-------------------	---

Provider and Client may be individually referred to as a “**Party**” and collectively as the “**Parties**.”

WHEREAS, Provider is engaged in manufacturing, marketing, selling, managing, and servicing electric vehicle (“**EV**”) charging equipment (the “**Equipment**”); and

WHEREAS, Client is the owner, leaseholder, or manager of the property(ies) located at the address(es) listed on Schedule I (“**Property**”); and

WHEREAS, Client and Provider are interested in engaging in a deployment and service arrangement for the Equipment on the Property and establish the terms and conditions of such arrangement through this agreement (the “**Agreement**”).

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. AGREEMENT SUMMARY:

Provider	In some Sections in this Agreement “ Provider ” may include Provider’s affiliates, subcontractors, and/or agents
Effective Date	For the purposes of the Parties obligations, the date this Agreement is Executed; and for the purposes of the expiration of the Term only, the date the Equipment is actually installed
Initial Term	7 years following the Effective Date
Renewal Term	None
Equipment	The Equipment listed on Schedule II
Property	Those property address(es) listed on Schedule I
Equipment Ownership	Provider
Installation Responsibility	Provider
Make Ready Responsibility	Client
Other Charges	Network/connectivity Fees \$20 per month Transaction Fees – 8% of Gross Revenues Provider reimburses: Electricity
Equipment Prices	Covered by Provider
Revenue Sharing	Provider 80% - Client 20%

*All the terms used in the summary above have the same meanings attached to the terms within this Agreement.

1 Engagement

1.1 Provider and Client hereby engage in this exclusive electric vehicle charging service agreement whereby Provider will supply, operate, and service the Equipment listed on Schedule II, for which Client agrees to complete the make-ready requirements in strict accordance with Schedule III (the “**Make Ready Requirements**”) at the property addresses listed on Schedule I, under the terms and conditions hereof throughout the Term.

1.2 **Make Ready.** Client shall complete the Make Ready Requirements at the location(s) within the Property specifically designated for EV charging by Client and set forth and/or depicted by diagrams on Schedule I (collectively, hereinafter the “**Designated Areas**”). The Property list (Schedule I) may be updated from time to time throughout the Term to include additional properties. Client undertakes to (i) use licensed professional services and (ii) obtain all necessary permits to complete the Make Ready Requirements within thirty (30) days following the execution of this Agreement.

1.3 **Installations.** Following Client’s verification to Provider that the electric panels, breakers conduits, and wiring are all fully functional and supply adequate electricity to the Designated Area, Provider shall install the Equipment at the Designated Areas. Provider will connect the Equipment to the electricity grid and bear certain costs associated with the installation of the Equipment. Provider’s installation responsibility is limited to (i) connecting the Equipment to the fully-functioning electric panels, breakers conduits, and wiring that supply adequate electricity; and (ii) the commission of the Equipment on the Blink Network. Provider undertakes to: use licensed professional services and obtain all necessary permits to install the Equipment within sixty (60) days following the execution of this Agreement, subject to Client completing its Make Ready Requirements. The Parties will execute an Installation Date Acknowledgement Certificate (Schedule IV) on the date of Provider’s installation to establish the Effective Date.

1.4 **Services.** Provider will service and operate the Equipment at the Designated Areas for the Term (defined below).

2 Term and Termination

2.1 **Initial Term.** The initial term of this Agreement shall be for a period of seven (7) years commencing on the Effective Date (“Initial Term”).

2.2 **Renewal Term; Term.** Upon expiration of the second Renewal Term, unless terminated earlier, the Agreement shall continue on a month-to-month basis.

2.3 **Termination.** Provider may choose to terminate this Agreement by delivering Client a written notice of its intent to terminate prior to the expiration of the Term or any applicable Renewal Term.

2.4 **Termination Fee; Removal Cost.** In the event Client elects to terminate this Agreement prior to the end of the Initial Term, Client agrees to pay Provider a termination fee per the termination fee schedule, based on a seven (7) year period from the installation of the Equipment (Schedule II) (the “Termination Fee”). If Client terminates the Agreement at any time during the Term (including throughout any of the Renewal Terms) Client will be subject to a removal fee, in the amount of \$750 for every five EV charging stations removed, plus applicable shipping costs, which will cover the removal of the Equipment and shipment of the Equipment back to Provider’s facility in the US (the “Removal Cost”). However, Client shall not be subject to payment of the Removal Cost if it chooses to independently remove the Equipment and ship the Equipment to Provider’s facilities in good operating condition.

2.5 **Removal of Equipment.** Provider shall have the right, but not the obligation, upon the termination or expiration of this Agreement, to enter upon the Property within sixty (60) days after such termination/expiration and to remove any and all Equipment (which all right, title, and interest in said Equipment shall at all times during the term of this Agreement, be deemed property of Provider) as well as any other ancillary property of Provider relating thereto. Provider shall coordinate the removal of Equipment with Client.

3 Equipment

3.1 **Supply.** Provider shall supply the Equipment listed on Schedule II hereof, shortly after the execution of this Agreement.

3.2 **Ownership.** All rights, titles and interests in and to the Equipment shall, at all times during the Term, be and remain the property of Provider. Provider’s ownership shall include, but not be limited, to all hardware, software, records, files and/or data collected or produced by the Equipment (the “Proprietary Data”), as well as any and all environmental (or similar) credits generated by the Equipment or the use or disbursement of electricity by the Equipment.

3.3 **Grants and Rebates.** Provider holds all right, title, and interest in and to any grants and/or rebates received, or which may be received in the future, in connection with the installation, and/or operation of the Equipment and/or the Network under this Agreement. If any grant and/or rebate is received in the name of the Client or its subsidiaries, Client expressly agrees that this Agreement shall act as an assignment of its right, title, and interest in and to such grant and/or rebate.

(Client initials)

3.4 **Additional Equipment.** Provider may assess, from time to time, the need for additional Equipment on the Property based on certain parameters and make its recommendations to the Client. If accepted: (i) Client shall complete the Make Ready Requirements at the locations for any additional Equipment and carry all associated costs; (ii) the Parties will execute an Installation Date Acknowledgement Certificate (Schedule IV) for the additional

Equipment, which will establish a new Effective Date. The Term of this Agreement shall restart from the new Effective Date.

3.5 **Markings.** Provider shall ensure the Equipment is clearly marked with the following information for users: (i) Provider’s contact information for complaints, notification, and service issues and (ii) a statement of Provider’s responsibility to service issues, damages, or loss.

3.6 **Property Condition.** Client agrees, at its own expense and at all times during the Term, to keep public areas, streets, and sidewalks appurtenant to any Designated Areas, reasonably free of debris and rubbish, and in good repair and condition. In addition, Client shall provide and maintain, in compliance with any applicable codes and statutes, such outdoor lights and lighting as may be necessary to illuminate the Designated Areas and Equipment. Client shall be responsible for protecting the Equipment on the Property.

3.7 **Internet Connection.** In the event the Equipment cellular signal is not available or non-functioning, Client will allow Provider to access its Wi-Fi network or wired ethernet (LAN) if such networks are available at the Property.

3.8 **Signage.** Client will install and pay all costs and expenses associated with signage that Provider will supply for marking the spot in the Designated Area(s) as EV charging station area(s).

4 Access to Equipment

4.1 Client grants Provider a license for Provider, its employees, agents, and vendors to enter upon the Property at any time (and to the extent possible, with notice to Client), for the purposes of inspecting, servicing, and maintaining the Equipment. Client shall not interfere with Provider’s services, maintenance, or data collection from the Equipment, or its other responsibilities under this Agreement.

5 Licenses/Permits

5.1 Client must obtain all necessary licenses and/or permits to complete the Make Ready Requirements at the location and for the operation of the Equipment and shall be exclusively responsible for any citations as a result of any default hereunder.

6 Maintenance and Service

6.1 Provider will service and operate the Equipment.

6.2 Provider will maintain and replace the Equipment as necessary to keep the Equipment in proper working order.

6.3 Provider will make available technical service support personnel to promptly service the Equipment in a commercially reasonable manner.

6.4 If Client knows, or becomes aware, of any actual or potential claim against Provider by any person or entity, or any actual or potential malfunction of the Equipment, Client shall promptly notify Provider upon discovery of such claim or malfunction.

6.5 If the Equipment requires maintenance or replacement due to (i) vandalism; or (ii) issues arising from Client’s completion of the Make Ready Requirements, Client shall be responsible for carrying the costs associated with such services. Provider will cover the cost of the first instance of vandalism.

7 Payments and Fees

7.1 **Collection of Revenue.** Provider will record the Equipment usage and collect all revenue generated by the Equipment.

7.2 **Revenue Payment.** Provider shall remit to Client twenty percent (20%) of the Net Revenues generated by the Equipment (“Revenue Payment”).

7.3 “Net Revenues” are defined as the gross revenues generated from the Equipment through EV charging fees and advertising (“Gross

Revenues”), minus: (i) any and all taxes paid by Provider, (ii) transaction fees of eight percent (8%) of Gross Revenues, (iii) \$20.00 per month, per charging station in network/connectivity fees related to the operation of the Equipment, and (iv) Electricity payments or reimbursements by Provider for the period (i), (ii), and (iii) being referred to hereinafter as the “Fees”).

- 7.4 Provider shall issue the Revenue Payment to Client on or before the fifteenth (15th) day of each month subsequent to the applicable monthly revenue period. An activity report for the reported month detailing: (i) the number of transactions, (ii) the Gross Revenues, and (iii) the Fees will accompany each Revenue Payment.
- 7.5 If the Gross Revenues do not cover the Fees incurred in a given month, such unpaid Fees will accrue to the following month.
- 7.6 Client waives all claims for any additional payments beyond the Revenue Payment.
- 7.7 **ACH Payments.** Client will obtain its monthly Revenue Payments through direct electronic transmissions (ACH Payments) by providing its banking information to Provider and executing the ACH form attached as Schedule V hereof. Client agrees that unless Client executes the ACH Form, no Revenue Payment shall be processed to Client unless and until either (i) the aggregate amount due to Client (including the Revenue Payment and the Electricity Reimbursement (defined below)) exceeds \$50.00 or (ii) it is January 15th and there are unpaid Revenue Payments due to Client as of December 31st of the previous year.
- 7.8 **Session Limits.** Provider shall be solely responsible for managing issues relating to session time limits, advertising fees, or other charges relating to the use of the Equipment.
- 7.9 **Electricity.**

Client Electric Meter. If the Equipment is connected to Client’s electric meter, Provider shall reimburse Client for the electricity used by the Equipment (the “**Electricity Reimbursement**”), in accordance with the usage indicated by the Equipment’s internal meter. The meter indicates the exact amount of Kilowatt-hours (kWh) that the Equipment utilizes in charging EVs during each calendar month (“**Monthly kWh**”). Provider will then reimburse the Client for the Monthly kWh at the rate per kWh, which the utility company charges the Client in its monthly electricity bill. The Electricity Reimbursement shall be issued by Provider to Client together with the Revenue Payment. Unless Client executes the ACH Form Schedule V, no Electricity Reimbursement shall be sent to Client unless and until either (i) the aggregate amount due to Client (including the Revenue Payment and the Electricity Reimbursement) exceeds \$50.00 or (ii) it is January 15th and there are unpaid Electricity Reimbursements due to Client as of December 31st of the previous year.

Provider Electric Meter. Provider is hereby granted the option, which it may exercise at its sole discretion, to install its own electric meter at the Property and connect the Equipment to such meter at no cost to Client.

- 7.10 **Equipment Upgrade.** During the Term, Provider, at its sole discretion, may upgrade the Equipment within the Designated Areas. Provider shall be solely responsible for all costs associated with such upgrade.
- 7.11 **Relocation.** During the Term, Client shall not unreasonably withhold its approval of Provider’s request to relocate or remove underperforming Equipment from a specific location to a different location within the Designated Area(s). Provider shall be responsible for all costs associated with the relocation or removal of the Equipment. In the event the relocation or removal of the Equipment is made due to the determination of the Client or a third party, Client shall be responsible for all costs associated with the removal and/or relocation.

8 Press releases and Public Filings

- 8.1 Provider and/or its parent may disclose information relating to this Agreement in any manner necessary to comply with any regulatory responsibilities under the Securities Exchange Act of 1934 or other applicable law.
- 8.2 Provider and/or its parent may release information concerning this Agreement as a press release substantially similar to the draft press release attached as Schedule VI hereto.
- 8.3 Client agrees that Provider may use Client’s name and logo as a customer in its marketing materials.
- 8.4 Client may not disclose any information relating to this Agreement without obtaining Provider’s prior written approval.

9 Exclusive Right and Option

- 9.1 **EV Exclusivity.** Client hereby grants Provider with an exclusive right to install, maintain, service, and operate any EV charging equipment on the Property during the Term.
- 9.2 **Additional Locations.** During the Term, in the event that additional Designated Areas for EV charging equipment will be needed, either on the Property or at another Client-owned/leased/managed location at the same site address, Provider shall have the exclusive option to provide, operate, and service the Equipment at said location (“**Additional Equipment**”). The Additional Equipment shall be listed and added to Schedule II, the new locations shall be added to the list of the Designated Areas Schedule I, and all terms and conditions of this Agreement shall apply to the Additional Equipment.
- 9.3 Provider shall have the sole determination on the appropriate ratio of Equipment in a Designated Area under this Agreement.

10 Indemnification

- 10.1 Client shall indemnify Provider and hold it harmless from and against any and all claims, actions, damages, liabilities, and expenses incurred in connection with loss of life, personal injury, and/or damage to property arising directly out of the negligence or misconduct of Client its agents, employees or servants (the “**Indemnified Matters**”), including costs and reasonable attorneys’ fees related to the Indemnified Matters.
- 10.2 Provider shall indemnify Client and hold it harmless from and against any and all claims, actions, damages, liabilities, and expenses incurred in connection with loss of life, personal injury, and or damage to property arising directly out of the negligence or misconduct of Provider.

11 Limitation of liability

- 11.1 Provider’s aggregate liability under this Agreement shall not exceed the greater of: the aggregate Net Revenues retained by Provider in the calendar year prior to the event giving rise to a claim; or the maximum compensation paid by the applicable insurance if the liability is covered by an existing insurance policy.
- 11.2 In no event will Provider be liable for any lost revenue or profit, lost or damaged data, business interruption, loss of capital, or for special, indirect, consequential, incidental or punitive damages, however caused and regardless of the theory of liability or whether arising out of the use of the Equipment, this Agreement or otherwise or based on any express, implied or claimed warranties not specifically set forth in this Agreement.

12 Confidential Information

- 12.1 The Parties incorporate the attached Non-Disclosure Agreement (Schedule VII) into the terms of this Agreement.

13 Injunctive Relief

- 13.1 Provider shall be entitled to enforce each of the obligations and

restrictive covenants by means of injunctive relief or an order of specific performance and such remedy shall be available in addition to all other remedies available at law or in equity.

- 13.2 In such action, Provider shall not be required to plead or prove irreparable harm or lack of an adequate remedy at law or post a bond or any security.

14 Privacy

- 14.1 Where a Party provides or makes available personal information to the other Party in connection with this Agreement, the first Party must: **(i)** comply with all Privacy Laws in relation to that personal information; and **(ii)** take all steps that are reasonable in the circumstances to keep that personal information safe and secure.
- 14.2 Privacy Laws. Client agrees that to the extent that any Confidential Information provided to Client comprises any Personal Data Client will: (i) comply with all applicable Data Protection Laws “Data Protection Laws” means: (a) the General Data Protection Regulation (EU) 2016/679 (“GDPR”) and any regulations and secondary legislation, as amended or updated from time to time in the Client’s country of residence; (b) any successor legislation to the GDPR or the Data Protection Acts 1988 and 2018; and (c) the Privacy laws of the State the Client is located, in connection with the processing of such Personal Data (the terms “processing” and “Personal Data” having the meaning given to such terms in Data Protection Laws from time to time); and (ii) when applicable, not transfer Confidential Information comprising Personal Data outside the EEA unless the Client can ensure that such transfer is performed in accordance with the Data Protection Laws.

15 Force majeure

- 15.1 If Provider is delayed in or prevented from the performance of any act required under this Agreement by reason of any strike, lockout, labor trouble, inability to procure materials or energy, failure of power, weather, restrictive governmental laws or regulations, riot, insurrection, picketing, sit-ins, war, pandemic or other unavoidable reason of a like nature not attributable to the negligence or fault of Provider, the performance of such work or action will be excused for the period of the unavoidable delay and the period for the performance of any such work or action will be extended for an equivalent period.

16 Dispute resolution

- 16.1 This Section 16 applies to any dispute which arises between Provider and Client in connection with this Agreement (“Dispute”).
- 16.2 **Amicable Resolution.** If either Party considers that a Dispute has arisen as a result of the conduct of the other Party, it may issue a notice to the other Party, setting out reasonable particulars of the conduct which gives rise to the Dispute (“Dispute Notice”). The Parties must promptly hold discussions between their representatives after the issue of a Dispute Notice to attempt to resolve the Dispute (the “Discussion”).
- 16.3 If the Dispute has not been resolved within ten business days following the Discussion, either Party may pursue its rights and remedies under this Agreement as it sees fit.
- 16.4 **Court Proceedings.** Notwithstanding the above, Provider may, at any time, commence court proceedings in relation to a Dispute or claim arising in connection with this Agreement.
- 16.5 **Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of North Carolina, without regard to conflict of laws. Any suit involving any Dispute arising under this Agreement may only be brought in local, State, or Federal Court of Pitt County, North Carolina, which shall have exclusive jurisdiction over the subject matter of the Dispute.
- 16.6 EACH OF THE PARTIES TO THIS AGREEMENT HEREBY

IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER AGREEMENT OR INSTRUMENT DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

17 Notice

- 17.1 Any notice required to be given or otherwise given pursuant to this Agreement shall be in writing and shall be: **(i)** hand-delivered, or **(ii)** mailed by certified mail, return receipt requested, or **(iii)** sent via recognized overnight courier service to the addresses listed above, or **(iv)** transmitted by fax, or **(v)** by email.
- 17.2 Notwithstanding Section 17.1, above neither Party may use email or fax transmissions to give notice of breach or termination to the other Party, such breach/termination notice must be sent by certified mail return receipt requested.

18 Insurance

- 18.1 Each Party shall hold and maintain, at all times during the Term, fitting and suitable insurance policies according to the reasonably perceived risks associated with each Party’s responsibilities under this Agreement and in accordance with standard industry practice.

19 General

- 19.1 Nothing in this Agreement shall constitute or be deemed to constitute a partnership or joint venture between the parties hereto or constitute or be deemed to constitute any Party as the agent or employee of the other Party for any purpose whatsoever, and neither Party shall have authority or power to bind the other or to contract in the name of, or create a liability against, the other in any way or for any purpose.
- 19.2 Client agrees to comply with all applicable laws, statutes, regulations or rules, including those of applicable self-regulatory bodies in its performance of this Agreement.
- 19.3 Client may not assign, in whole or in part, or novate its rights and obligations under this Agreement without the prior written consent of Provider.
- 19.4 This Agreement supersedes all previous agreements about its subject matter. This Agreement embodies the entire agreement between the parties.
- 19.5 A right under this Agreement may only be waived in writing signed by the party granting the waiver and is effective only to the extent specifically set out in the waiver.
- 19.6 This Agreement may be signed in any number of counterparts. All counterparts together make one instrument. This Agreement may be signed electronically.
- 19.7 **Client Representation:** If Client is not the Property Owner, or Leaseholder of the Property, and in the case of a leaseholder, if Client does not have authority to carry out its obligations under this Agreement pursuant to its lease agreement with the Property Owner, Client hereby expressly warrants that it will obtain the Property Owner or Leaseholder’s signature in the section of the signature panel titled “Property Owner/Leaseholder’s Acceptance and Agreement.” **[Signature Page Follows]**

IN WITNESS WHEREOF, the Parties hereto have each caused this Agreement to be executed by their officers duly authorized to execute

Signed by the authorized representative of **PROVIDER**:

Signed by the authorized representative of **CLIENT**:

Signature: *Michael Battaglia*.....

Signature:

Name: Michael Battaglia.....

Name:

Position: Chief Operating Officer.....

Position:

Date: 2024-08-29 | 9:00 AM EDT.....

Date:

Property Owner/Lessee's Acceptance and Agreement:

By adding our signature below, we accept all of the terms of this Agreement that might apply to us, or might be affected by our ownership or leasehold on the Property, during the Term hereof. Additionally, our signature below expressly grants the authority to Client to enter into this Agreement and carry out any obligations and make any decisions pursuant to this Agreement which may need our authorization due to our ownership or leasehold on the Property:

Signature:

Name:

Position:

Date:

SCHEDULE I – LIST OF PROPERTIES

Property Address	Designated Area	Mark on the Map	Point of Contact
		Yes	

*The information in this schedule is subject to change at the discretion of Provider following Provider’s completion of its site assessment. Provider shall provide Client written notice of any changes.

SCHEDULE II – EQUIPMENT; TERMINATION FEE SCHEDULE

Equipment Name	Details	Serial Numbers
Blink- Series 8 Plus	1 unit 2 Ports	

*The information in this schedule is subject to change at the discretion of Provider. Provider shall provide Client written notice of any changes.

Termination Fee Schedules:

[insert schedule]

Month	Series 2+ Dual Wall - 80A, 18" cable, Credit Card Reader			Cable Management System		Pedestal Mount System	
	MSRP		\$8,740.00	MSRP	\$599	MSRP	\$250
1	-\$34.33		\$8,705.67	-\$2.35	\$597	-\$0.99	\$249
2	-\$34.33		\$8,671.34	-\$2.35	\$594	-\$0.99	\$248
3	-\$34.33		\$8,637.01	-\$2.35	\$592	-\$0.99	\$247
4	-\$34.33		\$8,602.68	-\$2.35	\$590	-\$0.99	\$246
5	-\$34.33		\$8,568.35	-\$2.35	\$587	-\$0.99	\$245
6	-\$34.33		\$8,534.02	-\$2.35	\$585	-\$0.99	\$244
7	-\$34.33		\$8,499.69	-\$2.35	\$583	-\$0.99	\$243
8	-\$34.33		\$8,465.36	-\$2.35	\$580	-\$0.99	\$242
9	-\$34.33		\$8,431.03	-\$2.35	\$578	-\$0.99	\$241
10	-\$34.33		\$8,396.70	-\$2.35	\$576	-\$0.99	\$240
11	-\$34.33		\$8,362.37	-\$2.35	\$573	-\$0.99	\$239
12	-\$34.33		\$8,328.04	-\$2.35	\$571	-\$0.99	\$238
13	-\$34.33		\$8,293.71	-\$2.35	\$568	-\$0.99	\$237
14	-\$34.33		\$8,259.38	-\$2.35	\$566	-\$0.99	\$236
15	-\$34.33		\$8,225.05	-\$2.35	\$564	-\$0.99	\$235
16	-\$34.33		\$8,190.72	-\$2.35	\$561	-\$0.99	\$234
17	-\$34.33		\$8,156.39	-\$2.35	\$559	-\$0.99	\$233
18	-\$34.33		\$8,122.06	-\$2.35	\$557	-\$0.99	\$232
19	-\$34.33		\$8,087.73	-\$2.35	\$554	-\$0.99	\$231
20	-\$34.33		\$8,053.40	-\$2.35	\$552	-\$0.99	\$230
21	-\$34.33		\$8,019.07	-\$2.35	\$550	-\$0.99	\$229
22	-\$34.33		\$7,984.74	-\$2.35	\$547	-\$0.99	\$228
23	-\$34.33		\$7,950.41	-\$2.35	\$545	-\$0.99	\$227
24	-\$34.33		\$7,916.08	-\$2.35	\$543	-\$0.99	\$226
25	-\$34.33		\$7,881.75	-\$2.35	\$540	-\$0.99	\$225
26	-\$34.33		\$7,847.42	-\$2.35	\$538	-\$0.99	\$224
27	-\$34.33		\$7,813.09	-\$2.35	\$536	-\$0.99	\$223
28	-\$34.33		\$7,778.76	-\$2.35	\$533	-\$0.99	\$222
29	-\$34.33		\$7,744.43	-\$2.35	\$531	-\$0.99	\$221
30	-\$34.33		\$7,710.10	-\$2.35	\$528	-\$0.99	\$220
31	-\$34.33		\$7,675.77	-\$2.35	\$526	-\$0.99	\$219
32	-\$34.33		\$7,641.44	-\$2.35	\$524	-\$0.99	\$218
33	-\$34.33		\$7,607.11	-\$2.35	\$521	-\$0.99	\$217
34	-\$34.33		\$7,572.78	-\$2.35	\$519	-\$0.99	\$216
35	-\$34.33		\$7,538.45	-\$2.35	\$517	-\$0.99	\$215
36	-\$34.33		\$7,504.12	-\$2.35	\$514	-\$0.99	\$214
37	-\$34.33		\$7,469.79	-\$2.35	\$512	-\$0.99	\$213
38	-\$34.33		\$7,435.46	-\$2.35	\$510	-\$0.99	\$212
39	-\$34.33		\$7,401.13	-\$2.35	\$507	-\$0.99	\$211
40	-\$34.33		\$7,366.80	-\$2.35	\$505	-\$0.99	\$210
41	-\$34.33		\$7,332.47	-\$2.35	\$503	-\$0.99	\$209
42	-\$34.33		\$7,298.14	-\$2.35	\$500	-\$0.99	\$208
43	-\$34.33		\$7,263.81	-\$2.35	\$498	-\$0.99	\$207
44	-\$34.33		\$7,229.48	-\$2.35	\$496	-\$0.99	\$206
45	-\$34.33		\$7,195.15	-\$2.35	\$493	-\$0.99	\$205
46	-\$34.33		\$7,160.82	-\$2.35	\$491	-\$0.99	\$204
47	-\$34.33		\$7,126.49	-\$2.35	\$489	-\$0.99	\$203
48	-\$34.33		\$7,092.16	-\$2.35	\$486	-\$0.99	\$202
49	-\$34.33		\$7,057.83	-\$2.35	\$484	-\$0.99	\$201
50	-\$34.33		\$7,023.50	-\$2.35	\$481	-\$0.99	\$201
51	-\$34.33		\$6,989.17	-\$2.35	\$479	-\$0.99	\$200
52	-\$34.33		\$6,954.84	-\$2.35	\$477	-\$0.99	\$199
53	-\$34.33		\$6,920.51	-\$2.35	\$474	-\$0.99	\$198
54	-\$34.33		\$6,886.18	-\$2.35	\$472	-\$0.99	\$197
55	-\$34.33		\$6,851.85	-\$2.35	\$470	-\$0.99	\$196
56	-\$34.33		\$6,817.52	-\$2.35	\$467	-\$0.99	\$195
57	-\$34.33		\$6,783.19	-\$2.35	\$465	-\$0.99	\$194
58	-\$34.33		\$6,748.86	-\$2.35	\$463	-\$0.99	\$193
59	-\$34.33		\$6,714.53	-\$2.35	\$460	-\$0.99	\$192
60	-\$34.33		\$6,680.20	-\$2.35	\$458	-\$0.99	\$191
61	-\$34.33		\$6,645.87	-\$2.35	\$456	-\$0.99	\$190
62	-\$34.33		\$6,611.54	-\$2.35	\$453	-\$0.99	\$189
63	-\$34.33		\$6,577.21	-\$2.35	\$451	-\$0.99	\$188
64	-\$34.33		\$6,542.88	-\$2.35	\$449	-\$0.99	\$187
65	-\$34.33		\$6,508.55	-\$2.35	\$446	-\$0.99	\$186
66	-\$34.33		\$6,474.22	-\$2.35	\$444	-\$0.99	\$185
67	-\$34.33		\$6,439.89	-\$2.35	\$442	-\$0.99	\$184
68	-\$34.33		\$6,405.56	-\$2.35	\$439	-\$0.99	\$183
69	-\$34.33		\$6,371.23	-\$2.35	\$437	-\$0.99	\$182
70	-\$34.33		\$6,336.90	-\$2.35	\$434	-\$0.99	\$181
71	-\$34.33		\$6,302.57	-\$2.35	\$432	-\$0.99	\$180
72	-\$34.33		\$6,268.24	-\$2.35	\$430	-\$0.99	\$179
73	-\$34.33		\$6,233.91	-\$2.35	\$427	-\$0.99	\$178
74	-\$34.33		\$6,199.58	-\$2.35	\$425	-\$0.99	\$177
75	-\$34.33		\$6,165.25	-\$2.35	\$423	-\$0.99	\$176
76	-\$34.33		\$6,130.92	-\$2.35	\$420	-\$0.99	\$175
77	-\$34.33		\$6,096.59	-\$2.35	\$418	-\$0.99	\$174
78	-\$34.33		\$6,062.26	-\$2.35	\$416	-\$0.99	\$173
79	-\$34.33		\$6,027.93	-\$2.35	\$413	-\$0.99	\$172
80	-\$34.33		\$5,993.60	-\$2.35	\$411	-\$0.99	\$171
81	-\$34.33		\$5,959.27	-\$2.35	\$409	-\$0.99	\$170
82	-\$34.33		\$5,924.94	-\$2.35	\$406	-\$0.99	\$169
83	-\$34.33		\$5,890.61	-\$2.35	\$404	-\$0.99	\$168
84	-\$5,890.61		\$0.00	-\$403.95	\$0.00	-\$167.83	\$0

SCHEDULE III – MAKE READY REQUIREMENTS

Client shall be responsible for the make-ready work as required to facilitate the final installation of the charger pedestal(s) and charger(s) included under the Agreement. Provider will be responsible for the installation of the pedestal(s) and charger(s) on top of the make-ready work to provide a complete and functional installation without any additional work or adjustment to the make-ready installation provided by Client.

The make-ready requirements include the following configurations:

- Dual-port Charger with Pedestal on Sidewalk
- Single-port Charger with Pedestal on Sidewalk
- Dual-port Charger with Pedestal on Concrete Pad
- Single-port Charger with Pedestal on Concrete Pad
- Dual-port Charger Wall Mount
- Single-port Charger Wall Mount

A dual-port charger is an assembly of an IQ-200 Advanced unit and IQ-200 Smart unit on a common triangular pedestal. The dual-port charger can be configured to share a single circuit or to have dedicated circuits for each port. The agreement will specify the applicable wiring configuration to be installed as part of the make-ready.

Please note that any variation to these requirements must be approved in writing by Provider.

General Requirements – applicable to all configurations

- The following materials are required to be submitted to Provider within 30 days of Agreement execution.
 - A scaled Site Plan shall be provided that provides the following minimum information with respect to the installation:
 - Client name, site address
 - Parking lot layout including all travel lanes and ingress/egress
 - Location of source electric panel
 - Location of charger pedestal(s)
 - Conduit run from source panel to charger pedestal(s)
 - Location of disconnects, if any
 - Location of bollards, wheel stops, or other protective means to be installed
 - One-line electrical diagram for the circuits
 - Photos of electric source panel, typical grade conditions where trenching, and pedestal location(s)
- Make-ready work will not commence until Provider has reviewed and accepted the above materials and Client has secured any required permits. Provider reserves the right to make edits on-site plan prior to construction by Client for ADA compliance and/or other make-ready requirements
- All work shall be in conformance with the National Electric Code, latest edition, and all requirements of the local Authorities Having Jurisdiction (AHJ). All codes and requirements are considered minimum requirements and are superseded by these make-ready requirements where such make-ready requirements stricter. Client is responsible for obtaining any required permits and passing any required inspections.
- Conduit shall be **1-1/4"** minimum
- Underground conduit shall be schedule 40 PVC where permitted by code. No conduit should be visible on the site or exterior of the facility. Where PVC is not permitted, use IMC conduit and fittings suitable for the installation conditions as prescribed by code.
- Interior conduit in electric service rooms and other areas shall be EMT with compression style sealed couplings. Where EMT is not permitted, use other approved wiring methods, with the exception of flexible conduit.
- A separate conduit or pair of conduits shall be run from the electric source panel to each of the pedestals included in the agreement. Where 2 circuits are required to feed the pedestal, each circuit should be run in a separate conduit.
- Conductors shall be copper, type THHN, **#6** AWG minimum, **#2** AWG preferred.
- Each circuit to be connected to a 2-pole circuit breaker (single phase **208-240V** Supply) in the electric source panel. New breakers shall be provided, regardless of whether existing breakers are suitable. Breaker rating shall be **60A** minimum, **100A** preferred. Breaker rating shall match wire ampacity per code requirements. Panel directory to be updated to include added circuits.
- Client is responsible for determining the adequacy of the source electric panel to support the charging load. Client is responsible for any work required to provide a source panel suitable for the intended charger load.
- Provide a minimum of a **60"** wire whip at pedestal stub-up to facilitate charger connection without the need to extend wiring. Coil and attach wire to stub for protection.
- Upon completion of the installation, and approval of required AHJ inspections, the installation shall be commissioned. Commissioning for make ready includes the following:
 - Energize circuit(s) and test voltage at stub-up
 - Shut breakers and tag/lockout.
 - Photograph completed installation including circuit breaker panels, restoration of trenching, stub up with wire whip of intended pedestal/charger location, and intended parking spots
 - Update site plan and 1-line to represent as-built conditions.
 - Certify via a certificate of completion
- Upon completion of commissioning, cover and protect stub-up and wiring, by placing a wood box over the stub and wiring and attach to slab with concrete screws within the pedestal footprint such that holes will not be visible upon final installation. Mark box with warning and protect

the public from any potential trip hazard with warning tape, cones, etc. as required. In the case of wall mount installation, the box shall be attached to wall.

- All conductors should be properly identified at both ends (panel and charger). Identification shall include panel id, location, and circuit number(s).
- For dual-port make-ready where 1 circuit is required, a junction box at grade, or junction box at location where conduit goes underground is required. Wire connection should be made with insulated Polaris multi-tap connectors for energized conductors and copper split bolt or weld for ground conductors. Tap conductors should be same size as circuit conductor. From junction box extend 2 conduits to pedestal and stub up as specified above.
- If source electrical panel is not visible from charger location, or as otherwise required by the AHJ, disconnect switches shall be provided for each circuit in accordance with code requirements.
- Client will be responsible for installation of wheel stops, bollards, or other protective means as determined or otherwise required by the AHJ and/or by Provider.
- Except for wall-mounted installations, Client will install an 8' U-Chanel signpost, sunk 2' into the ground with 6' exposed, at the head of each parking stall serviced by a charger.
- Client is responsible for ensuring charger connectivity through Wi-Fi or cellular booster if cellular sim cards do not provide connectivity. Provider can provide assistance in helping Client understand connectivity issues where the IQ 200 cellular sim card is not sufficient.

Configuration: Single/Dual-port Charger with Pedestal on Sidewalk

- A minimum of 36" clear sidewalk must be maintained after installation pedestal.
- Curb of sidewalk must be no greater than 6" and no less than 4" above the adjacent parking surface to meet ADA requirements.
- For single-port, the center of conduit stub-up to be 3.5" off-centered between parking stalls and set back 10" from the face of the curb (This will create 4" between the face of the charger and the face of the curb).
- For dual-port, the center of conduit stub-up to be centered between parking stalls and set back 12" from the face of the curb (This will create 3.5" between the tip of the triangle and the face of the curb, which complies with ADA requirements).

Configuration: Single/Dual-port Charger with Pedestal on Concrete Pad

- Concrete pad to be minimum 36" x 36". Pad shall be designed in accordance with local code requirements and AHJ. Client is responsible for any engineering, stamps, fees, etc., associated with the work.
- Concrete pad to be finished flush with adjacent parking surface or grade.
- Rebar shall be maintained with a minimum 3" clearance from forms and grade.
- Concrete pad(s) to be centered between parking spaces and align with the outside edge of the parking stall. No portion of the concrete pad should be located within the parking stall.
- Conduit stub-up to be centered between parking spaces and set back 12" outside the edge of the parking stall for dual-port.
- For single-port, the center of conduit stub-up to be 3.5" off-centered between parking stalls and set back 10" from the face of the curb

Configuration: Single/Dual-port Charger - Wall Mounted

- Conduit should be routed to a point 24" above the finished floor, below and centered on the intended charger location.
- Conduit should be routed parallel and perpendicular to the structure.
- Conduit should be routed up to the charger from below. If the conduit is fed from above, it should drop down a minimum of 24" horizontally from the charger location to prevent physical interference.

SCHEDULE IV – INSTALLATION DATE ACKNOWLEDGMENT

Installation Date Acknowledgment

For the purposes of determining the term of the Agreement, pursuant to Paragraph 1.3 or 3.4 hereof, the following date shall be deemed the acknowledgment of the initial date of installation of the Equipment at the following location(s):

Location: _____

Date of Installation: _____

Serial number(s): _____ ; _____ ; _____ ; _____ ; _____ ; _____ ; _____ ; _____ ; _____ ; _____

Signed by the authorized representative of **PROVIDER**:

Signed by the authorized representative of **CLIENT**:

Signature:

Signature:

Name:

Name:

Position:

Position:

Date:

Date:

Signed by the authorized representative of **MANAGER (if applicable)**:

Signature:

Name:

Position:

Date:

SCHEDULE V – ACH FORM

CLIENT AUTHORIZATION/ACKNOWLEDGMENT

I hereby authorize Blink Network, LLC (the “**Provider**”) to electronically credit my account as follows:

I agree that the ACH transactions I hereby authorize comply with all applicable law.

Bank Name: _____

Name on the Account: _____

Routing Number: _____

Account Number: _____

I understand that this authorization will remain in full force and effect until I notify the Provider in writing that I wish to revoke this authorization. I understand that the Provider requires at least two weeks prior notice in order to cancel this authorization. I understand that debits made for the sole purpose of correcting erroneous credits do not require my authorization.

Signature: _____

Name: _____

Date: _____

SCHEDULE VI – DRAFT PRESS RELEASE

Blink Charging to Deliver Charging Stations to Client
Blink Inks Deal with Client for Expansion of its Charging Station Network

Miami Beach, FL – xxxxxx xx, 2020 – Blink Charging Co. (NASDAQ: BLNK, BLNKW) (“Blink” or the “Company”), a leading owner and operator of electric vehicle (EV) charging equipment and services, and client, a provider of [products/services], announced the installation of xx Level 2 EV charging stations at location. Blink will provide its EV charging stations to client employees, tenants, and visitors in support of the rapidly increasing number of electric vehicles.

“Our IQ 200 chargers are the fastest Level 2 AC charging stations available, producing 80 amps of output and capable of providing approximately 65 miles of charge in an hour. With this agreement, we continue to expand and monetize our network of stations throughout the country,” remarked Blink Founder and CEO, Michael D. Farkas. “We are honored to be a part of client’s corporate sustainability initiative that is leading the way in adopting green living through the reduction of carbon dioxide emissions caused by traditional gasoline-powered vehicles.”

Blink’s charging stations are compatible with any fully electric or plug-in hybrid vehicle, including the entire line of Tesla vehicles. The charging units installed at client location join the rapidly expanding network of Blink Charging stations, which are easily accessible throughout the country, using Blink’s mobile app, the Blink Charging website (www.blinkcharging.com), and Google Maps.

Client quote.

Custom paragraph for client initiatives/products/services.

According to the U.S. Department of Energy’s EV Everywhere Workplace Charging Challenge (2015), access to electric vehicle charging stations at workplaces continues to increase, with 90% of employers reporting their stations were in regular use five days a week. Corporations and employers are providing EV charging stations at the workplace as an employee benefit to attract and retain individuals who are environmentally conscious.
 # # #

ABOUT BLINK CHARGING

Blink Charging (Nasdaq: BLNK, BLNKW) is a leader in electric vehicle (EV) charging equipment and networked EV charging stations, enabling EV drivers to easily charge at any of its 23,000 deployed charging locations worldwide. The Company’s principal line of products and services is its Blink EV charging network (“Blink Network”), EV charging equipment, and EV charging services. The Blink Network utilizes a proprietary cloud-based software that operates, maintains, and tracks the EV charging stations connected to the network and the associated charging data. With global EV purchases forecasted to rise to 10 million by 2025 from approximately 2 million in 2019, the Company has established key strategic partnerships to roll out adoption across numerous location types, including parking facilities, multi-family residences and condos, workplace locations, healthcare/medical facilities, schools and universities, airports, auto dealers, hotels, mixed-use municipal locations, parks and recreation areas, religious institutions, restaurants, retailers, stadiums, supermarkets, and transportation hubs. For more information please visit: <https://www.blinkcharging.com/>.

ABOUT CLIENT

SCHEDULE VII – NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Non-Disclosure and Confidentiality Agreement (this “NDA”) is made on the same day of the Exclusive Electric Vehicle Charging Services Agreement (“Agreement”), by and between the **Provider** and the **Client**. (Client and Provider collectively referred to as “Parties” and individually as “Party”).

WHEREAS: A. Provider, for the mutual benefit of the Parties may have provided, and may wish further to provide, to Client, certain commercially valuable, proprietary and confidential business information and trade secrets in relation to the Purpose (defined below). **B.** Client recognizes that Provider has legitimate business interests in protecting the Confidential Information, including but not limited to, (i) trade secrets as defined by the Florida Uniform Trade Secrets Act; (ii) valuable, confidential business, or professional, information that otherwise does not qualify as trade secrets; (iii) substantial relationships with specific, prospective, or existing, Clients; and (iv) Client goodwill associated with Provider’s business.

In consideration of the mutual covenants contained herein, the Parties hereby agree as follows:

1. DEFINITIONS. In this NDA, the following terms have the following meanings: (i) “**Affiliate**” with respect to either Party, shall mean any entity which directly or indirectly controls or is controlled by, or is under common control with that Party. (ii) “**Confidential Information**” or “**CI**” shall mean (a) any and all information which is disclosed by Provider (whether before or after the date of this NDA and in whatever form) to Client including but not limited to, the revenue payments, financial statements, analyses, budgets, forecasts, evaluations, processes, products (and including, as to specific processes or products, information relating to the formulation, composition, methods of manufacture, potential uses, test methods or other technical or scientific features), business strategies, plans and procedures, trade secrets, samples, prototypes, designs, drawings, photographs, specifications, standards, manuals, formulae, algorithms, computations, compilations, data, software, programs, databases, know-how, mask work, concepts, intellectual property, costs, profits, sales, customer and supplier lists, customer requirements, price quotations of or in relation to Provider and/or its Affiliates, which Provider considers to be confidential and which is identified by Provider as confidential, or which by necessary implication must have been imparted in confidence; (b) the terms of the Agreement including this NDA; and (c) the fact that discussions are taking place between the Parties and the subject matter of the discussions. Further, all analyses, compilations, studies, summaries, extracts, notes and other documentation prepared by Client arising out of the CI shall also be included within the purview of CI and shall be treated as such. (iii) “**Purpose**” shall mean the deployment and operation of Provider’s charging stations and network connectivity (“**Equipment**”) at Client’s properties. (iv) “**Representatives**” shall mean any or all of a Party’s directors, officers, employees, agents, contractors and advisors.

2. CONFIDENTIALITY AND RESTRICTED USE. Client hereby expressly agrees:

2.1 to hold the CI in strict confidence and use any CI only for the Purpose and for no other purpose and in particular, but without prejudice to the generality of the foregoing, Client undertakes (a) not to make any commercial use of any CI; and (b) not to use any CI for the benefit of itself or of any third party other than pursuant to a further agreement with Provider.
 2.2 that without the prior written consent of Provider, Client will not in any manner or at any time publish or disclose, disseminate or otherwise provide the CI, in whole or in part, to any person or entity except to such of its Affiliates and/or Representatives as are directly concerned with the Purpose and whose knowledge of the CI is essential for the Purpose (“**Permitted Person**”).

2.3 to safeguard the CI in the same manner as Client would safeguard its own information of a similar nature, but with no less than reasonable care under the circumstances.

2.4 to institute and maintain appropriate security measures to carry out the Purpose including limiting the disclosure of the CI to the Permitted Person only if the Permitted Person is subject to an obligation of confidentiality and it has been intimated that Provider’s CI must be kept confidential and must be used only for the Purpose. Client shall ensure that each Permitted Person strictly complies with the terms of this NDA and will be unconditionally responsible for any unauthorized disclosure or use of Provider’s CI or breach of this NDA.

2.5 that it shall immediately inform or advise Provider of any unauthorized use or disclosure, misappropriation or misuse by any person or entity of any CI upon Client having actual notice or actual knowledge of the same or having any reason to suspect such unauthorized use or disclosure or misappropriation.

2.6 Unless specifically requested to do so by Provider, Client shall be prohibited from analyzing the composition of or modifying, changing, merging, adapting, translating, reverse engineering, decompiling, disassembling or preparing works derived from any Equipment or the CI.

2.7 Subject to the provisions of this NDA, Client may disclose CI if and to the extent that it is compelled or required to do so by a court or other authority that has jurisdiction over Client. Before making such a disclosure Client shall advise Provider of such required disclosure promptly upon learning thereof in order to afford Provider a reasonable opportunity to contest, limit and/or assist Client in complying with any such requirement for disclosure.

2.8 The obligations of confidentiality under this NDA shall not apply to any part of the CI which (i) Client can demonstrate, by its written records, is already known to Client, free of any confidentiality obligation or restriction, at the time that it was disclosed to Client; (ii) is or becomes publicly known through no wrongful act or breach of this NDA on the part of Client; (iii) has been independently developed by Client without breach of this NDA or infringement of the proprietary rights of Provider; (iv) has been rightfully received from a third party without restriction on disclosure and without the breach of this NDA or any confidentiality obligation imposed on such third party; or (v) has been approved in writing for disclosure to third parties by Provider without imposing any confidentiality obligation.

2.9 In the event CI involving any public entity is disclosed, both parties agree to refrain from trading the stock of the disclosing company until that material non-public information is publicly disseminated.

3. OWNERSHIP OF CONFIDENTIAL INFORMATION. Client recognizes and agrees that all CI received by it from Provider is and shall remain the exclusive property of Provider and/or its respective Affiliates and that this NDA neither intends to transfer the ownership of nor grants license or any other right, express or implied, in relation to the CI or to any other intellectual property disclosed by Provider to Client. Client undertakes that it will not file any application for a patent, design and/or utility model based on or derived from any intellectual property of Provider (whether already filed or not).

4. NATURE OF OBLIGATION. Client acknowledges and agrees that (a) the CI is a special, valuable and unique asset to Provider, its parent, subsidiaries and affiliates; (b) any unauthorized disclosure or use of the CI could cause irreparable harm and loss to Provider and/or its respective Affiliates; (c) monetary damages may be inadequate to compensate Provider and/or its respective Affiliates for a breach of this NDA; and (d) in addition to any other remedies at law or in equity available for breach of this NDA, Provider shall be entitled to specific performance, injunctive or other equitable relief as may be necessary to restrain any continuing or further breach by Client without showing or proving any actual damages sustained by Provider and/or its respective Affiliates in addition to any other relief or other applicable remedies. Moreover, any such award of relief to Provider shall include recovery of all actual and reasonable costs associated with enforcement of this NDA.

5. RETURN OF CONFIDENTIAL INFORMATION. All CI of Provider remains the property of that party and will be returned to it or destroyed at its request. Within 30 days of receiving such a request from Provider, Client will comply with the request and provide a written certification, signed by an officer, of its compliance.

6. REPRESENTATIONS AND WARRANTIES

6.1 Each Party agrees, acknowledges, represents, warrants and covenants with the other Party that: (i) this NDA constitutes a legal, valid and binding obligation and is enforceable against it in accordance with the terms hereof; and (ii) the execution, delivery, and performance of this NDA have been duly authorized by all requisite corporate actions and will not constitute a violation of any statute, judgment, order, decree or regulation of any court or arbitral tribunal applicable or relating to the Party, its assets or its business.

6.2 Provider does not make any representation or warranty as to the accuracy or completeness about its CI (or any part thereof) and Client should satisfy itself through independent inquiry and investigation with respect to these matters. Client agrees that neither Provider nor its Representatives shall have any liability in any manner whatsoever for any loss or damage suffered by Client as a result of relying upon or using any CI of Provider including, but not limited to, any consequential, incidental, direct, indirect, special, or punitive damages incurred by Client.

7. TERM. This NDA shall be effective from the date of the Agreement and shall continue in force thereafter for the longer of two (2) years following the termination of any business relations between the Parties.

8. INDEMNIFICATION. Client hereby agrees to indemnify and hold harmless Provider and Provider’s Affiliates from and against any and all losses, damages, suits, proceedings, claims, demands, liabilities, fines, costs and expenses (whether direct or indirect, and whether or not resulting from third party claims), including interest and penalties with respect thereto and out-of-pocket expenses, including reasonable attorneys’ fees and disbursements arising out of or resulting from any breach of the provisions of this NDA by Client or its Representatives, including unauthorized use or disclosure of the CI by Client or, as the case may be, its Representatives.

9. SEVERABILITY AND WAIVER. In the event that any one or more of the provisions of this NDA shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Moreover, if any one or more of the provisions contained in this NDA shall be held to be excessively broad as to duration, activity or subject, such provisions shall be construed by limiting and reducing them so as to be enforceable to the maximum extent allowed by applicable law. Furthermore, a determination in any jurisdiction that this NDA, in whole or in part, is invalid, illegal or unenforceable shall not in any way affect or impair the validity, legality or enforceability of this NDA in any other jurisdiction.

10. ASSIGNMENT. This NDA shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, personal representatives, executors and administrators. Neither Party shall assign nor transfer any of its rights or obligations under this NDA to any third Party without the prior written consent of the other Party and any attempt to do so will be null and void, except that either Party may assign or transfer any of its rights or obligations to any of its Affiliates, or an acquirer of its controlling interest or substantially all its assets without consent of the other Party.

11. GOVERNING LAW AND JURISDICTION. The provisions in Section 16 of the Agreement will apply to this NDA.

Provider Initials MB Client Initials _____



City of Greenville,
North Carolina

Meeting Date: 10/07/2024

Title of Item: Approval to Purchase New Additional Vehicles for Public Works Department Transit Division

Explanation: The Public Works Department is requesting the purchase of 4 new additional vehicles for the Public Works Department's Transit Division for \$205,000. The new vehicles will be funded utilizing monies available from the 5307 FY 19 grant of \$164,000 which City Council approved on September 12, 2024, and the City's local match of \$41,000 from the Transit Fund. The new vehicles will be utilized for the Greenville Area Transit System's new on-demand service.

These new vehicles will be purchased through the following contract:

NC Sheriff's Association Contract:

(2) 2025 Toyota Sienna Hybrid Le (7 passenger minivan)

(1) 2025 Ford Explorer XLT (5 passenger)

(1) 2025 Ford Transit 350 (15 passenger full-size van)

Fiscal Note: Funding for these purchases will come from Transit's Capital Outlay account with budget appropriations transferred from the following funding sources:

5307 FY 19: \$164,000

Transit Fund: \$41,000

Recommendation: City Council approve the purchase of the four new vehicles as listed above using the funding sources listed.

ATTACHMENTS

[TRANSIT ON DEMAND VEHICLE PURCHASE.pdf](#)

#	Department	New Vehicle Make/Model	New Vehicle Description	Cost	Contract
1	Transit	2025 Toyota Sienna	Hybrid LE - 7 Passenger Mini Van + Camera Systems, logos/decals, iPad/tablets for on-demand service software, docking stations, partitions, and safety lighting	\$49,950.00	NC Sheriff's Association
2	Transit	2025 Toyota Sienna	Hybrid LE - 7 Passenger Mini Van + Camera Systems, logos/decals, iPad/tablets for on-demand service software, docking stations, partitions, and safety lighting	\$49,950.00	NC Sheriff's Association
3	Transit	2025 Ford Explorer	XLT - 5 Passenger 4 Door SUV + Camera Systems, logos/decals, iPad/tablets for on-demand service software, docking stations, partitions, and safety lighting	\$49,550.00	NC Sheriff's Association
4	Transit	2025 Ford Transit	350 - 15 Passeneger Full Size Van + Camera Systems, logos/decals, iPad/tablets for on-demand service software, docking stations, partitions, and safety lighting	\$55,550.00	NC Sheriff's Association
Total				\$205,000.00	



City of Greenville, North Carolina

Meeting Date: 10/07/2024

Title of Item: Contract Award to ETA Phi Systems, Inc. (DBA “ETA Transit”) for Passenger Information System and Electronic Fare Collection System Products and Services

Explanation: Greenville Area Transit (GREAT) is updating onboard passenger information technology in its fleet of 13 buses. The new products and services include automatic vehicle location (AVL), automatic passenger counter (APC), automated voice annunciation (AVA), and electronic fare collection (E-fare) systems. Some of the improvements riders will experience from the technology updates include app-based mapping and trip planning, accurate bus location/stop prediction, reliable voice announcements onboard, as well as electronic fare payment options. GREAT will have constant monitoring of bus GPS location, real-time passenger load, and data from passenger counts (boarding and alighting). Additionally, traditional options for receiving information by customers will still be available, such as SMS texting and call-in options for bus location, and fare payments via cash at the ticket counter and local retailers in partnership with the fare vendor.

Seven responses to Transit’s RFP for Passenger Info Systems and Electronic Fareboxes were received. A team of four reviewers rated the proposals based on the scoring criteria outlined in the RFP. The top three scoring companies were asked to each provide a one-hour demo/interview via Teams for the review team along with representatives from Public Works/Fleet and IT. After the demos, the review team met with the IT representatives to confirm there were no concerns about any of the three companies providing software services to the City of Greenville. IT approved all three companies.

The review team discussed the demos in depth and agreed that the preferred company to proceed with is ETA Transit. This selection was based on the following criteria observed during the demonstration and through discussion with a current ETA customer:

1. Ease of use of onboard technology by Transit Drivers
2. State-of-the-art online platform for administrators to operate
3. Impressive customer experience systems (i.e. mobile phone app, website, SMS)
4. Favorable project timeline for product launch in transit operations
5. Excellent customer service based on background inquiry
6. Reasonable start-up expenses and annual costs

Fiscal Note:

The Agreement includes the installation of hardware/equipment, training, and service for one (1) year. The service term may then be extended as mutually agreed upon by both parties (i.e. annual software renewal). The anticipated startup cost will be \$538,000. The FTA reimbursement for this contract will be 80% of the total amount. There will also be an ongoing cost of approximately \$110,000. This contract will be paid for utilizing 5307 grant funding.

Recommendation:

City Council award a contract to ETA Phi Systems, Inc. (doing business as “ETA Transit”) for passenger information system and electronic fare collection system products and services.

ATTACHMENTS

GREAT AGREEMENT WITH ETA TRANSIT FOR PASSENGER INFORMATION SYSTEMS AND E-FARE BOXES.pdf



Find yourself in good company*

AGREEMENT FOR CONTRACTOR SERVICES

Greenville Area Transit Passenger Information and Electronic Fare Collection Systems

THIS Agreement for Contractor Services (“Agreement”) made and entered into on _____ by and between the City of Greenville, a municipal corporation organized and existing under the laws of the State of North Carolina (the “City”), and ETA Phi Systems, Inc. (DBA “ETA Transit”), a Florida corporation duly authorized to transact business in the State of North Carolina and whose primary office is located at 7700 Congress Ave, Suite 2201, Boca Raton, FL 33487 (the “Vendor”) (collectively the “Parties” and individually “Party.”).

GENERAL RECITALS

WHEREAS, the City desires the assistance of a contractor in the performance of certain professional services; and

WHEREAS, the Vendor has exhibited evidence of experience, ability, competence, and reputation to perform such services; and

WHEREAS, the City is authorized by N.C.G.S. § 160A-20.1 to enter into an Agreement for performance of such services and has followed the required procurement processes pursuant to federal, state, and local laws and regulations, where applicable;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and agreements contained herein below, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I
SCOPE OF WORK

1.0. **Description of Work Required.** The Vendor shall provide passenger information system and electronic fare collection system products and services as defined in the Request for Proposals (“RFP”) #23-24-40 and amendments, if any, said work being hereinafter referred to as the “work.” The RFP and amendments, if any, are hereby incorporated by reference herein and made a part hereof as fully as if herein set forth. Unless otherwise specified herein, the Vendor is to furnish all necessary labor, materials, tools, equipment, superintendence, delivery, and perform all necessary services to complete the work at no additional costs to the City.

1.1. **Work Standards.** The Vendor will perform the passenger information and electronic fare collection systems product installation, service, and training in accordance with all applicable federal, state and local laws, regulations, and safety guidelines.

1.2. **Order of Precedence.** For the resolution and interpretation of any inconsistencies in this Agreement and/or the documents attached hereto and included herein by this reference, the precedence of these documents shall be given the following order:

1. This Agreement with any Attachments, including Addendum(s) and Amendment(s) hereto;
2. Contractor’s Subcontract SaaS & Validator Terms (including its Schedules) attached at Annex 1;
3. If applicable, negotiated Amendments or clarifications to the Vendor’s Proposal which have been incorporated by reference to this final Agreement;
4. The City’s RFP, which is attached hereto as Exhibit A; and

5. The Vendor's Proposal, which is attached hereto as Exhibit B.
6. Federal Clauses, which is attached hereto as Exhibit C.

1.3. **Subcontracts.** Neither the Vendor nor any subconsultant or subcontractors will sublet any portion of the Work covered by this Agreement without prior written approval by the City.

1.3.1. The Vendor will be responsible for the schedule of any work sublet to others so as to assure the overall schedule of the project is maintained.

1.3.2. The Vendor will be responsible for the completeness, accuracy, and presentation of all data, and for the review of any work sublet to others.

1.3.3. The Vendor shall notify all subconsultants and subcontractors under this Agreement of ALL new work assignments made by the City to the Vendor regardless of any particular subconsultant's or subcontractor's engagement level under a particular task order. This notification information may be requested by the City in the form of a report.

ARTICLE II **DATA AND SERVICES TO BE PROVIDED BY THE CITY**

2.0 **Data and Services.** The City's herein defined project manager who will be overseeing the Vendor in order to ensure that the requirements of this Agreement are met is Elizabeth Stalls, Transit Manager ("City's project manager"). If assistance or further information is needed, the Vendor shall contact the City's project manager at (252) 329-4047. All directions and communications from the City to the Vendor shall be through the City's project manager or his or her designee unless otherwise stated herein.

2.1 The City shall provide available data and information, as applicable to the detailed Scope of Work developed for all tasks, which may include, but is not limited to the following:

2.1.1. Any City property, information, data, instruments, documents, studies, or reports given to or prepared or assembled by or provided to the Vendor under this Agreement shall be kept as confidential, used only for the purpose(s) required to perform the Agreement and not divulged or made available to any individual or organization without the prior written approval of the City.

2.1.2. The City's data and property in the hands of the Vendor shall be protected from unauthorized disclosure, loss, damage, or destruction by a natural event or another eventuality. Subject to the Limitation of Liability set out at Section 7.0.8.4, the Vendor agrees to reimburse the City for loss or damage of City property while in the Vendor's custody. Such City Data shall be returned to the City in a form acceptable to the City upon the termination or expiration of this Agreement.

2.1.3. The Vendor shall notify the City of any security breaches within 24 hours as required by N.C.G.S. § 143B-1379.

ARTICLE III **TIME OF BEGINNING AND COMPLETION**

3.0. **Period of Performance.** Work will begin no later than 10 days following written a Notice to Proceed to begin work on specified deliverables. The work will be completed according to a written schedule mutually agreed upon by the Parties. The Vendor will be responsible for implementing and monitoring the schedule. This Agreement will expire 36 months from the issuance of a Notice to Proceed. This Agreement may be extended if mutually agreed upon by the Parties.

3.1. **Deliverables.** If additional deliverables beyond the agreed-upon scope of work for the project are required to complete the assignment then a new written amended scope of work/description of goods will be developed for the additional work. This amendment will not become effective until completed as required herein. The Vendor shall notify the City's project manager as soon as additional services beyond agreed upon scope of work appear to be warranted. The Vendor must never under any circumstance exceed the approved cost estimate without prior written authorization from the City. No new assignment will be issued after 12 months past the date of execution or after the not-to-exceed amount has been depleted, whichever occurs first. No additional work may be assigned under this Agreement after that date unless appropriate supplemental Agreements are in place.

3.2. **Performance of Work by City.** Subject to Section 5.0.4 (Force Majeure) and any delay caused by the City or its third party contractors, if the Vendor fails to perform the work in accordance with the schedule required by this Agreement, the City may, in its discretion, perform or cause to be performed some or all of the work, and doing so shall not waive any of the City’s rights and remedies. Before doing so, the City shall give Vendor notice of its intention. Subject to the Limitation of Liability set out at Section 7.0.8, the Vendor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the work pursuant to this section subject to the City using all reasonable endeavors to mitigate any additional costs.

ARTICLE IV
COMPENSATION AND PAYMENTS

4.0 **Fees and Costs.** As compensation for the Vendor’s services as outlines in Article I. above, a maximum fee amount will be established. The maximum fee amount for the products and services covered under this Agreement shall not exceed Five Hundred Fifty Thousand Dollars (\$550,000.00). The consulting services will be performed as individual tasks with lump sum or cost-plus compensation negotiated for each task. The lump sum amount negotiated for each task will be full compensation for all direct salary costs, overhead, direct non-salary costs, and operating margin incurred for the duration of the task. The Vendor may also be paid for other direct non-salary reimbursement costs as established by the City. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

4.1. **Payment.** Upon receipt of invoices and appropriate supporting documentation by the City, the invoices will be payable within 30 days from invoice approval by City. The City does not agree to the payment of late charges or finance charges assessed by the Vendor for any reason. Invoices are payable in U.S. funds. The Vendor shall pay subcontractors and subconsultants for work performed within seven (7) days after the Vendor receives payment from the City for work performed by the subcontractor or subconsultants. This requirement must be incorporated into all subcontractor and subconsultant agreements. Failure to comply with the seven (7) day requirement may cause the City to withhold payments to the Vendor and the City may suspend work until the subcontractor or subconsultant is paid. All invoices shall be directed to the following City employee:

City Employee:	Elizabeth Stalls, Transit Manager
Department:	Public Works Department
Physical Address:	1500 Beatty Street, Greenville, NC 27834
Mailing Address:	P.O. Box 7207, Greenville, NC 27835
Telephone:	252-329-4047
Email:	estalls@greenvillenc.gov

It shall be the responsibility of the Vendor and all subconsultants and subcontractors to keep records of all payments requested and the dates received. The City may request copies of this information in the form of a report.

ARTICLE V
TERMINATION

5.0. **Termination.** The City may terminate this Agreement at any time upon any of the following grounds:

5.0.1. **Default.** Either Party materially fails to perform, provides materially unacceptable performance, materially fails to comply with the provisions of the Agreement, or materially fails to follow safety regulations as required in this Agreement. Under this provision only, the non-defaulting Party shall provide written notice to the defaulting Party regarding the condition(s) and the defaulting Party shall have 30 calendar days to rectify. In the event the condition(s) identified are not rectified to the reasonable satisfaction of the non-defaulting Party, that Party will give the defaulting Party written notice of termination, which will be effective as of the date of notice unless otherwise stated in the notice of termination.

5.0.2. Convenience. Without limiting either Party’s right to terminate for breach, the Parties agree that the City may terminate this Agreement, without cause and in its sole discretion, by giving the Vendor 30 calendar days’ written notice. The Vendor shall be paid for services provided up to the date of termination except to the extent previously paid for under the Agreement. The Vendor shall pay the Termination for Convenience charges. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the work been completed except to the extent it would be inequitable to either party, and if work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that work. The City shall not be liable to the Vendor for any consequential or incidental damages, including but not limited to overhead, profit, damages, other economic loss, or otherwise, and all obligations under the Agreement shall be discharged except that any right based on prior breach or performance survives and any other provisions expressly cited to survive termination. At the time of termination for convenience or as soon afterwards as is practical, the Vendor shall give the City all work, including partly completed work.

“**Termination for Convenience Charges**” means (i) payment for all work performed by the Vendor up to the date of termination; (ii) the cost to terminate subcontracts that support the Vendor’s provision of the work; (iii) Sunk Costs; and (iv) any other unavoidable costs or expenses incurred by Vendor as a result of City’s termination for convenience.

“**Sunk Costs**” means all costs committed, incurred or expended by the Vendor (i.e. money that has already been spent or committed costs) and supply chain costs which cannot be recovered and include, but are not limited to, the costs of materials/products that can’t be returned, sold or used for other contracts. Upon a demand for “Sunk Costs” following termination for convenience by City, Vendor shall provide evidential proof of loss to the reasonable satisfaction of City, acceptance of which shall not be unreasonably withheld.

5.0.3 Funding. In accordance with Section 10.15., the City may terminate this agreement on not less than thirty (30) days’ notice should funding cease to be available.

5.0.4. Force Majeure. Neither Party shall have any liability to the other Party under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including but not limited to any acts of God; acts of the public enemy; insurrections; riots; embargoes; labor disputes, including strikes, lockouts, job actions, or boycotts; shortages of materials or energy; fires; explosions; floods; any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, war, riot, civil commotion, malicious damage, accident, fire, flood, storm including, without limitation any of the foregoing which occur as a result of epidemic or pandemic; failure of a utility service or transport or telecommunications network, changes in laws governing this type of work of facility; or other unforeseeable causes beyond the reasonable control and without the fault or negligence of a Party (each a “**Force Majeure Event**”).

Any delay in delivery of the work caused by a Force Majeure Event, shall not cause either Party to be in breach of its performance obligations under this Agreement.

If any such Force Majeure Event occurs, the affected Party shall provide written notice to the other party within three (3) days and the time for performance (and any milestone dates) for the affected party will be extended for a period of time equal to the duration of the delay caused by the Force Majeure Event. The existence of a Force Majeure Event will not extend the Period of Performance of this Agreement.

5.0.5 Expiration. Upon expiration of this Agreement, this Agreement is terminated, if not extended, in accordance with the terms and conditions of this Agreement.

ARTICLE VI
VENDOR’S RESPONSIBILITY

6.0. The Vendor shall perform the work under this Agreement as an independent contractor and not as City’s agent or employee. The Vendor shall be solely responsible for the compensation, benefits, contributions, and taxes, if any, of its employees and agents.

6.1. The standard of care applicable to the Vendor’s performance will be the degree of skill and diligence normally employed by professional vendors, consultants, and contractors performing the same or similar services at the time and location said services are performed. The Vendor will re-perform any services not meeting this standard without additional compensation.

- 6.2. The Vendor will provide all equipment including but not limited to computer, recording equipment, long distance telephone and facsimile service, cellular service, and any clerical supplies necessary to perform the work required under this Agreement. The Vendor shall be responsible for all travel and related expenses.
- 6.3. The Vendor shall be responsible for all federal, state, and local taxes incurred, owed or payable as a result of the performance of the work.
- 6.4. In the performance of the work under this Agreement, the Vendor shall comply with all federal, state, county, and City statutes, ordinances, regulations, and rules, which are applicable.
- 6.5. The Vendor shall furnish a competent project manager who shall be available to the City's project manager or his or her designee at all times that the Vendor is performing the work under this Agreement. The Vendor's supervisor shall have full authority over the Vendor's employees, agents, subcontractors, subconsultants, or otherwise and shall monitor them and direct them responsibly. The Vendor's supervisor shall have a mobile telephone number to be contacted as needed. This number shall be provided to the City within five (5) days of the date of this Agreement.

ARTICLE VII **INDEMNIFICATION AND INSURANCE**

7.0. Indemnity and Hold Harmless Requirements / Limitation of Liability.

- 7.0.1. Subject to the Limitation of Liability set out at Section 7.0.8, to the maximum extent allowed by law, the Vendor shall defend, indemnify, and save harmless Indemnitees from and against all third-party Charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of the Vendor, subconsultants, or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection 7.0.1, the Vendor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.
- 7.0.2. Definitions. As used herein, "Charges" means direct claims, judgments, direct costs, direct damages, direct losses, demands, direct liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials (whether elected or otherwise), independent contractors, agents, and employees, and assigns, excluding the Vendor.
- 7.0.3. Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provision that may be in this contract.
- 7.0.4. Survival. This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of the Vendor under this Agreement.
- 7.0.5. Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair, or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition, and/or excavating connected therewith, then subsection 7.0.1 above shall not require the Vendor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.
- 7.0.6. The Vendor shall assume full and complete liability for any and all damages to City or private properties caused by or from its activities, operations, and that of its employees, agents, officers, and/or assigns.
- 7.0.7. The Vendor will promptly notify the City of any civil or criminal actions filed against the Vendor or of any notice of violation from any federal, state, or local agency or of any claim as soon as practical as relates to the services provided. The City shall provide reasonable co-operation to the Vendor in the defense and settlement of such indemnified claim. The Vendor is given sole authority to defend or settle the indemnified claims.

7.0.8. **LIMITATION OF LIABILITY**

7.0.8.1 **NOTHING IN THIS AGREEMENT:**

- (a) **SHALL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR:**
 - (i) **DEATH OR PERSONAL INJURY CAUSED BY ITS GROSS NEGLIGENCE OR WILFUL MISCONDUCT, OR THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF ITS PERSONNEL, AGENTS OR SUBCONTRACTORS;**
 - (ii) **FRAUD OR FRAUDULENT MISREPRESENTATION;**
 - (iii) **ANY OTHER LIABILITY WHICH CANNOT BE LIMITED OR EXCLUDED BY APPLICABLE LAW;**
- (b) **SHALL LIMIT OR EXCLUDE MASABI'S LIABILITY UNDER THE IPR INDEMNITY AT CLAUSE 12.1 AND THE CUSTOMER'S LIABILITY UNDER CLAUSE 12.4 (INDEMNITY) AND CLAUSE 7.20 (PCI COMPLIANCE BREACH LIABILITY) OF THE CONTRACTOR'S SUBCONTRACT SAAS & VALIDATOR TERMS.**

7.0.8.2 **SUBJECT TO CLAUSE 7.0.8.1, NEITHER PARTY SHALL BE LIABLE, IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR FOR BREACH OF STATUTORY DUTY OR IN ANY OTHER WAY FOR:**

- (a) ANY LOSS ARISING FROM OR IN CONNECTION WITH LOSS OF REVENUES, PROFITS, CONTRACTS OR BUSINESS OR FAILURE TO REALISE ANTICIPATED SAVINGS (WHETHER SUCH LOSS IS DIRECT OR INDIRECT);
- (b) ANY LOSS OF GOODWILL OR REPUTATION (WHETHER SUCH LOSS IS DIRECT OR INDIRECT); OR
- (c) ANY **SPECIAL, EXEMPLARY, PUNITIVE**, INDIRECT OR CONSEQUENTIAL LOSSES; OR
- (d) **ANY LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE OR IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES**

SUFFERED OR INCURRED BY THE OTHER PARTY, OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF WHETHER THE CUSTOMER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

7.0.8.3 **SUBJECT TO SECTIONS 7.0.8.1, 7.0.8.2 AND 7.0.8.4 AND EXCEPT FOR ANY OBLIGATION OF THE VENDOR TO REMIT THE NET TICKET REVENUE PURSUANT TO CLAUSE 9.2 AND THE CITY'S PAYMENT OBLIGATIONS UNDER CLAUSE 9 OF THE CONTRACTOR'S SUBCONTRACT SAAS & VALIDATOR TERMS, EACH PARTY'S AGGREGATE LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL VALUE PAYABLE BY THE CUSTOMER DURING THE FIRST TWELVE MONTHS OF THIS AGREEMENT.**

7.0.8.4 **SUBJECT TO SECTIONS 7.0.8.1, 7.0.8.2 AND 7.0.8.3 AND EXCEPT FOR ANY OBLIGATION OF THE VENDOR TO REMIT THE NET TICKET REVENUE PURSUANT TO CLAUSE 9.2 AND THE CITY'S PAYMENT OBLIGATIONS UNDER CLAUSE 9 OF THE CONTRACTOR'S SUBCONTRACT SAAS & VALIDATOR TERMS, EACH PARTY'S AGGREGATE LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, ARISING IN CONNECTION WITH THE UNAUTHORIZED DISCLOSURE, LOSS, DAMAGE OR DESTRUCTION OF DATA SHALL BE LIMITED TO TWO TIMES (X2) THE TOTAL VALUE PAYABLE BY THE CUSTOMER DURING THE FIRST TWELVE MONTHS OF THIS AGREEMENT.**

7.0.8.5 The rights of either Party under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by the common law.

7.0.8.6 A Party's liability under this Agreement will be reduced to the extent that the wrongful, unlawful or negligent act or omission of the other party caused or contributed to the relevant liability or to the act or circumstance giving rise to the liability.

7.0.8.7 A Party which incurs a loss under an Agreement must take reasonable steps to avoid or minimise the loss.

7.1 **Insurance.** The Vendor agrees to purchase at its own expense insurance coverages to satisfy the following minimum requirements. Work under this Agreement shall not commence until all insurance required as listed has been obtained. Insurance required shall remain in effect through the life of this Agreement.

7.1.1 Workers' Compensation Insurance. Neither the Vendor nor any subcontractor or subconsultant may exclude executive officers from coverage under the North Carolina Workers' Compensation Act. Workers Compensation must include all employees.

<u>Limits:</u>	<u>Amount:</u>
Workers Compensation:	Statutory for the State of North Carolina.
Employer's Liability:	Bodily Injury by Accident \$1,000,000 each accident.
	Bodily Injury by Disease \$1,000,000 policy limit.
	Bodily Injury by Disease \$1,000,000 each employee.

7.1.2 Commercial General Liability.

<u>Limits:</u>	<u>Amount:</u>
Each Occurrence:	\$1,000,000
Personal and Advertising Injury	\$1,000,000
General Aggregate Limit	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000

The aggregate limit must apply per project. The form of coverage must be the ISO CG 00 01 policy as approved by the State of North Carolina Department of Insurance. If a form of coverage other than the CG 00 01 is used it must be approved by the City. Any endorsed exclusions or limitations from the standard policy must be clearly stated in writing and attached to the Certificate of Insurance. Completed Operations coverage must be maintained for the period of the applicable statute of limitations. Additionally, the City must be added as an Additional Insured to the Commercial General Liability policy.

7.1.3 Commercial Automobile Liability (Non-owned Vehicles only). Limits: \$1,000,000 combined single limit.

7.1.4 Cancellation. Each certificate of insurance shall bear the provision that the policy cannot be altered or canceled in less than 30 days (or 15 days for cancellation due to non-payment of premium) after mailing written notice to the insured of such alteration or cancellation.

7.1.5 Proof of Carriages.

7.1.5.1 The Vendor shall provide the City with insurance industry standard ACCORD form Certificate(s) of Insurance on all policies of insurance and renewals thereof in a form(s) acceptable to the City prior to the commencement of services under this Agreement. Said policies shall provide that the City be an additional named insured.

7.1.5.2 The City shall be notified in writing of any reduction, cancellation, or substantial change of policy or policies at least 30 days prior to the effective date of said action.

- 7.1.5.3. All insurance policies shall be issued by responsible companies who are acceptable to the City and licensed and authorized to do business under the laws of the State of North Carolina.

ARTICLE VIII
WARRANTIES, CORRECTION OF WORK, AND RELATIONSHIP WITH OTHERS

8.0. **Warranties.** In addition to other warranties made in this transaction, the Vendor represents and warrants that all of the products (which includes goods, items, and other things) furnished under this Agreement, the process by which those products are made, and their use will not infringe any patent, trademark, or other rights of any other person, firm, or corporation, and the Vendor shall defend, indemnify, and hold harmless the City and its officers, officials, agents, contractors, and employees from and against any and all claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses (including interest and reasonable attorney's fees assessed as part of any such item) arising out of any:

8.0.1 Actual infringement of any such patent, trademark, or other rights; or

8.0.2 Personal injury, death, or third party property damage caused by or resulting from the delivery to the City of, or the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, selling, advertising, packaging, or labeling of any product furnished to the City under this Agreement (except to the extent that the personal injury, death, or third party property damage is caused solely by negligent or intentional acts or omissions of the City) PROVIDED THAT:

- (a) Vendor is given prompt notice of any such claims;
- (b) the City provides reasonable co-operation to Vendor in the defense and settlement of such indemnified claim, at Customer's expense; and
- (c) Vendor is given sole authority to defend or settle the indemnified claims.

8.1. Without reducing the City's rights under this Article, the Vendor, in case of an actual claim, may, at the Vendor's option and expense, procure for the City the right to continue using the products furnished under this contract. (However, the preceding sentence does not pertain to subsection 8.1.2., below) In addition to other warranties made in this transaction, the Vendor warrants that all of the products (which includes goods, items, and other things) furnished under this Agreement must:

- 8.1.1. Be in conformity with applicable NC and federal statutes and regulations; except to the extent other contract documents provide otherwise,
- 8.1.2. Not have been used;
- 8.1.3. Pass without objection in the trade under the contract description;
- 8.1.4. In the case of fungible goods, be of fair average quality within the description;
- 8.1.5. Be fit for the ordinary purposes for which such goods are used;
- 8.1.6. Run, within the variations permitted by the Agreement, of even kind, quality, and quantity within each unit and among all units involved;
- 8.1.7. Be adequately contained, packaged, and labeled as the Agreement may require; and
- 8.1.8. Conform to the promises or affirmations of fact made on the container or label if any.

8.2. **Correction of Work.** The Vendor shall promptly correct all work rejected by the City (acting reasonably) as failing to conform to this Agreement. The Vendor shall bear all costs of correcting such rejected work. Rejected work shall consist of that work which is deemed materially ineligible by the City's project manager, representative, or designee (acting reasonably).

8.3. **Relationship with Others.** The Vendor will cooperate fully with the City, with other municipalities and local government officials, federal and state environmental resource and regulatory agencies, and with any others as may be directed by the City. This shall include reasonable attendance at meetings, workshops, and hearings and also includes timely providing project development, human and natural environmental, and engineering information to all parties as may be requested by the City. The Vendor will also cooperate fully with the City and other agencies on adjacent projects, as reasonably necessary.

ARTICLE IX
NOTICES

9.0. Any notice, consent, or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. registered or certified mail, by overnight courier, by email, or by telefacsimile to the intended recipient at the address set forth below. Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by telefacsimile or email shall also be simultaneously sent by regular first-class mail deposited with the U.S. Postal Service or by overnight courier. Each Party may change its address for notification purposes by giving the other Party written notice of the new address and the date upon which it shall become effective. Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Agreement shall be sent to:

For The Vendor:	For The City:
XX XX XX XX	City of Greenville Attn: Michael Cowin, City Manager
<i>(Mailing Address)</i>	<i>(Mailing Address)</i>
XX XX	P.O. Box 7207 Greenville, NC 27835-7207
<i>(Physical Address)</i>	<i>(Physical Address)</i>
XX XX	200 West Fifth Street Greenville, NC 27834
Telephone: (xxx) xxx-xxxx Facsimile: (xxx) xxx-xxxx Email: xxxxxx	Telephone: (252) 329-4432 Email: mcowin@greenvillenc.gov
With Copy to (Legal):	With Copy to (Legal):
XX XX XX XX	Emanuel McGirt City Attorney City of Greenville City Attorney's Office
<i>(Mailing Address)</i>	<i>(Mailing Address)</i>
XX XX	P.O. Box 7207 Greenville, NC 27835-7207
<i>(Physical Address)</i>	<i>(Physical Address)</i>
XX XX	200 West Fifth Street Greenville, NC 27834
Telephone: (xxx) xxx-xxxx Facsimile: (xxx) xxx-xxxx Email: xxxxxx	Telephone: (252) 329-4426 Facsimile: (252) 329-4626 Email: emcgirt@greenvillenc.gov
With Copy to Project Manager:	With Copy to Project Manager:
XX XX	Elizabeth Stalls Transit Manager

XX XX	City of Greenville Public Works Department
(Mailing Address)	(Mailing Address)
XX XX	P.O. Box 7207 Greenville, NC 27835-7207
(Physical Address)	(Physical Address)
XX XX	1500 Beatty Street Greenville, NC 27834
Telephone: (xxx) xxx-xxxx Cellular Telephone: (xxx) xxx-xxxx Facsimile: (xxx) xxx-xxxx Email: xxxxxx	Telephone: (252) 329-4047 Email: estalls@greenvillenc.gov

9.1. All other notices shall be sent to the other Party's herein designated respective project manager at the most recent address provided in writing by the other Party.

9.2. **Vendor's Project Manager.** The Vendor must dedicate a full-time account executive/customer service representative/project manager, designated herein, who shall serve as the Vendor's project manager ("Vendor's project manager") for servicing the City. The Vendor's project manager must be available by cellular telephone and by email. The cellular telephone must be operational during normal business hours. All communicational contact, either via telephone, email, etc. must be addressed by the Vendor's project manager with a response in a reasonable amount of time. The Vendor's project manager must be available to attend meetings regarding this Agreement issues upon reasonable request. The Vendor's project manager will be responsible for providing timely response and resolution of all the service issues and complaints of City personnel related to this Agreement. The Vendor's project manager must have an in-depth knowledge of all items provided in this Agreement and have access to all manufacturers providing the products, services, and deliverables herein. The Vendor's project manager must have the ability and authority to make decisions on behalf of the Vendor enabling the Vendor's project manager to provide both normal and emergency service as necessary. The Vendor must identify the dedicated Vendor's project manager (above, Section 9.0.).

ARTICLE X
GENERAL TERMS AND CONDITIONS

10.1. **Ownership Documents.** All tracings, documents, technical reports, charts, plans, specifications, photographs, photographic negatives, survey notes, computations, maps, and other data or documents prepared solely and exclusively for the City under the terms of this Agreement shall be delivered to and become the property of the City without restriction or limitation on their use. However, in the event of any reuse or alteration of any documents furnished to the City, such alteration or reuse shall be at the City's sole risk.

10.2. **Non-Discrimination.** The Vendor shall not discriminate on the basis of race, color, gender, religion, national origin, ethnicity, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, subconsultants, vendors, suppliers, or commercial customers in connection with a City contract or contract solicitation process, nor shall the Vendor retaliate against any person or entity for reporting instances of such discrimination. The Vendor shall provide equal opportunity for subcontractors, subconsultants, vendors, and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Vendor understands and agrees that a violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the Vendor from participating in City contracts or other sanctions. As a condition of entering into this Agreement, the Vendor agrees to: (a) promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment, and payment of subcontractors, subconsultants, vendors, and suppliers in connection with this Agreement and (b) if requested, provide to the City within 60 days after the request a truthful and complete list of the names of all subcontractors, subconsultants, vendors, and suppliers that the Vendor has used on City contracts in the past five (5) years, including the total dollar amount paid by the Vendor on each subcontract or supply contract. The Vendor further agrees to fully cooperate in any investigation conducted by the City and to provide any documents relevant to such investigation that are requested by the City. The Vendor understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in contract termination, disqualification of the Vendor from participating in City contracts and other sanctions. The Vendor further agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by the Vendor to subcontractors and suppliers in connection with this Agreement

within a certain period of time. Such affidavits shall be in the format provided by the City.

10.3. **Minority/Women Business Enterprise (M/WBE) Program.** It is the policy of the City to provide minorities and women equal opportunity for participating in all aspects of the City's contracting and procurement programs, including but not limited to, construction projects, supplies and materials purchase, and professional and personal service contracts. In accordance with this policy, the City has adopted a Minority and Women Business Enterprise (M/WBE) Plan and subsequent program, outlining verifiable goals. The City has established a 2% Minority Business Enterprise (MBE) and 2% Women Business Enterprise (WBE) goal for the participation of M/WBE firms in supplying goods and services for the completion of this project. The Vendor agrees to utilize minority and women-owned suppliers and service providers whenever possible. Questions regarding the City's M/WBE Program should be directed to the M/WBE Office at (252) 329-4462.

10.4. **Iran Divestment Act Certification.** The Vendor hereby certifies that, it is not on the Iran Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. § 147-86.58. The Vendor shall not utilize in the performance of the Agreement any subcontractor or subconsultant that is identified on the Iran Final Divestment List.

10.5. **E-Verify.** The Vendor shall comply with the requirements of Chapter 64, Article 2 of the North Carolina General Statutes. Further if the Vendor utilizes a subcontractor or subconsultant, the Vendor shall require the subcontractor and subconsultant to comply with the requirements of Chapter 64, Article 2 of the North Carolina General Statutes. The Vendor represents that the Vendor and its subcontractors and subconsultants are in compliance with the requirements of Chapter 64, Article 2 of the North Carolina General Statutes.

10.6. **Assignment.** There shall be no assignment, subletting, or transfer of the interest (including payments) of the Vendor in any of the work covered by the Agreement by either Party without the written consent of the other Party. Unless a Party agrees otherwise in writing, the assigning Party shall be subject to all of the non-assigning Party's defenses and shall be liable for all of the assigning Party's duties that arise out of this Agreement and all of the non-assigning Party's claims that arise out of this Agreement. Without granting the a Party the right to assign, it is agreed that the duties of the either Party that arise out of this Agreement shall be binding upon the assigning Party and its heirs, personal representatives, successors, and assigns.

10.7. **General Compliance with Laws.** Each Party shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations pertaining to this Agreement.

10.8. **Amendments and Waiver.** No waiver, alterations, consent, or modification of any of the provisions of this Agreement shall be binding unless agreed to in writing and signed by both Parties.

10.9. **Permits, Licenses, and Certificates.** The Vendor is to procure all permits, licenses, and certificates, as required by any such laws, ordinances, rules and regulations, for proper execution and completion of the work under this Agreement.

10.10. **Governing Law and Venue.** This Agreement is deemed to be made in Pitt County, North Carolina under and shall be governed by and construed according to the laws of the State of North Carolina and the ordinances of the City of Greenville. North Carolina law shall govern the interpretation and enforcement of this Agreement, and any other matters relating to this Agreement. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Pitt County, North Carolina. Such actions shall neither be commenced in nor removed to federal court. This subsection shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. By execution of this Agreement, the Parties submit to the jurisdiction of such herein stated courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any said court sitting in Pitt County, North Carolina.

10.11. **Service of Process.** Without excluding any other method of service authorized by law, the Vendor agrees that every agent for service of process is designated as the Vendor's non-exclusive agent for service of process, summons, and complaint. The Vendor will instruct each agent for service of process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Vendor. This Section does not apply while the Vendor maintains a registered agent in North Carolina with the office of the North Carolina Secretary of State and such registered agent can be found with due diligence at the designated registered office.

10.12. **Authority to Contract.** The undersigned hereby certifies that this Agreement is made without prior understanding, agreement, or connection with any corporation, firm, or person who submitted bids for the work covered by this Agreement and is in all respects fair and without collusion or fraud. As to the Vendor,

the undersigned hereby warrants and certifies that they are authorized to enter into this Agreement and to execute same on behalf of the the Vendor as the act of the said Vendor.

10.13 **Dispute Resolution.** In the event of a dispute between the Parties which the Parties are unable to resolve within the normal course of business, the Parties within fifteen (15) days after delivery of written notice of the dispute, promptly appoint a designated representative who has authority to settle the dispute. Their designated representatives shall meet as often as they deem reasonably necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. If the Parties are unable to resolve issues related to the dispute within thirty (30) days after the Parties' appointment of their designated representatives, then either party may submit their dispute to non-binding mediation before the regulatory authority's rules and practices for handling such disputes. Each Party shall bear its own costs and expenses of participating in the mediation (including, without limitation reasonable attorneys' fees), and each Party shall bear one-half (1/2) of the costs and expenses of the mediator. The matters discussed or revealed in the mediation session shall not be revealed in any subsequent litigation. In the event the matter is not resolved in mediation, either Party may pursue alternative means of resolving the issues. The dispute resolution procedures in this section shall not preclude either Party from filing a proceeding or commencing a dispute process before a regulatory commencing a dispute process before a regulatory authority having proper jurisdiction pursuant such regulatory authority's rules and practices for handling such matters.

10.14. **Conflicts of Interest.** The Vendor is aware of the conflict of interest laws and rules of the State of North Carolina and the City of Greenville (particularly those as set forth in North Carolina General Statutes), and agrees that it will fully comply in all respects with the terms thereof and any future amendments.

10.14.1. The Vendor covenants that no person or entity under its employ, presently exercising any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with the City. The Vendor further covenants that, in the performance of this Agreement, no person or entity having such conflicting interest shall be utilized in respect to the Scope of Work or services provided hereunder. Any such conflict(s) of interest on the part of the Vendor, its employees or associated persons or entities shall be disclosed to the City.

10.14.2. The Vendor shall disclose any possible conflicts of interest or apparent improprieties of any party under or in connection with the Legal Requirements, including the standards for procurement.

10.14.3. The Vendor shall make any such disclosure to the City in writing and immediately upon the Vendor's discovery of such possible conflict. The City's determination regarding the possible conflict of interest shall be binding on all parties.

10.14.4. No employee, agent, vendor (including the Vendor), elected official, or appointed official of the City, exercising any functions or responsibilities in connection with this Agreement, or who is in a position to participate in the decision-making process or gain inside information regarding activities, has any personal financial interest, direct or indirect, in this Agreement, the proceeds hereunder, the Project, or the Vendor, either for themselves or for those with whom they have family or business ties, during their tenure or for one year thereafter.

10.15. **Non-Appropriation of Funds.** The Vendor acknowledges that funding for this Agreement is conditioned upon appropriation and allocation by the governing body of sufficient funds to support the activities described in this Agreement. By written notice to the Vendor at the earliest possible date, the City may terminate this Agreement, in whole or in part, at any time on not less than thirty (30) days' notice for lack of appropriation of funds, or other withdrawal, reduction, or limitation in any way of the City's budget, funding, or financial resources. Such termination is in addition to the City's rights to terminate for convenience or cause. If this Agreement is terminated for non-appropriation: The City will be liable only for payment in accordance with the terms of this Agreement for work completed and expenses incurred prior to the effective date of termination. The Vendor will not be compensated for any other costs in connection with a termination for non-appropriation. The Vendor will not be entitled to recover any damages in connection with a termination for non-appropriation, including, but not limited to, lost profits. The Vendor shall be released from any further obligation to provide work affected by such termination; and termination shall not prejudice any other right or remedy available to the City. Funding for this Agreement is subject to annual appropriation.

10.16. **Records Retention.** All records required to be kept on the project shall be maintained for at least five (5) years after final payments and until all other pending matters under this project have been closed. However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the five (5) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the five (5) year period, whichever is later.

10.17. **NOT USED**

10.18. **Severability.** No waiver of any breach of this Agreement shall operate as a waiver of any similar subsequent breach or any breach of any other provision of this Agreement. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be severed from this Agreement and to the extent possible, this Agreement shall continue without affecting the remaining provisions.

10.19. **Counterparts.** This Agreement may be executed in counterparts, and the counterparts, taken together, shall constitute the original.

10.20. **Third Party Rights.** No third party rights are created by this Agreement. This Agreement is intended for the benefit of the City and the Vendor and not any other person.

10.21. **Principles of Interpretation and Definitions.** (1) The singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc. without limitation. (2) References to a “Section” or “section” or “Paragraph” or “paragraph” shall mean a section of this Agreement. (3) Unless the context requires otherwise, the terms “Contract” and “Agreement,” whether or not capitalized, refer to this instrument. (4) “Duties” includes obligations. (5) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and any other legal entity(ies). (6) The word “shall” is mandatory. (7) The word “day” means calendar day. (8) The word “Work” whether capitalized or not is defined in Section 1.0. (9) A definition in this contract will not apply to the extent the context requires otherwise.

10.22. **Entire Agreement.** This Agreement, including any Exhibits hereto, contains all the terms and conditions agreed upon by the Parties. No promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the Parties, other than as set forth or referenced in this Agreement shall be deemed to exist or to bind either Party hereto.

10.23. **Headings.** The headings of the various Articles and Sections herein are for convenience of reference only and shall not form part of this Agreement or define or limit any of the terms or provisions hereof.

10.24. **Discharge of Mechanics and Materialmen’s Lien(s).** If applicable, the Vendor shall use its best efforts to prevent any liens that arise from the performance of the work from being filed against the City or any property. If any liens are filed, the Vendor shall prevent any liens from becoming delinquent. Upon completion of the work and prior to payment by the City, the Vendor shall execute and provide to the City a release of liens and waiver of claims form as approved by the City.

10.25. **Performance of Government Functions.** Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

10.26. **E-Signature Authority.** As it is applicable to this Agreement, the Parties agree to and adopt the terms and conditions of the Uniform Electronic Transactions Act (the “Act”), as adopted in North Carolina General Statutes Chapter 66, including but not limited to the provisions governing electronic signatures. As such, this Agreement is “signed” if it includes a digital signature, symbol, and/or action that is adopted or performed by either Party or Party’s Electronic Agent (as defined in the Act) with the present intent to authenticate or manifest assent to the Agreement. Accordingly, the parties hereto consent and agree that this Agreement may be signed and/or transmitted by facsimile, e-mail of a .pdf document, or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology), and that such signed electronic record shall be valid and as effective to bind the Party so signing as a paper copy bearing such Party’s handwritten signature. The Parties further consent and agree that (1) to the extent a Party signs this document using electronic signature technology, by clicking “sign,” such Party is signing this Agreement electronically, and (2) the electronic signatures appearing on this Agreement shall be treated for purposes of validity, enforceability, and admissibility, the same as handwritten signatures.

10.27. **City Manager’s Authority.** To the extent, if any, the City has the power to suspend or terminate this contract or the Vendor’s services under this Agreement, that power may be exercised by the City Manager or his or her designee.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above as indicated by the signatures of their authorized representatives.

CITY OF GREENVILLE

By: _____

Print Name: Michael Cowin

Title: City Manager

Date: _____

APPROVED AS TO FORM:

BY: _____

Emanuel D. McGirt, City Attorney

PRE-AUDIT CERTIFICATION:

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

Jacob Joyner, Director of Financial Services

Date: _____

Account Number _____

(Signatures Continue on Next Page)

Project Code (if applicable) N/A

VENDOR: ETA PHI SYSTEMS, INC.

By: _____

Print Name: _____

Title: _____

Date: _____

ANNEX 1 – Contractor’s Subcontract SaaS & Validator Terms

1 INTERPRETATION

1.1 In this Agreement the following words shall have the following meanings:

"Additional Services" means (i) any services in addition to the Platform Services, including ad-hoc support and maintenance, consulting services and custom development that, at Customer’s request (and with Masabi’s agreement), Masabi provides to the Customer from time to time; and (ii) implementing changes to the initially deployed configuration of the Justride™ Platform and/or Product customization that may be agreed between the Parties in accordance with clause 17 of this Agreement. In addition to the agreed Charges, all Additional Services shall be priced and charged using the Rates, together with all reasonable and proper travel and subsistence expenses incurred in the performance of the Additional Services, all as notified to the Customer in writing in advance of such reasonable and proper expenses being incurred;

"Agency" means City of Greenville;

"Agency Data" means the data inputted by the Agency or Authorized Users in the course of using the Justride™ Platform;

"Agreement" means this written agreement and includes the Schedules to it (as varied in writing between the Parties from time to time);

"API" means the application programming interface;

"App" or **"Justride™ Retail Mobile App"** means the component of Masabi’s Justride™ Platform that is a white-labelled mobile application, which is provided to the Agency and branded for the Agency for the purpose of selling Tickets to End Users;

"Applicable Laws" means, with respect to any person, property, transaction, event or other matter, any laws, rules, statutes, regulations, orders, judgments, decrees, treaties or other requirements having the force of law applicable in the Customer’s agreement with the Agency and relating to or applicable to such person, property, transaction, event or other matter;

"Authorized User(s)" means the Customer or Agency employees who are authorized by the Customer and/or Agency to access the Justride™ Platform;

"Business Day" means a day other than a Saturday, Sunday or a public holiday in England and Wales or in the place in which a Party’s obligation is to be performed or in which a notice under this Agreement is received;

"Charges" means the charges payable for the Services, as set out in or calculated in accordance with Schedule 2 (Charges) (as varied from time to time in accordance with this Agreement);

"Claim" means any claim, demand, action or legal proceeding;

"Confidential Information" means all information in any form that a reasonable person in the position of the recipient would consider to be of a confidential nature (regardless of whether or not it is marked as confidential), including software, computer programs, codes, technology, test data, architectures, hardware configuration information, algorithms, formulas, processes, ideas, inventions, discoveries, concepts, prototypes, designs, drawings, engineering, schematics and other technical, business, financial and present or future products or services, and services and product development plans, forecasts, customer lists, current and anticipated customer requirements, strategies or other information, but does not include the Excluded Information with effect from the date that it becomes Excluded Information. For the avoidance of doubt, all of the object and source code to any software and all software design documents and APIs and/or SDKs provided by Masabi to the Customer from time to time (and all information derived from them) and any technical details relating to the Justride™ Platform and/or the Validation Hardware and/or the Services shall be treated as

forming part of Masabi's Confidential Information and the Customer irrevocably agrees that such information and any Masabi Data shall never be considered to be "Excluded Information";

"Customer" means ETA Transit;

"Documentation" means the standard user documentation that is identified in writing as such by Masabi and is made available to the Customer by Masabi from time to time, which sets out a description of the elements/functionality of the (i) Justride™ Platform to which it relates; and/or (ii) Validation Hardware. However, any advertising or other promotional material in respect of the Justride™ Platform and/or Validation Hardware is not Documentation;

"Early Termination Charges" means the greater of (i) the previous three (3) months of Masabi's transaction revenue fees (calculated using the Masabi transaction commission rates for the revenue managed for Customer's Product sales set out in Schedule 2 (Charges) (or if not set out there, in Masabi's Proposal) and (ii) an amount equal to the Masabi share of transaction revenue share fee multiplied by 30% (thirty per cent) of Customer's annual gross fare revenue, which both parties agree is a reasonable three (3) month adoption expectation;

"End User" means the end users (i.e. passengers) who are authorized by the Agency to access or use any Justride™ Platform (via the Justride™ Retail Mobile App) to purchase a Product;

"Excluded Information" means information which the receiving Party can prove:

- (a) is or becomes publicly known through no default or breach of this Agreement by the receiving Party;
- (b) was or becomes lawfully known to the receiving Party without any confidentiality obligation from a source other than the disclosing Party who itself obtained it without any confidentiality obligation; or
- (c) is developed by the receiving Party independently of the disclosing Party or the disclosing Party's Confidential Information.

In order to avoid any doubt, however, the parties irrevocably agree all of the object and source code to any software and all software design documents and APIs and/or SDKs relating to the JustRide™ Platform and/or the Validation Hardware and/or the Services and/or the Masabi Data shall never be "Excluded Information" regardless of whether or not any of the criteria in (a) to (c) above are ever met.

"in-App End User Terms" means the terms for download, license and use of the Justride™ Retail Mobile App for purchase of Tickets, as finally decided by the Agency but must include provisions that are materially in the form of (and shall include the blue highlighted sections of) the End User T&Cs set out at Schedule 6 (in-App End User Terms);

"Initial Period" means the initial period of this Agreement as stated in Schedule 1;

"Insolvency Event" means the happening of any of the following events:

- (a) an order is made that a body corporate be wound up;
- (d) an order appointing a liquidator or provisional liquidator in respect of a body corporate is made;
- (e) except to reconstruct or amalgamate while solvent on terms consented to by the other party acting reasonably, a body corporate enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (f) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the other party acting reasonably or is otherwise wound up or dissolved;
- (g) a body corporate is or states that it is insolvent;
- (h) as a result of the operation of applicable Law, a body corporate is taken to have failed to comply with a statutory demand;

- (i) a body corporate is, or makes a statement from which it may be reasonably deduced by the other party that the body corporate is, the subject of an insolvency event under applicable Law;
- (j) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate;
- (k) a resolution is passed to appoint an administrator or an administrator is appointed to a body corporate; or
- (l) anything analogous or having a substantially similar effect to any of the events specified above happens under the Law of any applicable jurisdiction;

"Intellectual Property Rights" means copyright, rights related to or affording protection similar to copyright, database rights, patents and rights in inventions, semi-conductor topography rights, trade and service marks, logos, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise) and registered designs, know-how, trade secrets and moral rights and other similar rights or obligations together with applications for registration and the right to apply for registration and all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction and the right to sue for passing off in each case which may subsist or come into existence from time to time;

"Justride™ Hub" means Masabi's responsive web back-office also known as the 'Hub' which offers its customers a self-service consumer-grade user experience for securely operating the Justride™ Platform. Hub functionality encompasses tariff administration, customer services handling, all types of fare media, tariff setup, validation device management, reporting and analytics;

"Justride™ Inspect Mobile Software" means a software component (and set of APIs) of Masabi's Justride™ Platform that is used to confirm the validity of Tickets used by End Users when travelling on the Customer's transport service and which runs as an enterprise application on any handheld mobile device running iOS or Android, or as an SDK (the Justride™ Inspect Mobile SDK) running on Android only. The Justride™ Inspect Mobile SDK enables third party providers to integrate the Justride Platform validation capabilities into their third-party apps.

"Justride™ Inspect Embedded Software" means a software component of Masabi's Justride™ Platform that is used to confirm the validity of Tickets used by End Users when travelling on Customer's transport service, and which runs as a software layer on validation hardware devices with suitable operating systems (presently Linux) or as an SDK (the Justride™ Inspect Mobile SDK presently running on Linux only) and that complies with the minimum hardware specifications (to be advised by Masabi from time to time);

"Justride™ Platform" means all components of Masabi's Justride™ cloud-based transit fare payments software platform (IT systems and software - known as 'the Justride™ Platform') as detailed in Schedule 1 (Justride™ Platform, Validators and Services) and including the Justride™ Hub and the Justride™ Retail Mobile App, and where applicable the Justride™ Retail SDK, the Justride™ Inspect Mobile Software and/or the Justride™ Inspect Embedded Software, as described in Masabi's Proposal and set out in Schedule 1 (Justride™ Platform, Validation Hardware and Services) deployed to and configured for the Customer;

"Justride™ Inspect Embedded SDK" means the 'Inspect' embedded SDK for third party hardware for inspecting or validating Tickets and which runs on Android or Linux;

"Justride™ Inspect Mobile SDK" means the 'Inspect' SDK for inspecting or validating Tickets on mobile devices which runs on Android;

"Justride™ Retail SDK" means the SDK (for selling Tickets) and which can run on iOS and Android;

"Justride™ Sales Channels" means all different sales options from where End Users purchase or use Customer's Tickets, enabled or managed by the Justride™ Platform, such as the Justride™ Retail App, the Justride™ Retail SDK, the Web Portal, or any other sales channel, as agreed in writing between the Parties;

"Licensed Accessible Products" has the meaning given in clause **Error! Reference source not found.** of this Agreement;

"Masabi Data" is defined in clause **Error! Reference source not found.**

"Masabi Hardware Warranty Plan" means the hardware warranty plan as set out in Schedule 5 (Masabi Hardware Warranty Plan);

"Masabi's Proposal" means the Masabi's proposal submitted to Prime for inclusion in Prime's Proposal to Agency in response to the Agency RFP;

"Masabi's Revenue Share" has the meaning set out in clause 9.2;

"Platform Services" means the services of configuration and implementation of the Justride™ Platform described under the title 'Platform Services' in Schedule 1 (Justride™ Platform, Validators and Services);

"Pre-existing IP" means Intellectual Property Rights of a party, including underlying know-how, ideas, concepts, techniques, methodologies, and processes:

- (a) that were owned by or licensed to that party prior to the Commencement Date; or
- (b) that are created by or on behalf of that party, or licensed to that party, independently from this Agreement.

To avoid any doubt, any modification or improvement of Masabi's Pre-existing IP at any time will form a part of Masabi's Pre-existing IP;

"Premises" means the location agreed between the parties at which the Validation Hardware is to be delivered;

"Rates" means Masabi's then standard time and materials rates as set out in Schedule 2 (Charges) (as varied from time to time in accordance with this Agreement), or if not set out in Schedule 2 (Charges), as provided to the Customer and/or the Agency on request from time to time;

"SDK" means Masabi's Software Development Kit(s);

"Services" means the services provided or to be provided under this Agreement (as the case may be) and which shall comprise the Platform Services and the Additional Services (if any);

"Scope of Support Services Document" means Masabi's support services (and service level agreement) for the Services and for the Justride™ Retail Mobile App (the app support being in-App support) set out in Schedule 3 (Masabi SLA and Support Services), as amended by subsequent notification to the Customer and/or Agency from time to time. Schedule 3 provides a description of the Masabi 'Incident Support Management' process and the service level agreements (SLAs) for Masabi to respond and resolve critical incidents;

"Support Services" means the support services to be provided in accordance with the provisions of the Scope of Support Services Document;

"Term" has the meaning set out in clause 2 (Duration);

"Territory" means the State of North Carolina, USA and any other municipality or administrative area as agreed by the parties in writing;

"Ticket" means a ticket, pass, token, voucher, or similar mechanism issued using the Justride™ Platform which can be used to redeem transportation services from the Agency;

"Ticket Revenue" has the meaning set out in clause 9.2;

"Update(s)" means a software release that fixes known bugs and maintains the functionality of the Justride™ Platform as deployed to and configured for the Agency;

"Validation Hardware" means the Justride™ electronic validation unit (and quantities) as described in under 'Equipment' in Schedule 1 (Services), and any further or other Justride™ electronic validation units as agreed by the parties in writing from time to time;

"Validation Hardware IAT Procedure" means the Masabi Generic Validation Hardware Installation Acceptance Test (IAT) Procedure set out at Schedule 4;



City of Greenville, North Carolina

Meeting Date: 10/07/2024

Title of Item: Contact Award to Eneco East LLC to Replace HVAC AAON Units #6 and #7 and In-Line Duct Humidifiers at City Hall

Explanation: This Facility Improvement Project will replace the two HVAC AAON units and in-line humidifiers that provide conditioned air to the main IT server room at City Hall. The current units are approximately 15 years old and are at the end of their serviceable life, and the humidifiers are also failing and are no longer in production. This project was publicly bid and five bids were received. Eneco East, LLC submitted the lowest bid of \$324,225.

This project is projected to take two weeks to complete. The units will be replaced one at a time to maintain conditioned air to the server room throughout the duration of the project.

Fiscal Note: Contract cost is \$324,225 and funds are available in the FY25 Facility Improvement Project account.

Recommendation: Award the replacement project of 2 HVAC AAON Units and in-line humidifiers for City Hall to Eneco East, LLC for \$324,225.

ATTACHMENTS

[ENECO East Bid- Greenville City Hall HVAC Replacement AAON Units #6 and #7 and In-Line Duct Humidifiers.pdf](#)



PROJECT MANAGEMENT

INFORMAL INVITATION TO BID REQUEST
#24-25-10

HVAC REPLACEMENT
AAON UNIT #6 & #7 and IN-LINE DUCT HUMIDIFIERS
CITY HALL

MANDATORY

PRE-BID MEETING: TUESDAY, SEPTEMBER 10, 2024 @ 10:00 AM
CITY HALL CONFERENCE ROOM 337
200 W. FIFTH STREET, GREENVILLE, NC

BIDS DUE DATE: TUESDAY, SEPTEMBER 24, 2024 @ 2:00 PM
PROJECT MANAGEMENT
2000 CEDAR LANE, GREENVILLE, NC 27834

CONTACT PERSONS:

QUESTIONS REGARDING THE BID PACKAGE:

Wanda House
Financial Services Manager
Telephone: (252) 329-4862
Email: whouse@greenvillenc.gov

QUESTIONS REGARDING THE SPECIFICATIONS:

Mr. Ross Peterson
Project Management
Telephone: (252) 329-4570
Email: rpeterson@greenvillenc.gov



PROJECT MANAGEMENT

6.0 REFERENCE INFORMATION

All bidders must provide a list of three (3) client references of similar work. The reference information must include the company's name, a contact person's name with his or her title and their telephone number. Contractor must provide the information below with their bid sheet. Contractor must be experienced in projects of similar construction.

1. **Company name:** EDGECOMBE COUNTY
 Contact person: STAN LIVERMAN
 Title: MAINTENANCE DIRECTOR **Phone No.** 252.641.7841

2. **Company name:** BEAUFORT COUNTY
 Contact person: CHRISTINA SMITH
 Title: MAINTENANCE DIRECTOR **Phone No.** 252.975.0720

3. **Company name:** PITT COUNTY
 Contact person: KEN BRANN
 Title: DIRECTOR-BUILDINGS & GROUNDS **Phone No.** 252.902.2630



PROJECT MANAGEMENT

7.0 CONTRACTOR INFORMATION

Contractor must provide the information below with the bid sheet.

**CITY OF GREENVILLE
NORTH CAROLINA
PROSPECTIVE CONTRACTOR DATA FORM**

Company Name: ENECO EAST LLC

Address: 103 STATON COURT GREENVILLE NC 27834

Phone Number: 252.752.3686 **Mobile Phone Number:** 252.413.8437

Email: jseymour@enecoeast.com **Business Fax Number:** 252.752.7091

Tax ID# 36-4821956

NC General Contractors License# 33244

Corporation or Partnership: LLC

Number of Years in Business: 37



PROJECT MANAGEMENT

CITY OF GREENVILLE
 PROJECT MANAGEMETN DEPARTMENT
 REQUEST FOR BIDS

In compliance with the request for bids by the City of Greenville and subject to all conditions and specifications thereof, the undersigned offers and agrees to furnish all equipment, labor and work site clean-up as provided in the above-mentioned specifications.

Description

AAON Units #6 & #7 and In-Line Duct Humidifiers Replacement including 10-year extended warranty for parts on AAON Units:

Lump Sum Bid Total

\$ 324,225.00

Bid reviewed, prepared and submitted by-

Company Name: ENECO EAST, LLC

Addenda Received: (1)

Signed: 

Print Name: JOSHUA SEYMOUR

Date: 09.24.2024

**City of Greenville/Greenville Utilities Commission
Minority and Women Business Enterprise (MWBE) Program**

**City of Greenville
Construction Guidelines and Affidavits
\$100,000 and above**

These instructions shall be included with each bid solicitation.

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid

City of Greenville/Greenville Utilities Commission
Minority and Women Business Enterprise Program

\$100,000 and Construction Guidelines for MWBE Participants

Policy Statement

It is the policy of the City of Greenville and Greenville Utilities Commission to provide minorities and women equal opportunity for participating in all aspects of the City's and Utilities' contracting and procurement programs, including but not limited to, construction projects, supplies and materials purchases, and professional and personal service contracts.

Goals and Good Faith Efforts

Bidders responding to this solicitation shall comply with the MWBE program by making Good Faith Efforts to achieve the following aspiration goals for participation.

	CITY	
	MBE	WBE
Construction This goal includes Construction Manager at Risk.	10%	6%
	Type text here	

Bidders shall submit MWBE information with their bids on the forms provided. This information will be subject to verification by the City prior to contract award. **As of July 1, 2009, contractors, subcontractors, suppliers, service providers, or MWBE members of joint ventures intended to satisfy City MWBE goals shall be certified by the NC Office of Historically Underutilized Businesses (NC HUB) only.** Firms qualifying as "WBE" for City's goals must be designated as a "women-owned business" by the HUB Office. Firms qualifying as "MBE" for the City's goals must be certified in one of the other categories (i.e.: Black, Hispanic, Asian American, American Indian, Disabled, or Socially and Economically Disadvantaged). Those firms who are certified as both a "WBE" and "MBE" may only satisfy the "MBE" requirement. **Each goal must be met separately. Exceeding one goal does not satisfy requirements for the other.** A complete database of NC HUB certified firms may be found at <http://www.doa.nc.gov/hub/>. An internal database of firms who have expressed interest to do business with the City and GUC is available at www.greenvillenc.gov. However, the HUB status of these firms must be verified by the HUB database. The City shall accept NCDOT certified firms on federally funded projects only. **Please note: A contractor may utilize any firm desired. However, for participation purposes, all MWBE vendors who wish to do business as a minority or female must be certified by NC HUB.**

The Bidder shall make good faith efforts to encourage participation of MWBEs prior to submission of bids in order to be considered as a responsive bidder. Bidders are cautioned that even though their submittal indicates they will meet the MWBE goal, they should document their good faith efforts and be prepared to submit this information, if requested.

The MWBE's listed by the Contractor on the **Identification of Minority/Women Business Participation** which are determined by the City to be certified shall perform the work and supply the materials for which they are listed unless the Contractors receive **prior authorization** from the City to perform the work with other forces or to obtain materials from other sources. If a contractor is proposing to perform all elements of the work with his own forces, he must be prepared to document evidence satisfactory to the owner of similar government contracts where he has self-performed.

The Contractor shall enter into and supply copies of fully executed subcontracts with each MWBE or supply signed Letter(s) of Intent to the Project Manager after award of contract and prior to Notice to Proceed. Any amendments to subcontracts shall be submitted to the Project Manager prior to execution.

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid

Instructions

The Bidder shall provide with the bid the following documentation:

- Identification of Minority/Women Business Participation
(if participation is zero, please mark zero—Blank forms will be considered nonresponsive)
- Affidavit A (if subcontracting)

OR

Type text here

- Identification of Minority/Women Business Participation
(if participation is zero, please mark zero—Blank forms will be considered nonresponsive)
- Affidavit B (if self-performing; must attest that bidder does not customarily subcontract work on this type of project—includes supplies and materials)

Within 72 hours or 3 business days after notification of being the apparent low bidder who is subcontracting anything must provide the following information:

- Affidavit C (if aspirational goals are met or are exceeded)

OR

- Affidavit D (if aspirational goals are not met)

After award of contract and prior to issuance of notice to proceed:

- Letter(s) of Intent or Executed Contracts

****With each pay request, the prime contractors will submit the Proof of Payment Certification, listing payments made to MWBE subcontractors.**

*****If a change is needed in MWBE Participation, submit a Request to Change MWBE Participation Form. Good Faith Efforts to substitute with another MWBE contractor must be demonstrated.**

Minimum Compliance Requirements:

All written statements, affidavits, or intentions made by the Bidder shall become a part of the agreement between the Contractor and the City for performance of contracts. Failure to comply with any of these statements, affidavits or intentions or with the minority business guidelines shall constitute a breach of the contract. A finding by the City that any information submitted (either prior to award of the contract or during the performance of the contract) is inaccurate, false, or incomplete, shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the City whether to terminate the contract for breach or not. In determining whether a contractor has made Good Faith Efforts, the CITY will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts.

Identification of Minority/Women Business Participation

I, ENECO EAST, LLC _____
(Name of Bidder)

do hereby certify that on this project, we will use the following minority/women business enterprises as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #	Work type	*MWBE Category
N/A		

*MWBE categories: Black, African American (B), Hispanic, Latino (L), Asian American (A) American Indian (I), Female (F) Socially and Economically Disadvantaged (S) Disabled (D)

If you will not be utilizing MWBE contractors, please certify by entering zero "0"

The total value of MBE business contracting will be (\$) 0.00 _____.

The total value of WBE business contracting will be (\$) 0.00 _____.

City of Greenville AFFIDAVIT A – Listing of Good Faith Efforts

County of PITT

(Name of Bidder)

Affidavit of ENECO EAST LLC

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

- 1 – (10 pts) Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- 2 – (10 pts) Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- 3 – (15 pts) Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4 – (10 pts) Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- 5 – (10 pts) Attended prebid meetings scheduled by the public owner.
- 6 – (20 pts) Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7 – (15 pts) Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- 8 – (25 pts) Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- 9 – (20 pts) Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- 10 - (20 pts) Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

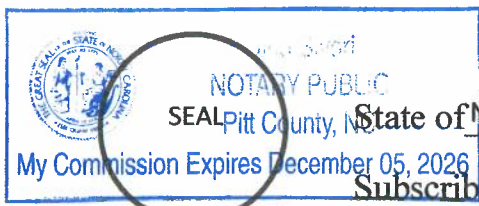
The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority/Women Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority/women business commitment and is authorized to bind the bidder to the commitment herein set forth.


Date: 09.24.2024 Name of Authorized Officer: JOSHUA SEYMOUR

Signature: 

Title: PROJECT MANAGER



Subscribed and sworn to before me this 24th day of SEPT. 2024

Notary Public 

My commission expires 12/05/2026

STATE OF NORTH CAROLINA

AFFIDAVIT

CITY OF GREENVILLE

I, JOSHUA SEYMOUR (the individual attesting below), being duly authorized by and on behalf of ENECO EAST, LLC (the entity bidding on project hereinafter "Employer") after first being duly sworn hereby swears or affirms as follows:

- 1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).
- 2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).
- 3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (mark Yes or No)
 - a. YES X, or
 - b. NO _____
- 4. Employer's subcontractors comply with E-Verify, and if Employer is the winning bidder on this project Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer.

This 24th day of SEPTEMBER, 20 24.

[Signature]
Signature of Affiant
Print or Type Name: JOSHUA SEYMOUR

State of North Carolina City of Greenville

Signed and sworn to (or affirmed) before me, this the 24th day of SEPTEMBER, 20 24.

My Commission Expires: 12/05/2026

Notary Public: [Signature]

(Affix Official/Notarial Seal)





City of Greenville, North Carolina

Meeting Date: 10/07/2024

Title of Item: Various Tax Refunds Greater Than \$100

Explanation: **Abstract:** Pursuant to North Carolina General Statute 105-381, refunds are being reported to City Council. These are refunds created by a change or release of value for City of Greenville taxes by the Pitt County Tax Assessor. Pitt County Commissioners have previously approved these refunds; they are before City Council for their approval as well. These refunds will be reported as they occur when they exceed \$100.

Explanation: The Director of Financial Services reports refunds of the following taxes:

<u>Payee</u>	<u>Adjustment Refunds</u>	<u>Amount</u>
Backus, Robert Earl	Registered Motor Vehicle	630.37
Spencer, Johnny Williams Jr	Registered Motor Vehicle	540.63
Measamer, Sylvia Harrington	Registered Motor Vehicle	465.45
Oneal, Gary Ryan Jr	Registered Motor Vehicle	462.41
Levine, Kaylyn Avery	Registered Motor Vehicle	452.37
Greenland, Barry Williams	Registered Motor Vehicle	381.57
Pearsall, Maria Elena	Registered Motor Vehicle	350.44
Ruiz, Laylani Danielle	Registered Motor Vehicle	339.80
Nowell, Ebonee Braswell	Registered Motor Vehicle	311.09
Grillo, Christine Ann	Registered Motor Vehicle	292.27
Ormond, Herbert Lyman III	Registered Motor Vehicle	286.15
Wieder, Steven Mark	Registered Motor Vehicle	265.54
Van Wagner, Kenneth James	Registered Motor Vehicle	243.88
Carmon, Jasmine Chanee	Registered Motor Vehicle	238.49
Walston, Larry Donald Jr	Registered Motor Vehicle	211.46
Baker, Harriett Hill	Registered Motor Vehicle	209.81

Sannapu, Satyadev	Registered Motor Vehicle	197.66
Christiano, Natalie Grace	Registered Motor Vehicle	196.14
Stone, Jaquan Lesean	Registered Motor Vehicle	189.55
Allen, Sally Hardee	Registered Motor Vehicle	181.38
Hobbs, Nolan Patrick	Registered Motor Vehicle	171.27
Copeland-Williams, Serena Marshelle	Registered Motor Vehicle	148.65
Bui, Kim Leigh	Registered Motor Vehicle	130.85
Daly, Debra Lynne	Registered Motor Vehicle	118.46
Stone, Jaquan Lesean	Registered Motor Vehicle	118.00
Scruggs, Richard Paul	Registered Motor Vehicle	111.80
Green, Clifton Earl Jr	Registered Motor Vehicle	111.59
Oliveria, Elizabth Jane	Registered Motor Vehicle	111.01
Deyton, Robert Guy Jr	Registered Motor Vehicle	110.31
Lutz, Markus Alexander	Registered Motor Vehicle	109.69
Ellis, Federick Wayne	Registered Motor Vehicle	105.90
Hardee, Wilbur	Registered Motor Vehicle	100.32
Aldi NC LLC	Business Personal Property	12,985.17
Greenville Mobile Estates LLC	Business Personal Property	6,350.13
Green Venture LLC	Business Personal Property	4,539.73
Jacobs, Andrew James	Individual Property Taxes	254.86
Senna, Ronald J	Individual Property Taxes	196.77
Stewart, Karen	Individual Property Taxes	179.12
Savage, George Thomas	Individual Property Taxes	167.65
Edwards, Shepherd M	Individual Property Taxes	152.16
Malloy, Connie Jones	Individual Property Taxes	125.06
Seaman, Aline	Individual Property Taxes	114.87

Fiscal Note: The total amount refunded is \$32,959.83

Recommendation: Approval of taxes refunded by City Council



City of Greenville, North Carolina

Meeting Date: 10/07/2024

Title of Item: Presentations by Boards and Commissions

- a. Historic Preservation Commission
- b. Human Relations Council
- c. Greenville Youth Council

Explanation: The City Council's advisory boards make annual presentations to the City Council. The City Council will hear presentations from the following boards:

- Historic Preservation Commission
- Human Relations Council
- Greenville Youth Council

Fiscal Note: No direct fiscal impact.

Recommendation: Hear presentation from the Historic Preservation Commission, Human Relations Council, and Greenville Youth Council



City of Greenville, North Carolina

Meeting Date: 10/07/2024

Title of Item: Contract Award for Professional Services for the Greenville MPO 2024 Pavement Condition Survey and Asset Inventory Project

Explanation: On March 15, 2024, the City advertised a Request for Letters of Interest (RFLOI) for professional service firms to perform a Roadway Pavement Condition Survey and Asset Inventory collection for the locally maintained street system. On April 18, 2024, staff received three (3) proposals in response to the RFLOI. A selection team consisting of two (2) City staff members, one (1) NCDOT Transportation Planning Division representative, and one (1) representative from the Village of Simpson reviewed each proposal independently and rated each according to the criteria included in the RFLOI. After independent review, the team met together to discuss ratings and to select a firm. The selection team unanimously chose the team lead by ESP Associates, Inc. of Fort Mill, SC. ESP Associates has teamed with KCI Associates of North Carolina, PA, to provide a comprehensive approach to pavement analysis and asset collection.

The scope of professional services for the Greenville MPO 2024 Pavement Condition Survey and Asset Inventory Project includes, but is not limited to, project management, automated pavement data collection, automated pavement data processing, LiDAR data collection and asset (sidewalks and accessible ramps) extraction. Once the assets are identified, the consultant will perform self-assessments of ADA compliance for all new assets installed and accepted by the City after the 2019 Pavement Condition Survey. These self-assessments are required per the City's ADA Transition Plan.

The Engineering Department is requesting City Council approve and award the professional services contract (Attachment A) to ESP Associates, Inc. in the amount of \$372,583.20.

Fiscal Note: The \$372,583.20 will be funded through the following fund sources:

- Greenville MPO: \$80,000.00
- Sidewalk and ADA upgrades: \$200,000.00
- Engineering Department contracted services: \$20,000.00
- Capital Project fund: \$72,583.20

Recommendation: City Council approve and award a professional services contract for the Greenville MPO 2024 Pavement Condition Survey and Asset Inventory Project to ESP Associates, Inc. in the amount of \$372,583.20.

ATTACHMENTS

- [Attachment A-MPO 2024 Pavement Condition Survey and Asset Inventory Contract.pdf](#)

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



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
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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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
ESP Associates, Inc. (ESP) _____ (“Engineer”).

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

City of Greenville MPO Pavement Condition Survey

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

Pavement Condition Survey & Asset Inventory

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. 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. (Not included)
- E. Exhibit E, Notice of Acceptability of Work. (Not included)
- F. Exhibit F, Construction Cost Limit. (Not included)
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution. (Not Included)
- I. Exhibit I, Limitations of Liability. (Not Included)
- 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: City of Greenville

Engineer: ESP Associates, Inc.

By: P. J. Connelly

By: Joseph R. Bruno, Jr.

Title: Mayor

Title: Executive Vice President

Date _____

Date _____

Signed: _____

Signed: _____

Engineer License or Firm's Certificate No. Engineering & Surveying #F-1407
State of: NC

Address for giving notices:

Address for giving notices:

1500 Beatty Street

3475 Lakemont Blvd

Greenville, NC

Fort Mill, SC

27834

29708-9243

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

Kevin D. Leigh, PLS

Ryan Swingley

Title: Asset Manager

Title: Geospatial Business Unit Executive

Phone Number: 252-329-4470

Phone Number: 317-306-0158

E-Mail Address: kleigh@greenvillenc.gov

E-Mail Address: rswingley@espassociates.com

APPROVED AS TO FORM:

BY: _____
Emanuel D. McGirt, City Attorney

DATE: _____

PRE-AUDIT CERTIFICATION:

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

Director of Financial Services

DATE: _____

Account Number(s)/Project String(s) _____

This is **EXHIBIT A**, consisting of 11 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 5, 2024.

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:

Phase 1 Pavement Condition Survey

1.1 Project Management & Project kickoff meeting

The Project Manager will work with the City to schedule bi-weekly /monthly project meetings and define channels for communication between the ESP team and City staff.

The Project Manager will coordinate with the City for a project kickoff meeting to confirm the scope, extent, and contents of surveys and will discuss the following items:

- Project management
- Scope, project schedule, and milestones
- Network GIS shapefile and segmentation
- Construction history and deliverables

1.2 Automated Pavement Data Collection

a) Records Review & Data Collection Routing

ESP will prepare data collection maps and routes based on existing centerline data to be provided by the City, for the pavement condition survey and provide the City with the proposed data collection route maps confirming the data collection requirements for each pavement segment.

b) Pavement Data Collection

A PCI-based Pavement Condition Survey - All of the approximately 282 centerline miles of paved streets within the City limits of Greenville.

- For arterials and collectors, the survey will involve driving in both directions. All the collected data will then be processed to determine the Pavement Condition Index (PCI)
- Local streets will be driven in one direction following the digitized direction of the provided centerline files. Local roads will be driven in two directions when sidewalks are present on

both sides of the road, on any divided road, or on roads with more than 2 lanes in each direction.

1.3 Automated Pavement Data Processing

a) Field Pilot

The ESP team will discuss with the City Staff to select approximately 15 miles of streets to demonstrate all required deliverables for the City's review before completing the remaining streets. The field pilot allows the ESP team to collect, process, and review condition data with City staff to confirm the accuracy of the data collection and interpretation protocols

b) Pavement Data Processing – ESP

A pavement condition inspection will be performed block to block for the 100% area of the driven lane. Also, each pavement section will be divided into sample units for the entire driven lane area based on the ASTM D6433, and all sample units will be processed automatically to determine the type, severity, and extent of the existing distress. Pavement distress and PCI values will be provided for each sample unit in a geodatabase so the City can perform QC on the inspections at the sample level.

c) QA/QC of Pavement Condition Data

A geodatabase will be delivered, including all downward, forward, left, and right views of the right-of-way imagery linked with the corresponding pavement sections. Also, the downward view (pavement view) shall include 3D, range, and distress overlay imagery in the same geodatabase to facilitate the pavement data Quality Control process.

d) Presenting data to the City

The ESP team will present the PCI data and analytics to the City staff and will provide the following deliverables:

- Pavement distress and PCI values will be provided for each sample unit in a geodatabase so the City can perform Quality Control on the inspections.
- The pavement condition and PCI data that is compatible with Pavement Express™.
- Configuration of pavement express and developing budget scenarios and multi-year pavement maintenance, preservation, and rehabilitation plan for the City of Greenville
- The International Roughness Index (IRI) data should be collected for all streets following the ASTM E950 standards and reported based on the Facility ID.

1.4 Pavement Management Software Implementation and Analysis

a) The ESP team will review the pavement deterioration models that the city created, provide feedback, and include it in the report.

b) The ESP team will review the pavement treatment selection decision tree in the Pavement Express™ that the city created, provide feedback, and include it in the report.

c) The ESP team will review the budget/maintenance scenario analysis that the City will create and summarize those to create a comparison chart and include it in the report.

- d) The ESP will review the multi-year pavement rehabilitation plan the City will create, provide feedback, and summarize those in the report.

1.5 Final Report & Presentation

A comprehensive report with charts, tables, graphics, and images to summarize the following items:

- Executive Summary
- Summary and findings of Pavement condition results and analytics
- Details of pavement management through pavement preservation and rehabilitation
- A summary of the budget scenario analysis that the City will perform and an explanation of the current budget based on the City's needs.

1.6 Pavement Express Support

The ESP team will provide Pavement Express platform support for 20 hours as a task manager and 20 hours as a data analyst.

Phase II LiDAR Data Collection and Asset Extraction

2.1 LiDAR Data Collection

- a) Mobile Lidar Collection (collection miles)

ESP anticipates collecting 353 miles of mobile Lidar for the City of Greeneville. This data will be utilized for all asset extraction and assessment. At any point in the future, this data can be controlled in specified areas giving the city survey grade design quality data for use on other projects.

- b) Mobile Lidar Processing (collection miles)

ESP will utilize the current version of RiProcess to process the anticipated 353 miles of mobile lidar for the City of Greeneville. All files will be of asset quality and registered cloud to cloud to create a unified point cloud.

- c) Mobile Lidar Data Export and Tiling (centerline miles)

ESP will create a tiling scheme based on the provided City of Greeneville centerline shapefile. These tiles will then be used to parse all the mobile lidar data, creating computer-friendly sections of working data.

- d) Mobile Lidar Image Export and Calibration (collection miles)

ESP will complete calibrations for the ladybug 5+ image collections and export georeferenced images for the entire collection network that will be utilized in the asset extraction process.

2.2 Asset Extraction

a) Sidewalk geodatabase, condition and ADA compliance (new only)

ESP will create a geodatabase for all new sidewalks within the City of Greenville's provided centerline shapefile. The following attributes will be provided.

- AssetID
- Street Name
- Position
- Direction
- Length
- Photo Image Link
- ADA Compliance
 - Cross slope
 - Vertical fault size
 - Obstructions
 - Width
- Condition
 - Number of multi-cracked panels
 - Number of divided panels
 - Spalling
- Overall Physical Condition Rating
 - Good
 - Fair
 - Poor
- Comments

b) Ramp Extraction and ADA Assessment (New Only)

ESP will create a geodatabase for all new ramps within the City of Greenville's provided centerline shapefile. The following attributes will be provided.

- Asset ID
- X, Y Location
- Photo Image link
- ADA Compliance
 - Ramp width
 - Cross slope
 - Running slope
 - Detectable wearing surface type
 - Detectable wearing surface width
 - Curb ramp gutter slope

- Curb ramp gutter counter slope
- Landing dimension
- Landing slope
- Approach cross-slope
- Flare slope
- Vertical faults
- Obstructions
- Number of multi-cracked panels
- Number of divided panels
- Physical Condition Rating
 - Good = ramp is level with no uprooting or cracking with truncated dome
 - Fair = ramp has minimal uprooting or cracking
 - Poor = ramp has major uprooting or cracking and poses a hazard to pedestrians
- Comments

c) Asset Extraction PM QA/QC (extraction miles)

ESP will incorporate manual and automated processes to validate the accuracy of all provided assets within the City of Greenville’s provided centerline shapefile.

- ~~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, *see scope of work at end of exhibit* 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 perform services in accordance with Exhibit A, Attachment 1.~~

~~B. Engineer's services under the Final Design Phase will be considered complete on the date (_____) when the submittals required by Exhibit A have been delivered to and approved by Owner.~~

~~C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.~~

~~D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one. 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 as set forth in **Exhibit A, Attachment 2.**~~

- ~~1. Unspecified 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 constructability 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 3 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]*.

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 5, 2024.

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 - 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 total lump sum amount \$ 372,583.20 based on the following estimated distribution of compensation.

Phase I Total: \$170,593.20

- 1.1 Project Management & Project kickoff meeting \$22,316.34
- 1.2 Automated Pavement Data Collection \$41,511.38
- 1.3 Automated Pavement Data Processing \$62,609.35
- 1.4 Pavement Management Software Implementation and Analysis \$13,238.70
- 1.5 Final Report and Presentation \$25,105.88
- 1.6 Pavement Express Support \$5,811.55

Phase II Total: \$201,990.00

- 2.1 LiDAR Data Collection \$104,125.00
- 2.2 Asset Extraction \$97,865.00

2. 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 Lump Sum amount unless approved in writing by the Owner.
3. The Lump Sum amount includes compensation for Engineer’s services and services of Engineer’s Consultants. The Lump Sum amount accounts 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.
5. Period of Service: The compensation amount stipulated in the Compensation Packet BC-1 is conditioned on a period of service that begins upon receipt of signed contract and will end when the Final Design is completed. If such period of service is extended, the compensation amount for the Engineer's services shall be appropriately adjusted.

**COMPENSATION PACKET AS-1:
Additional Services — Lump Sum**

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

~~C2.05 Compensation for Additional Services — Lump Sum Method of Payment~~

~~A. Owner shall pay Engineer for Additional Services set forth in Exhibit A, except for services of Engineer's Resident Project Representative, if any, as follows:~~

~~1. Lump Sum amounts as identified below based on the following compensation:~~

- ~~a. _____ \$ _____~~
- ~~b. _____ \$ _____~~
- ~~c. _____ \$ _____~~
- ~~d. _____ \$ _____~~
- ~~e. _____ \$ _____~~

~~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 Sums include compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum costs included in Paragraph C2.05.A.1 to account for labor, overhead, profit, and Reimbursable Expenses.~~

~~4. The portion of the Lump Sum amounts billed for Engineer's Additional 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 amounts stipulated in Paragraph C2.05.A.1 are conditioned on the period of service as identified in Paragraph C2.01.A.5. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.~~

This is **Appendix 1 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 5, 2024.

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 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:

Key Staff	Position	Overhead Rate	Fee %	Cost of Capital	Total
Brian Moravec	Project Survey Supervisor	185.46%	9%	1.48%	\$145.25
Derek Rhoten	Survey Crew Leader	185.46%	9%	1.48%	\$78.16
Walter Cubero	Survey Crew Member	185.46%	9%	1.48%	\$68.00
Ryan Swingley	Geospatial Business Unit Executive	185.46%	9%	1.48%	\$293.09
Bryce Robertson	Data Analyst	165.97%	9%	0.67%	\$81.36
Sarah Huber	Senior Data Analyst	165.97%	9%	0.67%	\$164.90
Shahidul Islam	Principal Engineer	165.97%	9%	0.67%	\$209.22

This is **EXHIBIT G**, consisting of 3 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~~ _____ \$ _____
- e. ~~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 J, consisting of 4 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated _____, _____.

Special Provisions

The Agreement is amended to include the following agreement(s) of the parties:

Federal Requirements

This Contract will be funded in whole or in part with federal funding. As such, federal laws, regulations, policies and related administrative practices apply to this Contract. The most recent of such federal requirements, including any amendments made after the execution of this Contract shall govern the Contract, unless the federal government determines otherwise. This section identifies the federal requirements that may be applicable to this contract. The Vendor is responsible for complying with all applicable provisions, updates or modifications that occur in the future relating to these clauses.

To the extent possible, the federal requirements contained in the most recent version of the Uniform Administrative Requirements for federal awards (Uniform Rules) codified at 2.C.F.R., Part 200, including any certifications and contractual provisions required by any federal statutes or regulation referenced therein to be included in this contract are deemed incorporated into this contract by reference and shall be incorporated into any sub-agreement or subcontract executed by the Vendor pursuant to its obligations under this Contract. The Vendor and its sub-contractors, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the original contract then in effect and with all applicable federal, state, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to Work to be performed under this contract.

No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

Access to Records

The following accesses to records requirements apply to this contract:

- (1) The contractor agrees to provide the City of Greenville, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- (3) The contractor agrees to provide City access to construction or other work sites pertaining to the work being completed under the contract.

Changes

Any change in the contract cost, modification, change order, or constructive change must be allowable, allocable, within the scope of its funding, grant or cooperative agreement, and reasonable for the completion of project scope. All changes and/or amendments to the contract will be outlined in detail, formalized in writing, and signed by the authorized representative of each party. A Contractor's failure to do so shall constitute a material breach of the contract.

Termination for Convenience (General Provision)

The City may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City to be paid the Contractor. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in the manner the City directs.

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure (General Provision)

The City in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) calendar after receipt by Contractor of written notice from the City setting forth the nature of said breach or default, the City shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that the City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the City shall not limit the City's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

Equal Opportunity

“During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, 3 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a

contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state conservation plan issued in compliance with the Energy Policy and Conservation Act.

Suspension and Debarment

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

Suspension and Debarment Certification

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Title VI of the Civil Rights Act of 1964 Nondiscrimination Provisions, Appendices A & E.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1) Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, creed (religion), low-income, limited English proficiency, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

ct covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

(3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

onal origin.

(4) Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the USDOT to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the USDOT, as appropriate, and will set forth what efforts it has made to obtain the information.

on, the contractor will so certify to the Recipient or the USDOT, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to:

- (a) withholding payments to the contractor under the contract until the contractor complies; and/or
- (b) cancelling, terminating, or suspending a contract, in whole or in part.

(6) Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the USDOT may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

h litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

I. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- es of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- on includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq);
- Federal transit laws, specifically 49 U.S.C. § 5332 (prohibiting discrimination based on race, color, religion, national origin, sex (including gender identity), disability, age, employment, or business opportunity).

a. NCDOT Title VI Nondiscrimination Program (23 CFR 200.5(p))

The North Carolina Department of Transportation (NCDOT) has assured the United States Department of Transportation that, as a condition to receiving federal financial assistance, NCDOT will comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed by Title 49 CFR part 21 and related nondiscrimination authorities to ensure that no person shall, on the ground of race, color, national origin, limited English proficiency, income-level, sex, age, or disability, (or religion, where applicable) be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any programs, activities, or services conducted or funded by NCDOT. Contractors and other organizations under contract or agreement with NCDOT must also comply with Title VI and related authorities, therefore:

- I. During the performance of this contract or agreement, contractors (e.g., subcontractors, consultants, vendors, prime contractors) are responsible for complying with NCDOT's Title VI Program. Contractors are not required to prepare or submit Title VI Programs. (*USDOJ Title VI Legal Manual, VI(F)*)
- II. Subrecipients (e.g. cities, counties, LGAs, MPO/RPOs) may be required to prepare and submit a Title VI Program to NCDOT, which may include Title VI Nondiscrimination Assurances and/or agreements. Subrecipients must also ensure that their contractors and subrecipients comply with Title VI. (*23 CFR 200.9(b)(7)*)
- III. If reviewed or investigated by NCDOT, the contractor or subrecipient agrees to take affirmative action, to correct any deficiencies found within a reasonable time period, not to exceed 90 calendar days, unless additional time is granted by NCDOT. (*23 CFR 200.9(b)(15)*)

4. Incorporation of Provisions:

The CONSULTANT will include the provisions of paragraph 6.12 of this AGREEMENT in every sub-contract, including procurements of materials and

leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The CONSULTANT or subconsultant will take such action with respect to any subcontract, procurement or leases as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the CONSULTANT become involved in, or is threatened with litigation with a subconsultant, or lessor as a result of such direction, the CONSULTANT may request the CITY to enter into such litigation to protect the interests of the CITY, and in addition, the CONSULTANT may request the State of North Carolina and United States to enter into such litigation to protect the interests of the United States. The CONSULTANT shall advise the CITY, State of North Carolina and United States in writing of such potential or actual litigation. However, the CITY, State of North Carolina and United States are not required to enter into such litigation by law. The CONSULTANT shall be responsible for paying all litigation expenses, including but not limited to attorneys fees and costs, incurred by the CITY, State of North Carolina and United States defending such litigation.

5. For contracts and subcontracts of amounts in excess of \$100,000.00, the CONSULTANT or subconsultant will comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 7606), Section 508 of the Clean Water Act (33 USC 1368), U.S. Presidential Executive Order 11738, and U.S. Environmental Protection Agency (EPA) regulations, which prohibit, under nonexempt Federal contracts, grants or loans, the use of facilities included on the EPA List of Violating Facilities. The CONSULTANT or subconsultant will report violations to the grantor agency and to the U.S. Environmental Protection Agency, U.S. Assistant Administrator for Enforcement.

Disadvantaged Business Enterprises

(a) Policy

It is the policy of the CITY that small businesses shall have an equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by federal and state funds.

The CITY is committed to its annual aspirational goal(s) set on all federally-assisted and state funded contracts. Professional Services Contracts are race and gender neutral and do not contain goals. However, the CONSULTANT is encouraged to give every opportunity to allow Disadvantaged, Minority-Owned and Women-Owned Business Enterprises (DBE/MBE/WBE) subconsultant participation on all contracts and supplemental agreements.

(b) Obligation

In compliance with *Title VI, 23 CFR 200, 230, 635, 117 (d) and (e) and 49 CFR Parts 21 and 26*, the CONSULTANT and subconsultant shall not discriminate on the basis of race, religion, color, creed, national origin, age, disability or sex in the performance of this contract. Failure by the CONSULTANT to comply with these requirements is a material breach of this contract, which will result in the termination of this contract or such other remedy, as the North Carolina Department of Transportation deems necessary.

(c) Reporting Participation

When payments are made to subconsultants, including material suppliers, firms at all levels (CONSULTANT, subconsultant or subfirm) shall provide the Contract Administrator with an accounting of said payments. This accounting shall be furnished to the Contract Administrator for any given month, by the end of the following month. Failure to submit this information accordingly may result in (1) withholding of money due in the next partial pay estimate; or (2) removal of an approved CONSULTANT from the pre-qualified list or the removal of other entities from the approved subconsultants list. The accounting shall be listed on the Department's Subcontractor Payment Information Form (Form DBE-IS). In the event the CONSULTANT has no subconsultant participation, the firm shall indicate this on the Form DBE-IS by entering the word 'None' or the number 'zero' and the form shall be signed.

A responsible fiscal officer of the payee CONSULTANT, or subconsultant, who can attest to the date and amount of the payments shall certify that the accounting is correct on the Form DBE-IS by affixing his/her signature. This information shall be submitted as part of the requests for payments made to the North Carolina Department of Transportation. A copy of the Form DBE-IS may be found on the NCDOT website.

Small Professional Services Firms

(a) Program

The Small Professional Services Firm (SPSF) Program was developed to provide consultant opportunities for firms that meet the eligibility criteria to compete against other consultant firms that are comparably positioned in their industries.

The CITY and North Carolina Department of Transportation is committed to providing contractual opportunities to qualified firms and believes that the total quality of a professional or specialized services team is enhanced by the inclusion of qualified subconsultants.

The SPSF program is a race, ethnicity, and gender neutral program designed to increase the availability of contracting opportunities for small businesses on federal, state, or locally funded contracts. SPSF participation is not contingent upon the funding source.

Participation credit cannot be counted unless the firm is certified as a SPSF at the time a letter of interest is submitted for the proposed work.

A firm certified as a Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE), and/or Women's Business Enterprise (WBE) may automatically be certified, based on North American Industrial Classification System (NAICS) code classification, as an SPSF and does not need to obtain further SPSF certification.

(b) Replacement of SPSF contractors

The Prime Consultant must not terminate a SPSF listed in the Consultant's Letter of Interest, for convenience and then perform the work of the terminated subcontract with its own forces, or those of an affiliate, without the Department's prior written consent.

When a SPSF subconsultant is terminated or fails to complete its work on the contract for any reason, the Department encourages the Prime Consultant to make an earnest effort to find another SPSF subconsultant to substitute for the original SPSF. These efforts shall be directed at finding another SPSF to perform at least the same amount of work under the contract as the SPSF that was terminated.

(c) Counting SPSF Participation toward meeting the proposed SPSF Utilization

If a Firm is determined to be an eligible SPSF Firm and certified by the Department, the total dollar value of the participation by the SPSF will be counted toward the utilization. The total dollar value of participation by a certified SPSF will be based upon the value of work actually performed by the SPSF and the actual payments to SPSF Firms by the Consultant.

State Requirements

Iran Divestment Act Certification. The Vendor hereby certifies that, it is not on the Iran Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. § 147-86.58. The Vendor shall not utilize in the performance of the Agreement any subcontractor or subconsultant that is identified on the Iran Final Divestment List.

E-Verify. The Vendor shall comply with the requirements of Chapter 64, Article 2 of the North Carolina General Statutes. Further if the Vendor utilizes a subcontractor or subconsultant, the Vendor shall require

the subcontractor and subconsultant to comply with the requirements of Chapter 64, Article 2 of the North Carolina General Statutes. The Vendor represents that the Vendor and its subcontractors and subconsultants are in compliance with the requirements of Chapter 64, Article 2 of the North Carolina General Statutes.

Governing Law and Venue. This Agreement is deemed to be made in Pitt County, North Carolina under and shall be governed by and construed according to the laws of the State of North Carolina and the ordinances of the City of Greenville. North Carolina law shall govern the interpretation and enforcement of this Agreement, and any other matters relating to this Agreement. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Pitt County, North Carolina. Such actions shall neither be commenced in nor removed to federal court. This subsection shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. By execution of this Agreement, the Parties submit to the jurisdiction of such herein stated courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any said court sitting in Pitt County, North Carolina.

Israeli Boycott Divestment:

Vendor or Contractor certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to NCGS 147-86.81.

Dispute Resolution Clause:

- A. In the event of a dispute between the Parties which the Parties are unable to resolve within the normal course of business, the Parties within fifteen (15) days after delivery of written notice of the dispute, promptly appoint a designated representative who has authority to settle the dispute. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. If the Parties are unable to resolve issues related to the dispute within thirty (30) days after the Parties' appointment of the designated representatives, then either may submit their dispute to non-binding mediation before the regulatory authority having proper jurisdiction pursuant to such regulatory authority's rules and practices for handling such disputes. Each Party shall bear its own costs and expenses of participating in the mediation (including, without limitation, reasonable attorneys' fees), and each Party shall bear one-half (1/2) of the costs and expenses of the mediator. The matters discussed or revealed in the mediation session shall not be revealed in any subsequent litigation. In the event the matter is not resolved in mediation, the dispute resolution procedures in this section shall not preclude either Party from filing a proceeding or commencing a dispute process before a regulatory authority having proper jurisdiction pursuant to such regulatory authority's rules and practices for handling such matters.

- B. Final Dispute Resolution will be via litigation in Pitt County Superior Court.

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. _____

4. *Background Data:*

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

5. *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: 10/07/2024

Title of Item: Update on Environmental and Climate Justice Community Change Grant Application

Explanation: The Greenville Community and Climate Resilience Project is comprised of four infrastructure projects that will individually contribute to different aspects of community development, protection, and wellness:

- The first involves reducing and preventing pollution through the addition of a constructed wetland at the Greenfield Terrace Park. This will provide dual benefits of mitigating flood risk and enhanced stormwater management while reducing watershed pollution and associated health and environmental hazards.
- The second project will support resilience to climate change and mitigate current and future climate risks through the construction of a secondary Emergency Operations Center/Engineering Building, used to house City staff and resources during emergencies.
- Additionally, the construction of a community gym (third project) will provide permanent storage for the American Red Cross, be used as a distribution warehouse during emergencies, and serve as a community gym under blue skies. In a disaster, rapid deployment of emergency resources becomes a key factor in reducing losses. In tandem, these projects will contribute to the manufacturing and construction of resilient green infrastructure, offsetting the risks associated with outdated or environmentally unfriendly infrastructure.
- The fourth project will bolster the project area's strengths by retrofitting the Boys and Girls Club to support its mission. The site will be retrofitted to include LED lights, solar power/batteries, an energy-efficient HVAC, and EV stations, providing clean, resilient energy. These improvements support the Boys and Girls Club initiatives and provide opportunities for the American Red Cross to utilize the facility for training during blue-sky operations.

Grant applications are reviewed on a rolling basis as stated in the Notice of Funding Opportunity. Applicants selected for award will be notified as soon as possible after the evaluation and selection process is complete.

Fiscal Note: The Greenville Community and Climate Resilience Project is estimated to cost \$21 million. The grant application requested \$20 million (maximum award) in Federal funds with the City contributing an additional \$1 million from the

Stormwater Utility Fund.

Recommendation: Council receive update.



City of Greenville,
North Carolina

Meeting Date: 10/07/2024

Title of Item: Ordinance to Amend the Manual of Fees to Add Fees to Engineering Fees

Explanation: Attached for consideration at the October 7, 2024 City Council meeting is an ordinance for addition of two Engineering fees to the 2024-25 City of Greenville Manual of Fees. The Engineering Department is requesting to add CDL Skills Test Fee for Non-Employees at \$150 and also a Payment in Lieu of Attenuation fee of \$2,500 per CFS increase. The CFS increase is determined as the difference in peak runoff rate of post-development from pre-development rates for the highest storm event regulated in Sec 9-9-15 (A-B) (10 or 25 yr/6 hr storm), calculated in cubic feet per second. This fee was adopted in the revised stormwater ordinance, Section 9-9-16, passed by City Council on April 11, 2024 and effective on July 1, 2024.

Fiscal Note: These fees will cover costs for third party CDL Skills testing for non-employees at \$150 per request and recognize a payment in lieu of attenuation fee of \$2,500 per CFS increase.

Recommendation: Approve the ordinance to add the additional Engineering fees.

ATTACHMENTS

- [Manual_of_Fees_Engineering \(1\).doc](#)

ORDINANCE NO. 24-____
AN ORDINANCE AMENDING THE MANUAL OF FEES RELATING TO ENGINEERING
FEES – TRAFFIC ENGINEERING AND STORMWATER

WHEREAS, an amendment to the Manual of Fees is required to provide for fees related to the City’s Engineering Fees – Traffic Engineering CDL skills test fee for non-employees and Payment in lieu of attenuation;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES HEREBY ORDAIN:

Section 1: That the Manual of Fees of the City of Greenville, North Carolina, be and is hereby amended by adding a CDL skills test fee for non-employees and Payment in lieu of attenuation:

ENGINEERING FEES

Service	Fee
CDL Skills Test Fee for Non-Employees	\$150 Third Party tester
Payment in Lieu of Attenuation	\$2,500 per CFS* increase

*CFS increase is determined as the difference in peak runoff rate of post-development from pre-development rates for the highest storm event

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3. Any part or provision of this ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the ordinance.

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

This the 7th day of October 2024.

P. J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk



City of Greenville, North Carolina

Meeting Date: 10/07/2024

Title of Item: Budget Ordinance Amendment #3 to the 2024-25 City of Greenville Budget (Ordinance #24-038), Capital Projects Funds (Ordinance #17-024), Special Revenue Grant Fund (Ordinance #11-003), Engineering Capital Projects Fund (Ordinance #20-019), Capital Project Management Fund (Ordinance #24-040), and the newly established Opioid Settlement Fund.

Explanation: Attached for consideration at the October 7, 2024 City Council meeting is an ordinance amending the 2024-25 City of Greenville Budget (Ordinance #24-038), Capital Projects Funds (Ordinance #17-024), Special Revenue Grant Fund (Ordinance #11-003), Engineering Capital Projects Fund (Ordinance #20-019), Capital Project Management Fund (Ordinance #24-040), and the newly established Opioid Settlement Fund.

For ease of reference, a footnote has been added to each line item of the Budget Ordinance Amendment, which corresponds to the explanation below:

<u>Item</u>	<u>Justification</u>	<u>Funds Amended</u>	<u>Net Adjustment</u>
A	To move funds remaining in Debt Service fund for the Zoning Ordinance Update within Community Development.	Community Dev Cap	11,640
B	To move funds from Engineering MPO and the STRIP project to fund the Pavement Condition Survey Project.	General Public Works Capital Engineering Capital	- - 175,000
C	To recognize funding received from Bradford Creek Golf Course for improvement projects.	Capital Project Mgmt	160,000
D	To move Occupancy Tax Reserves to General Fund. These funds will be used to cover Wayfinding Project.	Occupancy Tax General	- 75,000

E	To move Occupancy Tax Reserves to Public Work Capital Projects Fund to cover costs associated with CVA - Pedestrian Mall Renovation.	Occupancy Tax Public Works Capital	- 36,042
F	To move Merchant Alley project from Project Management to Public Works.	General	-
G	To recognize funding received for Body Worn Cameras.	Special Revenue Grant	1,400,000
H	To recognize funding received for the Uptown Beautification Project.	General	20,000
I	To recognize funding received for ShotSpotter.	Special Revenue Grant	262,893
J	To recognize additional rescue service transport funds received to cover contracted services associated with outsourced billing services for EMS.	General	130,000
K	To recognize funding for Boviet Solar Economic Development Grant.	Special Revenue Grant	2,600,000
L	To move funds received over time for the Opioid Settlement into a new fund dedicated solely for these funds. The new fund will be established with this ordinance.	Special Revenue Grant Opioid Settlement Fund	(500,877) 500,877
M	To close out Pool Replacement Project within the Recreation & Parks Capital Projects Fund.	Recreation & Parks Capital	(4,310,290)
N	To close out projects within the Public Works Capital Projects Fund.	Public Works Capital	(19,561,157)
O	To appropriate fund balance for federal forfeiture funds for PD.	General	174,991

Fiscal Note:

The Budget Ordinance Amendment affects the following funds:

<u>Fund</u>	<u>2024-25 Original Budget</u>	<u>Amendment #3</u>	<u>2024-25 Budget per Amend #3</u>
General	\$116,930,271	\$399,991	\$117,330,262

Debt Service	7,368,819	-	7,368,819
Public Transportation (Transit)	7,871,546	-	7,871,546
Fleet Maintenance	6,880,638	-	6,880,638
Sanitation	11,226,062	-	11,226,062
Stormwater	13,918,081	-	13,918,081
Housing	2,115,598	-	2,115,598
Health Insurance	14,521,684	-	14,521,684
Vehicle Replacement	8,416,410	-	8,416,410
Facilities Improvement	1,926,915	-	1,926,915
Special Revenue Grants	15,347,849	4,262,893	19,610,742
Public Works Capital Projects	61,903,361	(19,525,115)	42,378,246
Recreation & Parks Capital Projects	18,587,552	(4,310,290)	14,277,262
Community Development Capital Projects	19,784,757	11,640	19,796,397
Occupancy Tax	4,699,328	-	4,699,328
Engineering Capital Projects	65,413,286	175,000	65,588,286
Fire/Rescue Capital Projects	12,817,183	-	12,817,183
Capital Project Management Fund	500,000	160,000	660,000
Donations	596,986	-	596,986
Enterprise Capital Projects	18,571,296	-	18,571,296
Pitt-Greenville Convention and Visitors Authority (CVA)	2,060,047	-	2,060,047
Opioid Settlement Fund	-	500,877	500,877

Recommendation: Approve Budget Ordinance Amendment #3 to the 2024-25 City of Greenville Budget (Ordinance #24-038), Capital Projects Funds (Ordinance #17-024), Special Revenue Grant Fund (Ordinance #11-003), Engineering Capital Projects Fund (Ordinance #20-019), Capital Project Management Fund (Ordinance #24-040), and the newly established Opioid Settlement Fund.

ATTACHMENTS

[BA #3.xlsx](#)

ORDINANCE NO. 24-
CITY OF GREENVILLE, NORTH CAROLINA
Ordinance (#3) Amending the 2024-25 Budget (Ordinance #24-038), Capital Projects Funds (Ordinance #17-024),
Special Revenue Grant Fund (Ordinance #11-003), Engineering Capital Projects Fund (Ordinance #20-019),
Capital Project Management Fund (Ordinance #24-040), and newly established Opioid Settlement Fund

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

Section I: Estimated Revenues and Appropriations. General Fund, of Ordinance #24-038 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	Budget Amendment #3								2024-25 Budget per Amend #3
	2024-25 Revised Budget	B.	D.	F.	H.	J.	O.	Total Amend #3	
ESTIMATED REVENUES									
Property Tax	\$ 43,668,004	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 43,668,004
Sales Tax	31,930,000	-	-	-	-	-	-	-	31,930,000
Video Prog. & Telecom. Service Tax	650,000	-	-	-	-	-	-	-	650,000
Rental Vehicle Gross Receipts	177,000	-	-	-	-	-	-	-	177,000
Utilities Franchise Tax	6,900,000	-	-	-	-	-	-	-	6,900,000
Motor Vehicle Tax	1,706,000	-	-	-	-	-	-	-	1,706,000
Other Unrestricted Intergov't	905,000	-	-	-	-	-	-	-	905,000
Powell Bill	2,400,000	-	-	-	-	-	-	-	2,400,000
Restricted Intergov't Revenues	619,000	-	-	-	-	-	-	-	619,000
Licenses, Permits and Fees	5,545,000	-	-	-	-	-	-	-	5,545,000
Rescue Service Transport	3,500,000	-	-	-	-	130,000	-	130,000	3,630,000
Parking Violation Penalties, Leases,	625,000	-	-	-	-	-	-	-	625,000
Other Revenues	1,269,360	-	-	-	20,000	-	-	20,000	1,289,360
Interest on Investments	3,600,000	-	-	-	-	-	-	-	3,600,000
Transfers In GUC	8,594,000	-	-	-	-	-	-	-	8,594,000
Transfers from Other Funds	-	-	75,000	-	-	-	-	75,000	75,000
Appropriated Fund Balance	4,841,907	-	-	-	-	-	174,991	174,991	5,016,898
Total Revenues	\$ 116,930,271	\$ -	\$ 75,000	\$ -	\$ 20,000	\$ 130,000	\$ 174,991	\$ 399,991	\$ 117,330,262
APPROPRIATIONS									
Mayor/City Council	\$ 617,501	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 617,501
City Manager	3,596,688	-	-	-	-	-	-	-	3,596,688
City Clerk	440,055	-	-	-	-	-	-	-	440,055
City Attorney	817,633	-	-	-	-	-	-	-	817,633
Human Resources	3,861,805	-	-	-	-	-	-	-	3,861,805
Information Technology	4,789,723	-	-	-	-	-	-	-	4,789,723
Engineering	6,691,241	(100,000)	75,000	-	-	-	-	(25,000)	6,666,241
Fire/Rescue	21,218,610	-	-	-	-	-	-	-	21,218,610
Financial Services	3,988,165	-	-	-	-	130,000	-	130,000	4,118,165
Recreation & Parks	9,617,709	-	-	-	-	-	-	-	9,617,709
Police	33,124,544	-	-	-	-	-	174,991	174,991	33,299,535
Public Works	8,721,875	-	-	150,000	20,000	-	-	170,000	8,891,875
Planning & Development	3,043,128	-	-	-	-	-	-	-	3,043,128
Project Management	1,170,000	-	-	(150,000)	-	-	-	(150,000)	1,020,000
Neighborhood & Business Services	2,117,482	-	-	-	-	-	-	-	2,117,482
OPEB	700,000	-	-	-	-	-	-	-	700,000
Contingency	40,000	-	-	-	-	-	-	-	40,000
Indirect Cost Reimbursement	(1,950,887)	-	-	-	-	-	-	-	(1,950,887)
Total Appropriations	\$ 102,605,273	\$ (100,000)	\$ 75,000	\$ -	\$ 20,000	\$ 130,000	\$ 174,991	\$ 299,991	\$ 102,905,264
OTHER FINANCING SOURCES									
Transfers to Other Funds	\$ 14,324,998	\$ 100,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100,000	\$ 14,424,998
Total Other Financing Sources	\$ 14,324,998	\$ 100,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100,000	\$ 14,424,998
Total Approp & Other Fin Sources	\$ 116,930,271	\$ -	\$ 75,000	\$ -	\$ 20,000	\$ 130,000	\$ 174,991	\$ 399,991	\$ 117,330,262

Section II: Estimated Revenues and Appropriations. Community Development Capital Projects Fund, of Ordinance #17-024 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2024-25 Revised Budget	A.	Total Amend #3	2024-25 Budget per Amend #3
ESTIMATED REVENUES				
Transfers In / CD Small Business	\$ 4,997,546	\$ -	\$ -	\$ 4,997,546
Transfers / Ctr City Rev Project	160,500	-	-	160,500
Transfers / Trans from Energy Eff	275,000	-	-	275,000
Transfers from General Fund	1,270,530	11,640	11,640	1,282,170
Rstrc Intgv / Spec ST Fed Grant	1,450,000	-	-	1,450,000
Rstrc Intgv / Grant Proceeds	7,500	-	-	7,500
Investment Earnings	399,640	-	-	399,640
Bond Proceeds	10,048,747	-	-	10,048,747
Comm Dev / Sale of Property	422,088	-	-	422,088
Rental Income	316,117	-	-	316,117
Other Revenues	437,089	-	-	437,089
Total Revenues	\$ 19,784,757	\$ 11,640	\$ 11,640	\$ 19,796,397
APPROPRIATIONS				
GUC Energy Improvement Program	\$ 100,000	\$ -	\$ -	\$ 100,000
West Greenville Revitalization Proj	6,270,918	-	-	6,270,918
Center City Revitalization Project	5,349,156	-	-	5,349,156
Energy Efficient Revolving Loan Prog	1,600,000	-	-	1,600,000
4th Street Parking Garage Project	5,194,153	-	-	5,194,153
Imperial Site Purchase	957,035	-	-	957,035
Zoning Ordinance Update	230,530	11,640	11,640	242,170
Transfer to R&P Capital Project	82,965	-	-	82,965
Total Appropriations	\$ 19,784,757	\$ 11,640	\$ 11,640	\$ 19,796,397

Section III: Estimated Revenues and Appropriations. Engineering Capital Projects Fund, of Ordinance #20-019 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2024-25 Revised Budget	B.	Total Amend #3	2024-25 Budget per Amend #3
ESTIMATED REVENUES				
Special Fed/State/Loc Grant	\$ 18,400,000	\$ -	\$ -	\$ 18,400,000
Restricted Intergovernmental - NCDOT	190,000	-	-	190,000
Transfer from ARPA Fund	9,813,000	-	-	9,813,000
Transfer from Capital Reserve	3,266,882	-	-	3,266,882
Transfer from Street Improvement Bond Fund	4,180,921	-	-	4,180,921
Transfer from Other Funds	2,661,022	75,000	75,000	2,736,022
Other In-kind Contributions	1,150,000	-	-	1,150,000
Transfer from General Fund	11,676,368	100,000	100,000	11,776,368
Transfer from Stormwater Utility	4,000,000	-	-	4,000,000
Sale of Property	1,433,040	-	-	1,433,040
Long Term Financing	8,642,053	-	-	8,642,053
Total Revenues	\$ 65,413,286	\$ 175,000	\$ 175,000	\$ 65,588,286
APPROPRIATIONS				
BUILD	\$ 48,956,506	\$ -	\$ -	\$ 48,956,506
Pavement Management Program	9,673,269	-	-	9,673,269
Employee Parking Lot	1,302,840	-	-	1,302,840
Ficklen Street Improvements	240,000	-	-	240,000
Dickinson Avenue Improvements	1,250,000	-	-	1,250,000
Mast Arm Project	45,000	-	-	45,000
4th Street Project	1,125,000	-	-	1,125,000
Traffic Safety Improvements	56,000	-	-	56,000
Arts District	885,000	-	-	885,000
North South Connector	1,500,000	-	-	1,500,000
ADA	200,000	(200,000)	(200,000)	-
Pavement Conditions	-	375,000	375,000	375,000
Transfer to General Fund	179,671	-	-	179,671
Total Appropriations	\$ 65,413,286	\$ 175,000	\$ 175,000	\$ 65,588,286

Section IV: Estimated Revenues and Appropriations. Public Works Capital Project Fund, of Ordinance #17-024 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2024-25 Revised Budget	B.	E.	N.	Total Amend #3	2024-25 Budget per Amend #3
ESTIMATED REVENUES						
Occupancy Tax	\$ 422,610	\$ -	\$ -	\$ -	\$ -	\$ 422,610
Transfers from Other Funds	23,913,836	-	36,042	-	36,042	23,949,878
Other Income	2,731,245	-	-	-	-	2,731,245
Spec Fed/State/Loc Grant	24,698,934	-	-	(19,561,157)	(19,561,157)	5,137,777
Long Term Financing	7,950,000	-	-	-	-	7,950,000
Appropriated Fund Balance	2,186,736	-	-	-	-	2,186,736
Total Revenues	\$ 61,903,361	\$ -	\$ 36,042	\$ (19,561,157)	\$ (19,525,115)	\$ 42,378,246
APPROPRIATIONS						
Stantonsburg Rd./10th St Con Project	\$ 7,191,050	\$ -	\$ -	\$ -	\$ -	\$ 7,191,050
Computerized Traffic Signal System	8,883,151	-	-	(8,883,151)	(8,883,151)	-
Sidewalk Development Project	791,287	-	-	-	-	791,287
GTAC Project	9,336,917	-	-	(9,336,917)	(9,336,917)	-
Gateway Sign Project	350,000	-	-	-	-	350,000
Energy Efficiency Project	777,600	-	-	-	-	777,600
King George Bridge Project	1,341,089	-	-	(1,341,089)	(1,341,089)	-
Energy Savings Equipment Project	2,591,373	-	-	-	-	2,591,373
Convention Center Expansion Project	4,718,000	-	-	-	-	4,718,000
Pedestrian Improvement Project	210,761	-	-	-	-	210,761
Street Lights & Cameras	2,701,225	-	-	-	-	2,701,225
F/R Station 3 Parking Lot	139,551	-	-	-	-	139,551
F/R Station 2 Bay Expansion	244,655	-	-	-	-	244,655
Parking Lot Enhancements	4,866	-	-	-	-	4,866
Street Improvements Project	13,414,536	(75,000)	-	-	(75,000)	13,339,536
Safe Routes to School	1,409,463	-	-	-	-	1,409,463
Imperial Demolition	238,464	-	-	-	-	238,464
Parking Deck Safety Improvements	180,000	-	-	-	-	180,000
Emerald Loop Lighting Upgrades	200,000	-	-	-	-	200,000
CVA - Pedestrian Mall Renovation	290,000	-	36,042	-	36,042	326,042
Pipe Improvement Project	1,750,000	-	-	-	-	1,750,000
Transfer to Other Funds	2,875,135	75,000	-	-	75,000	2,950,135
Transfer to General Fund	636,801	-	-	-	-	636,801
Transfer to Street Improvement	1,002,567	-	-	-	-	1,002,567
Transfer to Recreation & Parks Capital	74,870	-	-	-	-	74,870
Transfer to Facilities Improvement	300,000	-	-	-	-	300,000
Transfer to IT Capital Projects Fund	250,000	-	-	-	-	250,000
Total Appropriations	\$ 61,903,361	\$ -	\$ 36,042	\$ (19,561,157)	\$ (19,525,115)	\$ 42,378,246

Section V: Estimated Revenues and Appropriations. Special Revenue Grant Fund, of Ordinance #11-003 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2024-25 Revised Budget	G.	I.	K.	L.	Total Amend #3	2024-25 Budget per Amend #3
ESTIMATED REVENUES							
Special Fed/State/Loc Grant	\$ 11,882,701	\$ 1,400,000	\$ -	\$ 2,600,000	\$ -	\$ 4,000,000	\$ 15,882,701
CARES Act Funding	1,526,923	-	-	-	-	-	1,526,923
Transfer From General Fund	1,802,911	-	-	-	-	-	1,802,911
Transfer From Pre-1994 Entitlement	27,419	-	-	-	-	-	27,419
Transfer from Other Funds	107,895	-	-	-	-	-	107,895
Other Income	-	-	262,893	-	-	262,893	262,893
Total Revenues	\$ 15,347,849	\$ 1,400,000	\$ 262,893	\$ 2,600,000	\$ -	\$ 4,262,893	\$ 19,610,742
APPROPRIATIONS							
Personnel	\$ 2,306,650	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,306,650
Operating	6,304,186	-	262,893	-	-	262,893	6,567,079
Capital Outlay	2,006,385	-	-	-	-	-	2,006,385
Transfers	27,419	-	-	-	-	-	27,419
COVID-19	1,526,923	-	-	-	-	-	1,526,923
Rural Housing Recovery Grant	350,000	-	-	-	-	-	350,000
Environmental Enhancement Grant	150,935	-	-	-	-	-	150,935
STAR Grant	330,000	-	-	-	-	-	330,000
Governor's Crime Commission Grant 22	24,500	-	-	-	-	-	24,500
Governor's Crime Commission Grant 23	22,900	-	-	-	-	-	22,900
COPS Community Policing Development	175,000	-	-	-	-	-	175,000
Justice Assistance Grant 2022	55,135	-	-	-	-	-	55,135
Justice Assistance Grant 2023	53,522	-	-	-	-	-	53,522
Project Lucky - Job Creation Grant	100,000	-	-	-	-	-	100,000
Opioid Settlement Trust	500,877	-	-	-	(500,877)	(500,877)	-
Energy Efficient Conservation Block Grant	146,850	-	-	-	-	-	146,850
Assistance to Fire Fighters Grant	297,567	-	-	-	-	-	297,567
USAR	94,000	-	-	-	-	-	94,000
Body Worn Cameras	-	1,400,000	-	-	-	1,400,000	1,400,000
Transfer to Other Funds	875,000	-	-	-	500,877	500,877	1,375,877
Boviet Solar Economic Development	-	-	-	2,600,000	-	2,600,000	2,600,000
Total Appropriations	\$ 15,347,849	\$ 1,400,000	\$ 262,893	\$ 2,600,000	\$ -	\$ 4,262,893	\$ 19,610,742

Section VI: Estimated Revenues and Appropriations. Recreation & Parks Capital Project Fund, of Ordinance #17-024 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2024-25 Revised Budget	M.	Total Amend #3	2024-25 Budget per Amend #3
ESTIMATED REVENUES				
Restricted Intergovernmental	\$ 1,122,457	\$ -	\$ -	\$ 1,122,457
Transfer from General Fund	3,737,669	-	-	3,737,669
Transfer from Capital Reserve	128,822	-	-	128,822
Transfer from CD Cap Proj Fund	82,965	-	-	82,965
Transfer from FIP	154,818	-	-	154,818
Transfer from FEMA-Hurricane	317,340	-	-	317,340
Transfer from PW Cap Proj Fund	74,870	-	-	74,870
Transfer from Occupancy Tax Reserve	617,900	-	-	617,900
Special Donations	2,082,755	-	-	2,082,755
Miscellaneous Revenue	567,148	-	-	567,148
Appropriated Fund Balance	971,573	-	-	971,573
Long Term Financing	8,729,235	(4,310,290)	(4,310,290)	4,418,945
Total Revenues	\$ 18,587,552	\$ (4,310,290)	\$ (4,310,290)	\$ 14,277,262
APPROPRIATIONS				
Water Sports Facility Project	\$ 306,325	\$ -	\$ -	\$ 306,325
Wildwood Park	11,191,321	-	-	11,191,321
Transfer to General Fund	9,000	-	-	9,000
Parks Improvements	45,000	-	-	45,000
Pool Replacement	4,310,290	(4,310,290)	(4,310,290)	-
Off-Lease Dog Park	100,000	-	-	100,000
Parks Comprehensive Master Plan	147,000	-	-	147,000
Pickleball Conversion	75,000	-	-	75,000
Sports Complex Feasibility Study	117,900	-	-	117,900
Guy Smith Improvements	1,051,403	-	-	1,051,403
Greenfield Terrace	766,361	-	-	766,361
Elm Street Improvements	44,870	-	-	44,870
Transfer to Other Funds	423,082	-	-	423,082
Total Appropriations	\$ 18,587,552	\$ (4,310,290)	\$ (4,310,290)	\$ 14,277,262

Section VII: Estimated Revenues and Appropriations. Opioid Settlement Fund, of Ordinance #24- is hereby established by increasing estimated revenues and appropriations in the amount indicated:

	2024-25 Original Budget	L.	Total Amend #3	2024-25 Budget per Amend #3
ESTIMATED REVENUES				
Transfer from Other Funds	\$ -	\$ 500,877	\$ 500,877	\$ 500,877
Total Revenues	<u>\$ -</u>	<u>\$ 500,877</u>	<u>\$ 500,877</u>	<u>\$ 500,877</u>
APPROPRIATIONS				
Opioid Settlement Funds	\$ -	\$ 500,877	\$ 500,877	\$ 500,877
Total Appropriations	<u>\$ -</u>	<u>\$ 500,877</u>	<u>\$ 500,877</u>	<u>\$ 500,877</u>

Section VIII: Estimated Revenues and Appropriations. Capital Project Management Fund, of Ordinance #24-040 is hereby established by appropriating estimated revenues and appropriations in the amount indicated:

	2024-25 Revised Budget	C.	Total Amend #3	2024-25 Budget per Amend #3
ESTIMATED REVENUES				
Transfer from Fire/Rescue Capital Projects Fund	\$ 500,000	\$ -	\$ -	\$ 500,000
Other Income	-	160,000	160,000	160,000
Total Revenues	<u>\$ 500,000</u>	<u>\$ 160,000</u>	<u>\$ 160,000</u>	<u>\$ 660,000</u>
APPROPRIATIONS				
Burn Facility	\$ 500,000	\$ -	\$ -	\$ 500,000
Bradford Creek Improvements	\$ -	\$ 160,000	160,000	160,000
Total Appropriations	<u>\$ 500,000</u>	<u>\$ 160,000</u>	<u>\$ 160,000</u>	<u>\$ 660,000</u>

Section IX: Estimated Revenues and Appropriations. Occupancy Tax Fund, of Ordinance #11-003 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2024-25 Revised Budget	D.	E.	Total Amend #3	2024-25 Budget per Amend #3
ESTIMATED REVENUES					
Occupancy Tax	\$ 1,669,738	\$ -	\$ -	\$ -	\$ 1,669,738
Transfer from Public Works Capital Projects	1,866,866	-	-	-	1,866,866
Transfer from Debt Service	1,162,724	-	-	-	1,162,724
Appropriated Fund Balance	-	-	-	-	-
Total Revenues	\$ 4,699,328	\$ -	\$ -	\$ -	\$ 4,699,328
APPROPRIATIONS					
Occupancy Tax Reserves	\$ 2,583,428	\$ (75,000)	\$ (36,042)	\$ (111,042)	\$ 2,472,386
Service Charge/Collection Fee	58,000	-	-	-	58,000
Payments to CVB	1,050,000	-	-	-	1,050,000
Transfer to Facilities Improvement	100,000	-	-	-	100,000
Transfer to Other Funds	907,900	75,000	36,042	111,042	1,018,942
Total Appropriations	\$ 4,699,328	\$ -	\$ -	\$ -	\$ 4,699,328

Section X: All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed:

Adopted this 07th day of October, 2024

P. J. Connelly, Mayor

ATTEST:

Valerie P. Shiuwegar, City Clerk