

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

THIS AGREEMENT is made as of this _____ day of _____, 2021, between the City of Hickory (“OWNER”), with principal offices at 76 North Center Street, Hickory, NC, 28601 and ??? (“CONSULTANT”) with principal offices at ??? for services in connection with the project known as the ??? (“Project”);

WHEREAS, OWNER desires to engage CONSULTANT to provide professional engineering, consulting and related services (“Services”) in connection with the Project; and

WHEREAS, CONSULTANT desires to render these Services as described in SECTION I, Scope of Services.

NOW, THEREFORE, OWNER and CONSULTANT in consideration of the mutual covenants contained herein, agree as follows:

SECTION I. SCOPE OF SERVICES

CONSULTANT will provide Services for the Project, which consist of the Scope of Services as outlined on the attached Exhibit A.

SECTION II. TERMS AND CONDITIONS OF CONSULTING SERVICES

The Terms and Conditions which are attached hereto in Exhibit B, are incorporated into this Agreement by this reference as if fully set forth herein.

SECTION III. RESPONSIBILITIES OF OWNER

The OWNER shall provide the information set forth in paragraph 6 of the attached Terms and Conditions for Professional Services.

SECTION IV. COMPENSATION

Compensation for CONSULTANT services under this Agreement shall be on the basis of lump sum. The amount of the lump sum is \$???

The amount of any sales tax, excise tax, value added tax (VAT), or gross receipts tax that may be imposed on this Agreement shall be added to the CONSULTANT’S compensation as Reimbursable Expenses.

Compensation terms are defined as follows: Lump Sum

Lump Sum shall mean a fixed amount which shall be the total compensation agreed upon in advance for Scope of Services.

SECTION V. PERIOD OF SERVICE

Upon receipt of written authorization to proceed, CONSULTANT shall perform the services within ?? days from notice to proceed.

Unless otherwise stated in this Agreement, the rates of compensation for CONSULTANT'S services have been agreed to in anticipation of the orderly and continuous progress of the project through completion. If any specified dates for the completion of CONSULTANT'S services are exceeded through no fault of the CONSULTANT, such as Acts of God, Delay attributed solely to Owner or unforeseeable delay related to Regulatory Agency, the time for performance of those services shall be automatically extended for a period which may be reasonably required for their completion and all rates, measures and amounts of CONSULTANT'S compensation may be equitably adjusted, as agreed to in writing.

SECTION VI. SPECIAL PROVISIONS

Consultant shall be responsible for paying all fees related to regulatory or other governing authority submittal, review, permitting, etc. These fees shall be requested as a reimbursement from the City at the direct cost with no markup.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

City of Hickory
"OWNER"

BY: _____

NAME: _____

TITLE: Mayor

ADDRESS: PO Box 398
Hickory, NC 28603

"CONSULTANT"

BY: _____

NAME: _____

TITLE: _____

ADDRESS: _____

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B

TERMS AND CONDITIONS

Terms and Conditions for Professional Services

1. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by CONSULTANT and its employees under this Agreement will be the care and skill ordinarily used by members of CONSULTANT's profession. CONSULTANT makes no warranties, express or implied, under this Agreement or otherwise, in connection with CONSULTANT's services.

2. INSURANCE/INDEMNITY

CONSULTANT agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$3,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which CONSULTANT is legally liable. OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. CONSULTANT agrees to indemnify OWNER for claims to the extent caused by CONSULTANT's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, 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 any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.

3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by CONSULTANT are made on the basis of information available to CONSULTANT and on the basis of CONSULTANT's experience and qualifications, and represents its judgment as an experienced and qualified professional. However, since CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, CONSULTANT does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost CONSULTANT prepares.

4. CONSTRUCTION PROCEDURES

CONSULTANT's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. CONSULTANT shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. CONSULTANT shall not be responsible for the acts or omissions of the contractor or other parties on the project. CONSULTANT shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of CONSULTANT beyond those set forth in this Agreement.

5. CONTROLLING LAW

This Agreement is to be governed by the state of NC. Jurisdiction and Venue shall lie with the courts of Catawba County, NC.

6. SERVICES AND INFORMATION

OWNER will provide all criteria and information pertaining to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. OWNER will also provide copies of any OWNER-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project.

In performing professional engineering and related services hereunder, it is understood by OWNER that CONSULTANT is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the OWNER's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the OWNER's legal and financial interests. To that end, the OWNER agrees that OWNER or the OWNER's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by CONSULTANT, and will obtain the advice of an attorney, insurance counselor or other consultant as the OWNER deems necessary to protect the OWNER's interests before OWNER takes action or forebears to take action based upon or relying upon the services provided by CONSULTANT.

7. SUCCESSORS AND ASSIGNS

OWNER and CONSULTANT, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor CONSULTANT will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other.

8. RE-USE OF DOCUMENTS

Upon payment of all amounts rightfully owed by Owner to the CONSULTANT for services rendered with respect to the Services provided under this Agreement, all plans, drawings, specifications, elements of design, models, reports, submissions, mock-ups and other documents and materials that are produced by the CONSULTANT as part of its performance of such Services hereunder (hereinafter the "Design Documents"), with the exception of those documents that constitute standard details, specifications, and/or other data and/or materials that are regularly used by the Engineer and/or the professional design industry in the normal course of business, shall be deemed to be the property of Owner. Any reuse or modification of such documents for purposes other than those intended by the CONSULTANT shall be at the Owner's sole risk and without liability to the CONSULTANT.

9. TERMINATION OF AGREEMENT

OWNER or CONSULTANT may terminate the Agreement, in whole or in part, by giving ten (10) days written notice to the other party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs CONSULTANT incurs as a result of commitments that had become firm before termination.

proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

10. SEVERABILITY

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

11. INVOICES

CONSULTANT will submit monthly invoices for services rendered and OWNER will make payments within 30 days in response to CONSULTANT's invoices.

CONSULTANT will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in CONSULTANT's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify CONSULTANT of the dispute and request clarification and/or correction. After any dispute has been settled, CONSULTANT will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for CONSULTANT. CONSULTANT retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date of receipt by OWNER. In the event undisputed portions of CONSULTANT's invoices are not paid when due, CONSULTANT also reserves the right, after ten (10) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

12. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by CONSULTANT are estimates to perform the services required to complete the project as CONSULTANT understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. CONSULTANT will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment may be made, and the Agreement modified accordingly.

13. CONTROLLING AGREEMENT

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any

14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

In connection with the services under this Agreement, CONSULTANT agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity for individuals based on color, religion, sex, or national origin, or disabled veteran, recently separated veteran, other protected veteran and armed forces service medal veteran status, disabilities under provisions of executive order 11246, and other employment, statutes and regulations, as stated in Title 41 Part 60 of the Code of Federal Regulations § 60-1.4 (a-f), § 60-300.5 (a-e), § 60-741 (a-e).

CONSULTANT shall comply with NC's e-verify program.

15. HAZARDOUS MATERIALS

OWNER represents to CONSULTANT that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to CONSULTANT the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that CONSULTANT's scope of services do not include services related in any way to hazardous materials. In the event CONSULTANT or any other party encounters undisclosed hazardous materials, CONSULTANT shall have the obligation to notify OWNER and, to the extent required by law or regulation, the appropriate governmental officials, and CONSULTANT may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. OWNER acknowledges that CONSULTANT is performing professional services for OWNER and that CONSULTANT is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with CONSULTANT's services under this Agreement. If CONSULTANT's services hereunder cannot be performed because of the existence of hazardous materials, CONSULTANT shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless CONSULTANT, its officers, directors, partners, employees, and sub-consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) 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 sole negligence or willful misconduct.

16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between CONSULTANT and OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

17. ALLOCATION OF RISK

OWNER and CONSULTANT have evaluated the risks and rewards associated with this project, including CONSULTANT'S fee relative to the risks assumed, and agree to allocate certain of the risks, so, to the fullest extent permitted by law, the total aggregate liability of CONSULTANT (and its related corporations, sub-consultants, and employees) to OWNER and third parties granted reliance is limited to the fee, for any and all injuries, damages, claims, losses, or expenses (including attorney and expert fees) arising out of CONSULTANT's services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity, or other recovery. This limitation shall not apply to the extent the damage is paid under CONSULTANT's commercial general liability insurance policy.

18. LITIGATION SUPPORT

In the event CONSULTANT is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which CONSULTANT is not a party or negligent in the performance of services rendered, OWNER shall reimburse CONSULTANT for reasonable costs in responding and compensate CONSULTANT at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

19. UTILITY LOCATION

If underground sampling/testing is to be performed, a local utility locating service shall be contacted to make arrangements for all utilities to determine the location of underground utilities. In addition, OWNER shall notify CONSULTANT of the presence and location of any underground utilities located on the OWNER's property which are not the responsibility of private/public utilities. CONSULTANT shall take reasonable precautions to avoid damaging underground utilities that are properly marked.

20. PROFESSIONAL LICENSURE

All work shall be sealed by a properly licensed design professional in North Carolina doing business in the state of North Carolina. These shall include but not be limited to: Engineer, Landscape Architect, Surveyor, Architect, Geologist, etc.

21. E-VERIFY ADDENDUM

Consultant hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. Consultant further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and 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). Consultant hereby pledges, attests and warrants through execution of this Agreement that Consultant complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subconsultants currently employed by or subsequently hired by Consultant shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.