



## TOWN OF RIVER BEND

45 Shoreline Drive  
River Bend, NC 28562

T 252.638.3870  
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[www.riverbendnc.org](http://www.riverbendnc.org)

### RIVER BEND TOWN COUNCIL AGENDA

Work Session Meeting

November 10, 2022

River Bend Town Hall

5:00 p.m.

1. **VOTE** – Approval of Agenda
2. **VOTE** – Budget Items - Jackson
  - A. Budget Amendment FY22-23 – 22-B-04
  - B. Capital Project Ordinance for WWTP Enhancements
  - C. Grant Project Ordinance for Water AIA
  - D. Grant Project Ordinance for Sewer AIA
3. **VOTE** – Engineering Services Agreement – Jackson
  - A. WWTP Enhancements
  - B. Water AIA
  - C. Sewer AIA
4. **DISCUSSION** – Public Hearing on November 17, 2022 for Short-term Rentals - Jackson
5. **DISCUSSION** – Update on Conditional Re-zoning Ordinance - Jackson
6. **DISCUSSION** – Additional Leaf and Limb Pickup - Sheffield
7. **REVIEW AGENDA** – Nobles

Pledge: Van Slyke



**TOWN OF RIVER BEND  
BUDGET ORDINANCE AMENDMENT 22-B-04  
FISCAL YEAR 2022 - 2023**

BE IT ORDAINED by the Council of the Town of River Bend, North Carolina that the 2022-2023 Budget Ordinance as last amended on September 15, 2022, be amended as follows:

**Summary**

General Fund	2,273,469
General Capital Reserve Fund	99,847
Law Enforcement Separation Allowance Fund	13,525
Water Fund	877,516
Water Capital Reserve Fund	245,260
Sewer Fund	1,187,139
Sewer Capital Reserve Fund	11,273
Total	<hr/> 4,708,029

**Section 1.**

**General Fund**

**Anticipated Revenues**

AD VALOREM Taxes 2022-2023	721,710
AD VALOREM Tax-Motor Vehicle	92,300
Animal Licenses	2,000
Sales Tax 1% Article 39	177,124
Sales Tax 1/2% Article 40	102,899
Sales Tax 1/2% Article 42	88,586
Sales Tax Article 44	11,613
Sales Tax Hold Harmless Distribution	99,000
Solid Waste Disposal Tax	2,200
Powell Bill Allocation	91,000
Beer and Wine Tax	13,225
Video Programming Sales Tax	50,743
Utilities Franchise Tax	108,963
Telecommunications Sales Tax	8,140
Court Refunds	500
Zoning Permits	5,000
Federal Grant (Byrne Justice Assistance Grant)	22,170
State Grant (Golden LEAF Foundation Grant)	250,000
Miscellaneous	10,000
Interest- Powell Bill Investments	50
Interest-General Fund Investments	500
Contributions	421
Wildwood Storage Rents	18,144
Rents & Concessions	18,000
Sale of Fixed Assets	15,000
Transfer From Capital Reserve Fund	72,787
Appropriated Fund Balance	<hr/> 291,394
Total	2,273,469

**Section 1.**            **General Fund (continued)**

Authorized Expenditures

Governing Body	30,400
Administration	296,800
Finance	133,800
Tax Listing	11,600
Legal Services	24,000
Elections	1,000
Police	664,443
Public Buildings	102,300
Emergency Services	3,700
Animal Control	14,600
Street Maintenance	193,000
Public Works	177,500
Leaf & Limb and Solid Waste	51,000
Stormwater Management	311,395
Wetlands and Waterways	2,900
Planning & Zoning	54,800
Recreation & Special Events	7,600
Parks & Community Appearance	101,200
Contingency	17,931
Transfer To General Capital Reserve Fund	60,000
Transfer To L.E.S.A. Fund	13,500
Total	<u>2,273,469</u>

**Section 2.**            **General Capital Reserve Fund**

Anticipated Revenues

Contributions from General Fund	60,000
Interest Revenue	60
Appropriated Fund Balance	<u>39,787</u>
Total	<u>99,847</u>

Authorized Expenditures

Transfer to General Fund	72,787
Future Procurement	<u>27,060</u>
	<u>99,847</u>

**Section 3.**            **Law Enforcement Separation Allowance Fund**

Anticipated Revenues:

Contributions from General Fund	13,500
Interest Revenue	<u>25</u>
Total	<u>13,525</u>

Authorized Expenditures:

Separation Allowance	0
Future LEOSA Payments	<u>13,525</u>
Total	<u>13,525</u>

**Section 4.**            **Water Fund**

Anticipated Revenues

Utility Usage Charges, Classes 1 & 2	209,332
Utility Usage Charges, Classes 3 & 4	10,525
Utility Usage Charges, Class 5	13,183
Utility Usage Charges, Class 8	3,519
Utility Customer Base Charges	277,253
Hydrant Availability Fee	20,130
Taps & Connections Fees	1,250
Nonpayment Fees	10,500
Late payment Fees	7,707
Interest Revenue	435
Sale of Capital Asset	0
Appropriated Fund Balance	323,681
Total	877,516

Authorized Expenditures

Administration & Finance [1]	479,225
Operations and Maintenance	124,000
Transfer To Fund Balance for Capital Outlay	3,500
Transfer To Water Capital Reserve Fund	0
Transfer to PW Capital Projects Fund	270,791
Total	877,516

*[1] Portion of department for bond debt service:* 146,416

**Section 5.**            **Water Capital Reserve Fund**

Anticipated Revenues

Contributions From Water Operations Fund	0
Interest Revenue	172
Appropriated Fund Balance	245,088
Total	245,260

Authorized Expenditures

Future Expansion & Debt Service	172
Transfer to PW Capital Projects Fund	245,088
Total	245,260



**Section 6.**      **Sewer Fund**

Anticipated Revenues:

Utility Usage Charges, Classes 1 & 2	257,727
Utility Usage Charges, Classes 3 & 4	23,194
Utility Usage Charges, Class 5	29,053
Utility Usage Charges, Class 8	6,836
Utility Customer Base Charges	294,601
Taps & Connection Fees	1,250
Late payment Fees	7,948
Interest Revenue	703
Sale of Capital Asset	0
Appropriated Fund Balance	565,827
Total	<hr/> 1,187,139

Authorized Expenditures:

Administration & Finance [2]	468,025
Operations and Maintenance	211,000
Transfer to Fund Balance for Capital Outlay	3,500
Transfer to Sewer Capital Reserve Fund	0
Transfer to PW Capital Projects Fund	504,614
Total	<hr/> 1,187,139

*[2] Portion of department for bond debt service:*      126,434

**Section 7.**      **Sewer Capital Reserve**

Anticipated Revenues:

Contributions From Sewer Operations Fund	0
Interest Revenue	8
Appropriated Fund Balance	11,265
Total	<hr/> 11,273

Authorized Expenditures:

Future Expansion & Debt Service	8
Transfer to PW Capital Projects Fund	11,265
Total	<hr/> 11,273

**Section 8.**            **Levy of Taxes**

There is hereby levied a tax at the rate of twenty-six cents (\$0.26) per one hundred dollars (\$100) valuation of property as listed for taxes as of January 1, 2022, for the purpose of raising the revenue listed as "Ad Valorem Taxes 2022-2023" in the General Fund Section 1 of this ordinance. This rate is based on a valuation of \$278,500,000 for purposes of taxation of real and personal property with an estimated rate of collection of 99.67%. The estimated collection rate is based on the fiscal year 2020-2021 collection rate of 99.67% by Craven County who has been contracted to collect real and personal property taxes for the Town of River Bend. Also included is a valuation of \$35,500,000 for purposes of taxation of motor vehicles with a collection rate of 100% by the North Carolina Vehicle Tax System.

**Section 9.**            **Fees and Charges**

There is hereby established, for Fiscal Year 2022-2023, various fees and charges as contained in Attachment A of this document.

**Section 10.**           **Special Authorization of the Budget Officer**

- A. The Budget Officer shall be authorized to reallocate any appropriations within departments.
- B. The Budget Officer shall be authorized to execute interfund and interdepartmental transfers in emergency situations. Notification of all such transfers shall be made to the Town Council at its next meeting following the transfer.
- C. The Budget Officer shall be authorized to execute interdepartmental transfers in the same fund, including contingency appropriations, not to exceed \$5,000. Notification of all such transfers shall be made to the Town Council at its next meeting following the transfer.

**Section 11.**           **Classification and Pay Plan**

Cost of Living Adjustment (COLA) for all Town employees shall be 5.0% and shall begin the first payroll in the new fiscal year. The Town Manager is hereby authorized to grant merit increases to Town employees, when earned, per the approved Pay Plan.

**Section 12.**           **Utilization of the Budget Ordinance**

This ordinance shall be the basis of the financial plan for the Town of River Bend municipal government during the 2022-2023 fiscal year. The Budget Officer shall administer the Annual Operating Budget and shall ensure the operating staff and officials are provided with guidance and sufficient details to implement their appropriate portion of the budget.

**Section 13.**           **Copies of this Budget Ordinance**

Copies of this Budget Ordinance shall be furnished to the Clerk, Town Council, Budget Officer and Finance Officer to be kept on file by them for their direction in the disbursement of funds.

Adopted this 10th day of November, 2022.

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John R. Kirkland, Mayor

Attest:

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Kristie J. Nobles, Town Clerk



**TOWN OF RIVER BEND**  
**PUBLIC WORKS CAPITAL PROJECTS FUND ORDINANCE AMENDMENT #1**

BE IT ORDAINED by the Council of the Town of River Bend, North Carolina, that the Public Works Capital Projects Fund Ordinance be amended as follows:

**Section 1.** The following amounts are hereby appropriated for the operation of a Town Capital Projects Fund for the construction of a Public Works Building:

<u>CAPITAL PROJECTS FUND</u>	
<u>Revenues:</u>	
Operating Transfer from General Fund	964,378
Operating Transfer from Sewer Capital Reserve Fund	11,265
Operating Transfer from Water Capital Reserve Fund	245,088
Operating Transfer from Sewer Fund	504,614
Operating Transfer from Water Fund	270,791
	<hr/>
	1,996,136
<u>Expenditures:</u>	
Architectural Services	71,500
Land Acquisition	60,000
Legal Services	2,000
Miscellaneous	5,000
Construction	1,719,596
Contingency	138,040
	<hr/>
	1,996,136

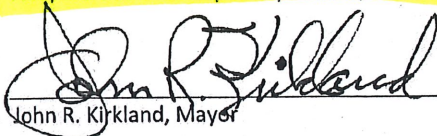
**Section 2.** It is estimated that revenues in the amounts indicated in the foregoing schedule will be available to support the foregoing appropriations.

**Section 3.** The Finance Officer is hereby authorized to maintain an appropriate Fund Chart of Accounts.

**Section 4.** Copies of this Ordinance shall be furnished to the Clerk, Town Council, Budget Officer and Finance Officer to be kept on file by them for their direction in the disbursement of funds.

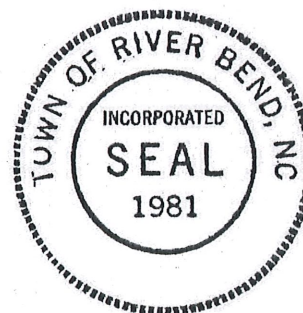
**Section 5.** The capital projects funds are appropriated pursuant to section 13.2 of Chapter 159 of the General Statutes of North Carolina; therefore, appropriations do not lapse at the end of the fiscal year and are available for the duration of the project, estimated to be eighteen months, unless subsequently amended by Council action.

Adopted this 27th day of September, 2022.

  
John R. Kirkland, Mayor

Attest:

  
Kristie J. Nobles, Town Clerk





**TOWN OF RIVER BEND  
WASTEWATER TREATMENT PLANT CAPITAL PROJECTS FUND ORDINANCE**

BE IT ORDAINED by the Council of the Town of River Bend, North Carolina:

**Section 1.** The following amounts are hereby appropriated for the operation of a Town Capital Projects Fund for the enhancement of the Wastewater Treatment Plant:

<b><u>CAPITAL PROJECTS FUND</u></b>	
<b><u>Revenues:</u></b>	
State Fiscal Recovery Fund Grant	9,108,500
<b><u>Expenditures:</u></b>	
Administration	84,000
Engineering	621,000
Construction	8,403,500
	<u>9,108,500</u>

**Section 2.** It is estimated that revenues in the amounts indicated in the foregoing schedule will be available to support the foregoing appropriations.

**Section 3.** The Finance Officer is hereby authorized to maintain an appropriate Fund Chart of Accounts.

**Section 4.** Copies of this Ordinance shall be furnished to the Clerk, Town Council, Budget Officer and Finance Officer to be kept on file by them for their direction in the disbursement of funds.

**Section 5.** The capital projects funds are appropriated pursuant to section 13.2 of Chapter 159 of the General Statutes of North Carolina; therefore, appropriations do not lapse at the end of the fiscal year and are available for the duration of the project, estimated to be eighteen months, unless subsequently amended by Council action.

Adopted this 10th day of November, 2022.

---

John R. Kirkland, Mayor

Attest:

---

Kristie J. Nobles, Town Clerk

B1



**TOWN OF RIVER BEND  
GRANT PROJECT ORDINANCE  
WATER ASSET INVENTORY AND ASSESSMENT PROGRAM**

BE IT ORDAINED by the Council of the Town of River Bend, North Carolina, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:

- Section 1.** The project authorized is the Asset Inventory and Assessment (AIA) project described in the work statement contained in the Grant Agreement between this unit and the North Carolina Environmental Quality Drinking Water Reserve. This project is more familiarly known as the River Bend 2022 Water AIA Project.
- Section 2.** The officers of this unit are hereby directed to proceed with the grant project within the terms of the grant documents, the rules and regulations of the NC Environmental Quality Drinking Water Reserve and the budget contained herein.
- Section 3.** The following revenues are anticipated to be available to complete this project:
- |  |         |
|--|---------|
| Division of Water Infrastructure Grant | 150,000 |
|--|---------|
- Section 4.** The following amounts are appropriated for the project:
- |                      |                |
|----------------------|----------------|
| Project Management   | 10,000         |
| Administration       | 5,000          |
| Engineering Services | 135,000        |
| Total                | <u>150,000</u> |
- Section 5.** The Finance Officer is hereby directed to maintain within the Grant Project Fund sufficient specific detailed accounting records to provide the accounting to the grantor agency required by the grant agreement and federal and state regulations.
- Section 6.** Funds may be advanced from the Water Fund for the purpose of making payments as due. Reimbursement requests should be made to the grantor agency in an orderly and timely manner.
- Section 7.** The Finance Officer is directed to report annually on the financial status of each project element in Section 4 and on the total grant revenues received or claimed.
- Section 8.** The Budget Officer is directed to include a detailed analysis of past and future costs and revenues on this grant project in every budget submission made to this Council.
- Section 9.** Copies of this Ordinance shall be furnished to the Clerk, Town Council, Budget Officer and Finance Officer to be kept on file by them for their direction in the disbursement of funds.

Adopted this 10<sup>th</sup> day of November, 2022.

\_\_\_\_\_  
John R. Kirkland, Mayor

Attest:

\_\_\_\_\_  
Kristie J. Nobles, Town Clerk

C1





**TOWN OF RIVER BEND  
GRANT PROJECT ORDINANCE  
SEWER ASSET INVENTORY AND ASSESSMENT PROGRAM**

BE IT ORDAINED by the Council of the Town of River Bend, North Carolina, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:

- Section 1.** The project authorized is the Asset Inventory and Assessment (AIA) project described in the work statement contained in the Grant Agreement between this unit and the North Carolina Environmental Quality Wastewater Reserve. This project is more familiarly known as the River Bend 2022 Sewer AIA Project.
- Section 2.** The officers of this unit are hereby directed to proceed with the grant project within the terms of the grant documents, the rules and regulations of the NC Environmental Quality Wastewater Reserve and the budget contained herein.
- Section 3.** The following revenues are anticipated to be available to complete this project:
- |  |         |
|--|---------|
| Division of Water Infrastructure Grant | 150,000 |
|--|---------|
- Section 4.** The following amounts are appropriated for the project:
- |                      |         |
|----------------------|---------|
| Project Management   | 10,000  |
| Administration       | 5,000   |
| Engineering Services | 135,000 |
| Total                | 150,000 |
- Section 5.** The Finance Officer is hereby directed to maintain within the Grant Project Fund sufficient specific detailed accounting records to provide the accounting to the grantor agency required by the grant agreement and federal and state regulations.
- Section 6.** Funds may be advanced from the Sewer Fund for the purpose of making payments as due. Reimbursement requests should be made to the grantor agency in an orderly and timely manner.
- Section 7.** The Finance Officer is directed to report annually on the financial status of each project element in Section 4 and on the total grant revenues received or claimed.
- Section 8.** The Budget Officer is directed to include a detailed analysis of past and future costs and revenues on this grant project in every budget submission made to this Council.
- Section 9.** Copies of this Ordinance shall be furnished to the Clerk, Town Council, Budget Officer and Finance Officer to be kept on file by them for their direction in the disbursement of funds.

Adopted this 10<sup>th</sup> day of November, 2022.

\_\_\_\_\_  
John R. Kirkland, Mayor

Attest:

\_\_\_\_\_  
Kristie J. Nobles, Town Clerk

D1



3A

**TOWN OF RIVER BEND**

45 Shoreline Drive  
River Bend, NC 28562

T 252.638.3870  
F 252.638.2580

[www.riverbendnc.org](http://www.riverbendnc.org)

TO: River Bend Town Council

FROM: Delane Jackson

RE: Recommendation on Response to RFQ

DATE: November 8, 2022

The Town of River Bend posted an RFQ for engineering services for rehabilitation of the town's wastewater treatment plant. The selection committee met on November 7 to review and evaluate all responses. The selection committee is composed of the Mayor, Town Manager and Public Works Director.

The Selection Committee recommends awarding the contract for engineering services to Rivers & Associates, Inc. of Greenville, NC BELS license # F-0334.



November 8, 2022

Mr. Delane Jackson, Town Manager  
Town of River Bend  
45 Shoreline Drive  
River Bend, North Carolina 28562

SUBJECT: WWTP Enhancements  
Engineering Services Agreement

Dear Delane:

Attached for your review, processing and approval are two (2) copies of the proposed Engineering Services Agreement to proceed with consulting services associated with the recently funded River Bend WWTP Enhancements project.

In general, the services required include preparation of the Engineering Report for NCDEQ DWI approval; specific design modifications/updates; revisions/update to the existing construction plans, specifications and contract(s); re-permitting for Environmental, Wetland and Construction purposes; additional Boundary & Topographic survey work; Bid Phase services, Construction Administration and Construction Observation Phase services; and Preparation of Construction Record Drawings. Grant administration assistance will be provided as required to facilitate proper documentation, reimbursement, and closeout.

The following is a summary of the recommended services and associated fees:

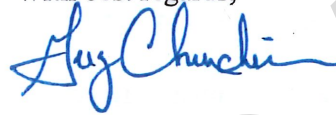
Consulting Service	Est. Fee	Fee Basis
Preparation of Engineering Report	\$20,000	Lump Sum
Preliminary and Final Design	\$88,000	Lump Sum
Environmental, Wetland & Construction Permitting	\$19,000	Hourly plus reimb.
Bidding and/or Negotiation	\$32,000	Hourly plus reimb.
Construction Administration	\$190,000	Hourly plus reimb.
Construction Observation	\$260,000	Hourly plus reimb.
Additional Boundary & Topographic Survey	\$13,000	Hourly plus reimb.
Preparation of Record Drawings	<u>\$17,000</u>	Hourly plus reimb.
Total Estimated Cost	\$639,000	

Please let me know if you have any questions. With your permission, I will plan to attend the River Bend Town Council Workshop Meeting on November 10<sup>th</sup> to address any questions or provide any additional input that is desired.

November 8, 2022  
Page 2

We appreciate the opportunity to continue to work with the Town of River Bend, and look forward to assisting the Town with making the WWTP Enhancements project a reality after these many years.

With best regards,



Gregory J. Churchill, P.E.  
President

Cc: File

Encls.

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

THIS IS AN AGREEMENT effective as of November 10, 2022 ("Effective Date") between  
Town of River Bend ("Owner") and  
Rivers & Associates, Inc. ("Engineer").

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

WWTP Enhancements ("Project").

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

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

Preparation of Engineering Report, Preliminary and Final Design Additions and Revisions; Modifications to Existing Construction Plans, Specifications and Construction Contract(s); Environmental, Wetland and Construction Permitting; Bidding and/or Negotiation; Construction Administration; Construction Observation; additional Boundary and Topographic Survey; Preparation of Record Drawings; Grant Administration Assistance; and additional phases or tasks as required and/or authorized in writing by Owner. Refer to Exhibit J for further Project Description.

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

**1.01 Scope**

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

**ARTICLE 2 – OWNER'S RESPONSIBILITIES**

**2.01 General**

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

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

### **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

#### **3.01 Commencement**

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

#### **3.02 Time for Completion**

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

### **ARTICLE 4 – INVOICES AND PAYMENTS**

#### **4.01 Invoices**

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

#### 4.02 *Payments*

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

### ARTICLE 5 – OPINIONS OF COST

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

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

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

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

### 5.03 *Opinions of Total Project Costs*

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

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

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

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This document is a MODIFIED version of EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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**Summary of Engineering Fees**

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**C2.01.1** *Compensation for Basic Services (other than Resident Project Representative) - Lump Sum Method of Payment*

A.1.a.	Study and Report Phase	<u>\$20,000.00</u>
A.1.b.	Preliminary and Final Design Phase	<u>\$88,000.00</u>

**C2.01.2** *Compensation for Basic Services (other than Resident Project Representative) – Standard Hourly Rates Method of Payment*

A.4.d.	Bidding or Negotiating Phase	<u>\$32,000.00</u>
A.4.e.	Construction Phase	<u>\$190,000.00</u>

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

A.1.	Resident Project Representative Services	<u>\$260,000.00</u>
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**C2.05** *Compensation for Additional Services – Standard Hourly Rates Method of Payment*

D.1.	Environmental, Wetland and Construction Permitting	<u>\$19,000.00</u>
D.2.	Additional Boundary and Topographic Surveys	<u>\$13,000.00</u>
D.3.	Record Drawings	<u>\$17,000.00</u>

**C2.01.1 through C2.05 TOTAL**    **\$639,000.00**





3B

**TOWN OF RIVER BEND**

45 Shoreline Drive  
River Bend, NC 28562

T 252.638.3870  
F 252.638.2580

[www.riverbendnc.org](http://www.riverbendnc.org)

TO: River Bend Town Council

FROM: Delane Jackson

RE: Recommendation on Response to RFQ

DATE: November 8, 2022

The Town of River Bend posted an RFQ for engineering services for development of an Asset Inventory and Assessment for the town's water system. The selection committee met on November 7 to review and evaluate all responses. The selection committee is composed of the Mayor, Town Manger and Public Works Director.

The Selection Committee recommends awarding the contract for engineering services to Municipal Engineering Services, Inc. of Garner, NC BELS license # F-0812.

# SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of \_\_\_\_\_  
("Effective Date") between the Town of River Bend, North Carolina ("Owner") and  
Municipal Engineering, Inc. (MEI) ("Engineer").

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

**Water System Asset Inventory and Assessment (AIA) ("Project").**

## **Project Description**

The Town of River Bend was awarded a \$150,000 water system Asset Inventory and  
Assessment (AIA) Grant from the NCDEQ Division of Water Infrastructure. The town will  
use these funds to develop a hydraulic model of its water system, update portions of its  
water system GIS mapping system and develop water system improvement projects for  
inclusion in the town's Asset Management Plan and CIP.

The ENGINEER'S **Scope of Services** under this Agreement are generally identified as  
follows:

### **1. Project Management**

Project Management is estimated to span twenty-four (24) months to be completed by  
the ENGINEER as follows:

- a) Project Scoping and Contract Preparation
- b) One (1) Project Kick-Off Meeting with OWNER
- c) Maintain a project filing system to document and retain project records
- d) Maintain project costs accounting system
- e) Review monthly budgets and invoices for engineering services to oversee  
and document project progress
- f) Arrange and participate in two (2) project status meetings with OWNER to  
review progress, budget and schedule and exchange ideas and information.  
Meetings will be held in-person at Town offices or via online virtual  
meeting.
- g) Prepare and distribute project status meeting minutes to include a record of  
decisions made and actions assigned.

### **2. GIS Asset Inventory and Mapping**

- a) The ENGINEER shall provide services to inventory and map the water  
infrastructure assets utilizing GPS/GIS based mapping technology including

---

Appendix 1, Standard Hourly Rates Schedule

EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services.

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inventory location of pipes, valves, hydrants, water meters, pump stations, major treatment facility structures, materials, asset features, age, etc. and provide connectivity and GIS mapping for water system assets in ESRI ArcGIS format. Inventory includes approximately 19 miles of distribution lines and appurtenances (valves, hydrants, meters, vaults), 3 wells, 2 treatment plants, and 2 elevated storage tanks.

- b) Prior to initial GPS/GIS fieldwork, ENGINEER shall review and compile existing systems maps, as-built drawings and other data sources to identify gaps in data, assist in the asset inventory and to obtain relevant and missing data.
- c) The ENGINEER is responsible for locating only those above or below ground assets that are visible, readily accessed and safe to enter. It is not the responsibility of the ENGINEER to expose any valves, meters, vaults, or any other water system assets that are covered, paved over or for any reason, inaccessible or unsafe to enter. If such cases arise, the ENGINEER will coordinate with the OWNER to have these assets uncovered or exposed, at the OWNER's expense, so that they may be inventoried and mapped. ***MEI personnel are not certified for confined space entry and will not enter any environment considered hazardous or a confined space.***

## **2. Water System Hydraulic Model**

The consultant will utilize existing GIS system maps, plans, specifications, past water construction projects; interview town staff, and other additional information available for the completion of water system hydraulic modeling.

The Consultant shall perform field investigation to verify the available data and shall collect additional data necessary for the hydraulic models. The data shall include, but not be limited to, pump station capacities, pump curves, water storage tank volumes, pressure relief valve capacities and settings, elevations, water demands including average daily flow (ADF) and peak flows for the major water users within the system.

After records review and field investigation, the Consultant shall develop a water system hydraulic model. The Model shall include, but not be limited to, the following attributes:

- Line lengths
- Line diameters
- Friction factors of pipes
- Node elevations
- Representative demands at each node
- Water storage characteristics & elevations
- Any major Control valves
- All pumping stations characteristics in the water system

The Model shall be calibrated to observe the current field conditions. Field calibration measurements shall be conducted at key locations to provide accurate calibration. If required, the town will perform some fire flow tests for calibration which shall be provided to the Consultant. Hazen-Williams C-Factors shall be assigned based on relative historical values and calibration changes shall be made to the model values on a global basis. Once the base model is calibrated, the Consultant shall perform the following:

- Steady-state analyses of the water distribution system with pumps and tanks under average daily demand and maximum daily demand.
- Extended Period Simulation analyses of the water distribution system based on the average, daily operating conditions and parameters.
- Water Quality analyses on the water system to determine how the system will behave under extreme conditions and if high water age is a potential problem for the system.

At the completion of modeling, the consultant shall prepare a summary report. Shortcomings in flow, pressure, head loss, and water quality shall be noted in the report based on a criterion supplied by the Town or developed in coordination with the Consultant. A plan shall be developed prioritizing recommended enhancements for future improvements.

1. Replacing old cast iron lines, making recommendations for replacement sizes.
2. Completing system loops to provide proper system backbone, residual disinfection, and elimination of maintenance problems caused by dead ends.
3. Addition/replacement of water lines where flow and pressure deficiencies, known areas of chronic discolored water calls and main breaks are identified.
4. Correcting inadequate system pressures and flow to meet AWWA standards.
5. Analysis of existing storage and system capacity.

### **3. Desktop Condition Assessment**

The ENGINEER will conduct a desktop condition assessment of the water distribution system to identify existing and future critical needs. Town operations and maintenance staff, administration and financial staff along with the town's engineers will work together to identify and plan critical capital projects necessary to protect and maintain the water system and meet existing and future demands. Information gathered through this assessment, along with information gathered from the proposed water system model, will be used to prioritize and develop capital improvement projects. ***Note: The OWNER shall be responsible for providing and compiling all in-house documentation (leak/repair reports, O&M records, hydrant flow tests, customer complaints, etc.) requested by the ENGINEER and necessary to perform the desktop condition assessments.***

#### **4. Capital Improvement Planning**

Based on results from the desktop condition assessment and the water system model, the ENGINEER will assist the OWNER in identifying and developing projects for inclusion into the Town's 10-year Capital Improvements Plan (CIP). The ENGINEER will assist the OWNER in creating and adopting the actual CIP document and inclusion of recommended projects into the CIP. The following criteria will be provided to the OWNER for each potential CIP Project:

- Description of Project
- Need for Project
- Year Needed
- Estimated Project Costs
- Potential Funding Sources

#### **5. Grant/Loan Administration**

- a) The ENGINEER shall assist the OWNER with reimbursement/disbursement requests and submitting deliverables as required by the funding agency. The ENGINEER has budgeted for the preparation and submittal of six (6) reimbursement requests.
- b) Preparation and submittal of the AIA Preliminary Project Scope to the NCDEQ/DWI.
- c) One (1) meeting with the Town Board at the close of the project to present project deliverables and provide an overview of the tasks and accomplishments of the AIA grant project for acceptance by the Town board.
- d) Grant/loan close-out activities.

Owner and Engineer further agree as follows:

##### **1.01 *Basic Agreement and Period of Service***

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within twenty-four (24) months of the date specified in the State's Grant Offer & Acceptance letter to the OWNER for Project No. AIA-D-ARP-0132.

##### **2.01 *Payment Procedures***

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer

for services and expenses within 30 days after receipt of Engineer's invoice, then the 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. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been 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. Payments will be credited first to interest and then to principal.

### 3.01 *Termination*

A. The obligation to continue performance 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 Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.

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 for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.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 of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.
- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer 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.
  - C. In the event of any termination under Paragraph 3.01, 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.

#### 4.01 *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 4.01.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, 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. 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.

#### 5.01 *General Considerations*

- A. 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. Subject to the foregoing standard of care, 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.

- B. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- C. 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 employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- D. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have 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.
- E. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, 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, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- F. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive

Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, 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 Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- G. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), 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.

#### 7.01 *Basis of Payment—Lump Sum*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:

Phase/Description	Basis	Fee
Project Management (Task .1)	LS	\$ 10,000.00
GIS Mapping System Updates (Task .2)	LS	70,000.00
Water System Hydraulic Model (Task .3)	LS	50,000.00
Water System Desktop Assessment (Task .4)	LS	10,000.00
CIP Project Planning (Task .5)	LS	5,000.00
Grant Administration (Task .6)	LS	5,000.00
<b>TOTAL ENGINEERING SERVICES FEE</b>		<b>\$ 150,000.00</b>

- B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, including services resulting from changes in the defined "Scope of Services", extent or character of the Project, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing

class; plus reimbursable expenses and Engineer's consultants' charges, if any.  
Engineer's standard hourly rates are attached as Appendix 1.

Attachments: Appendix 1, Engineer's Standard Hourly Rates

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

OWNER: Town of River Bend, North Carolina

ENGINEER: Municipal Engineering, Inc.

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

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

Print Name: John Kirkland

Print Name: Travis L. Woodie

Title: Mayor

Title: COO/CFO

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

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

Engineer License or Firm's Certificate  
Number: F-0812 and C-586

State of: North Carolina

Address for giving notices:

Address for giving notices:

Town of River Bend

Municipal Engineering, Inc.

45 Shoreline Drive

68 Shipwash Drive

River Bend, NC 28562

Garner, NC 27529

Attn: Delane Jackson, Town Manager

Attn: Gary M. Flowers, PE

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

\_\_\_\_\_  
Finance Officer

\_\_\_\_\_  
Date

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, \_\_\_\_\_.

#### **Engineer's Standard Hourly Rates**

---

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 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 Paragraphs 7.01 and 7.02, and are subject to annual review and adjustment.

B. *Schedule of Hourly Rates:*

Hourly rates for services performed on or after the Effective Date are:

**MUNICIPAL ENGINEERING, Inc.**  
**N.C. Engineering & Surveying License No. F-0812**  
**N.C. Geologist License No. C-586**

#### **STANDARD HOURLY RATE SCHEDULE**

*Effective January 2022*

Sr. Principal Engineer	\$205.00 per hour
Sr. Project Engineer	\$165.00 per hour
Principal Project Manager	\$165.00 per hour
Professional Geologist	\$165.00 per hour
Senior Project Manager	\$155.00 per hour
Senior Engineer I	\$155.00 per hour
Funding Director	\$155.00 per hour
Funding Administrator	\$100.00 per hour
Expert Witness	\$220.00 per hour
Design Engineer	\$100.00 per hour
Environmental Specialist II	\$ 90.00 per hour
Environmental Specialist	\$ 85.00 per hour
Lead Senior Designer	\$ 95.00 per hour
Senior Designer	\$ 90.00 per hour
Design Technician	\$ 85.00 per hour
Professional Land Surveyor	\$165.00 per hour
Survey - Robotics	\$135.00 per hour
Survey - GPS	\$165.00 per hour
Survey Technician	\$ 85.00 per hour
Senior Construction Observer	\$ 90.00 per hour

QA/QC Field Supervisor	\$100.00 per hour
Secretary/Administrative Asst.	\$ 65.00 per hour
Consultants	Cost plus 15%
Direct Costs	Cost plus 15%
No Charge for Mileage or Phone Calls	



3C

**TOWN OF RIVER BEND**

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[www.riverbendnc.org](http://www.riverbendnc.org)

TO: River Bend Town Council

FROM: Delane Jackson

RE: Recommendation on Response to RFQ

DATE: November 8, 2022

The Town of River Bend posted an RFQ for engineering services for development of an Asset Inventory and Assessment for the town's sewer system. The selection committee met on November 7 to review and evaluate all responses. The selection committee is composed of the Mayor, Town Manager and Public Works Director.

The Selection Committee recommends awarding the contract for engineering services to Municipal Engineering Services, Inc. of Garner, NC BELS license # F-0812.

## SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”) between the Town of River Bend, North Carolina (“Owner”) and Municipal Engineering, Inc. (MEI) (“Engineer”).

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

**Sewer System Asset Inventory and Assessment (AIA) Program  
State No. AIA-W-ARP-0131 (“Project”).**

### **Project Description**

The Town of River Bend wastewater collection system consists of approximately 11 miles of gravity sewer, 5 miles of force main, and 8 duplex pump stations. The collected wastewater is metered and flows to the town's Wastewater Treatment Plant (NC0030406) for ultimate treatment and discharge into the Trent River. The WWTP has a permitted capacity of 0.330 MGD. *Assessment of the Wastewater Treatment Plant is outside the scope of this project.* The town was recently awarded an Asset Inventory and Assessment (AIA) grant from the North Carolina Department of Environmental Quality (NCDEQ), Division of Water Infrastructure (DWI) to fund this project.

The purpose of the Sanitary Sewer System Asset Inventory and Assessment program is to develop a sanitary sewer system AIA program that will implement condition assessment and asset inventory management practices and procedures to ensure the long-term sustainability of the wastewater system. By performing conditions assessments and having a current inventory of wastewater assets, the Town of River Bend will be able to make informed, cost-effective decisions regarding system improvements and the operations and maintenance of the wastewater collection system which will minimize the total costs of owning and operating those assets while also delivering the best service and appropriate rates to its customers.

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

The ENGINEER proposes to provide the following Tasks:

### **1. Project Management**

Project Management is estimated to span Twenty (24) months to be completed by the ENGINEER as follows:

- a) Project Scoping and Contract Preparation
- b) Project Kick-Off Meeting with OWNER



- c) Maintain a project filing system to document and retain project records
- d) Maintain project costs accounting system
- e) Review monthly budgets and invoices for engineering services to oversee and document project progress
- f) Arrange and participate in one (1) project status meeting with OWNER to review progress, budget and schedule and exchange ideas and information. Meeting will be held in-person or via online virtual meeting.
- g) Prepare and distribute project meeting minutes to include a record of decisions made and actions assigned.
- h) Provide coordination and administration of any sub-consultants.

## **2. GIS Asset Inventory and Mapping**

- a) The ENGINEER shall provide services to inventory and map the wastewater infrastructure assets utilizing GPS/GIS based mapping technology including inventory location of pipes, manholes (w/inverts), pump stations, and sewer clean-outs, materials, asset features, age, etc. and provide connectivity and GIS mapping for sewer system assets in ESRI ArcGIS format. Inventory includes approximately 11 miles of gravity sewer, 5 miles of force main, and 8 duplex pump stations.
- b) Prior to initial GPS/GIS fieldwork, ENGINEER shall review and compile existing systems maps, as-built drawings, consult with O&M personnel or other town staff that may have knowledge of the system components and locations and other data sources to identify gaps in data, assist in the asset inventory and to obtain relevant and missing data.
- c) The ENGINEER is responsible for locating only those above or below ground assets that are visible, readily accessed and safe to enter. It is not the responsibility of the ENGINEER to expose any manholes, service clean-outs, valves, dry-pits, vaults, or any other wastewater system assets that are covered, paved over or for any reason, inaccessible or unsafe for MEI personnel to enter. If such cases arise, the ENGINEER will coordinate with the OWNER to have these assets uncovered or exposed, at the OWNER's expense, so that they may be inventoried and mapped. ***MEI personnel are not certified for confined space entry and will not enter any environment considered hazardous or a confined space.***
- d) The ENGINEER shall deliver to the OWNER one (1) digital copy (PDF format) and two (2) hard copies of all mapping deliverables which shall consist of an overall system map (36"x 24" size) and indexed map book(s) (11"x 17" sized) showing enlarged sections of the system based on an indexed grid system.

## **3. Sewer System Condition Assessment**

- a) The ENGINEER shall provide services to perform a condition assessment of select segments of the wastewater collection system (segments and final quantities TBD by Owner and Engineer) including smoke testing and cleaning/CCTV inspection of approximately 12,000± linear feet of gravity sewers and Level 2 inspection of approximately 30 manholes. All inspections shall be performed in accordance with National Association of Sewer Service Companies (NASSCO) Pipeline Assessment Certification Program (PACP) and Manhole Assessment Certification Program (MACP) guidelines.

- b) Assist the OWNER with procurement of service providers utilizing tools such as smoke testing and CCTV video inspection of lines and manholes to inspect and assess condition.
- c) Prepare and administer sub-consultant agreement for smoke testing, CCTV pipeline and manhole condition assessment services.
- d) Project deliverables shall include smoke testing reports (w/GIS database/coordinates) and photos, manhole inspection reports and photos (MACP compliant) and copies of all CCTV inspection videos. Deliverables shall be provided in electronic format on either a DVD or USB thumb drive.

#### **4. Capital Improvement Project Planning**

Based on results from the condition assessment the ENGINEER will assist the OWNER in identifying and developing projects for inclusion into the Town's 10-year Capital Improvements Plan (CIP). The ENGINEER will assist the OWNER in creating and adopting the actual CIP document and inclusion of recommended projects into the CIP. The following criteria will be provided to the OWNER for each potential CIP Project:

- Description of Project
- Need for Project
- Year Needed
- Estimated Project Costs
- Potential Funding Sources

#### **5. Grant Administration**

- a) Preparation and submittal of Preliminary Project Scope to the Division of Water Infrastructure
- b) The ENGINEER shall assist the OWNER with reimbursement/disbursement requests and submitting deliverables as required by the funding agency. The ENGINEER has budgeted for the preparation and submittal of six (6) reimbursement requests.
- c) Attend one (1) meeting with the Town Board at the close of the project, to present any project deliverables and provide an overview of the tasks and accomplishments of the AIA grant project for acceptance by the Town board.
- d) Prepare and present a PowerPoint presentation and written Executive Summary to the town board summarizing the project expectations, goals and accomplishments.
- e) Prepare and submit all Grant/loan close-out documents to the NC division of Water Infrastructure for final reimbursement to the town.

Owner and Engineer further agree as follows:

##### ***1.01 Basic Agreement and Period of Service***

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish

services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.

- B. Engineer shall complete its services within two years (24 months) of the date specified in the State's Grant Offer & Acceptance letter to the Owner. for Project No. AIA-W-ARP-0131.

## 2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the 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. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been 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. Payments will be credited first to interest and then to principal.

## 3.01 *Termination*

- A. The obligation to continue performance 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 Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
    - 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 for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.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 of notice; provided, however, that if and to the extent such substantial failure cannot be

reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer 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.
- C. In the event of any termination under Paragraph 3.01, 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.

#### 4.01 *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 4.01.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, 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. 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.

#### 5.01 *General Considerations*

- A. 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. Subject to the foregoing standard of care, 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.

- B. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- C. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have 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.
- D. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, 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, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- E. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, 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 Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- F. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), 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.

7.01 *Basis of Payment—Lump Sum*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:

Task	Phase/Description	Basis	Fee
.1	Project Management	LS	\$ 10,000.00
.2	GIS Asset Inventory and Mapping	LS	70,000.00
.3	CCTV Condition Assessment/Smoke Testing	LS	60,000.00
.4	Capital Improvement Project Planning	LS	5,000.00
.5	Grant Administration	LS	5,000.00
<b>TOTAL ENGINEERING SERVICES FEE</b>			<b>\$ 150,000.00</b>

*LS: Lump Sum*

- B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

Attachments: Appendix 1, Engineer's Standard Hourly Rates

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

OWNER: Town of River Bend, North Carolina

ENGINEER: Municipal Engineering, Inc.

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

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

Print Name: John Kirkland

Print Name: Travis L. Woodie

Title: Mayor

Title: COO/CFO

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

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

Engineer License or Firm's Certificate  
Number: F-0812 and C-586

State of: North Carolina

Address for giving notices:

Address for giving notices:

Town of River Bend

Municipal Engineering Services, Co., PA

45 Shoreline Drive

68 Shipwash Drive

River Bend, NC 28562

Garner, NC 27529

Attn: Delane Jackson, Town Manager

Attn: Gary M. Flowers, PE

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

\_\_\_\_\_  
Finance Officer

\_\_\_\_\_  
Date



This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, \_\_\_\_\_.

### **Engineer's Standard Hourly Rates**

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A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 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 Paragraphs 7.01 and 7.02, and are subject to annual review and adjustment.

B. *Schedule of Hourly Rates:*

Hourly rates for services performed on or after the Effective Date are:

#### **STANDARD HOURLY RATE SCHEDULE**

*Effective January 2022*

Sr. Principal Engineer	\$205.00 per hour
Sr. Project Engineer	\$165.00 per hour
Principal Project Manager	\$165.00 per hour
Professional Geologist	\$165.00 per hour
Senior Project Manager	\$155.00 per hour
Senior Engineer I	\$155.00 per hour
Funding Director	\$155.00 per hour
Funding Administrator	\$100.00 per hour
Expert Witness	\$220.00 per hour
Design Engineer	\$100.00 per hour
Environmental Specialist II	\$ 90.00 per hour
Environmental Specialist	\$ 85.00 per hour
Lead Senior Designer	\$ 95.00 per hour
Senior Designer	\$ 90.00 per hour
Design Technician	\$ 85.00 per hour
Professional Land Surveyor	\$165.00 per hour
Survey - Robotics	\$135.00 per hour
Survey - GPS	\$165.00 per hour
Survey Technician	\$ 85.00 per hour
Senior Construction Observer	\$ 90.00 per hour
QA/QC Field Supervisor	\$100.00 per hour
Secretary/Administrative Asst.	\$ 65.00 per hour
Consultants	Cost plus 15%
Direct Costs	Cost plus 15%

**No Charge for Mileage or Phone Calls**

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#### **Appendix 1, Standard Hourly Rates Schedule**

EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services.  
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## **NOTICE OF PUBLIC HEARING**

The Town Council of the Town of River Bend will conduct a public hearing on November 17, 2022 to gather public comments on proposed amendments to Chapter 15.02 of the Town's Zoning Ordinance regulating short-term rentals. The public hearing will begin at 7 p.m. at Town Hall, located at 45 Shoreline Drive, River Bend, NC. A copy of the proposed amendments are available from the Zoning Department or they can be viewed online by visiting the town's web page at [www.riverbendnc.org](http://www.riverbendnc.org) and clicking on the "Proposed Ordinance Amendments" tab. The town's rules for conducting a public hearing will be followed.

ITEM 4

Note- The proposed amendments are highlighted in yellow. If this amendment is approved, short-term rentals will be permitted in districts marked with a "P" beside the "Tourist Home" line in the Schedule of District use Regulations.

#### § 15.02.020 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ACCESSORY USE.** A use customarily incidental and subordinate to the principal use of land or building, and located on the same lot with the principal use.

**ADULT DAY CARE CENTERS.** Adult day care centers shall comply with G.S. § 131D-6, which governs the inspection, licensing and certification of adult day care programs.

**ALLEY.** Privately or publicly owned right-of-way, primarily for service access to the back or side of abutting property, and not intended for general traffic circulation.

**BUFFERING.** Landscaping or other architectural measures to screen dissimilar uses from adjoining properties or private developments that abut the street right of way. Refer to §§ 15.02.220 et seq.

**BUILDING.** Any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry or other public or private purposes, or accessory thereto, and including mobile homes and unattached carports consisting of a roof and supporting members, and similar structures whether stationary or movable, built in accordance with the North Carolina State Building Code and manufactured homes built in accordance with the HUD Code.

**BUILDING, ACCESSORY.** A subordinate building on the same lot as the principal building, consisting of walls or supporting members and a roof, the use of which is customarily incidental to the use of a principal building on the same lot.

**BUILDING, PRINCIPAL/MAIN.** A building in which is conducted the principal or main use of the lot on which it is located. Principal and main are synonymous here and in all other usage throughout the code.

**BUILDING SETBACK LINE.** A line parallel to the front property line in front of which no structure shall be erected.

**CHILD DAY CARE CENTERS AND NURSERIES.** Child day care centers or nurseries shall comply with the G.S. § 110, Article 7, which governs the licensing of day care facilities.

**COMMERCIAL USE.** Any use permitted by this chapter in a commercial district.

**COMMERCIAL VEHICLE.** A vehicle:

- (1) With lettering or signage indicating use for commercial purposes; or
- (2) In excess of ½ ton load capacity of a type customarily used for commercial purposes.

**CONDITIONAL ZONING.** A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

**COUNTY.** Craven County, North Carolina.

**DIMENSIONAL NON-CONFORMITY.** A non-conforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other

buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

**DWELLING.** A building or portion thereof designed, arranged or used for permanent living quarters for 1 or more families. The term **DWELLING** shall not be deemed to include a motel, hotel, tourist home or any structures designed for transient residence.

**DWELLING, MULTIPLE.** A building, including an apartment house, or portion of 1 used or designed as a residence for 3 or more families living independently of each other and doing their own cooking therein.

**DWELLING, SINGLE-FAMILY.** A building used or designated as a residence for a single family.

**DWELLING, 2-FAMILY.** A building or portion thereof used or designed as a residence for 2 families living independently of each other and doing their own cooking therein.

**ELEVATION.** In relation to mean sea level, new construction shall have the minimum elevation no less than 10.5 feet to the floor joist or no less than 11 feet to the lowest habitable floor, whichever is more restrictive.

**FAMILY.** One or more persons occupying a single family dwelling unit, provided that, unless all members are related by blood or marriage, no family shall contain more than 5 persons.

**FRONT LOT LINE.** The line of a lot contiguous with the street right-of-way.

**IMPERVIOUS SURFACE.** Any surface which because of its material or composition or compacted nature impedes or prevents natural infiltration of storm water into the soil. Impervious surfaces include, but are not limited to, roofs, roof extensions, patios, balconies, decks (except wood slotted decks), athletic courts, swimming pools (excluding the water area of swimming pool), streets, parking areas, driveways, sidewalks, and any concrete, stone, brick, asphalt, or compacted gravel surface.

*Added 03/18/10*

**INCIDENTAL HOME OCCUPATION.** Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes. See § 15.02.067.

**INSTITUTIONAL USE.** Any use permitted by this chapter in an institutional district.

**JUNKYARD.** Any land or area used, in whole or in part, for commercial storage and/or sale of waste paper, rags or scrap metal, and including commercial storage of inoperative motor vehicles and boats, and dismantling of vehicles or machinery.

**LOT.**

- (1) A portion of a subdivision, or any other parcel of land, intended as a unit for transfer of ownership, or occupied or intended for occupancy by a principal building, together with its accessory buildings, including the open space required under this chapter.
- (2) For the purpose of this chapter, **LOT** shall mean any number of contiguous lots of record for location of 1 principal building and its accessory buildings.

**LOT, CORNER.**

- (1) A lot which occupies the interior angle of the intersection of 2 street rights-of-way which make an angle of more than 45 degrees and less than 135 degrees with each other.
- (2) A **CORNER LOT** shall be deemed to have 2 front yards (1 contiguous with each street right-of-way), 1 side yard and 1 rear yard; provided, however, that for a **CORNER LOT** of record prior to 12-19-1990, the

minimum side yard requirements for the main building shall be applicable to the front yard which is opposite the side yard.

- (3) The owner shall be required to specify which is the side yard and which is the rear yard in his application for an initial zoning permit.

**LOT DEPTH.** The depth of a lot is the distance measured in the mean direction of the side lines of the lot from the midpoint of the front lot line to the midpoint of the rear lot line.

**LOT OF RECORD.** A lot which is part of a subdivision, a plat of which has been recorded in the office of the Register of Deeds of Craven County prior to the adoption or applicable amendment of this chapter, or a lot described by metes and bounds, the description of which has been recorded prior to the adoption or applicable amendment of this chapter.

**LOT WIDTH.** The distance between the side lot lines as measured at the building line.

**LOW IMPACT DEVELOPMENT (LID).** Low Impact Development (LID) is a design strategy with the goal of maintaining or replicating the pre-development hydrologic regime through the use of design techniques to create a functionally equivalent hydrologic site design. Hydrologic functions of storage, infiltration and ground water recharge, as well as the volume and frequency of discharges are maintained through the use of integrated and disturbed micro-scale stormwater retention and detention areas, reduction of impervious surfaces, and the lengthening of run-off flow paths and flow time. Other strategies include the preservation/protection of environmentally sensitive site features such as riparian buffers, wetlands, steep slopes, valuable (mature) trees, floodplains, woodlands, and highly permeable soils.

*Added 06/18/2009*

**MAJOR RECREATIONAL EQUIPMENT.** A boat, boat trailer, or any form of mobile camping equipment.

**MANUFACTURED HOME.**

- (1) As provided in G.S. § 143-145(7), or any successor statutory definition.
- (2) In the event that G.S. § 143-145(7) is repealed with no successor statutory definition, the term **MANUFACTURED HOME** shall mean a structure, transportable in 1 or more sections, which, in the traveling mode, is 8 feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and is designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, and includes plumbing, heating, air conditioning and electrical systems contained therein.
- (3) Notwithstanding anything to the contrary hereinabove, for purposes of this chapter, the term **MANUFACTURED HOME** shall also include an on-frame modular home as defined herein, but shall not include an off-frame modular home as defined herein.

**MANUFACTURED HOME OVERLAY AREA.** Lots 21 to 41 of Piner Estates, as shown on the Town of River Bend Map #8-205-1.

**NON-CONFORMING LOT.** A lot existing at the effective date of this chapter that does not meet the minimum area and dimensional requirements of the zoned area in which the lot is located.

**NON-CONFORMING PROJECT.** Any structure, development, or undertaking that is incomplete at the effective date of this chapter and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.

**NON-CONFORMING USE.** A non-conforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the zoned area in which the property is located. The term also refers to the activity that constitutes the use made of the property.

**OFF-FRAME MODULAR HOME.** A structure that is designed to be used as a dwelling, is manufactured in accordance with the specifications of modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the Department of Insurance pursuant to G.S. § 143-139.1, is composed of components substantially assembled in a manufacturing plant, and which is not transported to its site on an integral/permanent chassis.

**ON-FRAME MODULAR HOME.**

- (1) A factory-built structure that is designed to be used as a dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the Department of Insurance pursuant to G.S. § 143-139.1, and which is transported to its site on an integral/permanent chassis, or any other type of modular unit that does not expressly meet the definition of off-frame modular home as defined herein.
- (2) For purposes of this chapter, an on-frame modular home constitutes a manufactured home as well, and is regulated herein as a manufactured home.

**PERSONAL SERVICES.** Occupations dealing with the body and/or physical appearance of a person that are regulated by the State of North Carolina by certification and/or registration.

**PRIVATE CLUBS AND LODGES.** Fraternal, athletic, dining and civic organizations or societies which are not inimical to the public health, welfare, safety, order or convenience.

**PROFESSIONAL SERVICES.** Occupations requiring special knowledge and academic degree and are regulated by the State of North Carolina by certification and/or registration.

**QUASI-JUDICIAL DECISION.** A decision involving the finding of facts regarding a specific application of development regulation and that requires the exercise of discretion when applying the standards of the regulation. Quasi-judicial decisions include but are not limited to decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision making board.

**REGULATED TREE.** Regulated trees shall be defined as any tree with a circumference of 12.5 inches or greater, measured at 54 inches above the ground.

*Added 01/17/2008, Amended 04/16/2009*

**SPECIAL USE PERMIT.** A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. This definition includes permits previously referred to as "conditional use permits" or "special exceptions."

**STREET.** A road or highway which affords the principal means for vehicular traffic access to abutting property and which has been dedicated to public use. **STREET**, road and highway are synonymous.

**STREET LIGHTING.** Night time street illumination intensity meeting NCDOT requirements. Placed on town right-of-way so as not to interfere with traffic or property access.

**STRUCTURE.** Includes but not limited to a building, deck, swimming pool, bulkhead, dock, wall or fence, storage shed, tennis court, gazebo, and satellite antenna, but excluding specifically satellite antennas with dishes of 24 inches or less in diameter.

**TIMBER HARVESTING.** Timber Harvesting shall be defined as the cutting and removal of a quantity of timber: (i) for delivery of merchantable timber to market, or (ii) pursuant to a practice that reduces tree density and competition to concentrate growth on fewer, high-quality trees (sometimes referred to as thinning); or (iii) otherwise resulting in the removal of more than twenty (20) regulated trees per acre.

*Added 09/17/2007, Amended 04/16/2009*

**TOURIST HOME.** A residential or commercial structure wherein rooms or the entire structure are rented to provide overnight accommodations or rental terms of less than thirty (30) days for transient guests.

**TOWN.** The Town of River Bend.

**TOWN COUNCIL.** The Town Council of the Town of River Bend.

**WATERWAYS.** The system of canals, ponds ( including private bodies of water) rivers or other natural or manmade water features that stormwater drains to, through and from and that are expected to act as a reservoir, conduit or collection point for storm water or areas classified as wet lands.

**YARD.**

- (1) The space on the same lot with the main building between the main building and the front lot line(s) (front yard), between the main building and the side lot line(s) (side yard), and between the main building and the rear lot line (rear yard).

§ 15.02.124 DISTRICT USE REGULATIONS.

For convenience in the administration of this chapter, there hereby is established and made a part of this chapter the following schedule of district use regulations.

SCHEDULE OF DISTRICT USE REGULATIONS									
<p>KEY:</p> <p>P – Use permitted by right</p> <p>SU – Special use permitted upon approval by Board of Adjustment after recommendation of the Planning Board</p> <p>Blank/Unlisted – Prohibited use</p>									
Use	R20/ R20A	R15	PDR- SF	PDR- MF	ID	BD	BD- PD	AGR	Parking Code*
Accessory Building	P	P	P	P	SU	SU	SU	P	
Adult Day Care					P	P	P		G
Bakery, Retail						P	P		G
Financial Services						P	P		G
Barber Shop/Beauty Shop						P	P		G
Boats and Trailer Sales						SU	SU		G
Cabinet, Woodworking or Upholstery Shops						P	P		G
Child Day Care						SU			
Churches	SU	SU	SU	SU	P	SU	SU		E



# SCHEDULE OF DISTRICT USE REGULATIONS

## KEY:

P – Use permitted by right

SU – Special use permitted upon approval by Board of Adjustment after recommendation of the Planning Board

Blank/Unlisted – Prohibited use

Use	R20/ R20A	R15	PDR- SF	PDR- MF	ID	BD	BD- PD	AGR	Parking Code*
Clubs and Lounges, Private					P	SU	SU		F
Clothing Store						P	P		G
Computer Sales and Service						P	P		G
Dairy Bar and Ice Cream Parlors						P	P		G
Drug Store						P	P		F
Dry Cleaners/Drop Off/Pick Up Only						P	P		G
Dwellings, Single- Family	P	P	P	P		SU			A
Dwellings, 2-Family				P		SU			A
Dwellings, Multi- Family				P		SU			A
Fire Department Buildings	SU	SU	SU	SU	SU	SU	SU		F
Fitness Center						P	P		G
Florists/Gift Shop						P	P		G
Furniture Store						P	P		G
Golf Course	SU	SU	SU	SU	P	SU	SU		F
Grocery Store						P	P		G
Hardware Sales						P	P		G
Home Occupations	P	P	P		P				G
Tourist Home***	P	P			P	P	P		D



# SCHEDULE OF DISTRICT USE REGULATIONS

## KEY:

P – Use permitted by right

SU – Special use permitted upon approval by Board of Adjustment after recommendation of the Planning Board

Blank/Unlisted – Prohibited use

Use	R20/ R20A	R15	PDR- SF	PDR- MF	ID	BD	BD- PD	AGR	Parking Code*
Jewelry and Watch Repair						P	P		G
Libraries	SU	SU	SU	SU		P	P		G
Marina						P			G
Nursing Home and Rest Home					P				G
Office for Business, Professional and Personal Services						P	P		G
Pet Shops (excluding Veterinary Services)						P	P		G
Pharmacy						P	P		G
Photo Shop/Supply						P	P		G
Police Station	SU	SU	SU	SU	SU	SU	SU		F
Public Enterprise**	SU	SU	SU	SU		SU	SU		F
Public Utility	SU	SU	SU	SU	SU	SU	SU		F
Restaurants					P	P	P		F
Schools	SU	SU	SU	SU	SU				F
Service Station						SU	SU		J
Shoe Sales and Repair						P	P		G
Sporting Goods Sales						P	P		G

# SCHEDULE OF DISTRICT USE REGULATIONS

## KEY:

P – Use permitted by right

SU – Special use permitted upon approval by Board of Adjustment after recommendation of the Planning Board

Blank/Unlisted – Prohibited use

Use	R20/ R20A	R15	PDR- SF	PDR- MF	ID	BD	BD- PD	AGR	Parking Code*
Storage Rental Units/Areas						P	P		G
Travel Agency						P	P		G
Utility Tanks, Pumps, Electrical Substations & Related Services	SU	SU	SU	SU	SU	SU	SU	SU	
Wholesale and/or Retail Janitorial Sales & Services						SU	SU		F
Youth Center					P	P	P		G

\*Parking code described in §15.02.080

\*\* As defined by G.S. § 160A-311

\*\*\* Non-conforming uses of tourist home at the time of its addition to this ordinance shall be amortized for a period of 12 months from [DATE to be inserted upon adoption]. After that date, the use must terminate if not permitted in the corresponding zone or a special use permit has not been obtained, as applicable.

Penalty, see § 1.01.999

Amended 11/18/10

## 2022-2023 LEAF & LIMB PICK-UP SCHEDULE

**You MUST have your debris by the road  
BEFORE the pick-up date for your zone.**

<b>Zone 1 Debris Placement</b>	<b>Zone 1 Pick-Up Day</b>
June 29 <sup>th</sup> , 2022	July 5 <sup>th</sup> , 2022
August 31 <sup>st</sup> 2022	September 6 <sup>th</sup> , 2022
October 26 <sup>th</sup> , 2022	October 31 <sup>st</sup> , 2022
January 4 <sup>th</sup> , 2023 (Includes Christmas Trees)	January 9 <sup>th</sup> , 2023 (Includes Christmas Trees)
March 1 <sup>st</sup> , 2023	March 6 <sup>th</sup> , 2023
May 3 <sup>rd</sup> , 2023	May 8 <sup>th</sup> , 2023
<b>Zone 2 Debris Placement</b>	<b>Zone 2 Pick-Up Day</b>
July 6 <sup>th</sup> , 2022	July 11 <sup>th</sup> , 2022
September 7 <sup>th</sup> , 2022	September 12 <sup>th</sup> , 2022
November 2 <sup>nd</sup> , 2022	November 7 <sup>th</sup> , 2022
January 11 <sup>th</sup> , 2023	January 16 <sup>th</sup> , 2023
March 8 <sup>th</sup> , 2023	March 13 <sup>th</sup> , 2023
May 10 <sup>th</sup> , 2023	May 15 <sup>th</sup> , 2023

**There are no pick-ups in the months of August 2022, October 2022, December 2022, February 2023, April 2023, and June 2023.**

**All leaf & limb debris must be the result of natural defoliation or minor trimming and must observe the following criteria:**

1. Maximum diameter of limbs is three inches (3") and maximum length is six feet (6').
2. Place all material in a pile at the roadside with butt ends towards the street in a flat area away from mailboxes, driveway tiles and any utility service areas. Leave room for removal equipment to work without harming adjacent grass or shrubbery.
3. Leaves and grass clippings must **NOT** be bagged. Bagged material will **NOT** be collected. Limbs must be kept separate from leaves and grass clippings. Leaves and grass clippings will be collected by a vacuum. The vacuum cannot accept limbs. Any leaf or grass clipping piles that also contain limbs will **NOT** be collected.
4. No tree trunks, grass clippings or debris left by commercial contractors will be collected.
5. Leaf & limb material shall **NOT** be placed at the roadside more than five (5) days prior to the day of pick-up or as shown on the schedule above.
6. **Pickup shall be done once per street per scheduled pick-up week. Any leaf & limb material placed on the roadside after a street has been cleaned shall be the responsibility of the property owner to clear immediately.**
7. Pick-ups will be provided to all properties within the corporate Town limits only. Leaf & limb pick-up shall not be provided for contractors, including general yard maintenance contractors working on a resident's property.
8. Leaf & limb is defined as leaves, grass clippings, pine cones, and small tree and shrub limbs. It does not include construction material of any kind, trimmings from lot clearing, tree trunks.
9. All debris placed upon the public right of way must be placed off the paved portion of the street, and must be placed in the right of way immediately adjacent to the property from which it originates. Debris may be placed in the right of way immediately adjacent to the property of others only with the express permission of the owner of the property.
10. Violation of these rules may subject violators to remedies described in the Town of River Bend Code of Ordinances, Section 1.01.999 General Penalty.





**RIVER BEND TOWN COUNCIL  
DRAFT AGENDA  
Regular Meeting  
November 17, 2022  
River Bend Town Hall  
7:00 p.m.**

Pledge: Van Slyke

1. CALL TO ORDER (Mayor Kirkland Presiding)
2. RECOGNITION OF NEW RESIDENTS
3. ADDITIONS/DELETIONS TO AGENDA
4. ADDRESSES TO THE COUNCIL
5. PUBLIC HEARINGS
  - A. Chapter 15.02 of the Town's Zoning Ordinance – Short-term Rentals
6. CONSENT AGENDA

*All items listed under this section are considered routine by the Council and will be enacted by one motion in the form listed below. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.*

A. Approve:

*Minutes of the October 13, 2022 Work Session*

*Minutes of the October 20, 2022 Regular Council Meeting*

7. TOWN MANAGER'S REPORT – Delane Jackson

**Activity Reports**

- A. **Monthly Police Report** by Chief Joll
- B. **Monthly Water Resources Report** by Director of Public Works Mills
- C. **Monthly Work Order Report** by Director of Public Works Mills
- D. **Monthly Zoning Report** by Assistant Zoning Administrator McCollum

**ADMINISTRATIVE REPORTS:**

8. Public Safety – Councilman Don Fogle
  - A. Community Watch
  - B. CERT
9. Parks & Recreation/CAC – Councilwoman Barbara Maurer
  - A. Parks and Rec Report
  - B. CAC Report
  - C. Organic Garden Report
  - D. Library Report

10. Finance – Councilman Irving Van Slyke, Jr.
  - A. Financial Report - Finance Director
11. Environment and Waterways – Councilman Brian Leonard
  - A. EWAB Report
12. Planning Board – Councilman Buddy Sheffield
  - A. Planning Board Report
  - B. Board of Adjustment Report
13. MAYOR'S REPORT – Mayor Kirkland
14. PUBLIC COMMENT

*The public comment period is set aside for members of the public to offer comments to the Council. It is the time for the Council to listen to the public. It is not a Question & Answer session between the public and the Council or Staff. All comments will be directed to the Council. Each speaker may speak for up to 3 minutes. A member of staff will serve as timekeeper. A sign-up sheet is posted by the meeting room door and will be collected prior to the start of the Public Comment Period. Speakers will be called on by the Mayor in the order that they signed up. In order to provide for the maintenance of order and decorum, the Council has adopted a policy for this section of the meeting. A copy of the policy is posted by the door for your review. Please follow the policy. If you have a specific question for staff, you are encouraged to contact the Town Manager or the appropriate Department Head at another time.*

15. ADJOURNMENT

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

THIS IS AN AGREEMENT effective as of November 10, 2022 ("Effective Date") between  
Town of River Bend ("Owner") and  
Rivers & Associates, Inc. ("Engineer").

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

WWTP Enhancements ("Project").

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

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

Preparation of Engineering Report, Preliminary and Final Design Additions and Revisions; Modifications to Existing Construction Plans, Specifications and Construction Contract(s); Environmental, Wetland and Construction Permitting; Bidding and/or Negotiation; Construction Administration; Construction Observation; additional Boundary and Topographic Survey; Preparation of Record Drawings; Grant Administration Assistance; and additional phases or tasks as required and/or authorized in writing by Owner. Refer to Exhibit J for further Project Description.

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

**1.01 Scope**

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

**ARTICLE 2 – OWNER'S RESPONSIBILITIES**

**2.01 General**

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

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

### **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

#### **3.01 Commencement**

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

#### **3.02 Time for Completion**

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

### **ARTICLE 4 – INVOICES AND PAYMENTS**

#### **4.01 Invoices**

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



#### 4.02 *Payments*

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

### ARTICLE 5 – OPINIONS OF COST

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

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

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

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

### 5.03 *Opinions of Total Project Costs*

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

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

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

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

## 6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

## 6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner 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 due and owing 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.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 *Electronic Transmittals*

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

#### 6.05 *Insurance*

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

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

#### 6.06 *Suspension and Termination*

##### A. *Suspension:*

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

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

- 1. For cause,
  - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
  - b. by Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
    - 3) Engineer shall have no liability to Owner on account of such termination.
  - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of

receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.07 *Controlling Law*

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

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

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this



Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

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

6.09 *Dispute Resolution*

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

6.10 *Environmental Condition of Site*

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

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

#### 6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the

other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

#### 6.12 *Records Retention*

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

#### 6.13 *Miscellaneous Provisions*

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

## ARTICLE 7 – DEFINITIONS

### 7.01 Defined Terms

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
  2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
  5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
  6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
  7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
  8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance,

resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:



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

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, ~~Construction Cost Limit.~~ **Not Used**
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

### 8.02 *Total Agreement*

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

### 8.03 *Designated Representatives*

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

#### 8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of 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.

ITEM 3A  
SUPPLEMENTAL

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

Owner: Town of River Bend

By(Signature): \_\_\_\_\_  
Print name: John R. Kirkland  
Title: Mayor  
Date Signed: \_\_\_\_\_

Attest: \_\_\_\_\_  
**Name:** Kristie Nobles  
**Title:** Town Clerk

(SEAL)

Engineer: Rivers & Associates, Inc.

By(Signature): \_\_\_\_\_  
Print name: Gregory J. Churchill, P.E.  
Title: President  
Date Signed: 11-8-22

Attest: \_\_\_\_\_  
**Name:** James M. Walker, P.L.S.  
**Title:** Vice President/Ass't. Secretary

(SEAL)



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

F-0334

State of: North Carolina

Address for Owner's receipt of notices:  
45 Shoreline Drive  
River Bend, NC 28562

Address for Engineer's receipt of notices:  
107 E. Second Street  
Greenville, N.C. 27858

Designated Representative (Paragraph 8.03.A):  
Delane Jackson  
Title: Town Manager  
Phone Number: (252) 638-3870 x 213  
E-Mail Address: manager@riverbendnc.org

Designated Representative (Paragraph 8.03.A):  
Gregory J. Churchill, P.E.  
Title: Principal  
Phone Number: 252-752-4135  
E-Mail Address: gchurchill@riversandassociates.com

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

By (Signature): \_\_\_\_\_

Typed Name: Irving J. Van Slyke, Jr.  
Finance Officer

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

This is **EXHIBIT A**, consisting of 16 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 10, 2022.

## **Engineer's Services**

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

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

### **PART 1 – BASIC SERVICES**

#### **A1.01 Study and Report Phase (*Engineering Report Preparation*)**

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
  - a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions: (1) Do Nothing, (2) Rehabilitation of Existing Steel Ring Treatment Units with Specific Packaged/Field Erected Additions for Water Quality Improvements, and (3) Replacement of Existing Steel Ring Treatment Units with Specific Packaged/Field Erected Additions for Water Quality Improvements.
  - ~~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 alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~
2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.
4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study

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Exhibit A – Engineer's Services.

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

6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.
8. Prepare a report (the "Engineering Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the ~~agreed-to~~ requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs. **The Engineering Report will be prepared to conform to the requirements of NCDEQ Division of Water Infrastructure (DWI).**
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
- ~~10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."~~
- ~~11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.~~
- ~~12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.~~
- ~~13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.~~
14. Perform or provide the following other Study and Report Phase tasks or deliverables:  
**None known at this time.**
15. Furnish 2 review copies of the Report and any other Study and Report Phase deliverables to Owner within 45 days of the Effective Date and review it with Owner. Within 7 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.

16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish 2 copies of the revised Report and any other Study and Report Phase deliverables to the Owner within 7 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 Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

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

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

7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
  8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.
  9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:  
**None at this time.**
  10. Furnish 2 review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within 60 days of authorization to proceed with this phase, and review them with Owner. Within 7 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
  11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner 2 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 14 days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

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

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
  2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.



3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
7. In addition to **updating and** preparing the final Drawings and Specifications, **update and** assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
8. **Update and** ~~Prepare or~~ assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.

Perform or provide the following other Final Design Phase tasks or deliverables:

**Update Final Design Memo**

9. Furnish for review by Owner, its legal counsel, and other advisors, 2 copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within 120 days of authorization to proceed with the Final Design Phase, and review them with Owner. Within 7 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
  10. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit 2 final copies of such documents to Owner within 21 days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other

assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.

- 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 2. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

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

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
  - 1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
  - 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
  - 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
  - 4. Consult with Owner as to the qualifications of prospective contractors.
  - 5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
  - 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement

documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables:

**DBE Bidding Assistance for the Owner**

**DBE Bidding Review for the Bidders**

10. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

**A1.05 Construction Phase**

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
  1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
  2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
  3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.

4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
  - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
  - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and

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

10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.

16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
19. *Inspections and Tests:*
  - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
  - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
  - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
  - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion.



Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables: **Grant Administration Assistance**
  25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
  26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

#### ~~A1.06 — Post-Construction Phase~~

- ~~A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:~~
- ~~1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.~~
  - ~~2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work~~

~~or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.~~

~~Perform or provide the following other Post-Construction Phase tasks or deliverables:~~

~~The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.~~

## **PART 2 – ADDITIONAL SERVICES**

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

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
  2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
  3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
  4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
  5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
  6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
  7. Undertaking investigations and studies including, but not limited to:
    - a. detailed consideration of operations, maintenance, and overhead expenses;

- b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
  - c. preparation of appraisals;
  - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
  - e. detailed quantity surveys of materials, equipment, and labor; and
  - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
- a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
  - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.

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**Exhibit A – Engineer's Services.**

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

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16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

**B. The following additional services are anticipated to be required and are part of this Agreement:**

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**Exhibit A – Engineer's Services.**

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

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1. **Grant Administration Assistance**
2. **Environmental, Wetland and Construction Permitting**
3. **Additional Boundary and Topographic Survey**
4. **Preparation of Record Drawings**

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

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
  2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
  3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
  4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
  5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
  6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
  7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
  8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 10, 2022.

## **Owner's Responsibilities**

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

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

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

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



- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: **Provide Construction Drawings associated with the ongoing Public Works Facility project, and facilitate coordination between parties as required.**

This is **EXHIBIT C**, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated November 10, 2022.

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

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

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

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

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. A Lump Sum amount of \$108,000.00 based on the following estimated distribution of compensation:
    - a. Study and Report Phase \$20,000.00
    - b. Preliminary **and Final** Design Phase \$88,000.00
    - c. Final Design Phase \$ NA
    - d. Bidding and Negotiating Phase \$ NA
    - e. Construction Phase \$ NA
    - f. Post-Construction Phase \$ NA
  2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
  3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.
  4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges): **Mileage, Meals, Printing, and Postage Charges**
  5. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the

billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

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

ITEM 3A  
SUPPLEMENTAL

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 10, 2022.

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

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

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

**C2.01 Compensation For Basic Services (other than Resident Project Representative) – Standard Hourly Rates Method of Payment**

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants’ charges, if any.
2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer’s services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer’s Consultants’ charges.
3. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
4. The total compensation for services under Paragraph C2.01 is estimated to be \$222,000.00 based on the following estimated distribution of compensation:

a. Study and Report Phase	\$ <u>NA</u>
b. Preliminary Design Phase	\$ <u>NA</u>
c. Final Design Phase	\$ <u>NA</u>
d. Bidding or Negotiating Phase	\$ <u>32,000.00</u>
e. Construction Phase	\$ <u>190,000.00</u>
f. Post-Construction (Warranty) Phase	\$ <u>NA</u>
5. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed

the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.

6. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultants' charges.
  7. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.
  8. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of June 30th) to reflect equitable changes in the compensation payable to Engineer.
- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-2 is conditioned on a period of service not exceeding 15 months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.**

#### **C2.02    *Compensation For Reimbursable Expenses***

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.15.

#### **C2.03    *Other Provisions Concerning Payment***

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.15.
- B. *Factors:* The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. *Estimated Compensation Amounts:*

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

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

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

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

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

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$260,000.00 based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a 15 day month construction schedule.

**B. Compensation for Reimbursable Expenses:**

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of 1.15.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of June 30th) to reflect equitable changes in the compensation payable to Engineer.

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



1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.15.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
  - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

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

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

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

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

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

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.15.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of June 30th) to reflect equitable changes in the compensation payable to Engineer.

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

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.15.

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**Exhibit C – Compensation Packet AS-1: Additional Services –  
Standard Hourly Rates Method of Payment.**

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2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

D. The Total Compensation for Services under Paragraph C2.05 is estimated to be \$49,000.00 based on the following estimated distribution of compensation:

1. Environmental, Wetland and Construction Permitting	<u>\$19,000.00</u>
2. Additional Boundary and Topographic Survey	<u>\$13,000.00</u>
3. Record Drawings	<u>\$17,000.00</u>

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

ITEM 3A  
SUPPLEMENTAL

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Exhibit C – Compensation Packet AS-1: Additional Services –  
Standard Hourly Rates Method of Payment.

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This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 10, 2022.

## **Reimbursable Expenses Schedule**

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Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

8.5" x 11" Black & White Copies	<u>.06</u> /each
8.5" x 11" Black & White Scans	<u>.06</u> /each
8.5" x 14" Black & White Copies	<u>.10</u> /each
8.5" x 14" Black & White Scans	<u>.10</u> /each
11" x 17" Black & White Copies	<u>.25</u> /each
11" x 17" Black & White Scans	<u>.25</u> /each
All above listed sizes of Color Copies	<u>\$1.00</u> /each
All above listed sizes of Color Scans	<u>\$1.00</u> /each
Color Plot all sizes	<u>\$2.50</u> per square foot
18" x 24" Black & White Plan Prints	<u>\$1.50</u> /each
18" x 24" Black & White Plan Scans	<u>\$1.50</u> /each
24" x 36" Black & White Plan Prints	<u>\$2.50</u> /each
24" x 36" Black & White Plan Scans	<u>\$2.50</u> /each
30" x 42" Black & White Plan Prints	<u>\$5.00</u> /each
30" x 42" Black & White Plan Scans	<u>\$5.00</u> /each
36" x 48" Black & White Plan Prints	<u>\$7.50</u> /each
36" x 48" Black & White Plan Scans	<u>\$7.50</u> /each
24" x 36" Foam Board	<u>\$1.25</u> /each
Larger size Plan Prints	subject to square footage
Mylar Prints - 18" x 24"	<u>\$20.00</u> /each
Mylar Prints - 24" x 36"	<u>\$30.00</u> /each
Mylar Prints - 30" x 42"	<u>\$40.00</u> /each
CD of Scans	<u>\$5.00</u> /each
Long Distance Phone Calls	at cost
Meals and Lodging	at cost
Miscellaneous Expenses	at cost
External Reimbursable Expenses	at cost x 1.15
3 Ring Binders up to 2 inches	<u>\$10.00</u> / each
3 Ring Binders over 2 inches	<u>\$25.41</u> / each

This is **Appendix 2 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 10, 2022.

## **Standard Hourly Rates Schedule**

---

**A. Standard Hourly Rates:**

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2, **and are subject to annual review and adjustment as of June 30th.**

**B. Schedule:**

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

**EMPLOYEE CLASSIFICATION:**

**HOURLY RATES:**

Principal	\$185.00
Project Manager	\$140.00 to \$180.00
Project Engineer	\$110.00 to \$165.00
Design Engineer	\$85.00 to \$105.00
Landscape Architect	\$95.00 to \$135.00
Planner	\$75.00 to \$95.00
Designer	\$80.00 to \$125.00
CAD Technician	\$65.00 to \$75.00
Project Surveyor	\$90.00 to \$135.00
Party Chief	\$55.00 to \$110.00
Surveyor Technician	\$45.00 to \$65.00
1-Man Robotic	\$100.00 to \$135.00
Resident Project Representative	\$60.00 to \$105.00
Administrative Assistant	\$60.00 to \$70.00
Intern Tech	\$35.00
Sub-Consultants and Fees	1.15 x Cost
Travel	Current IRS Rate
Miscellaneous Expense	Cost

## **Summary of Engineering Fees**

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**C2.01.1** *Compensation for Basic Services (other than Resident Project Representative) - Lump Sum Method of Payment*

A.1.a.	Study and Report Phase	<u>\$20,000.00</u>
A.1.b.	Preliminary and Final Design Phase	<u>\$88,000.00</u>

**C2.01.2** *Compensation for Basic Services (other than Resident Project Representative) – Standard Hourly Rates Method of Payment*

A.4.d.	Bidding or Negotiating Phase	<u>\$32,000.00</u>
A.4.e.	Construction Phase	<u>\$190,000.00</u>

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

A.1.	Resident Project Representative Services	<u>\$260,000.00</u>
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**C2.05** *Compensation for Additional Services – Standard Hourly Rates Method of Payment*

D.1.	Environmental, Wetland and Construction Permitting	<u>\$19,000.00</u>
D.2.	Additional Boundary and Topographic Surveys	<u>\$13,000.00</u>
D.3.	Record Drawings	<u>\$17,000.00</u>

**C2.01.1 through C2.05 TOTAL** **\$639,000.00**

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 10, 2022.

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

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

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

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

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



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

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

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. ; and
- 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.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all 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 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.

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Exhibit D - Resident Project Representative.

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

12. *Reports:*

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

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

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

15. *Completion:*

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

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Exhibit D - Resident Project Representative.

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

D. Resident Project Representative shall not:

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

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 10, 2022.



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**NOTICE OF ACCEPTABILITY OF WORK**

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**PROJECT:**

**OWNER:**

**CONTRACTOR:**

**OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:**

**EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:**

**ENGINEER:**

**NOTICE DATE:**

---

**To:**

**Owner**

**And To:**

**Contractor**

**From:**

**Engineer**

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

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**Exhibit E – Notice of Acceptability of Work.**

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

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**Page 1**

### CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

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

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

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

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

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

This is **EXHIBIT G**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 10, 2022.

## **Insurance**

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

### **G6.05 Insurance**

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

1. By Engineer:

- |  |              |
|--|--------------|
| a. Workers' Compensation:  | Statutory    |
| b. Employer's Liability --   |              |
| 1) Bodily injury, each accident:   | \$ 100,000   |
| 2) Bodily injury by disease, each employee:  | \$ 100,000   |
| 3) Bodily injury/disease, aggregate:   | \$ 500,000   |
| c. General Liability --  |              |
| 1) Each Occurrence (Bodily Injury and Property Damage):                              | \$ 1,000,000 |
| 2) General Aggregate:  | \$ 2,000,000 |
| d. Excess or Umbrella Liability --   |              |
| 1) Per Occurrence:   | \$ 2,000,000 |
| 2) General Aggregate:  | \$ 2,000,000 |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): |              |
|  | \$ 1,000,000 |
| f. Professional Liability --   |              |
| 1) Each Claim Made   | \$ 2,000,000 |
| 2) Annual Aggregate  | \$ 2,000,000 |
| g. Other (specify):  | \$ _____     |



2. By Owner:

- |  |              |
|--|--------------|
| a. Workers' Compensation:  | Statutory    |
| b. Employer's Liability --   |              |
| 1) Bodily injury, Each Accident  | \$ 100,000   |
| 2) Bodily injury by Disease, Each Employee   | \$ 100,000   |
| 3) Bodily injury/Disease, Aggregate  | \$ 500,000   |
| c. General Liability --  |              |
| 1) General Aggregate:  | \$ 2,000,000 |
| 2) Each Occurrence (Bodily Injury and Property Damage):                              | \$ 1,000,000 |
| d. Excess Umbrella Liability   |              |
| 1) Per Occurrence:   | \$ 2,000,000 |
| 2) General Aggregate:  | \$ 2,000,000 |
| e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage): |              |
|  | \$ 1,000,000 |
| f. Other (specify):  | \$ _____     |

B. *Additional Insureds:*

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:
  - a. Rivers & Associates, Inc.  
Engineer
  - b. Dibble & Pledger  
Engineer's Consultant
  - c. Dixon Associates  
Engineer's Consultant
  - d. None at this time  
[other]
2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 10, 2022.

## **Dispute Resolution**

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

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

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

ITEM 3A  
SUPPLEMENTAL

## **Limitations of Liability**

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

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

1. *Engineer's Liability Limited to Amount of 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, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement. If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$10,000.00.
2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, including but not limited to:

- B. *Indemnification by Owner:*** To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury

to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

ITEM3A  
SUPPLEMENTAL

## **Special Provisions**

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The proposed project includes treatment modifications and enhancements to the existing 0.33 MGD River Bend WWTP, but does not increase the treatment capacity. The modifications and enhancements are intended to provide improved effluent quality, as well as increased service life.

The proposed plant enhancements will produce a tertiary treatment facility with nutrient removal capability designed to treat primary waste constituents to the lower levels anticipated by future NPDES discharge permit.

WWTP enhancements include a new headworks, new influent and effluent flow meters and composite samplers, new complete package preliminary screen with grit removal, renovation of the existing surge tank, installation of new surge dosing pumps, renovation to the existing treatment units, continued use of the existing blowers, new alum feed system for phosphorous removal, new filter feed pump station, new methanol feed system and tertiary denitrification filters for nitrogen removal, continued use/relocation of the chlorine injection system, new chlorine contact tank and reaeration basin, continued use/relocation of the de-chlorination injection system, connection and continued use of the existing outfall and diffuser, new aerobic digester, new cellular SCADA monitoring system, and proper abandonment of the existing in-ground steel digester tank.

Construction plans and specifications for the project were completed in 2015. All environmental, wetland and construction permits previously obtained have expired, and must be re-secured. Notable updates and modifications will include: relocation/elevation of the existing chlorine feed system above the 100-year flood plain, design of a remote water/wastewater laboratory, and design of variable frequency drives and dissolved oxygen probe control to modulate the speed of the existing centrifugal blowers and motors to improve energy efficiency.

Consultant services are anticipated to include:

- Preparation of Engineering Report,
- Preliminary and Final Design Additions and Revisions,
- Modifications to Existing Construction Plans, Specifications and Contract(s),
- Environmental, Wetland and Construction Permitting,
- Bidding and/or Negotiation,
- Construction Administration,
- Construction Observation,
- Additional Boundary and Topographic Survey,
- Preparation of Record Drawings,
- Grant Administration Assistance,
- Additional phases and/or tasks as authorized in writing by the Owner.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 10, 2023.

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**  
**Amendment No. \_\_\_\_\_**

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

Background Data

Effective Date of Owner-Engineer Agreement: \_\_\_\_\_

Owner: \_\_\_\_\_

Engineer: \_\_\_\_\_

Project: \_\_\_\_\_

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

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

Description of Modifications:

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

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

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

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

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

OWNER:

ENGINEER:

\_\_\_\_\_  
By: \_\_\_\_\_  
Print \_\_\_\_\_  
name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Print \_\_\_\_\_  
name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

ITEM3A  
SUPPLEMENTAL