

AGREEMENT FOR PROFESSIONAL SERVICES

STATE OF NORTH CAROLINA §

COUNTY OF CATAWBA §

This AGREEMENT is entered into by the City of Hickory, North Carolina, hereinafter called "City" and Freese and Nichols, Inc., hereinafter called "FNI." In consideration of the AGREEMENTS herein, the parties agree as follows:

- I. **EMPLOYMENT OF FNI:** In accordance with the terms of this AGREEMENT: Owner agrees to employ FNI; FNI agrees to perform professional services in connection with the Project; Owner agrees to pay to FNI compensation. The Project is described as follows: Program Management Services.
- II. **SCOPE OF SERVICES:** FNI shall provide professional services in connection with Project as set forth in Attachment SC - Scope of Services and Responsibilities of Owner which is attached to and made a part of this AGREEMENT.
- III. **COMPENSATION:** Owner agrees to pay FNI for all professional services rendered under this AGREEMENT in accordance with Attachment CO - Compensation which is attached hereto and made a part of this AGREEMENT. FNI shall perform professional services as outlined in Basic Services for a lump sum fee of \$498,400 and FNI shall perform professional services as outlined in Special Services hourly at the rates noted in Attachment CO. Details concerning the fee are included in Attachment CO.

If FNI's services are delayed or suspended by Owner, or if FNI's services are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this AGREEMENT has been revised.

- IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement as set forth as Attachment TC shall govern the relationship between the Owner and FNI.

Nothing under this AGREEMENT shall be construed to give any rights or benefits in this AGREEMENT to anyone other than Owner and FNI, and all duties and responsibilities undertaken pursuant to this AGREEMENT will be for the sole and exclusive benefit of Owner and FNI and not for the benefit of any other party.

This AGREEMENT constitutes the entire AGREEMENT between Owner and FNI and supersedes all prior written or oral understandings.

FNI MDW
OWNER _____

This contract is executed in two counterparts.

IN TESTIMONY HEREOF, they have executed this AGREEMENT, the _____ day of _____ 2015.

ATTEST:

City of Hickory, North Carolina
(Owner)

By: _____

Print or Type Name & Title

ATTEST:

ABC

Freese and Nichols, Inc.
(FNI)

By: M-Wayts

MIKE WAYTS, PRINCIPAL

Print or Type Name & Title

SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNER

ARTICLE I

SCOPE OF SERVICES

Freese and Nichols (FNI) is proposing a phased approach to the Program Management services being provided to the City of Hickory (City). Program phasing is essential to develop additional project definition which impacts project costs, regulatory requirements, space constraints, topographic constraints, schedule, and utility conflicts. Further defining project scopes will help establish better baseline anticipated costs and schedules and provide for a better managed program.

Phase I scope of services includes seven main tasks outlined below:

- Task 1 - Pre-Engineering Task - FNI will further define and ultimately determine the design issues, infrastructure conflicts, impacted properties, public utility permitting requirements, and affected public and private entities for each project. This effort is needed to help establish more accurate scopes of work, schedules and budgets for each project. This will facilitate the design and construction phases of the program.
- Task 2 - Riverwalk Concept Rendering Task - FNI will develop a conceptual rendering for the Riverwalk, from Geitner Park to US-321, including a plan view rendering, typical sections and perspective view.
- Task 3 - Development of Project and Program Parameters Task - FNI will develop cost estimates and schedules for each project as well as the overall program schedule along with cash flow curves and financial models.
- Task 4 - Supplemental Funding Task - FNI will identify potential grant opportunities and other funding opportunities to supplement the City's bond revenue.
- Task 5 - Economic Development Task - FNI will analyze the City Walk (Lenoir-Rhyne University to 4th Street NW) to identify underutilized property for future development opportunities.
- Task 6 - PMIS Evaluation and Program Process Development Task - FNI will evaluate and recommend a PMIS software for use in this program.
- Task 7 - Program Coordination and Management Task - This task includes meetings with staff, City Council and the Bond Commission and overall program management.

Future phases of work will include implementation of the selected PMIS, grant applications and management, consultant project selection, design management and construction management along with on-going program communication, schedule, budget and financial model management.

ASSUMPTIONS: The following assumptions were made while developing the below scope: 1) the duration from the notice to proceed is nine months; 2) it includes Waterfront/Riverwalk (Geitner Park to US-321), City Walk (Lenoir-Rhyne University to 4th Street NW), up to seven Streetscape Projects and up to five Gateway Projects; 3) it does not include services for the Business Park 1764 except as provided under Special Services; 4) City will conduct public outreach.

BASIC SERVICES: The services outlined below will be performed as Basic Services.

TASK 1. Pre-Engineering Task

a. Data Collection

- i. FNI will evaluate the projects to determine required detailed engineering information that FNI will acquire, copy, store and utilize as base project information. This information includes, but is not limited to: previous studies, strip maps, electronic files, models, engineering calculations and analysis, GIS base information such as utilities, parcel information, land use, soils, zoning, design standards, design criteria, ordinances, topography and as-built plans.
 - ii. In addition to the proposed project coordination meetings, FNI will meet with City staff to review available project information and define each of the proposed projects. The purpose of this meeting will be to identify features along each corridor that are included or not included in each project and to identify City expectations on landscaping, art, way finding, entrance signage, lighting, pavers etc.
- b. Utility and Parcel Research and Evaluation – FNI will meet with franchise utility companies, review as-built plans, acquire tax appraisal property information and evaluate data along each of the project corridors.
- c. Field Visits - FNI will prepare for and conduct field investigations along City Walk, Riverwalk, streetscape projects and gateway projects as identified by the City. These investigations will be conducted as observations and will not include survey, GPS or other data collection technology. The objective of the field visits are to identify potential unforeseen issues along each project’s route, which will assist in determining project scope, cost and schedule.
- d. Regulatory Requirement Evaluations and Meetings – Based upon FNI’s data collection and field visits, FNI will review anticipated regulatory approval requirements and summarize these requirements. In addition, FNI will schedule and conduct two meetings with each of the six anticipated regulatory agencies to discuss the projects and refine anticipated requirements.
- e. Adjacent Project Coordination
- i. FNI will schedule and conduct a meeting with Land Design to discuss the Inspiring Spaces plan concepts and available information along with coordination of the current aesthetic requirements project being developed by Land Design.
 - ii. FNI will also meet with TSW, in Atlanta, to discuss the Lackey Memorial Park project and resulting connection with the Riverwalk project.
 - iii. In addition, FNI will help provide on-going coordination with TSW, Land Design, City staff and other consultants.
- f. GIS Data Assimilation – FNI will set up a GIS project file for each of the project corridors. Information in the project files will be base City GIS files supplemented with new information from the Data Collection and Field Visit Tasks.
- g. Alignment Verification – Based upon the GIS layers for each project along with field visit information, FNI will verify that each project alignment and corridor width will spatially

fit within the available City rights-of-way. Otherwise, FNI will make suggestions for shifting of the project alignment or identify the potential need for property acquisition/easements.

- h. Strip Map and Exhibit Development – FNI will develop a strip map and exhibit for each of the project corridors, as applicable. These strip maps will be engineering in nature and will not include rendering or artistic features. These maps will show the project limits, topography, available utilities, alignments, potential issues, anticipated easement needs and other features necessary to determine project scope and facilitate technical reviews.
- i. Technical Review – FNI will evaluate each project for design issues, infrastructure conflicts, impacted properties, public utility permitting requirements, and affected public and private entities. Technical experts in the fields of landscape architecture, planning, transportation, stormwater, water and wastewater utilities, structures and regulatory requirements will perform these evaluations and reviews as appropriate.

TASK 2. Riverwalk Concept Rendering Task – FNI will develop a conceptual rendering depicting alignment, features, corridor and typical section for Riverwalk Phase I (Geitner Park to US-321).

- a. Coordinate with City staff to discuss the preliminary program development including the Riverwalk alignment plan, typical trail section, other site program elements and construction materials. Prepare a list of program elements identifying the project priorities, assumptions, options and materials to be included in the concept plan.
- b. Develop preliminary conceptual alignment site plan and typical section for approximately 4,200 LF of the Riverwalk. The current preliminary program includes a Riverwalk trail along Lake Hickory from Geitner-Rotary Park to US-321. The Riverwalk is to be located within the natural greenway at the top of bank with the horizontal alignment and walking surface which may include areas adjacent to, at the edge of, and over portions of the lake edge. The illustrative conceptual alignment site plan drawing will be provided with an aerial photo as the base drawing, as on-site topographic surveying is not a part of this scope of services.
- c. Develop illustrative color renderings for the approved conceptual alignment site plan. The Riverwalk will be represented by one (1) rendered plan view, one (1) typical section and one (1) rendered perspective view.

TASK 3. Development of Project and Program Parameters Task

- a. Development of Project Fact Sheets – FNI will compile project information from Task 1 to create project fact sheets for each of the program projects. These will include an aerial map showing the project limits, a summary of the proposed project, opinion of probable design/construction cost, schedule, regulatory requirements and potential grant funding.
- b. Develop Opinion of Probable Design/Construction Costs – FNI will prepare an opinion of probable design/construction costs for each of the projects. These will include anticipated construction costs as well as estimates on design, testing, survey, right-of-way and any other applicable costs.
- c. Develop Project Schedules – FNI will develop a schedule for each project. These schedules will estimate timelines for both design, right-of-way and construction phases for each project.
- d. Develop Program Schedules, Cash Flow Curve and Financial Model

- i. Considering costs, permitting, project phasing, grant cycles, easement requirements and other factors, FNI will develop up to three program schedules and present to the Bond Commission for their recommendation to Council.
- ii. Based on the selected program schedule, FNI will develop a cash flow curve depicting expected project expense from each project schedule and opinion of probable design/construction costs.
- iii. The cash flow model will be used as the basis for developing a more robust financial model that takes into consideration ongoing operations and maintenance expense, other general fund impacts and the influx of grant and other funding. The financial model will be coordinated with City staff and the City's financial advisor to determine if any program schedule changes need to occur due to the resulting financial forecast and effects.

TASK 4 Supplemental Funding Task

- a. FNI will review each of the project fact sheets to determine potential grant funding opportunities, evaluate fit, and eligibility requirements. FNI will also meet with highly probable funders to further qualify and quantify opportunities, as well as understand each funding program cycle. This scope does not include grant application or management services (it is assumed these services will be provided in future phases of this project).
- b. FNI will also evaluate and qualify other potential revenue opportunities such as fund raising, public/private partnerships, financial districts, etc. for each bond program area (Riverwalk, City Walk, etc.) and outline recommendations and high level strategies for implementation.
- c. During the course of evaluating grant and other funding opportunities, FNI will consider whether combining or subdividing projects will aid the City in successfully funding projects. FNI will use the list of funding opportunities and corresponding deadline dates along with the proposed approach to help drive the sequence / schedule for the projects.

TASK 5 City Walk Economic Development Site Readiness – FNI will provide analysis and planning related services in the City Walk Phase I area to identify and make ready for marketing 10 sites. Our services in this area are described as follows:

- a. Develop an inventory of underutilized parcels along the City Walk Phase I corridor. Initial inventory to include basic parcel description, characteristics and owner information.
- b. Conduct work session with City to review and prioritize parcel inventory in an effort to identify the top 10 priority sites. FNI will complete a parcel profile, market opportunity assessment and site readiness assessment for the top 10 priority sites.
- c. Develop basic parcel profiles that will include parcel, building, zoning, usage, and utility characteristics. Note: For parcels that are not owned by the city, FNI is prepared to meet with up to seven landowners in person.
- d. Perform high level business composition and economic assessment for the City Walk area and identify needs and opportunities (usage analysis) for the 10 sites.
- e. Conduct site assessment to evaluate available utilities and existing site infrastructure.
- f. Identify allowable uses based on zoning and, if needed, recommend zoning changes. Using recommended zoning, review and summarize development requirements.

- g. Develop one “plan view” conceptual site plan for each site in AutoCAD showing proposed site layout of potential parking, building(s) and utility connections.
- h. Prepare a comprehensive parcel profile for each of the 10 sites that summarizes the findings and includes the site plan for the City to use in marketing the available sites.

TASK 6 PMIS Evaluation and Program Process Development Task

- a. FNI will meet with the City and discuss PMIS needs and options. This includes determining program goals and how they will be achieved such as how budget and schedule will be maintained and updated, how the public will be kept up to date, reporting and communication requirements, archiving and document storage, etc. Based upon City input, up to three different PMIS options will be identified for evaluation.
- b. FNI will analyze existing software being used by City and their capabilities to interact with other software.
- c. Evaluate up to three PMIS systems and summarize this information into memo format for City Review. Note, purchase of software is not included in this Phase of work.
- d. FNI will meet with the City to discuss the memo and finalize selection of a PMIS system.

TASK 7 Program Coordination and Management Task

- a. Project Coordination Meetings – FNI will conduct nine client update meetings (two hours each) in addition to other meetings identified in this scope. It is assumed these meetings will occur on average, monthly. However, during earlier stages of the project they may occur more frequently and lessen as the project continues.
- b. City Council Meetings – FNI will prepare and present bond program updates for one City Council meeting with regard to this Phase of the program.
- c. Bond Commission Meetings - FNI will facilitate meetings and supply meeting content for the Bond Commission meetings as follows:
 - i. Bond Commission Meeting #1 - Organizational meeting to define roles and responsibilities of FNI, staff, City Council and the Bond Commission. In addition, information will be provided regarding bond program steps, processes and a high level definition of the bond projects.
 - ii. Bond Commission Meeting #2 – The purpose of this meeting is to provide a program update to the overall Bond Commission.
 - iii. Bond Commission #3 - Provide project fact sheets and overall program schedule scenarios for Bond Commission feedback and/or their recommendation to Council.
 - iv. Bond Subcommittees – FNI will facilitate one meeting with each of the three subcommittees.
- d. Program Management - FNI will provide project and program management during Phase I. Activities will include: monthly program updates comprised of schedule revisions, calculation of percent complete, and a written one page program status report; maintenance and access to program files; and internal project production meetings.

DELIVERABLES: Phase I deliverables will include:

1. Pre-Engineering
 - a. Strip maps and exhibits of each project identified in this phase.
 - b. Project technical reviews and scope determination.
2. Project fact sheets to include:
 - a. Project site
 - b. Scope
 - c. Individual schedule
 - d. Possible supplemental funding
 - e. Opinion of probable design/right-of-way/construction cost
 - f. Project challenges
3. Riverwalk concept rendering, typical section and perspective.
4. Project schedules, project costs, overall program schedule(s), cash flow curve(s) and financial model.
5. Supplemental funding plan.
6. City Walk economic development site readiness documents and plan view site plans.
7. PMIS summary memorandum and recommendation.

SPECIAL SERVICES: The services outlined below will be performed as Special Services.

1. Business Park 1764 – FNI will be a liaison for Business Park 1764 and Catawba County Economic Development Commission. In addition, FNI will provide other economic development services as requested by the City for this project.
2. River Walk Economic Development Site Readiness – FNI will provide analysis and planning related services in the River Walk area near the L.P. Frans Stadium (west of Hwy-321) to identify and make ready for marketing 10 sites. Our services in this area are described as follows:
 - a. Develop an inventory of underutilized parcels along the Riverwalk area. Initial inventory to include basic parcel description, characteristics and owner information.
 - b. Conduct work session with City to review and prioritize parcel inventory in an effort to identify the top 10 priority sites. FNI will complete a parcel profile, market opportunity assessment and site readiness assessment for the top 10 priority sites.
 - c. Develop basic parcel profiles that will include parcel, building, zoning, usage, and utility characteristics. Note: For parcels that are not owned by the city, FNI will meet with landowners as needed and directed by City.
 - d. Perform high level business composition and economic assessment for the Riverwalk area and identify needs and opportunities (usage analysis) for the 10 sites.
 - e. Conduct site assessment to evaluate available utilities and existing site infrastructure.

- f. Identify allowable uses based on zoning and if needed, recommend zoning changes. Using recommended zoning, review and summarize development requirements.
 - g. Develop one “plan view” conceptual site plan for each site in AutoCAD showing proposed site layout of potential parking, building(s) and utility connections.
 - h. Prepare a comprehensive parcel profile for each of the 10 sites that summarizes the findings and includes the site plan for the City to use in marketing the available sites.
3. Economic Development for Riverwalk and City Walk – FNI will provide the following as requested by the City:
 - a. Geotechnical Investigations – FNI will coordinate geotechnical borings and testing as directed by the City for City Walk or Riverwalk economic development site investigations.
 - b. Rendered Site Plans – FNI will provide renderings, perspectives and/or elevations as directed by the City for Riverwalk and City Walk parcels.
 4. Additional Meetings – FNI will attend additional meetings, beyond those identified in Basic Services, at the request of the City.
 5. Additional Bond Commission Subcommittee Meetings – FNI will provide coordination for any meetings in addition to the three meetings outlined in Basic Services of this exhibit. The purpose, goals, structure, timing and sequence of these meetings is to be determined by the City and FNI following the first Bond Commission Meeting.
 6. Alternative Evaluations – FNI will investigate alternative solutions, alignments or routes to further refine schedules, costs and scope of projects, as requested by City.

ARTICLE II

ADDITIONAL SERVICES: Any services not listed above will be considered additional services and upon request, a Proposal can be submitted by FNI for review and approval by the CITY which will include a description of the requested Scope of Work, an Itemized Fee Calculation and any proposed extension of the contract time that may be necessary.

ARTICLE III

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with the following schedule:

Project will be completed within nine months from execution of this agreement.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Owner or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this AGREEMENT and in Attachment CO.

ARTICLE IV

RESPONSIBILITIES OF OWNER: Owner shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Designate in writing a person to act as Owner's representative with respect to the services to be rendered under this AGREEMENT. Such person shall have contract authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to FNI's services for the Project.
- B. Provide all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the drawings and specifications.
- C. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- D. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this AGREEMENT.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Owner deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.
- F. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- G. Owner shall make or arrange to have made all subsurface investigations, including but not limited to borings, test pits, soil resistivity surveys, and other subsurface explorations. Owner shall also make or arrange to have made the interpretations of data and reports resulting from such investigations. All costs associated with such investigations shall be paid by Owner.
- H. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Owner may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as Owner may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as Owner may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- I. Owner shall determine, prior to receipt of construction bid, if FNI is to furnish Resident Project Representative service so the Bidders can be informed.
- J. Attend the pre bid conference, bid opening, preconstruction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.
- K. Give prompt written notice to FNI whenever Owner observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
- L. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article II of this AGREEMENT or other services as required.
- M. Bear all costs incident to compliance with the requirements of this Article IV.

ARTICLE V

DESIGNATED REPRESENTATIVES: FNI and Owner designate the following representatives:

Owner's Designated Representative –

Owner's Accounting Representative –

FNI's Designated Representative – Mike Wayts, P.E., 1017 Main Campus Drive, Suite 1200, Raleigh, NC 27606; 919-582-5850; email mike.wayts@freese.com

FNI's Accounting Representative – Matt Shafer, 4055 International Plaza, Suite 200, Fort Worth, Texas 76109; 214-217-2238; email mcs@freese.com

COMPENSATION

Compensation to FNI for the Basic Services described in Attachment SC shall be the lump sum of Four Hundred Ninety Eight Thousand Four Hundred Dollars (\$498,400). Compensation to FNI for Special Services in Attachment SC shall be computed on the basis of the Schedule of Charges, but shall not exceed 500 hours. If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

Schedule of Charges:

<u>Position</u>	<u>Rate</u>
Professional - 1	107
Professional - 2	130
Professional - 3	146
Professional - 4	169
Professional - 5	197
Professional - 6	225
Program Manager	162
Construction Manager - 1	85
Construction Manager - 2	111
Construction Manager - 3	131
Construction Manager - 4	164
CAD Technician/Designer - 1	91
CAD Technician/Designer - 2	117
CAD Technician/Designer - 3	145
Corporate Project Support - 1	87
Corporate Project Support - 2	105
Corporate Project Support - 3	139
Intern/ Coop	53

Rates for In-House Services**Technology Charge**

\$8.50 per hour

Travel

Standard IRS Rates

Bulk Printing and Reproduction

Black and White	\$0.10 per copy
Color	\$0.25 per copy
Plot - Bond	\$2.50 per plot
Plot - Color	\$5.75 per plot
Plot - Other	\$5.00 per plot
Binding	\$0.25 per binding

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.10. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These rates will be adjusted annually in February.

1022015

FNI MDW
OWNER _____

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

1. **STANDARD OF PERFORMANCE:** The standard of care for all professional ENGINEERING, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill customarily used by members of ENGINEER's profession.
2. **EXECUTION OF CONTRACT:** Contract documents must contain an original signature of authorized representative in the space provided and must be typed or printed in ink. Use of erasable ink is not permitted. Do not use white out, correction tape or some other method of masking a correction. Contract documents are the property of the City and are subject to the provisions of the North Carolina Open Records Act. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.
3. **WAIVER:** The City of Hickory reserves the right to waive any general provisions, special provision or minor specification deviation when considered to be in the best interest of the City.
4. **OPINIONS OF PROBABLE COST (COST ESTIMATES):** Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER's experience and qualifications, and represents its judgment as an experienced and qualified professional ENGINEER. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER does not guarantee that cost estimates will not vary from opinions of probable cost ENGINEER prepares.
5. **MISTAKES:** Engineers are expected to thoroughly examine the specifications, delivery schedule, contract prices and all instructions pertaining to supplies and services.
6. **ALLOCATION OF RISK:** THE CITY and ENGINEER have evaluated the risks and rewards associated with this project, including ENGINEER'S fee relative to the risks assumed, and agree to allocate certain of the risks, so, to the fullest extent permitted by law, the total aggregate liability of ENGINEER (and its related corporations, sub consultants, and employees) to THE CITY and third parties granted reliance is limited to the greater of \$(1,000,000) or its fee, for any and all injuries, damages, claims, losses, or expenses (including attorney and expert fees) arising out of ENGINEER's services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity, or other recovery. This limitation shall not apply to the extent the damage is paid under ENGINEER's commercial general liability insurance policy.
7. **LITIGATION SUPPORT:** In the event ENGINEER is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which ENGINEER is not a party or negligent in the performance of services rendered, THE CITY shall reimburse ENGINEER for reasonable costs in responding and compensate ENGINEER at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.
8. **SUCCESSORS AND ASSIGNS:** THE CITY and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither THE CITY nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other.
9. **LIABILITY:** The Engineer shall hold and save the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned harmless against the claims by third parties resulting from the Engineer's breach of this contract or the Engineer's negligence.
10. **INDEPENDENT CONTRACTOR:** The parties agree that the Engineer and each subcontractor is acting in the capacity of an independent contractor with respect to the City of Hickory, and shall not at any time be or represent itself as an agent or employee of the City of Hickory.

11. **ACCEPTANCE OF PURCHASE ORDERS:** Engineers are to accept only those purchase orders issued by the City of Hickory prepared on Finance Department forms.
12. **CONFLICT OF INTEREST:** The Contract hereunder is subject to the provisions of City of Hickory's Ethics and Conflict of Interest Policy. Engineer must disclose, the name of any officer, director or agent who is also an employee of the City of Hickory or any of its agencies or subdivisions. Further, Engineer must disclose the name of any City employee who owns, directly or indirectly, an interest of five percent (5%) or more in the Engineer's firm or any of its branches.
13. **PATENTS AND ROYALTIES:** The Engineer, without exception, shall indemnify and save harmless the City of Hickory from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract including its use by the City of Hickory. If the Engineer uses any design, device or materials covered by letters, patent copyright, it is mutually agreed and understood without exception that the Consultants proposal shall include all royalties or cost rising from the use of such design, device or materials in any way involved in the work.
14. **RELEASE OF PATENTS AND COPYRIGHTS:** The Engineer will relinquish the ownership and exclusive rights to the City of Hickory for any patents and/or copyrights for any process, discovery, or invention which arise or is developed in the course of this contract.
15. **FACILITIES AND EQUIPMENT:** The City reserves the right to inspect the Engineer's facilities or equipment at any time with reasonable prior notice.
16. **BANKRUPTCY:** If the Engineer becomes bankrupt or insolvent, or if a petition in bankruptcy is filed against the Engineer, or if a receiver is appointed for the Engineer, the City shall have the right to terminate this contract upon written notice to the Engineer without prejudice to any claim for damages or any other right of the City under this contract to the time of such termination.
17. **ACCESS TO RECORDS:** The Engineer agrees to provide upon request audit materials to an auditor designated by the City. In addition, the Engineer will retain all records pertaining to this contract for a period of three (3) years after final payment and all other pending matters are closed.
18. **INSURANCE/INDEMNITY:** If insurance is required in the specifications to this Agreement, unless otherwise specifically stated, proof of the following types and amounts shall be furnished to the City showing the City as an additional insured thereunder without cost to the City of Hickory prior to the awarding of the contract. This shall be accomplished by including:
 - 1) Certificate of Insurance with the Certificate Holder being: *City of Hickory, PO Box 398, Hickory NC 28603*
 - 2) The Endorsement expressing the City of Hickory as the additional assured organization.

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. THE CITY shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the THE CITY. ENGINEER agrees to indemnify THE CITY for claims to the extent caused by ENGINEER's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.

19. **DISCRIMINATION:** Engineer agrees, in connection with the performance of work under this contract, as follows:
- a. Engineer will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation or affectation, national origin, ancestry, or physical or mental impairment. The Engineer shall take affirmative action to insure that employees are treated without regard to their race, creed, color, sex, sexual orientation or affectation, national origin, ancestry or physical or mental impairment. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, lay-off, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Engineer agrees to post in a conspicuous place available to employees and applicants for employment, notices setting forth provisions of this section.
 - b. The Engineer agrees to include this non-discrimination clause in any subcontract connected with the performance under this contract.
 - c. In the event of the Engineer's non-compliance with the above non-discrimination clause, this contract may be terminated by the City. The Engineer may be declared by the City ineligible for further contracts with the City until satisfactory proof of intent to comply is made by the Engineer.
20. **DISTRIBUTION OF CONTRACT:** One (1) copy of the contract or award letter shall be furnished to the Engineer. It shall be the Engineer's responsibility to reproduce and distribute copies of the contract. No additions, deletions or changes of any kind shall be made to this contract by the Engineer.
21. **APPLICABILITY OF FEDERAL REGULATIONS TO FEDERALLY FUNDED PROJECTS:** If it is indicated in the specifications to this Agreement that federal funding is used in the completion of this project, the following provisions shall apply in compliance with the regulations of the United States Department of Housing and Urban Development.
- a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 - b. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them for complying with the Part 135 Regulations.
 - c. The contractor agrees to send each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization of workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
 - d. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
 - e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

- f. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD-assisted contracts.
22. **ADVERTISING:** In submitting a proposal, Engineer agrees not to use the results therefrom as a part of any commercial advertising.
23. **TERMINATION FOR CONVENIENCE OF THE CITY:**
- a. The performance of work and/or delivery of ordered materials, supplies, equipment and/or services under this contract may be terminated by the City, in whole or in part, whenever it is determined to be in the best interest of the City.
 - b. Any such termination shall be effected by the delivery to the Engineer of a notice of termination specifying the extent to which performance of work and/or delivery of ordered materials, supplies, equipment and/or services are terminated, and the date upon which such termination becomes effective.
 - c. After receipt of a notice of termination, the Engineer shall stop work and/or place no further orders under the contract on the date and to the extent specified in the Notice of Termination.
24. **VENUE:** This contract shall be governed by the laws of the State of North Carolina.
25. **INTEGRATED AGREEMENT:** This writing, with the attachments hereto, and any associated purchase orders constitute the entire agreement of the parties. No separate promises or agreements have been made other than those contained herein. This Agreement may not be modified except in writing signed by both parties.
26. **RE-USE OF DOCUMENTS:** Upon payment of all amounts rightfully owed by Owner to the Engineer for services rendered with respect to the Services provided under this Agreement, all plans, drawings, specifications, elements of design, models, reports, submissions, mock-ups and other documents and materials that are produced by the Engineer as part of its performance of such Services hereunder (hereinafter the "Design Documents"), with the exception of those documents that constitute standard details, specifications, and/or other data and/or materials that are regularly used by the Engineer and/or the professional design industry in the normal course of business, shall be deemed to be the property of Owner. Any reuse or modification of such documents for purposes other than those intended by the Engineer shall be at the Owner's sole risk and without liability to the Engineer.
27. **DELIVERY OF NOTICES:** Any notices required or permitted by this Agreement will be considered sufficient if hand delivered or sent by certified mail to the party entitled to receive the notice at the address of that party set forth above. If a notice is sent by certified mail, it shall be deemed to have been given on the second business day after it is deposited in the United States mail, whether actually received by the addressee on that date or not.
28. **PAYMENT:**
- a. **INVOICING:** The Engineer shall be paid within a reasonable time, not to exceed 30 calendar days, after submission of proper certified invoices to the City at the prices stipulated on the contract. Invoices shall contain the contract number and purchase order number. Failure to follow these instructions may result in delay or processing invoices for payment. If the Engineer wishes to ship or service from a point other than the home office, he will furnish a list of these locations. **HOWEVER, NO ORDERS WILL BE PRESENTED TO, BILLING WILL NOT BE DONE FROM, NOR WILL PAYMENT BE MADE TO THESE LOCATIONS.**
 - b. **DISCOUNTS:** Engineers may offer a cash discount for prompt payment; however, such discounts shall not be considered in determining the lowest net cost. Engineers are encouraged to reflect cash discounts in the unit prices quoted. Discount time will be computed from the date of satisfactory delivery at place of acceptance or from receipt of correct invoice at the office specified, whichever is later.

29. **PARTIAL PAYMENTS:** Partial payments will be made once each month as the work progresses. Said payments will be based upon estimates prepared by the Engineer and approved by the appropriate City representative for the value of the work performed and materials complete in place in accordance with the contract and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with this contract.

The Engineer shall not receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders, except when such excess quantities have been determined by the THE CITY to be a part of the final quantity for the item of work in question.

No partial payment shall bind the THE CITY to the acceptance of any materials or work in place as to quality or quantity. Engineer shall submit partial payment request for work completed by the 25th of the month. THE CITY will make payment to the Engineer on or about the 25th of the following month.

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

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

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

30. **COMPLIANCE WITH LAWS:** The engineer, at his own expense, shall obtain and maintain all licenses, permits, liability insurance, worker's compensation insurance and shall comply with any and all other standards or regulations required by federal, state and local statute, ordinance, executive order and rules during the performance of any contract between the engineer and the City. Any such requirement specifically set forth in any contract document between the engineer and the City shall be supplementary to this section and not in substitution thereof.
31. **SEVERABILITY:** If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.
32. **GUARANTEE:** Consistent with Item 1 STANDARD OF PERFORMANCE, unless otherwise specified by the City the engineer shall unconditionally guarantee the services to be free from defect at the time of delivery and acceptance (to be determined by usage) by the City. If any defects are present which are due to faulty material, workmanship and/or services, the engineer at his expense, shall repair or adjust the condition, or replace the material and/or services to the complete satisfaction of the City. These repairs or replacements or adjustments shall be made only at such time as will be designated by the City as least detrimental to the operation of the City.
33. **LICENSE:** Engineering firm must have proper license governing services provided.
34. **E-VERIFY COMPLIANCE:** Employers and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the North Carolina General Statutes must comply with North Carolina Session Law 2013-418's E-Verify requirements to contract with local governments. E-Verify is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. A completed E-Verify affidavit is required to enter any contract with the City of Hickory.

Project Title:

Bid Number:

PROJECT NAME

BID NUMBER

Acceptance and entry into this Agreement by and on behalf of the City of Hickory is made this

21st day of April, 2015.



(SEAL)

CITY OF HICKORY,
A North Carolina Municipal Corporation


Mick W. Berry, City Manager

Attest:

Debbie D. Miller
Debbie D. Miller, City Clerk

This document has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Melissa Miller
Melissa Miller, Finance Officer

Approved as to form on behalf of the City of Hickory only:

Arnita M. Dula
Arnita M. Dula, Staff Attorney