

YADKIN COUNTY

AGREEMENT FOR SERVICES

NORTH CAROLINA

This Agreement is made and entered into this 6TH day of April, 2015 ("Effective Date") between Yadkin County, North Carolina ("County") and Northwest Geoscience, PC ("Provider").

WHEREAS, the County and the Provider wish to enter into a contract under which the Provider will provide certain specified services and/or materials to the County in exchange for payment. NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, conditions, and agreements herein, the County and the Provider agree as follows:

1. Services To Be Performed. The Provider agrees to perform the services and to provide the materials (all collectively called the "Services") for the County as described in Section A of the attached Exhibit A (the "Contract Specifications"), which is incorporated into this Agreement by reference as if it were fully set forth herein. The Provider warrants that all materials it provides shall be of good quality and shall meet industry standards and the County's expectations and approval, and the Provider warrants that it shall perform all Services in a good and workmanlike manner, in accordance with industry standards and the County's expectations, and to the County's full satisfaction.

2. Term. The term of this Agreement shall be as provided in Section B of the attached Exhibit A, the Contract Specifications.

3. Payment. In accordance with Section C of the attached Exhibit A, the Contract Specifications, the County agrees to pay the Provider for Services satisfactorily performed in accordance with this Agreement. The County shall pay each properly submitted invoice within thirty (30) days of its submission. Each invoice shall document, to the County's satisfaction, the work performed and the basis for the amount of payment sought. If the Provider fails to perform in accordance with this Agreement, the County may, without penalty, withhold any payment(s) associated with Services not properly performed until and unless the Provider completes or corrects its performance, as applicable. The County's remedies under this Agreement are not exclusive and are in addition to all other rights and remedies provided by law.

4. Non-waiver. If the County at any time does not require the Provider to satisfy any of the Provider's obligations under this Agreement, or if the County fails at any time to exercise any right or privilege granted to it by this Agreement, that shall not waive or limit the County's ability to require the Provider to satisfy those obligations in the future or the County's ability to enforce its rights or privileges in the future. If the County waives any breach of this Agreement by the Provider, which shall not be deemed a waiver of any later breach by the Provider, nor shall it be deemed a waiver of this section of the Agreement.

5. Independent Contractor. For purposes of this Agreement, the Provider at all times shall be considered an independent contractor, and the County shall not be deemed the employer of the Provider or of any of the Provider's agents or employees, nor shall the County be

responsible for the actions or omissions of the Provider or its agents and employees. For purposes of this Agreement, the Provider and its agents and employees shall not be deemed an employee of the County for any purpose, including (by example only and not for purposes of limitation) federal or state income taxation, unemployment benefits, or worker's compensation benefits.

6. Insurance. For the term of this Agreement, the Provider shall maintain at its sole expense the insurance specified in Section D of the attached Exhibit A, the Contract Specifications. All insurance policies shall be issued by a company authorized to issue insurance in the State of North Carolina. Before beginning to perform under this Agreement, the Provider shall provide the County with a certificate of insurance showing that all insurance required by this Agreement is in effect, and the Provider shall keep that certificate current by submitting to the County updated certificates as the Provider's insurance policies are renewed or otherwise modified. The Provider shall notify the County immediately if any insurance required by this Agreement will be or has been cancelled or not renewed or if the amount of coverage of any such insurance will be or has been reduced.

7. Indemnity. The Provider agrees that it shall defend, indemnify, and hold harmless the County and its officials, employees, and agents from and against any and all losses, liabilities, claims, demands, suits, costs, damages, or expenses (including reasonable attorneys' fees) arising from or related to this Agreement and/or the Services, including (by example only and not for purposes of limitation) those for bodily injury, death, or property damage. The Provider's obligations under this section shall survive termination of this Agreement.

8. Termination. Notwithstanding any other provision of this Agreement (including any provision in the attached Exhibit A), this Agreement may be terminated at any time by mutual written agreement of the County and the Provider, or it may be terminated by the County upon ten (10) days' written notice to the Provider. Ten days' written notice for termination by the County is not required if the County is terminating because the Provider has breached the Agreement.

9. Entire Agreement. This Agreement (including the attached Exhibit A, the Contract Specifications) constitutes the complete and entire Agreement between the County and the Provider concerning the subject matter of the Agreement and supersedes any and all prior agreements, discussions, understandings, promises, or representations concerning that subject matter. This Agreement may be modified only by a writing signed by both the County and the Provider.

10. Governing Law and Forum for Disputes. This Agreement shall be governed by the laws of the State of North Carolina without regard to North Carolina's choice of law provisions. Any lawsuit or other legal proceeding concerning this Agreement and/or the Services must be filed in Yadkin County, North Carolina, unless it is properly filed in federal court, in which case it must be filed in the federal District Court for the Middle District of North Carolina.

11. Severance Clause. If any part of this Agreement is deemed unenforceable by a court of competent jurisdiction, then that part shall be enforced to the greatest extent legally possible, and the rest of this Agreement will remain in full force and effect.

12. Compliance With Laws. The Provider acknowledges and agrees that it will perform all Services and will satisfy all of its obligations under this Agreement in full compliance with all applicable federal, state, and local laws and regulations.

13. Repair of Damages. The Provider shall promptly and fully repair any damages that it or its employees or agents cause to the County's property. Alternatively, the County may choose in its discretion to require the Provider to fully compensate the County for any such damages rather than have the Provider repair them.

14. Titles and Headings. Titles and headings used in this Agreement are for convenience only and do not limit or modify the language within each section of this Agreement.

15. Non-Assignment. The Provider may not assign its rights or obligations under this Agreement, nor may it sub-contract any part of this Agreement, without written approval from the County.

16. Notices. Any notice or communication to the County or the Provider for purposes of this Agreement shall be delivered or shall be deposited in the United States Mail, first class, addressed to the addressee in Section E of the attached Exhibit A, the Contract Specifications.

17. Number and gender. This Agreement's use of singular, plural, masculine, feminine, and neuter pronouns shall include the others as the context may require.

18. Exhibit A. To the extent of a conflict between the above language of this Agreement and the attached Exhibit A (the Contract Specifications), the above language of this Agreement will control.

IN WITNESS WHEREOF, the County and the Provider have caused this Agreement to be executed as of the Effective Date.

THE COUNTY

BY: 

Name: Lisa Hughes

Title: Yadkin County Manager

THE PROVIDER

BY: 

Name: Alan Barry Nelson

Title: President

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



Deputy Finance Officer

EXHIBIT A

CONTRACT SPECIFICATIONS

A. Services To Be Performed By The Provider. (The Services may also be described on one or more attached sheets, but each must be signed by the Provider and the County.)

Northwest Geoscience, PC, partnering with ET Engineering, will create emergency action plans (EAPs) for Yadkin County's 14 small earthen dams. These

EAPs will be written using the EAP development web tool provided by the Division of Emergency Management website. An Inundation map will also be created using

the top of the dam water level for all 14 dams. The maps will provide information about the downstream area of the dams including: all residences and structures

that are at risk from dam failure or flooding, contact information for residences at risk and emergency access routes. NWGS will also provide reservoir area-capacity

curve, principal spillway rating curve, rating curve for the top of dam and the emergency spillway if information is available. Both the EAPs and the Inundation

maps must be acceptable by all appropriate NC agencies such as the Division of Emergency Management and NC Dam Safety prior to payment.

NWGS will also enter the EAPs and Inundation maps into the EAP development web tool and provide copies to appropriate NC agencies and Yadkin Soil and Water.

Please see Attachment A for more details. In addition to these services, all items listed in attachment A will be provided.

B. Term of the Agreement. (Check the one provision that applies.)

☐

This Agreement shall end on _____, 20____.

☒

This Agreement shall continue until the Provider has completed the Services to the County's satisfaction.

☐

This Agreement shall continue until terminated in accordance with Section 8 of the Agreement.

C. Payment to the Provider. (Check the provision that applies.)

☐

The County shall pay the Provider \$_____ every _____.

☒

The County shall pay the Provider a total of \$ 18,000
for all Services performed under this Agreement. The Provider will invoice the County for Services as they are performed, but no more frequently than monthly.

D. E-Verify. North Carolina General Statutes prohibit counties from entering into contract with contractors and subcontractors who have not complied with the requirement of Article 2 of Chapter 64 of the NC General Statutes. The Contractor must submit the E-Verify Affidavit with bid proposals and/or contracts.

E. Insurance. During this Agreement's term, the Provider shall maintain worker's compensation insurance as required by North Carolina law to cover all of the Provider's employees engaged in any work under the Agreement. The Provider shall also maintain the following insurance to cover its performance under this Agreement during the Agreement's term:

- General commercial liability in the amount of \$1,000,000 per occurrence / \$2,000,000 aggregate.
- Workers' Compensation in the amount of \$500,000 employer's liability
- Automobile liability covering all owned, hired, and non-owned vehicles used in connection with this Agreement. The minimum combined single limit shall be \$1,000,000 for bodily injury and property damage; and, \$1,000,000 uninsured/underinsured motorist coverage.

E. Contact Information.

THE COUNTY

Yadkin County Soil and Water
PO Box 8 Yadkinville, NC 27055
P: 336 679 8052 ext 3 F: 336 679 3088
Jason Walker

THE PROVIDER

NORTHWEST GEOSCIENCE, PC/APPLIED EARTH SCIENTISTS
P.O. BOX 6418 HIGH POINT, NC 27262-6418
P: 336 885 4381 F: 336 885 4191
Alan Barry Nelson, PG

These Contract Specifications are hereby acknowledged and agreed to by:

THE COUNTY

BY: 

Name: Lisa Hughes

Title: County Manager

THE PROVIDER

BY: 

Name: Alan Barry Nelson

Title: President

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


(Signature of County Finance Officer)
Deputy

Attachment A



NORTHWEST GEOSCIENCE, PC
APPLIED EARTH SCIENTISTS

P.O. BOX 6418

HIGH POINT, NC 27262-6418

336 885 4381

USA

FAX 336 885 4191

March 2, 2015

Yadkin County Soil and Water
P.O. Box 8
Yadkinville, NC 27055

Attention: Mr. Jason Walker

Subject: **REVISED**
 Proposal for Preparation of Emergency Action Plans & Inundation Maps
 14 Dam Structures
 Yadkin County, North Carolina

Dear Mr. Walker:

INTRODUCTION

Northwest Geoscience, PC (NWGS) and our engineering partner ET Engineering (ETE) are pleased to submit this proposal to complete Emergency Action Plans (EAPs) and Downstream Inundation Maps (DIMs) at fourteen (14) small earthen dams across Yadkin County. NWGS will work to prepare the EAPs while the DIMs will be prepared by Mr. John M. Riley, PE of ET Engineering in order to comply with the policy of the NC Board of Engineering Examiners (NCBEE).

SCOPE OF WORK

Emergency Action Plan (EAP)

The Emergency Action Plans will be developed from the current EAP development tool on line at the Division of Environmental Management's website. A professional from NWGS will meet with you to discuss the structures, obtain information needed for developing a list of key individuals responsible for implementation of the EAP and review plans and file information

developed for each structure by the Soil Conservation Service (now the Natural Resource Conservation Service) to gain critical information about each dam. Following the interview and file review, the NWGS staff member will visit each dam, and obtain photographs of the structure as well as the area downstream. This information will be used to compile the inputs of the EAP. NWGS will obtain additional information concerning critical contacts, residences, businesses and infrastructure in the area downstream and will identify sources of emergency supplies, contractors and suppliers that can be utilized in an emergency.

Location maps, emergency access routes and routes of egress from the area will be compiled and presented as part of the EAP. Existing information from the SCS such as a reservoir area-capacity curve, principal spillway rating curve, rating curve for the top of dam and the emergency spillway and a plan of the dam will be provided if available. Please note that if this information is not available in the file, neither NWGS or ETE will develop them.

Downstream Inundation Area Map (DIM)

A review of the dam locations, their size and the downstream land uses has been conducted to verify the suitability of the Simplified Inundation Map Procedure (SIMP) for the Yadkin County Dams. Additionally, conversations have been made with representatives of Dam Safety in Raleigh and at the Winston-Salem Regional Office concerning the use of the SIMPs. Based on these facts, Mr. John M. Riley, PE of ET Engineering will prepare the inundation area maps for each structure using the SIMP. Each map will bear the signature and seal of Mr. Riley in compliance with the policy directive of the NC Board of Engineers. The map will be saved within the EAP development tool and will be provided as part of each EAP.

DELIVERABLES

A hard (paper) copy of the EAP and the DIM for each structure will be provided. Additionally, an electronic version of the EAP and the DIM will also be provided. A copy of the EAP and DIM will be downloaded directly to the state EAP Development Tool. Electronic copies will then be forwarded by Dam Safety to the appropriate Emergency Management Agencies.

PROPOSED FEE

The deliverables outlined above will be prepared according to the work tasks cited in the above Scope of Work based on unit rates for personnel and expenses based on actual quantities used or worked. All work will be completed under a time and materials basis with a maximum not to exceed fee of \$18,000.00. Utilizing this fee structure, the maximum cost is established for planning purposes whereas should the time and expenses needed to complete the work be less than our estimate, these savings will reduce the final costs to you.

PROJECT SCHEDULE

Dam Safety has determined that the original date of compliance of March 1, 2015 will not be enforced. This is due to various technical problems with the EAP portal that is still under final

development. Based on our current work load, we anticipate that the EAP's and inundation maps will be completed by mid-April.

PROFESSIONAL SERVICES AGREEMENT

We understand that Yadkin County will submit a copy of a contract for us to execute. Once this is in our office, we will sign and return it to you so that we can begin work.

CLOSURE

NWGS and our engineering partner ET Engineering appreciate this opportunity to offer our respective services to Yadkin County Soil and Water. Please review our proposal and should you have any questions, please do not hesitate to contact us. We look forward to working with you.

Sincerely,
Northwest Geoscience, PC

A handwritten signature in cursive script, appearing to read "Alan Barry Nelson".

Alan Barry Nelson, PG
President

Cc: John M. Riley, PE
ET Engineering