

MASTER SERVICES AGREEMENT

This AGREEMENT made and entered into this the 2 day of May, 2016, by and between Yadkin County, North Carolina, hereinafter referred to as "OWNER" and McGill Associates, P.A. with offices at 19th Street Lane, NW, Hickory, North Carolina, hereinafter referred to as ENGINEER.

WHEREAS, the OWNER, desires to retain ENGINEER, a professional consulting firm, to provide services for the accomplishment of certain TASKS and PROJECTS, to be defined by subsequent **Task Orders** which will reference, and be supplements to, this AGREEMENT, and;

WHEREAS the OWNER may require **ON-DEMAND** professional consulting services from time to time on an as-needed basis, to assist with the planning, conceptual, development, and implementation of infrastructure and facilities such as parks, landfill, environmental, including but not limited to strategic planning, surveying, engineering, assistance with public financial matters, environmental and regulatory permitting and compliance, assistance with local agreements, capital improvements planning, economic development, construction administration, and;

WHEREAS, the ENGINEER desires to provide such professional consulting services as may be agreed to by the parties in accordance with this AGREEMENT;

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, it is hereby mutually understood and agreed as follows:

SECTION 1 – TYPES OF SERVICES RENDERED

1.1 SERVICES RENDERED FOR PROJECT TASK ORDERS

- 1.1.1 This Agreement shall apply to as many projects as OWNER and ENGINEER agree will be performed under the terms and conditions of this Agreement. Each project ENGINEER performs for OWNER hereunder shall be designated by a "Task Order." A sample Task Order is attached to this Agreement and marked as Exhibit "B". No Task Order shall be binding or enforceable unless and until it has been properly executed by both OWNER and ENGINEER. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
- 1.1.2 In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control.
- 1.1.3 In performing services pursuant to this Agreement and any Task Order, ENGINEER shall comply with all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

1.1.4 ENGINEER's basic services and responsibilities for each Task Order are outlined herein and further defined in each Task Order. A detailed Scope of Services for each Task Order, or for Additional Services, will be developed at the direction of the OWNER and will formally become a part of this Agreement through a Task Order executed by both parties. Each Task Order shall include payment provisions and provisions for time of completion by ENGINEER. Unless expressly stated otherwise in a given Task Order, ENGINEER shall perform those services required for each phase as outlined in Section 2 – Basic Services of this AGREEMENT.

1.2 SERVICES RENDERED FOR ON-DEMAND SERVICES

1.2.1 From time to time, on an as-needed basis, for efforts with undefined or varying scope, the OWNER may request On-Demand Services be rendered by the ENGINEER. This AGREEMENT shall apply for On-Demand Services initiated by the OWNER and rendered by the ENGINEER.

1.2.2 On-Demand Services include, but are not limited to assisting the OWNER with the development and review of interlocal agreements, the development of Capital Improvements Planning (CIP) including financial modeling, funding alternatives and grantsmanship.

1.2.3 On-Demand services requested and authorized by the OWNER, that are agreed to and rendered by the ENGINEER, shall be provided on an hourly basis in accordance with the "Basic Fee Schedule" dated December 2015, attached hereto as "Exhibit A".

SECTION 2 - BASIC SERVICES

The following is a general scope of services listing for project planning, design, bidding, and construction administration. Specific scope of services may vary according to the OWNER's need as outlined in each specific Task Order.

2.1 PRELIMINARY PHASE

- 2.1.1 Consult with the OWNER to fully determine the OWNER's requirements for the project and to discuss the possible phasing, coordination, approvals and other preliminary matters.
- 2.1.2 Coordinate and conduct initial coordination meeting(s) with any other applicable parties as needed for the purpose of establishing communication lines, meet project team members and define project schedules, coordinate various plans and improvements and discuss pertinent matters related to the project.
- 2.1.3 Prepare a preliminary opinion of probable construction costs and a written narrative memorandum of the technical scope of the project resulting from the preliminary determinations to assure a good understanding and coordinate such information with the OWNER.

2.2 DESIGN PHASE

- 2.2.1 Prepare the complete bid documents, contract documents, technical specifications and construction drawings to detail the character and scope of the work including all design functions, surveying, and coordination for all construction sequencing of the project as determined in the Preliminary Phase.
- 2.2.2 Review all of the design documents as described above with the OWNER for comments and approval throughout the design process.
- 2.2.3 Assist the OWNER in securing approval of the final design documents from such governmental agencies as have jurisdiction over the project or any portion thereof, such as encroachment on NCDOT rights-of-way, sedimentation and erosion control plans, water and sewer system, etc.
- 2.2.4 Provide field surveys and legal descriptions to assist the OWNER in obtaining any right-of-way easements or encroachment agreements from public bodies, entities or persons necessary for satisfactory construction of the project.
- 2.2.5 ENGINEER shall coordinate the services provided by any firms conducting subsurface or structural investigations or other types of construction materials testing and analysis needed for proper design. The provision of such services including subsurface, geotechnical, special inspections and materials testing, should they be required, shall be paid for by the OWNER and contracted directly between the OWNER and the consultant providing such services.

- 2.2.6 Advise the OWNER of any adjustment of the project cost caused by changes in scope, design requirements or construction costs and furnish a revised opinion of probable construction cost based on the final design documents.
- 2.2.7 Furnish copies of the final design documents as required to accomplish the design phase.

2.3 BIDDING AND AWARDING PHASE

- 2.3.1 Assist the OWNER in advertising, receiving, opening and evaluating bids in accordance with the State of North Carolina General Statutes. Costs associated with project advertising and bid solicitation shall be paid for by the OWNER.
- 2.3.2 Consult with, and advise the OWNER as to the acceptability of contractors and subcontractors and make recommendations as to the lowest, responsive, responsible, bidder.
- 2.3.3 Assist the OWNER in the final preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.
- 2.3.4 Schedule a preconstruction conference with the OWNER, Contractor, ENGINEER and all other applicable parties to assure discussion of all matters related to the project.

2.4 CONSTRUCTION PHASE

- 2.4.1 Provide periodic on-site observation and construction administration in accordance with the ENGINEERs modified EJCDC general conditions to assistance in the discernment of the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents, and established schedules. During such visits and on the basis of on-site observations as experienced and qualified design professionals, keep the OWNER informed of the progress of the work, endeavor to safeguard the OWNER against defects and deficiencies in the materials and workmanship of the Contractor and disapprove or reject any work failing to conform to the Contract Documents. ENGINEER shall provide on-site observation and construction administration services for the original duration of the established construction time for the contractor constructing the project. On-site observation and construction administration services rendered by the ENGINEER beyond the original duration of the established construction time for the contractor constructing the project shall be considered additional services.
- 2.4.2 Prepare and review Field Orders, Work Change Directives, and Change Orders as required. The provision of special inspections or other materials testing of the work if necessary shall be in accordance with section 2.2.5 of this agreement.

- 2.4.3 Review shop drawings, diagrams, illustrations, brochures, catalog data, schedules and samples, the results of tests and inspections and other data which the Contractor is required to submit. Review schedules, guarantees, bonds and certificates of inspection which are to be assembled by the Contractor in accordance with the Contract Documents.
- 2.4.4 Based on periodic on-site field observations as an experienced and qualified design professional and on review of the Contractor applications for payment and supporting data, determine the amount owing to the Contractor and recommend to the OWNER payment to the Contractor in such amounts; based on such observations and review, that the work has progressed to the point indicated and that to the best of ENGINEER's knowledge, information and belief the quality of the work is in accordance with the Contract Documents.
- 2.4.5 Conduct a final review of the project with applicable parties to determine if the project has been completed in accordance with the Contract Documents and if Contractor has fulfilled all obligations thereunder so that the ENGINEER may approve to the OWNER final payment to Contractor.

2.5 POST-CONSTRUCTION PHASE

- 2.5.1 Prepare for the OWNER a set of reproducible record prints of drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished. The provision of surveyed as-builts will be considered additional services.
- 2.5.2 Provide or make available all project files and information to effect project close-out.
- 2.5.3 Assist the OWNER in assuring that the warranty period for the construction work is complied with.

SECTION 3 - ADDITIONAL SERVICES

If authorized by the OWNER, the ENGINEER will furnish or obtain from others additional services of the following types which are not considered Basic Services under this Agreement.

- 3.1 Additional services resulting from significant changes in general scope of a Project or Task Order, its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction including provision of on-site observation and construction administration services rendered by the ENGINEER beyond the original duration of the established construction time for the contractor constructing the project
- 3.2 Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of the ENGINEER.
- 3.3 Preparing documents for alternate bids requested by the OWNER for work which is not executed or documents for out-of-sequence work other than agreed upon in the Preliminary Phase.
- 3.4 Services in connection with change orders to reflect changes requested by the OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.
- 3.5 Additional or extended services during construction made necessary by prolongation of the construction contract or default by the Contractor under any prime construction contract if such construction contract is delayed beyond the original completion date.
- 3.6 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.7 Additional services in connection with the Project, including services normally furnished by the OWNER and services not otherwise provided for in this Agreement.
- 3.8 Assistance with property acquisition, easements or right-of-ways and preparation of easement map(s) not specifically included in the Task Order scope.
- 3.9 Provision of G.I.S. or surveying services for As-Builts.
- 3.10 Provision of Special Inspections, geotechnical or subsurface investigations, and construction materials testing during design and construction phases.

SECTION 4 - OWNERS RESPONSIBILITIES

The OWNER shall:

- 4.1 Provide full information as to his requirements for the Project.
- 4.2 Assist the ENGINEER by placing at his disposal all available information pertinent to the Project including previous documents and any other data relative to evaluation, design and construction of the Project.
- 4.3 Furnish the ENGINEER any existing data and information for property boundary, easement, right-of-way, operating information, previous construction plans, topographic and utility surveys; zoning and deed restriction; all of which the ENGINEER may rely upon in performing his services under this Agreement.
- 4.4 Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform his services under this Agreement.
- 4.5 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- 4.6 Pay for all costs incidental to conducting subsurface or structural investigations or other types of construction materials testing and analysis needed for proper design and construction of the project. The provision of such services including subsurface, geotechnical, special inspections and materials testing, should they be required, shall be paid for by the OWNER and contracted directly between the OWNER and the consultant providing such services. OWNER shall pay all costs associated with advertising, soliciting bids or proposals from Contractors.
- 4.7 Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor has used the monies paid to him under the construction contract.
- 4.8 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Agreement.
- 4.9 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any deficiency in design or defect in the Project.
- 4.10 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, subject to the obligations of the ENGINEER outlined in Section 2.2.3 of this Agreement.

- 4.11 Furnish, or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.12 Bear all costs incident to compliance with the requirements of this Section 4.

SECTION 5 – GENERAL CONDITIONS

5.1 SCOPE OF SERVICES

ENGINEER shall render professional consulting services to the OWNER as set forth in this AGREEMENT and specific to each of the individual Task Orders or as may be required by the OWNER from time to time in the provision of On-Demand Services.

5.2 STANDARD OF CARE

ENGINEER will perform its services using that degree of skill and diligence normally employed by professional engineers or consultants performing the same services at the time, place and condition these services are rendered.

5.3 AUTHORIZATION TO PROCEED

Execution of this Agreement will be considered authorization for ENGINEER to proceed with any ON-DEMAND Services that may be required and initiated by the OWNER. The execution by the OWNER of each Task Order will be considered authorization to proceed only for the scope of work specific to that individual Task Order.

5.4 CHANGES IN SCOPE

The OWNER may request changes in the Scope of Services provided in Task Orders. If such changes affect ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to the associated Task Order.

5.5 COMPENSATION

- 5.5.1 The OWNER shall pay the compensation to ENGINEER for services rendered as set forth in each of the Task Orders initiated by the OWNER. The OWNER shall compensate ENGINEER for ON-DEMAND services initiated by the OWNER and rendered by ENGINEER, on an hourly plus expenses basis in accordance with the ENGINEER's "Basic Fee Schedule" dated December 2015, attached hereto as "Exhibit A". This Basic Fee Schedule shall be valid for a period of two (2) years starting upon the date of the OWNER's execution of this agreement.

5.5.2 ENGINEER shall submit invoices to the OWNER monthly for work accomplished under this agreement and the OWNER agrees to make full payment to ENGINEER within thirty (30) days of receipt of the invoices. OWNER further agrees to pay interest on all accounts invoiced and not paid within said thirty (30) days at a rate of 1-1/2 percent per month (18 percent per annum), until paid unless OWNER disagrees in writing to the invoice within said thirty (30) days. It is also mutually agreed that should the OWNER fail to make prompt payments as described herein, ENGINEER reserves the right to immediately stop all work under this agreement until disputed amounts are resolved.

5.6 PERSONNEL

ENGINEER represents that it has, or will secure at their own expense, all personnel required to perform the services under this agreement except those noted as additional services or beyond the scope of this AGREEMENT and that such personnel will be fully qualified and adequately supervised to perform such services. It is mutually understood that should the scope of services require outside subcontracted services, ENGINEER may do so at their discretion.

5.7 OPINIONS OF PROBABLE CONSTRUCTION COST

Any cost estimates provided by ENGINEER shall be considered opinions of probable costs. These along with project economic evaluations provided by ENGINEER will be on a basis of experience and judgment, but, since ENGINEER has no control over market conditions or bidding procedures, ENGINEER cannot warrant that bids, ultimate construction cost, or project economics will not vary from these opinions.

5.8 TERMINATION

This Agreement may be terminated by OWNER upon 15 days written notice for any reason or no reason at all. This Agreement may also be terminated by either party if the other party fails substantially to perform through no fault of the non-defaulting party and does not commence correction of such non-performance within five (5) working days of written notice to do so and diligently complete the correction thereafter. On termination, ENGINEER will be paid for all authorized work performed up to the termination date plus reasonable project closeout costs.

5.9 LIMITATION OF PROFESSIONAL LIABILITY

ENGINEER'S liability (including the liability of ENGINEER'S directors, officers, employees and subcontractors) for OWNER's damages resulting from professional negligence, errors and omissions will, in aggregate, not exceed the

total fees paid by the OWNER for the Scope of Services referenced herein or \$100,000.00, whichever is greater. This provision takes precedence over any conflicting provision of this Agreement, Task Orders or any documents incorporated into it or referenced by it. At additional cost, OWNER may obtain a higher limit prior to commencement of services.

5.10 ASSIGNABILITY

This agreement shall not be assigned or otherwise transferred by either ENGINEER or the OWNER without the prior written consent of the other party.

5.11 SEVERABILITY

The provisions of this Agreement shall be deemed severable; and the invalidity or enforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement is deemed unenforceable for any reason whatsoever, such provision shall be appropriately limited, and given effect to the extent that it may be enforceable.

5.12 OWNERSHIP OF DOCUMENTS

The intellectual property contained in documents, calculations, drawings, maps and other items generated during the performance of services by the ENGINEER shall remain the property of ENGINEER. The foregoing notwithstanding, ENGINEER grants OWNER a non-revocable license to use the deliverables in any manner its sees fit in connection with the intended Project. Use beyond the intended Project is prohibited. ENGINEER shall assume no liability for inappropriate use of the deliverables.

5.13 EXCUSABLE DELAY

If performance of service is affected by causes beyond ENGINEER control, project schedule and compensation shall be equitably adjusted.

5.14 INDEMNIFICATION

OWNER and ENGINEER agree to indemnify, defend and hold each other harmless from any and all claims, and costs brought against either party which arises in whole or in part out of the failure by the other party to promptly and completely perform its obligations under this agreement, and as assigned in each

of the Task Orders or services rendered as On-Demand. Information supplied by the OWNER shall be deemed reliable by ENGINEER in performing its duties.

5.15 INSURANCE

ENGINEER shall provide and maintain, at its own expense, during the term of this Agreement the following insurance covering its operations. Evidence of such insurance shall be delivered to the OWNER on or before the commencement of work. OWNER shall be given written notice at least thirty (30) days in advance of any termination of any insurance coverage.

A. AUTOMOBILE LIABILITY

Bodily injury and property damage liability insurance covering all owned, non-owned, and hired automobiles for limits for bodily injury of not less than \$1,000,000 per person and \$2,000,000 per accident, and property damage limits of not less than \$1,000,000 per accident. The automobile liability insurance coverage amounts may be satisfied with a combination of primary and excess/umbrella coverage.

B. COMMERCIAL GENERAL LIABILITY

Bodily injury and property damage liability shall protect the ENGINEER performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations are performed by ENGINEER or anyone directly or indirectly working for or on ENGINEER's behalf. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/\$2,000,000 aggregate and \$1,000,000 property damage each occurrence/\$2,000,000 aggregate. This insurance shall include coverage for products/completed operations, personal and advertising injury liability and contractual liability in an amount not less than \$1,000,000 each occurrence / \$2,000,000 aggregate. The liability insurance coverage amounts may be satisfied with a combination of primary and excess/umbrella coverage.

C. PROFESSIONAL LIABILITY

Insuring against professional negligence/ errors and omissions on an occurrence basis with policy limits of \$2,000,000 per claim/\$2,000,000 annual aggregate.

D. WORKERS' COMPENSATION

Worker's Compensation insurance meeting the statutory requirements of the State of North Carolina, even if not required by law to maintain such insurance. Said Workers' Compensation insurance shall have at least the following limits: Employers Liability - \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.

5.16 CHOICE OF LAW

This Agreement shall be governed by the internal laws of the State of North Carolina.

SECTION 6 - PAYMENT TO THE ENGINEER

6.1 PAYMENT FOR SERVICES RENDERED

- 6.1.1 TASK ORDERS: The OWNER will pay the ENGINEER for services rendered as outlined in each Task Order.
- 6.1.2 ON-DEMAND SERVICES: Due to the limited scope and short duration of need, the OWNER will pay the ENGINEER for services rendered for OWNER authorized On-Demand services an amount based on actual time, materials spent plus expenses incurred by principals, employees and agents of the ENGINEER in accordance with Exhibit "A" – Standard Rate and Fee Schedule.
- 6.1.3 ENGINEER will invoice separately for each Task Order and OWNER authorized On-Demand services, should there be any. Each On-Demand services invoice will include an itemization of ENGINEER's staff type, hours expended, and expenses incurred.

6.2 PAYMENT FOR ADDITIONAL SERVICES

- 6.2.1 Should the OWNER initiate additional services beyond those included in an individual Task Order, the OWNER agrees to pay the ENGINEER for those Additional Services rendered an amount based on actual time spent and expenses incurred by principals and employees of the ENGINEER assigned to the Task Order in accordance with Exhibit "A" – Standard Rate and Fee Schedule, should any of these Additional Services be requested by the OWNER.

SECTION 7 – ENTIRE AGREEMENT

- 7.1 This Agreement and subsequent Task Orders constitutes the entire agreement between the OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented or modified by a duly executed written instrument.

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

McGILL ASSOCIATES, P.A.

By: 

Andy C. Lovingood, PE
Principal – Vice President

(SEAL)

YADKIN COUNTY

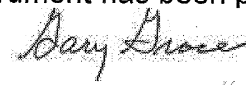
ATTEST: 

Tanya Gentry
Clerk to the Board

By: 

Lisa Hughes
County Manager

This instrument has been preaudited in the manner required by GS 18B702


Gary Groce
Finance Officer

Digitally signed by Gary
DN: cn=Gary, o=Finance, ou=Yadkin Co,
email=ggroce@yadkincountync.gov, c=US
Date: 2016.04.27 08:10:29 -04'00'

EXHIBIT B
Sample TASK ORDER

TASK ORDER NO. ____

This TASK ORDER NO. ____ dated the _____, day of _____ 201____, is a supplement to the **MASTER SERVICES AGREEMENT** between the Yadkin County, North Carolina, dated _____, 2016 hereinafter referred to as OWNER and McGill Associates, P.A., hereinafter referred to as "ENGINEER". The purpose of this Task Order is to authorize the ENGINEER to provide services for the "PROJECT" entitled:

_____.

SECTION 1 - PROJECT DESCRIPTION:

The project can generally be described as:

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SECTION 2 - SCOPE OF SERVICES:

The Engineer shall provide all professional services (the "Services") for the Project including, performance of the following:

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SECTION 3 – COMPENSATION

The Owner shall pay the Engineer for services outlined in Task Order No. ____ the following Not to Exceed, Lump Sum amount of \$_____

SECTION 4 - MISCELLANEOUS

Except as otherwise provided herein, this Task Order No. ____ supersedes all prior written or oral understanding of the parties and may only be changed by a written amendment executed by both parties.

SECTION 5 – AUTHORIZATION TO PROCEED

IN WITNESS WHEREOF, and as AUTHORIZATION TO PROCEED the parties execute below this Task Order No. ____ in duplicate originals:

EXECUTED this _____ day of _____, 201_____

McGill Associates, P.A.

Andy C. Lovingood, P.E.
Vice President

Yadkin County

By: _____
Lisa Hughes
County Manager

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

By: _____
Gary Groce
Finance Officer