

YADKIN COUNTY

NORTH CAROLINA

**AGREEMENT FOR SERVICES**

*(Munis Contract Number)* \_\_\_\_\_

This Agreement is made and entered into this 8 day of November, 2016 ("Effective Date") between Yadkin County, North Carolina ("County") and Schnabel Engineering South, 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 authorized by the County Manager. Provider acknowledges that this Agreement does not guarantee that the County will assign the Provider any work; however, that the County from time to time may request the Provider to perform services for Yadkin County.

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.

See "Exhibit A" attached hereto and incorporated as if fully setout herein. "Exhibit A" lists in detail the scope of services to be provided under this contract. Any changes to "Exhibit A" must be approved by the County Manager, in writing, prior to the service being provided.

2. **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.

**3. Payment to the Provider.**

- The County shall pay the Provider \$\_\_\_\_\_ every \_\_\_\_\_.
- The County shall pay the Provider a total not to exceed the amount of \$ 4,800.00 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.

In accordance with Item 3, Payment to the Provider, 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. E-Verify.** North Carolina General Statutes prohibit counties from entering into contracts with contractors and subcontractors under the formal bid process and/or proposals who have not complied with the requirement of Article 2 of Chapter 64 of the NC General Statutes. Said Article 2 of Chapter 64 states *The prohibition applies to all contracts subject to G.S. 143-129, which are purchase contracts with an estimated cost of \$90,000 or more, and construction or repair contracts with an estimated cost of \$500,000 or more. GS 143-129 applies to virtually all public entities, including cities, counties, local school boards, water and sewer authorities, and other special purpose local government districts and authorities.* The Contractor must submit the E-Verify Affidavit with bid proposals and/or contracts as required by NC General Statutes.

**5. 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 that 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.

**6. 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.

7. **Insurance.** During this Agreement's term, the Provider shall maintain at its sole expense all insurances as set out in this section. 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.

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.

8. **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.

9. **Termination.** Notwithstanding any other provision of this Agreement, 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.

10. **Entire Agreement.** This Agreement (including any attached Exhibits) constitute 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.

11. **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.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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 below:

THE COUNTY

Yadkin County Soil and Water  
\_\_\_\_\_  
Jason Walker  
\_\_\_\_\_  
PO Box 8  
\_\_\_\_\_  
Yadkinville, NC 27055  
\_\_\_\_\_  
336-466-1003  
\_\_\_\_\_

THE PROVIDER

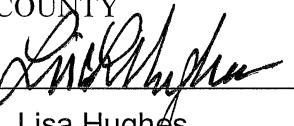
Schnabel Engineering South, PC  
\_\_\_\_\_  
Tom Fitzgerald  
\_\_\_\_\_  
11-A Oak Branch Drive  
\_\_\_\_\_  
Greensboro, NC 27407  
\_\_\_\_\_  
336-274-9456  
\_\_\_\_\_

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

19. **Exhibits.** To the extent of a conflict between the above language of this Agreement and any attachments, 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: County Manager

THE PROVIDER

BY: 

Name: Thomas Fitzgerald

Title: Senior Vice President

Digitally signed by Thomas Fitzgerald  
DN: cn=Thomas Fitzgerald, o=Schnabel  
Engineering, ou, email=t.fitzgerald@schnabel-  
eng.com, c=US  
Date: 2016.11.08 10:40:53 -05'00'

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

  
Yadkin County Finance Officer

Digitally signed by Gary  
DN: cn=Gary, o=Finance, ou=Yadkin Co,  
email=ggroce@yadkincountync.gov, c=US  
Date: 2016.11.14 11:35:14 -05'00'

EXHIBIT A

TO AGREEMENT TO SERVICES

Below is a detailed listing of the scope of services to be provided under this contract. Any changes to "Exhibit A" must be approved by the County Manager, in writing, prior to the service being provided. (The detailed listing of the scope of services may also be described on one or more sheets attached hereto and incorporated herein, but each must be signed by the Provider and the County.)

"See Attachment A"



SCHNABEL ENGINEERING SOUTH, P.C.

October 4, 2016

Mr. Jason Walker  
217 E. Willow Street  
P.O. Box 146  
Yadkinville, NC 27055

**Subject:      Proposal for Dam Engineering Services, Deep Creek Dam 5D Inspection  
Yadkin County, North Carolina**

Dear Mr. Walker:

**SCHNABEL ENGINEERING SOUTH, P.C.** (Schnabel) is pleased to present this proposal to perform a visual inspection and instrumentation data review of the Deep Creek Watershed Dam 5D.

#### **SITE DESCRIPTION AND BACKGROUND**

Schnabel performed monthly inspections of the Deep Creek 5D dam during the first year after construction of the dam. During the second year, the frequency of inspection was changed to every other month and during the third year the frequency of inspection was changed to quarterly.

The following proposal provides a description of the Scope of Services to perform a visual inspection and our Basis of Compensation to perform these services.

#### **SCOPE OF SERVICES**

Schnabel will perform a visual inspection of the Deep Creek Watershed Dam 5D. This inspection will be performed by a professional engineer licensed in North Carolina. The format and reporting for the inspection will be the same as the visual inspections that Schnabel has performed previously. The report will include a summary of the inspection, an evaluation of the instrumentation data, a discussion of any deficiencies observed and recommendations for repairs/maintenance as needed.

It is assumed that the County will provide the instrumentation data for the duration since the last inspection to Schnabel for review and inclusion in this report's data review.

#### **SCHEDULE**

We will schedule a date to perform the visual inspection within three weeks of a signed contract. We will issue the inspection report to you for review within four weeks of the inspection.

**schnabel-eng.com**

T/ 336-274-9456   F/ 336-274-9486  
11A Oak Branch Drive / Greensboro, NC / 27407

**Yadkin County  
Deep Creek Dam 5D Inspection Proposal**

**LUMP SUM FEE**

Our lump sum fee for the proposed services is **\$4,800.00**. This fee is for the specific scope of services detailed herein. The fee for work requested beyond this scope of services will be based on our current unit prices at the time the work is authorized or a negotiated lump sum. Our current Schedule of Personnel Fees is included as Attachment 1.

**PAYMENTS**

Services will be billed monthly as a percentage of completion of the lump sum fee. Payment will be due on receipt of our invoices and will be considered past due 30 days after the invoice date. Interest will be charged at 1.5 percent per month on all overdue accounts. Payments will not be contingent upon receipt of funds from third parties.

**GENERAL**

The Standard Contract Terms and Conditions of Attachment 2 will apply to services to be provided under this proposed agreement.

Please sign and return one copy of this proposal to our office to form our agreement. You may transmit your acceptance of this agreement electronically with the understanding that the signature on the electronic document will be considered an original signature. This proposal is valid for 90 days from the date shown.

We appreciate the opportunity to submit our proposal for these services and are looking forward to working with you on this project. Please contact us if you have any questions regarding this proposal.

Sincerely,

**SCHNABEL ENGINEERING SOUTH, P.C.**



Thomas J. Fitzgerald, PE  
Principal

SKK:TJF

Attachments:

- (1) Schedule of Personnel Fees
- (2) Standard Contract Terms and Conditions (2 Sheets)

Yadkin County  
Deep Creek Dam 5D Inspection Proposal

The terms and conditions of this proposal, including the attached Standard Contract Terms and Conditions are:

ACCEPTED BY:

YADKIN COUNTY

SIGNATURE:

Lisa L. Hurtado

PRINTED NAME:

LISA L. HURTADO

TITLE:

COUNTY MANAGER DATE: 11/14/16

**SCHNABEL ENGINEERING SOUTH, P.C.  
STANDARD CONTRACT TERMS AND CONDITIONS**

**1. DEFINITIONS**

- 1.1 Schnabel Engineering South, P.C., the "Engineer," agrees to provide Professional Services, as delineated in the attached Proposal. "Engineer" means Engineer and its employees, and subcontractors.
- 1.2 The "Client" is the other party to this "Agreement."
- 1.3 The "Contractor" is the responsible party providing construction for the subject Project.

**2. ENTIRE AGREEMENT, SCOPE OF WORK**

- 2.1 The Agreement between Engineer and Client consists of the Proposal, these Standard Contract Terms and Conditions, and any other exhibits or attachments referenced in the Proposal. Together these elements will constitute the entire Agreement, superseding all prior written or oral negotiations, statements, representations, correspondence, and/or agreements. The Services to be provided by Engineer pursuant to this Agreement are described in the attached Proposal and include the Scope of Work. Both Client and Engineer must mutually acknowledge any changes to this Agreement in writing. All work performed by Engineer on or relating to the Project is subject to the terms and limitations of this Agreement.
- 2.2 If work is performed, but the parties do not reach agreement concerning modifications to the Scope of Work or compensation, then the terms and conditions of this Agreement apply to such work. Disputes concerning modifications to Scope of Work or compensation shall be resolved pursuant to Article 12, "Dispute Resolution."

**3. STANDARD OF CARE, DISCLAIMER OF WARRANTIES**

- 3.1 Engineer will strive to perform Services under this Agreement in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation and no warranty or guarantee, either express or implied, is included or intended by this Agreement.

**4. SITE ACCESS, SITE CONDITIONS, SAMPLES**

- 4.1 Client will provide rights of entry and access for Engineer to perform its Services.
- 4.2 Engineer will take reasonable precautions to avoid damage or injury to subterranean structures or utilities in the prosecution of his work. Client agrees to advise Engineer of known or suspected underground features in the area of the work, and Engineer will not be responsible for damage to below grade features not brought to its attention, or incorrectly shown on plans provided.
- 4.3 Client shall promptly pay and be responsible for the removal and lawful disposal of contaminated samples and cuttings, and hazardous substances, unless other arrangements are mutually agreed in writing.

**5. OWNERSHIP OF DOCUMENTS, RESTRICTIONS ON REUSE**

- 5.1 All documents, including opinions, conclusions, certificates, reports, drawings and specifications and other documents, prepared or furnished by Engineer and Engineer's independent professional consultants pursuant to this Agreement (collectively "Documents") are instruments of Service. Engineer retains all ownership and property interests in the Documents, including all common law, statutory and other reserved rights, including copyrights, whether or not the Project is completed. Client may make and retain copies of them for information and reference in connection with the use and occupancy of the Project; however, such copies are not intended or represented to be suitable for reuse by others, and may not be used on other projects or for additions to this Project outside the Scope of the Work.
- 5.2 At Client's request, client may negotiate with Engineer to acquire ownership of Documents for a mutually agreed amount. If Client acquires ownership of Documents prepared by Engineer, Client agrees: a) that any subsequent reuse or modification of them by Client or any party obtaining them through Client will be at Client's sole risk and without liability to Engineer, and b) client will defend, indemnify and hold harmless Engineer from and against any claims, damages, and liabilities arising from or related to any use, reuse or modification of Documents by Client or any party obtaining them through Client. Client agrees that Engineer may retain copies of all documents for its files.
- 5.3 Electronic communications and CADD data transferred by Email, websites or computer disks (collectively "E-Data") are provided only as an accommodation by Engineer for the benefit of Client. Signed paper prints of documents constitute the contract deliverables. Client assumes the risk that E-Data may differ from the paper deliverables. Client agrees to indemnify and hold harmless Engineer from and against claims, damages, and liabilities for defects or inappropriate use of E-Data created or transmitted by Engineer.

**6. THIRD PARTY RELIANCE UPON DOCUMENTS**

- 6.1 Engineer's performance of the Services, as set forth in this Agreement, is intended solely and exclusively for the Client's benefit and use. No party may claim under this Agreement as a third party beneficiary. Client agrees not to distribute, publish or otherwise disseminate Engineer's Documents, without first obtaining Engineer's prior written consent.
- 6.2 No third party may rely upon Engineer's Documents including, but not limited to, opinions, conclusions, certificates, reports, drawings and specifications unless Engineer has agreed to such reliance in advance and in writing.

## 7. ASSIGNMENT, SUBCONTRACTING

- 7.1 Neither Client nor Engineer may delegate, assign, sublet, or transfer all or any part of this Agreement, including its duties or interest in this Agreement without the written consent of the other party.
- 7.2 Notwithstanding Section 7.1, Engineer may subcontract subsurface exploration, testing, and other supplemental services and assign accounts receivable as security for financial obligations without notification or consent of Client.

## 8. TERMINATION, SUSPENSION

- 8.1 Either party upon 7 days' written notice may terminate this Agreement for convenience or material breach of Agreement. In the event of termination for convenience or material breach of Agreement, Engineer shall be paid for Services performed to the termination date, plus reasonable termination expenses.

## 9. ALLOCATION OF RISK

- 9.1 Engineer's total cumulative liability to Client (including, but not limited to, attorneys' fees and costs awarded under this Agreement) irrespective of the form of action in which such liability is asserted by Client or others, shall not exceed the total compensation received by Engineer under this Agreement or \$25,000, whichever is less. Upon Client's written request, Engineer may negotiate an increase to this limitation in exchange for an additional agreed consideration for the increased limit.
- 9.2 Client and Engineer agree to limit each's liability to the other in the following respects: Neither party will have liability to the other for any special, consequential, incidental, exemplary, or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of the other party's property or facility, shutdowns or service interruptions, loss of use, lost profits or revenue, inventory or use, charges or cost of capital or claims of the other party's customer.
- 9.3 The limitations of liability of this Agreement shall survive the expiration or termination of this Agreement.

## 10. INDEMNIFICATION

- 10.1 Indemnification of Client. Subject to the provisions and limitations of this Agreement, Engineer agrees to indemnify and hold harmless Client, its shareholders, officers, directors, employees, and agents from and against any and all claims, suits, liabilities, damages, expenses (including without limitation reasonable attorney's fees and costs of defense) or other losses (collectively "Losses") to the extent caused by Engineer's negligent performance of its Services under this Agreement.
- 10.2 Indemnification of Engineer. Subject to the provisions and limitations of this Agreement, Client agrees to indemnify and hold harmless Engineer from and against any and all Losses to the extent caused by the negligence of Client, its employees, agents and contractors. In addition, except to the extent caused by Engineer's sole negligence, Client expressly agrees to defend, indemnify and hold harmless Engineer Entities from and against any and all Losses arising from or related to the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials, or the exposure of any person to Hazardous Materials, or the degradation of the environment due to the presence, discharge, disposal, release or exposure to Hazardous Material.

## 11. INVOICES, PAYMENTS

- 11.1 Payment is due without retainage upon presentation of invoice and is past due thirty (30) days from invoice date, and will not be contingent upon receipt of funds from third parties. Client agrees to pay a service charge of one and one-half percent (1-1/2%) per month or fraction thereof on past due payments under this Agreement.
- 11.2 It is further agreed that in the event a lien or suit is filed to enforce overdue payments under this Agreement, Engineer will be reimbursed by Client for all costs of such lien or suit and reasonable Attorney's fees in addition to accrued service charges, where the court of appropriate jurisdiction enters a finding in favor of Engineer.

## 12. DISPUTE RESOLUTION

- 12.1 Claims, disputes, and other matters in controversy between Engineer and Client caused by or any way related to this Agreement will be submitted to non-binding mediation as a condition precedent to litigation. The cost for mediation including the mediator's fees, reproduction of documents, and miscellaneous out-of-pocket expenses will be borne equally by each party to this Agreement.
- 12.2 The law of the Commonwealth of Virginia will govern the validity of these terms, their interpretation and performance. Client and Engineer agree that venue for any litigation will be in the courts of the Commonwealth of Virginia and Engineer and Client both hereby waive any right to initiate any action in, or remove any action to, any other jurisdiction.

## 13. SEVERABILITY

- 13.1 This Agreement reflects the entire agreement of the parties with respect to its terms and supersedes all prior agreements, whether written or oral. If any portion of this Agreement is void or voidable, such portion will be deemed stricken and the Agreement reformed to as closely approximate the stricken portions as the law allows.

STATE OF NORTH CAROLINA )  
COUNTY OF YADKIN )

AFFIDAVIT

\*\*\*\*\*  
I, Thomas J. Fitzgerald (the individual attesting below), being duly authorized by and on behalf of Schnabel Engineering South, PC (the entity bidding on project hereinafter "Employer") after first being duly sworn hereby swears or affirms as follows:

1. Employer understands that E-Verify is the federal E-Verify 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 in accordance with NCGS §64-25(5).
2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).
3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (mark Yes or No)
  - a. YES X, or
  - b. NO \_\_\_\_\_ (If answer is no, Employer is not required to use E-Verify)

4. Employer's subcontractors comply with E-Verify, and if Employer is the winning bidder on this project Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer.

This 8 day of November 2016.



Signature of Affiant

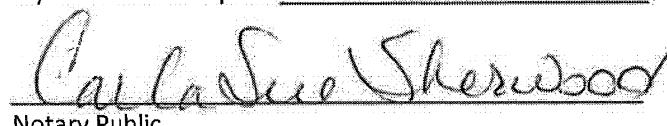
Print or Type Name and Title of Officer of the Company:

THOMAS J. FITZGERALD S. VICE PRESIDENT

State of North Carolina County of Yadkin

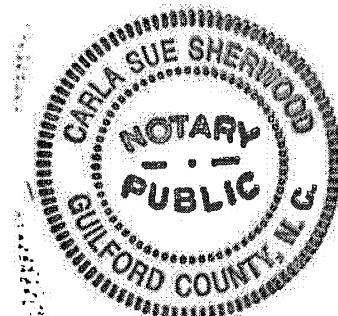
Signed and sworn to (or affirmed) before me, this the 8  
day of November 2016.

My Commission expires: 10/6/18



Notary Public

(Affix Official/Notarial Seal)



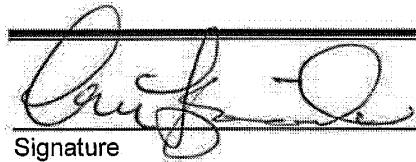
Name of Counterparty:

Schnabel Engineering South, PC

**IRAN DIVESTMENT ACT CERTIFICATION  
REQUIRED BY N.C.G.S. 143C-6A-5(a)**

As of the date listed below, the entity listed above is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4.

The undersigned hereby certifies that he or she is authorized by the entity listed above to make the foregoing statement.



Signature

NOVEMBER 8, 2016

Date

THOMAS FITZGERALD

Printed Name

SE. VICE PRESIDENT

Title