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PROPOSAL AND SCOPE OF SERVICES TRANSPORTATION ENGINEERING & PLANNING SERVICES FOR THE TOWN OF WAYNESVILLE

Prepared For:

Robert Hites, Town Manager
Town of Waynesville
9 South Main Street, Suite 110
Waynesville, NC 28786

February 24, 2023

Prepared By:

Candace Hladick, Transportation Planner
J.M. Teague Engineering & Planning
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WAYN-1400

CLIENT AND ENGINEER PROFESSIONAL SERVICES AGREEMENT

This agreement is made, entered into and effective this 22 day of May 2023 by
and between:

ENGINEER:

CLIENT:

Firm: J.M. Teague Engineering, PLLC
Address 1: 1155 N. Main St
Address 2: Waynesville, NC 28786
Phone: 828.456.8383
Name: David W. Hyder, PE
Title: Engineering Director

Company: Town of Waynesville
Address 1: 9 South Main Street, Suite 110
Address 2: Waynesville, NC 28786
Phone: 828-452-2491 x4
Name: Robert Hites
Title: Town Manager

Signature: David W. Hyder
Date: May 22, 2023

Signature: [Handwritten Signature] (SEAL)
Date: 5/12/2023
I accept the terms of this agreement

JMTE – WAYN 1400, Transportation Engineering & Planning Services, Town of Waynesville
North Carolina

In addition to the matters set forth herein, our Agreement shall include, and shall be subject to the Standard Provisions, which are attached hereto and incorporated herein. If you concur and wish us to proceed with services described in the Agreement, please return a signed copy of this Agreement executed by a properly authorized individual in the space provided above.

The parties acknowledge and agree that the initial lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page on this Agreement.

PROJECT UNDERSTANDING & SCOPE OF SERVICES

J.M. Teague Engineering & Planning (JMTE) understands that the Town of Waynesville (Town) occasionally requires Transportation Engineering and Planning services to support ongoing Town priorities and projects. Over the past few years, J.M. Teague Engineering & Planning has provided many types of Transportation Engineering and Planning services including sight distance assessments, intersection reviews, speed analysis, traffic calming studies, volume counts, and transportation-related land use planning. A couple of our contracts with the Town have been in place for several years and only spell out a few of the services we have performed for the Town. The purpose of this proposal is to clarify the services available, simplify how we provide them, update billing rates, and synchronize the fee structure for any project requested by the Town.

This proposal outlines a scope of services for JMTE to provide ongoing support to the Town staff with projects that require transportation engineering and planning expertise. Under this scope of services, JMTE will provide ongoing transportation engineering and planning services on an on-call basis.

SCOPE OF SERVICES

This professional services contract is intended to replace any existing contracts between the Town of Waynesville and JMTE. The scope of this proposal is broad with the intent that a wide variety of transportation-related engineering or planning tasks may be requested.

Examples of potential tasks:

- AutoCAD Services
- Conceptual Design & Cost Estimates
- Corridor Assessment
- Data Collection
- Event Planning & Layout
- GIS/GPS Services
- Intersection Review
- Land Use Review & Recommendations
- Map Design
- Meetings or Presentations to Town Staff, TRC Committee, Roadway Safety Committee, Planning Board, or Board Of Alderman
- NCDOT Collaboration
- Ordinance Review & Development
- Parking Studies or Design
- Pavement Marking Layout Design
- Pavement or Street Maintenance Assessment
- Public Input Sessions & Facilitation
- Regulatory Sign Assessment
- Roadway Design Standards Review
- Roadway Safety Review
- Speed Limit Reviews
- Technical Research
- Technical Review of Town Standards
- Technical Review of Traffic Engineering Reports Submitted to the Town by others
- Technical Writing and Report Preparation
- Traffic Calming Assessment
- Traffic Impact Analysis
- Work Zone Traffic Control Training
- Zoning Review & Recommendations

FEE STRUCTURE

When Town staff provides a written request for engineering or planning services they should provide a budget for that task or set of tasks and the JMTE team will proceed with work on those tasks on a per-hour basis (see Table 1 for Waynesville 2023 rates).

If the estimated budget is reached, work will cease until the Town approves additional funds for that task. If the Town changes a task scope or its parameters at any time during the project, additional fees may be required. The client will be provided with an update on anticipated fee changes before beginning any additional work.

Table 1 JMTE 2023 Billing Rates

2023 BILLING RATES		
JOB TITLE	STANDARD RATES	WAYNESVILLE 2023 RATES
Principal Engineer (PE)	\$240	\$200
Engineering Director (PE)	\$200	\$170
Executive Planner (AICP)	\$200	\$170
Transportation Planner	\$150	\$120
Sr. Engineering Technician	\$120	\$100
Engineering Technician	\$110	\$80
Administration Management	\$80	\$70
Administrative Support	\$45	\$40

Invoices will be submitted regularly, usually monthly, by JMTE to the Client for services performed and expenses incurred the previous month. If the final product has not yet been delivered upon the invoicing date, the invoice will reflect a percent complete, tasks complete, hours worked so far, or similar denotation. A final invoice will accompany the final product delivery and will be denoted as such. Payment of each invoice will be due within 30 days of receipt. Interest at the rate of 1.5% monthly will be added to accounts not paid within 30 days. If the Client fails to make any payment due to JMTE for services and expenses within 45 days after the transmittal of its invoice, JMTE may suspend services until all amounts are paid in full. JMTE reserves the right to delay work or withhold work products for unpaid or outstanding invoices.

If this proposal is acceptable, please sign and initial where indicated and JMTE will finalize the execution of the agreement. Project delivery time will begin on the executed contract date. If work needs to begin before the contract execution, a written notice to proceed will suffice as an interim agreement until a contract can be formally executed.

QUALITY ASSURANCE AND QUALITY CONTROL

J.M. Teague Engineering and Planning (JMTE) recognizes that the disciplines of quality, health and safety, and environmental management are integral parts of its management function. The successful delivery of a project involves having in place adopted quality assurance and control processes and procedures that govern best practices from project pursuit through project execution and measuring Client satisfaction. JMTE believes that

our professional services and project deliverables must meet or exceed our Client's expectations and reflect and advance our company's mission. We look forward to demonstrating our passion for quality with each Client.

STANDARD PROVISIONS J.M. Teague Engineering, PLLC

(1) **Engineer's Scope of Services:** The undertaking of the Engineer to perform professional services extends only to those services specifically described in this Agreement. However, if requested by the Client and agreed to by the Engineer, the Engineer will perform additional services through individual arrangements and agreements.

(2) **Client's Responsibilities:** In addition to other responsibilities described herein or imposed by law, the Client may be required to:

(a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.

(b) Provide to the Engineer all previous studies, plans, or other documents pertaining to the project; Client's requirements and criteria; standards to be followed; and all new information reasonably necessary; upon all of which the Engineer may rely.

(c) Arrange for access to the site and other property and obtain approvals and permits required for the Engineer to provide its services.

(d) Review all documents or verbal reports presented by the Engineer and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Engineer.

(e) Provide such overall feasibility services such as independent accounting, legal, insurance, and cost estimating as the client may require or the Engineer may reasonably request.

(f) Give prompt written notice to the Engineer whenever the Client becomes aware of any development that affects the scope and timing of the Engineer's services or any defect or noncompliance in any aspect of the project.

(g) Bear all costs incident to the responsibilities of the Client.

(3) **Period of Services:** This Agreement has been entered into in anticipation of conditions permitting continuous and orderly progress through the completion of the Engineer's services. Times for performance shall be extended to the extent necessary for delays due to circumstances the Engineer does not control. If such delay or suspension extends for more than one year (cumulatively), the rates of compensation provided for in the Agreement shall be renegotiated.

(4) **Method of Payment:** Compensation shall be paid to the Engineer in accordance with the following provisions:

(a) Invoices will be submitted on a regular basis, usually monthly, by the Engineer to the Client for services performed and expenses incurred the previous month. If the final product has not yet been delivered upon the invoicing date, the invoice will reflect a percent complete, tasks complete, hours worked so far, or similar denotation. A final invoice will accompany the final product delivery and will be denoted as such. Payment of each invoice will be due within 30 days of receipt. Interest at the rate of 1.5% monthly will be added to accounts not paid within 30 days. If the Client fails to make any payment due the Engineer for services and expenses within 45 days after the Engineer's transmittal of its invoice, the Engineer may suspend services until all amounts are paid in full.

(b) If the Client objects to any invoice, it must advise the Engineer in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections shall be waived, and the invoice shall conclusively be deemed due and owing.

(c) If the Engineer initiates legal proceedings to collect payment for services, it may recover in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Engineer's normal hourly billing rates, of the time devoted to such proceedings by its employees.

(d) The Client acknowledges and agrees that the payment for services rendered and expenses incurred by the Engineer pursuant to this Agreement is not subject to any contingency or conditions unless expressly set forth in this Agreement.

(5) **Use of Documents:** All documents, including but not limited to drawings, specifications and data or programs stored electronically, prepared by the Engineer are related exclusively to the services described herein. They are not intended or represented to be suitable for partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client or any partial use or reuse without written authorization or adaptation by the Engineer will be at the Client's sole risk and without liability or legal exposure to the Engineer, and the Client shall indemnify, defend and hold the Engineer harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Any authorization or adaptation will entitle the Engineer to further compensation at rates to be agreed upon by the Client and the Engineer. Copies of Documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) signed or sealed by the Engineer. Files in electronic media format of text, data, graphics, or of other types furnished by Engineer to Client are only for convenience of Client.

Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the Client, after receiving electronic files, agrees to perform acceptance tests or procedures within 60 days, after which the Client shall be deemed to have accepted the data. Any errors detected within the 60-day acceptance period will be corrected by the Engineer. Engineer shall not be responsible to maintain documents stored in electronic media format after acceptance by Client. When transferring documents in electronic media format, Engineer makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operation systems, or computer hardware differing from those used by Engineer at the beginning of this Project. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

(6) **Opinions of Cost:** Because the Engineer does not control the cost of labor, materials, equipment, services furnished by others, methods of determining prices, competitive bidding or market conditions, any opinion rendered as to costs shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, but the Engineer cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator.

Client Initials:



(7) Extension: If applicable, the terms of this Agreement may be extended for a period of time equal to the original agreement time frame or any portion thereof. In order to execute an Agreement extension both parties must sign and date an "Agreement Extension Addendum" as provided by the Engineer. An Agreement extension beyond the original terms can also be re-negotiated via the execution of a modified Agreement.

(8) Termination: This agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, the Engineer will be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Engineer as a result of such termination.

(9) Insurance: The Engineer is protected by professional liability insurance, and general liability insurance for bodily injury and property damage and will exchange certificates of insurance upon request.

(10) Expenses of Litigation: If the Client or its contractors initiate legal proceedings against the Engineer, its contractors, or its subcontractors related to the Engineer's services, and such proceedings conclude with the entry of a final judgment favorable to the Engineer, the Client shall reimburse the Engineer for all of its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Engineer's normal hourly billing rates, of the time devoted to the proceedings by the Engineer's employees.

(11) Dispute Resolution: If and to the extent that Client and Engineer have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure, if any, is set forth in an Exhibit attached to this Agreement. Client and Engineer agree to negotiate in good faith for a period of thirty days from date of notice of all disputes prior to exercising their rights under any Exhibit or under law.

(12) Hazardous Substances: It is understood and agreed that in seeking the professional services of the Engineer, the Client does not request the Engineer to undertake to perform any services, studies, or tests, or to make any determinations involving hazardous substances or conditions, as defined by federal or state law. Therefore, the Engineer undertakes no such obligation, and the Client agrees to hold harmless, indemnify, and defend the Engineer from and against any and all claims, losses, damages, liability, and costs arising out of or in any way connected with the presence, discharge, release, or escape of hazardous substances or conditions of any kind, or environmental liability of any nature, in any manner related to services performed by the Engineer. If any hazardous substance or condition is observed or reasonably suspected by the Engineer, it shall have the right to cease all services until the hazardous substance or condition has been eliminated. The Engineer shall notify the Client of any such substance or condition of which the Engineer becomes aware, and the Client shall be solely responsible for its elimination.

(13) Assignment: Nothing in this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Engineer, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Engineer and not for the benefit of any other party. Neither the Client nor the Engineer shall assign, sublet, or transfer any rights under or interest in this Agreement without the written consent of the other, except that the Engineer may retain sub-consultants as it deems appropriate.

(14) Confidentiality: The Client consents to the use and dissemination by the Engineer of photographs of the Project and to the use by the Engineer of facts, data and information obtained by the Engineer in the performance of its services. If, however, any facts, data or information is specifically identified in writing by the Client as confidential, the Engineer shall use reasonable care to maintain the confidentiality of that material.

(15) Miscellaneous Provisions: This Agreement is to be governed by the laws of the State of North Carolina. This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors and assigns. This Agreement contains the entire and fully integrated agreement between the parties hereto and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. This Agreement can be supplemented or amended only by a written document executed by both the Engineer and the Client. Provided, however, that conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Engineer. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. Also, the non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

(16) Liability: In performing its professional services, the Engineer will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession practicing in the same or similar locality at the time the services are provided. No warranty, express or implied, is made or intended by the Engineer's undertaking herein or its performance of services hereunder, and it is agreed that the Engineer is not a fiduciary with respect to the Client. To the fullest extent of the law, and notwithstanding any other provisions of this Agreement, the total liability, in the aggregate of the Engineer and the Engineer's officers, directors, employees, agents and sub-consultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Engineer or the Engineer's officers, directors, employees, agents, or sub-consultants shall not exceed the total compensation received by the Engineer under this Agreement or \$5,000 whichever is greater. Under no circumstances shall the Engineer be liable for lost profits, consequential damages or for extra costs or other consequences due to changed conditions or for costs related to the failure of the contractor to perform work in accordance with the plans and specifications.

(17) Client consents to the use of their name, logo, and/or project photographs as part of the creation and distribution of marketing materials by Engineer. These said materials will be used solely for marketing, portfolio presentation, and advertising purposes. Client understands that said materials will be made available to potential clients, on the Engineer's company website, and for conference presentation purposes.

Client Initials: