

AGREEMENT FOR ADDITIONAL ENGINEERING SERVICES

This **AGREEMENT FOR ADDITIONAL ENGINEERING SERVICES** dated the **27TH** day of **November 2023**, is made and entered into by and between Haywood County (OWNER) and **McGill Associates, P.A.** (ENGINEER).

WHEREAS, the OWNER proposes to do certain work toward the accomplishment of the project entitled **Haywood County Tropical Storm Fred Watershed Recovery Project**.

WHEREAS, the ENGINEER desires to provide professional engineering services as required to complete the project 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:

PURPOSE/SCOPE

The previous engineering services agreement with Haywood County (Owner) and McGill Associates (Engineer) covered right of way coordination, design and permitting, bid documents, and bidding services associated with Phase 1 clearing and snagging sites for the above referenced project. Bids have been accepted and contracts awarded for construction, therefore, this scope will cover construction services through Phase 1 project completion.

SECTION 1 - GENERAL SERVICES

The ENGINEER shall:

- 1.1 The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in all phases of the project; serve as OWNER's professional engineering representative for the project; and shall give professional consultation and advice to OWNER during the performance of the services hereunder.
- 1.2 The ENGINEER shall provide necessary personnel required in performing the project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All services rendered hereunder shall be performed by the ENGINEER or under his supervision and all personnel engaged in the project shall be fully qualified under North Carolina law to perform such services.
- 1.3 The ENGINEER shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for Basic Services set forth in Section 6 hereof, subject OWNER's right to terminate as herein provided.
- 1.4 The ENGINEER shall comply with existing federal, state, and local laws and regulations regarding equal employment opportunity. The ENGINEER is further obligated to include requirements hereunder in any subcontract written by him in association with this agreement.

SECTION 2 - BASIC SERVICES

2.1 PHASE 1 CONSTRUCTION SERVICES

- 2.1.1 Attend a pre-construction meeting for each Phase 1 Group (Group 2, 3, 5, 6, 7, 8, 9, and 10) if deemed necessary, with the respective Contractor, the Project Sponsor (Haywood County) Liaison, a Haywood County Soil & Water Conservation District (HSWCD) Liaison, and a Natural Resource Conservation Service (NRCS) Government Representative (GR).
- 2.1.2 Provide on-site construction observation in conjunction with representatives from the HSWCD to observe and document the progress and quality of the executed work and determine if the work is proceeding in accordance with the plans and specifications. Site visits, construction observation and reporting are estimated at 8 hours per week for a 16-week construction duration.
- 2.1.3 Produce monthly progress reports for each Group for submittal to Haywood County and NRCS.
- 2.1.4 Address questions from the Contractors during the proposed work.
- 2.1.5 Review pay requests from the Contractors. Coordinate with HSWCD and the Haywood County Finance Department and provide required documentation to the Finance Department for completion of Request for Advance or Reimbursements to the funding agencies.
- 2.1.6 Schedule and conduct final closeout inspections for each Group with the Contractors, a HSWCD Liaison, a Soil and Water Conservation District State Representative (when required), a NRCS GR (when required), and a Streamflow Rehabilitation Assistance Program (StRAP) representative (when required).
- 2.1.7 Deliverables:
 - 2.1.7.1 Digital copies of Field Observation Reports, including digital photography obtained during the site visits.
 - 2.1.7.2 Digital copies of Monthly Progress Reports.
 - 2.1.7.3 Digital copies of RFIs.
 - 2.1.7.4 Digital copies of monthly pay requests from Contractors and associated documentation for the completion of all Request for Advance or Reimbursements.
 - 2.1.7.5 Digital and hard copies of any proposed change orders.

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 the general scope of the project or its design including, but not limited to, changes in size, complexity, or OWNER's schedule.
- 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 Providing field surveys and legal descriptions to assist the OWNER in obtaining any right-of-way easements or real property from private bodies, entities, or persons necessary for satisfactory construction of the project.
- 3.4 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the project.
- 3.5 Geotechnical borings or Construction Materials Testing Services.
- 3.6 Review of Construction Material Testing reports.
- 3.7 Attendance at meetings not listed in the above scope of services.
- 3.8 Streambank stabilization sites, channel stabilization, and clearing and snagging sites requiring in-stream work will occur in Phase 2.
- 3.9 Additional services in connection with the project, including services normally furnished by the OWNER and services not otherwise provided for in this agreement.
- 3.10 Additional services in connection with an Environmental Assessment or Finding of No Significant Impact.
- 3.11 Additional services resulting from changes in project funding.
- 3.12 Surveying services will be provided as part of Phase 2 for the types of projects listed in item 3.8.
- 3.13 If it is determined that additional permits, studies, or investigations will be required, we will discuss these requirements and any additional services needed for completion, with the Owner prior to performing any additional services.
- 3.14 Production of as-built drawings at the conclusion of construction of the Phase 1 Groups.

SECTION 4 - OWNER'S RESPONSIBILITIES

The OWNER shall:

- 4.1 Provide full information as to its 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, railroad and road right-of-way, 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 Designate a person to function 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.
- 4.6 Examine all 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.
- 4.7 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 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the project.
- 4.9 Furnish or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this agreement or other services as required.
- 4.10 Prepare and submit Request for Advance or Reimbursements and Monthly Progress Report to NRCS and StRAP to satisfy project funding.
- 4.11 Bear all costs incident to compliance with the requirements of this Section 4.

SECTION 5 - PERIOD OF SERVICES

- 5.1 Unless this agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period which may be required for the services described herein. Upon receiving a written authorization to proceed, the ENGINEER shall provide the OWNER with construction services outlined in the previous sections and so authorized.

- 5.2 If the project is delayed significantly for reasons beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this agreement shall be subject to renegotiation. It is expressly understood by all parties to the agreement that a delay of several months may occur between completion of design and commencement of construction. This shall not be considered significant.

SECTION 6 - PAYMENT TO THE ENGINEER

6.1 PAYMENT FOR BASIC SERVICES

6.1.1 The OWNER will pay the ENGINEER for Basic Services as outlined in Section 2 based on actual labor spent plus expenses incurred by principals and employees of the ENGINEER assigned to the project in accordance with Attachment A - Basic Fee Schedule. For budgetary purposes, the estimated fees for Basic Services are defined as follows:

a. Phase 1 Construction Services **\$60,00**

6.2 PAYMENT FOR ADDITIONAL SERVICES

6.2.2 The OWNER will pay the ENGINEER for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by principals and employees of the ENGINEER assigned to the project in accordance with Attachment A - Basic Fee Schedule, should any of these services be requested by the OWNER.

6.3 TIMES OF PAYMENT

6.3.1 The OWNER will make prompt monthly payments in response to the ENGINEER's monthly statements for all services rendered under this agreement.

6.4 GENERAL

6.4.1 If the OWNER fails to make any payment due the ENGINEER because of his services and expenses within sixty (60) days after receipt of the ENGINEER's bill therefore, the ENGINEER may, after giving seven (7) days written notice to the OWNER, suspend services under this agreement until he has been paid in full all amounts due him because of his services and expenses.

6.4.2 If the agreement is terminated, at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the ENGINEER because of services rendered shall constitute total payment for services rendered. If this agreement is terminated during any phase of the Basic Services, except for termination due to breach of the terms and conditions of the agreement by ENGINEER, the ENGINEER shall be paid for services rendered on the basis of his reasonable estimate of the portion of such phase completed prior to termination. In the event of termination, except for termination due to breach of the terms and conditions of the agreement by ENGINEER, the ENGINEER will be paid for any unpaid reasonable reimbursable expenses.

6.4.3 If, prior to termination of this agreement, any work designed or specified by the ENGINEER, under Section 2, is suspended in whole or in part for more than three (3) months or is abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of his service, except for suspension of work due to breach of the terms and conditions of the agreement by ENGINEER..

SECTION 7 - GENERAL CONDITIONS

7.1 TERMINATION

- 7.1.1 In the event that the OWNER finds that it is inadvisable or impossible to continue the execution of the Project; or if the ENGINEER shall fail to fulfill in a timely and proper manner his obligations under this agreement; or, if the ENGINEER shall violate any of the covenants, agreements, or stipulations of this agreement; or if the services called for in this agreement are not completed within the time period specified under Section 5, or if the ENGINEER becomes subject to a voluntary or involuntary adjudication of bankruptcy or makes a general assignment for the benefit of creditors; then the OWNER has the right to terminate at any time this agreement or any task or phase of work being performed herein by providing thirty (30) days written notice to the ENGINEER of such termination and specifying the effective date of such termination; provided, however, that during such period of thirty (30) days the ENGINEER shall have the opportunity to remedy such failures or violations to avoid such termination. Termination of the agreement by OWNER pursuant to this paragraph 7.1.1 shall not limit the OWNER's right to pursue any legal or equitable remedy for damages available under the law.

7.2 OWNERSHIPHIP OF DOCUMENTS

- 7.2.1 All documents, including original drawings, estimates, specifications, field notes and data are and remain the property of the ENGINEER as instruments of service. The OWNER shall be provided a set of reproducible record prints of drawings, and copies of other documents, in consideration of which the OWNER will use them solely in connection with the Project, and not for the purpose of making subsequent extensions or enlargements hereto and not for resale.

7.3 OPINIONS OF PROBABLE COST

- 7.3.1 Since the ENGINEER has no control over the cost of labor, materials, or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable cost (cost estimates) for cost for the Project provided for herein are to be made on the basis of his experience and qualifications and represent his best judgement as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids or the project construction cost will not vary from cost estimates prepared by him.

7.4 INSURANCE AND CLAIMS

- 7.4.1 The ENGINEER will secure and maintain such insurance as will protect him and the OWNER from claims under workmen's compensation acts, claims for damages because of bodily injury including personal injury, sickness, or disease, or death of any of his employees or of any person other than his employees, and from claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom. Said insurance policy or policies shall be written by a company or companies and in a form and substance approved by the OWNER prior to the policies being put into effect and shall be in an amount not less than one million dollars (\$1,000,000) and shall name the OWNER as an additional insured.

7.5 SUCCESSORS AND ASSIGNS

- 7.5.1 The OWNER and the ENGINEER each binds himself and his partners, successors, executors, administrators and assigns to the other party of this agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this agreement; except as above, neither the OWNER nor the ENGINEER will assign, sublet or transfer his interest in this agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

7.6 ENTIRE AGREEMENT

7.6.1 This agreement 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: *Mark Cathey*
MARK CATHEY, PE
Vice President

Haywood County

By: _____
Bryant Morehead
County Manager

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

By: _____

Kristian Owen
Finance Director

ATTACHMENT A - BASIC FEE SCHEDULE

July 2023

| PROFESSIONAL FEES | I | II | III | IV |
|---|----------|-----------|------------|-----------|
| Senior Principal | \$250 | | | |
| Principal – Regional Manager – Director | \$220 | \$225 | \$240 | \$245 |
| Practice Area Lead | \$195 | \$210 | \$220 | \$235 |
| Senior Project Manager | \$200 | \$210 | \$215 | \$220 |
| Senior Engineer | \$200 | \$210 | \$215 | \$220 |
| Project Manager | \$170 | \$180 | \$185 | \$190 |
| Senior Project Engineer | \$170 | \$180 | \$185 | \$190 |
| Project Engineer | \$135 | \$145 | \$155 | \$165 |
| Engineering Associate | \$120 | \$125 | \$130 | \$135 |
| Planner- Consultant – Designer | \$120 | \$130 | \$155 | \$165 |
| Engineering Technician | \$110 | \$120 | \$125 | \$135 |
| CAD Operator - GIS Analyst | \$90 | \$100 | \$110 | \$115 |
| Construction Services Manager | \$140 | \$150 | \$170 | \$185 |
| Construction Administrator | \$110 | \$125 | \$135 | \$145 |
| Financial Services Manager | \$125 | \$135 | \$145 | \$155 |
| Grant Administrator | \$115 | \$125 | \$135 | \$145 |
| Construction Field Representative | \$90 | \$105 | \$115 | \$125 |
| Environmental Specialist | \$90 | \$100 | \$105 | \$110 |
| Administrative Assistant | \$75 | \$80 | \$90 | \$105 |
| Survey Party Chief | \$90 | \$105 | \$120 | \$140 |
| Survey Field Technician | \$75 | \$80 | \$85 | \$90 |

EXPENSES

- a. Mileage - \$0.70/mile
- b. Flow Monitoring Equipment: Pressure Flow Meter- \$400/wk.; Gravity Flow Meter - \$1,000/deployment
- c. Robotics/GPS Equipment: \$30/hr.
- d. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

ASSOCIATED SERVICES

- a. Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus ten (10) percent.