

MASTER SERVICES AGREEMENT

This AGREEMENT, made and entered into this the ___ day of _____, 2016, by and between the TOWN of Pittsboro (hereinafter called TOWN or OWNER) and McGill Associates, P.A. (a company organized and existing under the laws of the State of North Carolina, hereinafter called CONSULTANT).

WHEREAS, the TOWN proposes to do certain work with PROJECTS to be defined by subsequent **Task Orders** which will reference, and be supplements to, this AGREEMENT, and

WHEREAS, the CONSULTANT desires to provide professional services in accordance with this AGREEMENT.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, both parties agree to the following Terms and Conditions, which apply to this Agreement and the provisions of services by CONSULTANT hereunder.

SECTION 1 – GENERAL SERVICES

- 1.1 The CONSULTANT shall, as directed by the TOWN, provide professional services for the TOWN in all phases of the PROJECT, serve as TOWN'S professional representative for the PROJECT; and shall give professional consultation and advice to TOWN during the performance of the services hereunder.
- 1.2 The CONSULTANT shall obtain and furnish, or cause to be obtained and furnished, approvals and permits from all governmental authorities having jurisdiction over the PROJECT, unless otherwise agreed to herein or in an individual Task Order.
- 1.3 The CONSULTANT shall seek and obtain authorization from the TOWN or the TOWN'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 or subsequent Task Orders, subject to TOWN'S right to terminate as herein provided.
- 1.4 Since the CONSULTANT 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 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 judgment as a design professional familiar with the construction industry, but the CONSULTANT cannot and does not guarantee that proposals, bids, or the PROJECT construction costs will not vary from cost estimates prepared by him.

SECTION 2 – BASIC SERVICES

Basic services to be provided by the CONSULTANT shall be specifically defined in subsequent Task Orders that shall reference, and be supplements to, this AGREEMENT. Task Orders shall be executed by both the CONSULTANT and the TOWN.

Prior to issuance of each Task Order, CONSULTANT shall:

- 2.1 Consult with the TOWN to fully determine the TOWN'S requirements for the PROJECT and to discuss the possible phasing, coordination, approvals, and other preliminary matters.
- 2.2 Coordinate and conduct initial coordination meeting(s) with the TOWN as needed for the purpose of establishing communication lines, meet PROJECT team members, define PROJECT schedules, and gather initial data and information from the TOWN.
- 2.3 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.

SECTION 3 – ADDITIONAL SERVICES

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

- 3.1 Any services not specifically defined in an executed Task Order under the Basic Services Section.
- 3.2 Additional services resulting from significant changes in general scope of the PROJECT or its design including, but not limited to, changes in size, complexity, TOWN'S schedule, or character of construction.
- 3.3 Revising previously approved studies, reports, design documents, drawings, or specifications when such revisions are due to causes beyond the control of the CONSULTANT.
- 3.4 Preparing documents for alternate bids requested by the TOWN for work which is not executed or documents for out-of-sequence work other than agreed upon in the Task Order.
- 3.5 Services in connection with change orders to reflect changes requested by the TOWN if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.
- 3.6 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 more than 60 calendar days beyond the original completion date.
- 3.7 Preparing to serve or serving as a witness for the TOWN in any litigation, condemnation, or other legal or administrative proceeding involving the PROJECT.
- 3.8 Revisions to previously completed easement plats resulting from negotiations with property owners.
- 3.9 Additional services in connection with the PROJECT, including services normally furnished by the TOWN and services not otherwise provided for in this Agreement.

SECTION 4 – TOWN'S RESPONSIBILITIES

The TOWN shall:

- 4.1 Provide full information as to its requirements for the PROJECT.
- 4.2 Assist the CONSULTANT 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 CONSULTANT any existing data and information for property boundary, easement, right-of-way, topographic and utility surveys; zoning and deed restriction; all of which the CONSULTANT may rely upon in performing his services under this Agreement.
- 4.4 Guarantee access to and make all provisions for the CONSULTANT to enter upon public and private property as required for the CONSULTANT to perform his services under this Agreement.
- 4.5 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the CONSULTANT and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the CONSULTANT.
- 4.6 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.
- 4.7 Designate a person to act as TOWN'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 TOWN'S policies and decisions with respect to materials, equipment, elements, and systems pertinent to the services covered by this Agreement.
- 4.8 Give prompt notice to the CONSULTANT whenever the TOWN observes or otherwise becomes aware of any defect in the PROJECT.
- 4.9 Bear all costs related to regulatory permit and approval application fees unless otherwise defined in a subsequent Task Order.
- 4.10 Furnish, or direct the CONSULTANT to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 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 Paragraphs 7.1 or 7.2, the CONSULTANT will be obligated to render services hereunder for a period which may reasonably be required for the services described herein or in a subsequent Task Order. The CONSULTANT may decline to render further services hereunder if the TOWN fails to give prompt approval of the various phases as outlined. Upon receiving a written authorization to proceed, the CONSULTANT shall provide the TOWN with a written schedule of completion for the services so authorized, if requested by the TOWN.
- 5.2 If the design or construction of the PROJECT is delayed significantly for reasons, including costs of construction, beyond the CONSULTANT'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 CONSULTANT

6.1 PAYMENT FOR BASIC SERVICES

6.1.1 The TOWN will pay the CONSULTANT for Basic Services as outlined in Section 2 as described in subsequent Task Orders.

6.2 PAYMENT FOR ADDITIONAL SERVICES

6.2.1 The TOWN will pay the CONSULTANT for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by principals and employees of the CONSULTANT assigned to the PROJECT in accordance with the CONSULTANT'S most recent basic fee schedule, should any of these services be requested by the TOWN. A current fee schedule will be included in all subsequent Task Orders.

6.3 TIMES OF PAYMENT

6.3.1 The TOWN will make prompt monthly payments in response to the CONSULTANT'S monthly detailed statements for all services rendered under this Agreement.

6.4 GENERAL

6.4.1 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 CONSULTANT on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Basic Services, the CONSULTANT shall be paid for services rendered on the basis of his reasonable estimate of the portion of such phase completed prior to termination.

6.4.2 If, prior to termination of this Agreement, any work designed or specified by the CONSULTANT, under Section 2, is suspended in whole or in part for more than three months or is abandoned, after written notice from the TOWN, the CONSULTANT shall be paid for services performed prior to receipt of such notice from the TOWN.

SECTION 7 – ADDITIONAL TERMS AND CONDITIONS

7.1 TERMINATION OF CONTRACT FOR CAUSE

- 7.1.1 If, through any cause, the CONSULTANT shall fail to fulfill in a timely and proper manner his obligations under this Contract, or if the CONSULTANT shall violate any of the covenants, agreements, or stipulations of this Contract, the TOWN shall thereupon have the right to terminate this Contract by giving written notice to the CONSULTANT of such termination and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the CONSULTANT under this Contract shall, at the option of the TOWN, become its property and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the CONSULTANT shall not be relieved of liability to the TOWN for damages sustained by the TOWN by virtue of any breach of the Contract by the CONSULTANT, and the TOWN may withhold any payments to the CONSULTANT for the purpose of set-off until such time as the exact amount of damages due the TOWN from the CONSULTANT is determined.

7.2 TERMINATION FOR CONVENIENCE OF THE TOWN

- 7.2.1 The TOWN may terminate this Contract at any time by giving at least ten (10) days' notice in writing to the CONSULTANT. If the Contract is terminated by the TOWN as provided herein, the CONSULTANT will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the CONSULTANT, Paragraph 1 hereof relative to termination shall apply.

7.3 CHANGES

- 7.3.1 The TOWN may, from time to time, request changes in the scope of the services of the CONSULTANT to be performed hereunder. Such changes, including any increase or decrease in the amount of the CONSULTANT'S compensation, which are mutually agreed upon by and between the TOWN and the CONSULTANT, shall be incorporated in written amendments to this Contract.

7.4 PERSONNEL

- 7.4.1 The CONSULTANT represents that he has, or will secure at his own expense, all personnel required in performing the services under this

Contract. Such personnel shall not be employees of or have any contractual relationship with the TOWN.

7.4.2 All of the services required hereunder will be performed by the CONSULTANT or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.

7.4.3 None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the TOWN. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.

7.5 ASSIGNABILITY

7.5.1 The CONSULTANT shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or invitation), without the prior written consent of the TOWN thereto.

7.6 REPORTS AND INFORMATION

7.6.1 The CONSULTANT, at such times and in such forms as the TOWN may require, shall furnish the TOWN such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

7.7 RECORDS AND AUDITS

7.7.1 The CONSULTANT shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the TOWN to assure proper accounting for all PROJECT funds. These records will be made available for audit purposes to the TOWN or any authorized representative, and will be retained for three years after the expiration of this Contract unless permission to destroy them is granted by the TOWN.

7.8 FINDINGS CONFIDENTIAL

7.8.1 All of the reports, information, data, etc. prepared or assembled by the CONSULTANT under this Contract are confidential and the CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of the TOWN.

7.9 COPYRIGHT

7.9.1 No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the CONSULTANT.

7.10 COMPLIANCE WITH LOCAL LAWS

7.10.1 The CONSULTANT shall comply with all applicable laws, ordinances, and codes of the State and local governments, and the CONSULTANT shall save the TOWN harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

7.11 EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract, the CONSULTANT agrees that it will prohibit discrimination in employment on the basis of race, creed, color, religion, sex, national origin, physical or mental disability, age or any other factor which cannot be lawfully used as the basis for employment decisions.

7.12 INTEREST OF MEMBERS OF A TOWN

No member of the governing body of the TOWN and no other officer, employee, or agent of the TOWN, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract, and the CONSULTANT shall take appropriate steps to assure compliance.

7.13 INTEREST OF OTHER LOCAL PUBLIC OFFICIALS

No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract, and the CONSULTANT shall take appropriate steps to assure compliance.

7.14 INTEREST OF CONSULTANT AND EMPLOYEES

The CONSULTANT covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The CONSULTANT further covenants that in the performance of this Contract no person having any such interest shall be employed.

7.15 ADDITIONAL STANDARD TERMS AND CONDITIONS

- 7.15.1 CONSULTANT shall not be bound by any provision or agreement requiring or providing for arbitration of disputes or controversies arising out of this Agreement, any provision wherein Architect waives any rights to a mechanic's lien, or any provision conditioning CONSULTANT'S right to receive payment for its work upon payment to client by any third party.
- 7.15.2 If TOWN fails to make payments to CONSULTANT in accordance with this Agreement, such failure shall be considered substantial, breach, and nonperformance and cause for termination or, at CONSULTANT'S option, cause for suspension of performance of services under this Agreement. If CONSULTANT elects to suspend services, CONSULTANT shall give seven days' written notice to TOWN before suspending services. In the event of a suspension of services, CONSULTANT shall have no liability to TOWN for delay or damage caused TOWN because of such suspension of services. Before resuming services, CONSULTANT shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of CONSULTANT'S services. CONSULTANT'S fees for the remaining services and the time schedules shall be equitably adjusted.
- 7.15.3 In the event of termination not the fault of CONSULTANT, CONSULTANT shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses.
- 7.15.4 CONSULTANT shall be allowed to publish material presented to the public in our portfolio of PROJECTS. Information that is not part of public presentations will require the approval of the TOWN prior to CONSULTANT utilizing the information. CONSULTANT will be allowed to photograph the completed PROJECT for inclusion in CONSULTANT'S portfolio.
- 7.15.5 CONSULTANT will invoice the TOWN monthly for services rendered. Payment is due upon receipt of invoice. Any payment outstanding beyond sixty (60) days from date of invoice shall be cause to stop progress on the work.
- 7.15.6 TOWN agrees to pay interest on all amounts invoiced and not paid or objected to in writing for valid cause, within thirty (30) days from date of invoice at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted by applicable law), until paid. TOWN agrees to pay CONSULTANT the cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees.

SECTION 8 – NOTICE

8.1 Any notice or other communication given under this Agreement shall be in writing and mailed or delivered as follows:

To TOWN:

TOWN of Pittsboro
Attn: TOWN Manager
Post Office Box 759
Pittsboro, North Carolina 27312

To CONSULTANT:

McGill Associates, P.A.
Attn: Michael S. Apke, P.E., Principal/Pinehurst Office Manager
5 Regional Circle, Suite A
Pinehurst, North Carolina 28374

SECTION 9 – AUTHORITY

9.1 The undersigned persons hereby verify that they have the actual and apparent authority to enter into this contract and that any and all action necessary to approve this contract has been undertaken and approved by said entities.

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:



Michael S. Apke, P.E.
Pinehurst Office Manager

TOWN OF PITTSBORO

By: _____

Title: _____