

SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between

Town of Pittsboro (“Owner”)

and

L. E. Wooten & Company dba The Wooten Company (“Engineer”)

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Wastewater Treatment Plant Preliminary Engineering Report (“Project”).

Engineer's Services under this Agreement are generally identified as follows:

Develop a Preliminary Engineering Report (PER) for expansion of the Town's Wastewater Treatment Plant from 0.75 MGD to 1.249 MGD. See Appendix 2 for Scope of Services.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: **See Project Schedule included as Appendix 3.**
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding n/a months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability

for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Basis of Payment—Lump Sum*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
 - 1. A Lump Sum amount of \$ **85,675.00**

The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

Attachments:

Appendix 1 - Engineer's Standard Hourly Rates

Appendix 2 – Engineering Services and Services Provided by the Owner

Appendix 3 – Project Schedule

Appendix 4 - Client to provide their E-Verify Affidavit to be included as part of this contract

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

Town of Pittsboro

Typed Name: William G. Terry

By (Signature): _____

Title: Mayor

Date Signed: _____

ENGINEER:

L.E. Wooten and Company dba
The Wooten Company

Typed Name: W. Brian Johnson, PE

By (Signature): _____

Title: Director, Civil/Env. Engineering

Date Signed: _____

Engineer License or Firm's Certificate Number: F-0115

State of: North Carolina

Address for giving notices:

P.O. Box 759

Pittsboro, NC 27312

Address for giving notices:

120 N. Boylan Avenue

Raleigh, NC 27603

PRE-AUDITED STATEMENT

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

Finance Officer: _____

Date: _____

_____ TWC Officer's Initials

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated _____, _____.

Engineer's Standard Hourly Rates

APPENDIX 1
SCHEDULE OF FEES
ENGINEERING COST BREAKDOWN
HOURLY RATES FOR WAGE CATEGORIES

Wage Category	Hourly Billing Rate
Engineer IV	\$ 172
Engineer III	\$ 125
Engineer II	\$ 95
Engineer I	\$ 82
Designer IV	\$ 120
Designer III	\$ 95
Designer II	\$ 75
Designer I	\$ 63
Inspector III	\$ 75
Inspector II	\$ 63
Inspector I	\$ 59
Surveyor Project Manager	\$ 135
Project Surveyor	\$ 90
Survey Field Supervisor	\$ 70
Survey Technician	\$ 52
GIS Analyst III	\$ 97
GIS Analyst II	\$ 70
Construction Admin III	\$ 172
Construction Admin II	\$ 125
Architect II	\$ 120
Planner IV	\$ 172
Planner III	\$ 147
Planner II	\$ 125
Planner I	\$ 93
Community Development Planner I	\$ 104
Project Coordinator	\$ 93
Planning / Community Development Specialist II	\$ 81
Planning / Community Development Specialist I	\$ 70
Project Assistant	\$ 61
Reimbursables: Mileage will be billed at the current IRS Standard Mileage Rate, Subcontracted Services and other expenses at cost plus 10%.	

The Wooten Company makes annual adjustments on July 1st. The above hourly rates reflect current rates for the period through June 30, 2015. Hourly billing rates (per diem rates) will change effective July 1, 2015 to reflect Direct Payroll Costs (salaries) being paid at that time.

**APPENDIX 2
TO THE
ENGINEERING SERVICES CONTRACT
BETWEEN
THE TOWN OF PITTSBORO
AND
L.E. WOOTEN AND COMPANY DBA THE WOOTEN COMPANY
FOR
WASTEWATER TREATMENT PLANT
PRELIMINARY ENGINEERING REPORT (PER)**

The following scope of services shall become a part of the Contract Agreement.

A. PRELIMINARY ENGINEERING REPORT

1. Prepare the preliminary engineering documents in accordance with NC Division of Water Infrastructure (NC DWI) requirements for the Preliminary Engineering Report (PER) and Environmental Information Document (EID).
2. Hold project kick-off meeting with Town staff and project stakeholders.
3. Review past studies and evaluations completed for the Town.
4. Evaluate the existing condition of the wastewater collection system including, but not limited to, overview of system, general overflow history and potential unsewered areas located in the wastewater treatment plant service area. (Note: We will look to utilize collection system information included in the Town's recent CWSRF Inflow and Infiltration Engineering Report to the extent possible and conduct additional evaluation as necessary.)
5. Evaluate the existing condition of the wastewater treatment facility including, but not limited to, influent flow data utilizing year 2011 to present, condition of existing plant equipment, and determine existing components that can be utilized in the facility expansion, including rehabilitation/replacement requirements if necessary.
6. Evaluate current population figures and confirmation of future population projections for the Pittsboro service area developed in the 2010 EIS and recently updated for the Jordan Lake Partnership.
7. Evaluate current wastewater flow and confirmation of future wastewater flow projections for the Pittsboro service area developed in the 2010 EIS and recently updated for the Jordan Lake Partnership.
8. Evaluate Inflow and Infiltration (I/I) flows at the wastewater treatment plant and develop rainfall vs. flow relationship for extrapolation to determine future I/I flow impact.
9. Evaluate the influent wastewater characteristics utilizing year 2011 to present plant operation data reported in the Daily Monitoring Reports (DMRs) at a minimum. We will consider the existing wastewater characteristics and anticipated future residential and commercial development in the plant's service area to confirm the design influent wastewater characteristics that will be utilized as design values for the proposed improvements. Particularly we will look to confirm pH, Temperature (summer and winter), BOD₅, COD, TSS, TKN, NH₃-N, Total Phosphorous as P, Total Alkalinity, BOD₅/TP ratio, COD/TP ratio, BOD₅/TKN ratio, and COD/TKN ratio.

10. Evaluate unit operations/processes the plant could successfully employ for adequate hydraulic and process design loadings and determine the appropriate unit process sizing needed for safe, flexible, and efficient operations to comply with NPDES Permit limits. The evaluation will be supported by detailed unit operations/processes design calculations. Please note that our firm will work closely with Town staff to confirm that the preferred design objectives for plant expansion are met.
11. Conduct stakeholder meetings with Town staff and elected officials, Chatham County, City of Sanford, local economic development community, and other necessary entities at the 50% and 80% PER development stage.
12. Evaluate the following options related to expansion of the existing treatment facility:
 - No-Action Alternative
 - Optimum Operation of Existing Facilities
 - New Treatment Facility at an Alternate Site (This alternative shall include a conventional BNR treatment process only.)
 - Decentralized Systems (i.e. Chatham Park wastewater treatment concepts)
 - Regionalization (i.e. transport and treatment options for neighboring municipal treatment systems such as City of Sanford and the Western Wake Water Reclamation Facility)
 - Treatment Technologies (includes Conventional BNR as well as innovative technologies such as Integrated Fixed-Film Activated Sludge (IFAS), Magnetic Ballasted Treatment (Biomag), Sequencing Batch Reactor (SBR) Membrane Bioreactor (MBR) or other for small site footprints. We plan to screen the innovative treatment technologies available and select two (2) of these technologies deemed most favorable for the Pittsboro facility to be included in the alternatives analysis. Therefore, we shall limit the full evaluation to three (3) treatment technologies that includes the conventional BNR process and the two (2) selected innovative technologies. This evaluation shall also include evaluating the use of the Town's property north of the existing plant in conjunction with the selected technologies.)
 - Biosolids Alternatives
 - Preferred Alternative
13. Utilize the above findings, prepare costs estimates for each alternative, and complete the alternatives analysis with present worth evaluation to determine the most cost effective solution for wastewater capacity improvements.
14. Prepare project description of the preferred alternative.
15. Complete the financial analysis for the preferred alternative and determine the impact on user charges.
16. Prepare the Environmental Information Document (EID) with supporting documentation for the preferred alternative.
17. **Phase 2 Evaluation. Evaluate two future wastewater options for the Town when wastewater flows are greater than 1.249 mgd (the upgraded capacity of the existing wastewater treatment plant). The flow rate used for this evaluation would be 1.97mgd as indicated in the Haw River discharge permit. This evaluation would include the following:**
 - **Pumping of 1.97 mgd of wastewater to the City of Sanford. The Wooten Company and the Town would meet twice with the City of Sanford to develop this option in detail and modify an earlier version. This would include the Pittsboro pump station location, forcemain route, connection to the Sanford collection system, and headworks or other changes needed at the Sanford WWTP. We will estimate**

capital and O&M costs and perform a present worth analysis. Discussion with Sanford will need to include an estimated sewer charge rate (connection fee, flat rate, and volume rate as appropriate) from Sanford to the Town. If necessary, a meeting with DENR staff in Raleigh will be held to discuss if any interbasin transfer issues will impact this option.

- Evaluate construction of a future WWTP at a new location with discharge to the Haw River using the allocated Haw River discharge permit requirements. The evaluation would be assuming construction of a new 1.97 mgd conventional BNR treatment plant. The Town and The Wooten Company will work together to select an appropriate future site for this treatment plant option. Organic loading rates (BOD, TSS, etc) would be assumed to be typical domestic strength.
 - Prepare write-up of Phase 2 evaluation performed and incorporate into a Phase 2 section of the ER.
18. Complete the draft PER and EID and present to Town Staff for review and comment.
 19. Complete final PER and EID and present to Town Board of Commissioners.
 20. Prepare and submit a State Revolving Loan (SRF) funding application to the NC Division of Water Infrastructure (NCDWI).
 21. Following the Town's receipt of Intent to Fund notification by NCDWI, submit PER and EID to NCDWI for review and approval and respond to comments.

B. SERVICES PROVIDED BY THE OWNER

1. Designate a person to act as the Owner's representative with respect to the work to be performed under the Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret, and define the Owner policies.
2. Assist the Engineer by placing at his disposal all available information pertinent to the projects as may be required by the Engineer.
3. If necessary, perform sampling and testing for parameters not currently measured at the wastewater treatment plant, but may be deemed necessary for determination of influent wastewater characteristics.
4. Guarantee access to and make all provisions for the Engineer to enter upon public and private property as required to perform his services.
5. Examine all sketches, drawings, reports, and other documents presented by the Engineer.
6. Provide frequent observation of the project in order to apprise the Engineer of specific matters relating to the project that would foster good relations among all parties involved as well as to allow work to progress in an orderly manner.
7. Give prompt written notice to the Engineer whenever the Owner observes or otherwise becomes aware of any defect in the project or changed circumstances.
8. Furnish the Engineer in a timely manner with copies of pertinent correspondence relating to the project which would not otherwise have been delivered to the Engineer.

**APPENDIX 3
TO THE
ENGINEERING SERVICES CONTRACT
BETWEEN
THE TOWN OF PITTSBORO
AND
L.E. WOOTEN AND COMPANY DBA THE WOOTEN COMPANY
FOR
WASTEWATER TREATMENT PLANT
PRELIMINARY ENGINEERING REPORT (PER)**

The following Schedule shall become a part of the Contract Agreement.

Activity Name	Start Date	Finish Date	2015												2016					
			Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr			
Consultant Selection	2/23/15	2/23/15	◆																	
Kick-Off Meeting w/Town and Stakeholders	3/23/15	3/23/15		◆																
Preliminary Eng. / Alt. Analysis	3/18/15	7/1/15			■															
50% Progress Meeting with Town Staff	5/4/15	5/8/15				■														
80% Progress Meeting with Town Staff	6/1/15	6/5/15					■													
Submit Draft Report to Town Staff for Review	7/1/15	7/1/15						◆												
Present Report to Town Board of Commissioners	8/10/15	8/10/15							◆											
Prepare and Submit CWSRF Funding Application to NCDWI	8/11/15	8/11/15								■										
Receipt of NCDWI Intent to Fund	9/1/15	10/30/15									▨									
Submit ER and EID to NCDWI and Respond to Comments	11/2/15	4/1/16																▨		

Notes:

1. The 50% progress meeting with the Town is intended to be scheduled anytime the week of 5/4/15 at the Town's convenience.
2. The 80% progress meeting with the Town is intended to be scheduled anytime the week of 6/1/15 at the Town's convenience.
3. Per the NCDWI Funding Guidelines, the Letter of Intent to Fund is expected 2 months following funding application submittal.
4. Per the NCDWI Funding Guidelines, the PER/EID review process is expected to take 5 months following submission of the ER/EID.

APPENDIX 4

CLIENT'S E-VERIFY AFFIDAVIT