



**CITY OF SOUTHPORT
BOARD OF ALDERMEN
REGULAR MEETING AGENDA**

SOUTHPORT FIRE DEPARTMENT 1011 N. HOWE STREET

January 12, 2023

6:00 PM

Agenda

Please turn off all cell phones

Meetings are open to the public. Face masks and social distancing may be used at the discretion of each individual. The Board of Aldermen reserve the right to make changes to this policy, as needed to help prevent the spread of the Coronavirus.

If you are not able to attend the Board of Aldermen meetings in person, the meeting will be available for you to watch via live-stream on the City of Southport website (<https://cityofsouthport.com/board-of-aldermen-meetings/>), Facebook page, and YouTube channel.

ETHICS STATEMENT:

"If any members know of any conflict of interest or the appearance of a conflict of interest concerning matters on the agenda, please so state at this time."

- A. Call to Order**
- B. Invocation**
- C. Pledge of Allegiance**
- D. Presentation: City of Southport Draft Parks and Recreation Master Plan**
 - 1. Introduction of Dr. Herstine (H. Hemphill)
 - 2. Draft Parks and Recreation Master Plan (Dr. Herstine) Available on the Website.
 - 3. Questions from the Public
- E. Public Comment**
- F. Approval of Agenda**
- G. Approval of the Consent Agenda**
 - 1. Regular Board of Aldermen Meeting Minutes December 8, 2022
 - 2. Closed Session Board of Aldermen Meeting Minutes December 21, 2022 (Confidential)
- H. Special Recognition**
 - 1. Proclamation Honoring Dr. Martin Luther King, Jr.
- I. Agenda**
 - 1. Authorization of Wooten Contract for USDA Project

2. Resolution in Support of Adopting the Parks and Recreation Master Plan (B. Therrien and H. Hemphill)
3. Appointments to the ABC Board (Mayor Hatem)
4. Appointment to the Planning Board (K. Mosteller, J. Allen)
5. Appointment of a Voting Delegate for the NCLM (Mayor Hatem)
6. Yacht Basin Dredging Project (B. Therrien)
7. Meals and Beverage Tax (B. Therrien)
8. Scheduling Board Workshops (B. Therrien)
9. City Attorney Selection Process (B. Therrien)
10. Osprey Landing Electrical Service (B. Therrien)
11. Feasibility Study for Police Department and City Hall (B. Therrien, Chief Coring & Major Burke)
12. Historic Preservation Commission: Rules of Procedure (T. Henley & C. Drew)
13. Contract with Olsen Associates for Shoreline Stabilization Project (B. Therrien)

J. Manager's Report

K. Committee Reports

1. Planning Board Minutes December 15, 2022
2. ABC Board Minutes November 14, 2022
3. Update from Up Your Arts

L. Mayor's Comments

M. Staff Reports

1. Southport Police Department
2. Southport Fire/EMS Department
3. Parks and Recreation
4. Animal Protective Services
5. Community Relations and Communication
6. Public Services
7. Development Services (Code Enforcement and Permitting)
8. Finance Department

N. Board Comments

O. Closed Session: Per NCGS 143-318.11 (a) 6.

1. Motion to move into Closed Session.
2. Motion to end Closed Session and Resume Open Meeting.

P. Adjourn

JAMES H. HERSTINE, Ph.D.

- ✚ Professor Emeritus and former Program Coordinator for the Recreation, Sport Leadership and Tourism Management Program in the School of Health and Applied Human Sciences in the College of Health and Human Services at UNC Wilmington
- ✚ Also taught at UNC Chapel Hill in the Recreation Administration Program and at NC State University in the Parks, Recreation and Tourism Management Program
- ✚ Ph.D. in Natural Resource Management with a minor in Parks, Recreation and Tourism Management from NC State University
- ✚ MS in Recreation Administration from the University of North Carolina—Chapel Hill
- ✚ MA in International Relations from the University of Southern California
- ✚ BA in Psychology from Wake Forest University
- ✚ Previously served as Director of Parks and Recreation for the Town of Chapel Hill and as the Wilmington District Manager for the NC Division of Coastal Management
- ✚ Recognized in the 2004 – 2005 Who's Who Among America's Teachers and Educators, 9th Edition, Volume IV
- ✚ Awarded the 2007 UNCW Chancellor's Teaching Excellence Award, College of Arts and Sciences
- ✚ Recognized in the 2008 – 2009 Cambridge Who's Who Registry of Executives, Professionals and Entrepreneurs
- ✚ Consulting Experience
 - 2024 – 2029 Parks, Recreation and Open Space Master Plan. Town of Carolina Beach, NC. In-Progress—Scheduled for adoption January 2024
 - 2023 – 2028 Parks, Recreation and Open Space Master Plan. City of Southport, NC. In-Progress—Scheduled for adoption January 2023
 - 2019 – 2024 Parks, Recreation and Open Space Master Plan. Town of Oak Island, NC. Adopted January 2020
 - 2019 – 2024 Parks, Recreation and Open Space Master Plan. Town of Surf City. NC. Adopted June 2019
 - 2020 – 2030 Parks, Recreation and Open Space Master Plan. Town of Wrightsville Beach, NC. Adopted November 2019
 - 2018 – 2023 Parks, Recreation and Open Space Master Plan, City of Boiling Spring Lakes, NC. Adopted 2018
 - 2018 – 2023 Parks, Recreation and Open Space Master Plan. Town of Lake Waccamaw, NC. Adopted 2017
 - 2017 – 2022 Parks, Recreation and Open Space Master Plan. Town of Carolina Beach, NC. Adopted 2017
 - 2015 – 2020 Parks, Recreation and Open Space Master Plan. Town of Leland, NC. Adopted December 2015

- *2015 – 2020 Parks, Recreation and Open Space Master Plan.* City of Southport, NC. Adopted 2014
- *2013 – 2018 Parks, Recreation and Open Space Master Plan.* Town of Wrightsville Beach, NC. Adopted 2010
- *2009 – 2014 Parks, Recreation and Open Space Master Plan.* City of Wilmington, NC. Adopted 2009
- *2009 – 2014 Parks, Recreation and Open Space Master Plan.* City of Boiling Spring Lakes, NC. Adopted 2008
- *2008 – 2013 Parks, Recreation and Open Space Master Plan.* Town of Carolina Beach, NC. Adopted 2008
- *2007 – 2012 Parks, Recreation and Open Space Master Plan.* Town of Wrightsville Beach, NC. Adopted 2007
- *2003 – 2008 Parks and Recreation Facility Master Plan.* City of Wilmington, NC. Adopted 2003
- *2002 – 2007 Parks and Recreation Master Plan.* Brunswick County, NC. Adopted January 2002



Board of Aldermen Regular Meeting Minutes
December 8, 2022
223 E. Bay Street
Community Building
6:00 p.m.

Present: Mayor Pro Tem Karen Mosteller, Aldermen Thomas Lombardi, Rich Alt, Lowe Davis, Robert Carroll, and John Allen

Absent: Mayor Hatem

Staff Present: Bonnie Therrien, Interim City Manager
Dorothy Dutton, City Clerk
Norwood Blanchard, III, City Attorney
Randy Jones, Communications/Tourism Director
ChyAnn Ketchum, Communications and Public Information Officer
Heather Hemphill, Parks and Recreation Director
Kate Marshall, Animal Control
Travis Henley, Director of Development Services
Charles Drew, Fire Chief

Others Present: Norwood Blanchard III, Tish Hatem, Will Hewett, Sue Hodgins, Fred Fiss, Jeanne Brown-Bush, Gaines Brown, Ray DiGuseppe, Francesca Slaughter, Renee Spencer with Star News Online, and many other interested citizens attended.

Meetings are open to the public. Complete audio/video is available on the City's website or can be requested from the City Clerk's office.

A.) Mayor Pro-tem Mosteller called the meeting to order at 6:00 p.m. She explained that Mayor Hatem could not attend, and she was asked to preside over the meeting.

B.) Alderman Lowe Davis provided the invocation.

C.) Mayor Pro-tem Mosteller led the pledge of allegiance.

D.) Public Comment: The City Clerk called Pat Kirkman, who resides at 119 Park Avenue, forward for public comment. Ms. Kirkman stated that the City's cemetery ordinances need review and alteration. The last time they were amended was December 1991. She asked the Board of Aldermen to appoint a Cemetery Commission to maintain the records and coordinate the upkeep of the cemeteries with the Public Services Department. She added that she would keep asking the Board to place more attention on the cemeteries unless the Board tells her they are not interested in pursuing any action. Francesca Slaughter, a resident at 6243 Cottage Creek Road, stated that she is a member of the "No High-Density Southport" group. They would like to ask the Board why the City is interested in negotiating with the developers for Indigo Phase 2. She added that if the City is in a position of power, the City doesn't have to negotiate. Rezoning to a higher density might attract a better project, but the City should focus on getting grants to fix our existing infrastructure. She asked the Board to please share what the City is negotiating.

Aldermen John Allen said that he would like to speak. He wanted to clarify that PUD does not equate to high density. Preservation of open space is done much better in the PUD district. The Board is not negotiating; they offer opinions on the proposed plan. R-20 will still cause traffic problems, and they are only required to have two points of ingress and egress. He said he would rather have slightly more

dwelling units and three entrances/exits. He said he wished everyone would understand the decision on not binary; there are many different ways to work with the developers.

Mayor Pro-tem Mosteller read the ethics statement.

Alderman Lombardi stated that he wished to recuse himself from item H. 1., the dedication of the road in Rivermist, because he is the president of the Rivermist HOA. ***Alderman Alt motioned to recuse Alderman Lombardi. Alderman Allen seconded the motion. All ayes. Motion carried.***

E.) Approval of Agenda

Alderman Lombardi made a motion to approve the agenda as presented. Alderman Carroll seconded the motion. All ayes. Motion carried.

F.) Approval of Consent Agenda-Mayor Pro-tem Mosteller summarized the items on the Consent Agenda.

1. Minutes of the Closed Session Board of Aldermen Meeting November 8, 2022
2. Minutes of the Board of Aldermen Regular Meeting November 10, 2022
3. Capital Projects Ordinance-Shoreline Stabilization

G.) Special Recognition-None

H.) Agenda

1. Alderman Lombardi recused himself from considering and voting on this matter. Attorney Raymond DiGuiseppe represented the Rivermist Property Owner's Association. He explained that the portion of the road on the side of the clubhouse was never dedicated to the City. The street is identified as Flank Court and extends straight to a cul-de-sac. The 60-foot cul-de-sac is not included in the dedication nor the parking areas for the clubhouse. Ms. Dutton reported that the Public Services Director, Tom Stanley, had inspected the road and was comfortable assuming responsibility for its maintenance. Attorney Norwood Blanchard stated he was comfortable with the language in the deed of dedication. ***Alderman Allen motioned to approve the Resolution in Support of Accepting the Flank Court and agreed to the Deed of Dedication. Alderman Davis seconded the motion. All ayes, except for Alderman Lombardi, who was recused. Motion carried.***
2. Interim City Manager Bonnie Therrien introduced the request from two residents to abandon an alleyway. She said that nothing final was to be decided; other steps must be taken, including publishing the Intent to Abandon the Alleyway and contacting adjacent property owners. So far, no department heads were opposed to abandoning the alley. Mr. Gaines Brown approached the podium to speak on behalf of the proposal. He explained that after the last storm, there were trees and branches all over the ground and leaning onto other trees in the alley. He would like permission to maintain it but not use it actively. It will remain a natural/green area. There was some discussion about the types of easements on the property. Currently, the alley is a vacant wooded area. Typically, the abandoned property would get divided down the center, and those properties on either side would absorb each side. Ms. Therrien said this sometimes happens when property owners don't pay their taxes, and the City gets the property. ***Alderman Allen motioned to send the item to the Planning Board for further review before making any decisions. Aldermen Carroll and Davis seconded the motion. All ayes. Motion carried.***
3. The Development Services Director reviewed the request for the final plat approval for a Southport Crossings outparcel. The Southport Crossings project is vested under the previous ordinance. Staff requested the Board of Aldermen approve the final plat with three conditions. ***Alderman Allen approved the final plat for Southport Crossings with the following conditions:***
 - a. The Plat should not be signed for recordation until a performance guarantee, and a bond is received and accepted by the City of Southport staff for all roadways;***

- b. The Plat will not be signed for recordation until Brunswick County Utilities has inspected and certified the water and wastewater infrastructure and signed the plat;*
- c. The Plat shall not be signed for recordation until all required certificates are in conformance with the applicable standards of the Unified Development Ordinance and have been signed by the appropriate parties.*

Alderman Carroll seconded the motion. All ayes. Motion carried.

- 4. Mayor Pro-tem Mosteller explained that the Cape Fear Council of Governments has requested a City representative and alternate to represent the City in regional programs and discussions. Mayor Hatem has been serving as the main representative, and Mayor Pro-tem is the alternate. ***Alderman Allen motioned to appoint Mayor Hatem as the primary representative and Mayor Pro-tem Mosteller to remain the alternate. Alderman Lombardi seconded the motion. All ayes. Motion carried.***

I.) Manager's Report

Bonnie Therrien, the Interim Manager, asked the Aldermen to provide her with a list of dates they are not available. Many workshops are needed, and she wants to start scheduling them. Ms. Therrien also explained that she and the staff had been putting together a capital projects list to help keep up with everything. A copy of the list was provided at their seats. The Police Department has hired one new officer.

J.) Committee Reports

Alderman Allen reported the Planning Board had conducted interviews for the full position and would bring the recommendation to the Board of Aldermen at the January meeting. He thanked Ms. Therrien for the spreadsheet. The Planning Board review committee meeting will be meeting next Wednesday to review the proposed project at 115 N. Howe Street. The regular Planning Board meeting is next Thursday, December 15, 2022.

Alderman Carroll praised Randy Jones for his success and efforts with the 4th of July Committee. He said he is glad to be a part of the committee. The Historic Preservation Commission met the previous Wednesday evening. He said Mr. Charles Drew was selected as the Commission Chair, and Mr. Rick Pukenas is the Vice-Chair. The Commission also made good progress with the Rules of Procedure.

Alderman Alt reported that MOTSU was no longer interested in pursuing the City property at Sunny Point. All the easements and restrictions remain on the property regarding the activities at MOTSU.

Alderman Davis said that it was the season for all the Christmas trees. The tree at the federal Capital is from the Pisgah National Forest in North Carolina. They call it the People's Tree, adorned with over 7,000 ornaments made by school children. The Forestry Committee meets the following Tuesday, and the Parks and Recreation Committee meets next week.

Alderman Lombardi said that the Beautification Committee had not scheduled any clean-ups or meetings because of the holidays. They have worked hard with the help of the Public Services Department to get the Christmas decorations up around the City.

K.) Mayor's Report

In Mayor Hatem's absence, he asked Mayor Pro-tem Mosteller to read his comments. The Mayor and "First Lady" send their holiday wishes. Feeling gratitude and not expressing it is a waste. We are indebted to the employees that work for the City. Our City is blessed with committed individuals, and volunteerism is boundless. Southport is an awesome place to call home! Mayor Hatem also encouraged the public to visit the Candy Cane Garden at Keziah Park.

L.) Board Comments

Alderman Allen encouraged the public to participate or make donations to the Shop with a Cop program with the Southport Police Department. He also said that he would like the Board to consider scheduling a second Regular meeting each month, which would be more of a workshop session. He wished everyone Happy Holidays!

Alderman Carroll thanked the Southport Fire Department for including the Board in the annual awards banquet. He heard some amazing stories and met some wonderful people. He is grateful for the first responders. Alderman Carroll said he is so happy that Bonnie Therrien is with the City. He emphasized that the Board is here to serve the public. He invited anyone with concerns or questions to call or email him.

Alderman Alt stated that he agrees with Alderman Allen about having a second meeting. The Fire Department banquet was a tremendous event. There was a young lady in high school that received a certificate for having more volunteer hours than most of the others. Overall, it was an impressive group of people.

Alderman Davis said that 200 years ago, Clark Clement Moore wrote, "Twas the Night Before Christmas." She said she would conclude the meeting in the same way, "Merry Christmas to all, and to all a goodnight!"

Alderman Lombardi said he enjoyed the Fire Department banquet, too. He wished everyone a safe and happy holiday.

M.) Adjourn

Mayor Pro-tem Mosteller said that the meeting was concluded. ***After a motion made by Alderman Allen and seconded by Alderman Carroll, Mayor Pro-tem Mosteller adjourned the meeting at 7:37 p.m. All ayes. Motion carried.***

Joseph P. Hatem, MD, MPH.
Mayor, City of Southport

Dorothy Dutton, City Clerk



BOARD OF ALDERMEN
AGENDA ITEM SUMMARY

DATE: 12/22/2022 DEPARTMENT: Admin/Public Services

PRESENTED BY: City Manager, Bonnie Therrien, Consent Agenda

ITEM SPONSORED BY: Bonnie Therrien, Tom Stanley, Melanie Trexler & Dorothy Dutton

ITEM/TOPIC: USDA Project

COST: \$1,085,900.00 BUDGET LINE ITEM: _____

JUSTIFICATION: At the November Board meeting, the Board awarded the project to Wooten. Now, the Mayor/City Manager need authorization to sign the contract, etc.

IMPACT IF NOT APPROVED: Time delay in starting the project; possible loss of engineer; possible loss of funding

DEPARTMENT HEAD COMMENTS: _____

CITY MANAGER COMMENTS: We should move ahead with this with haste so we can start moving.

ATTACHMENTS: Proposed Contract from Wooten Engineering

REQUESTED ACTION: Approve the contract and authorize the Mayor and City Manager to complete all paperwork required

PROPOSED MOTION: When Consent Agenda is approved, the contract with Wooten Engineering for the USDA Wastewater project will be approved AND the Mayor and City Manager are authorized to sign the contract and other documents as needed for the USDA Wastewater project.

December 21, 2022

Mr. Steve Smith, Area Specialist
Bolivia Service Center, Rural Development
United States Department of Agriculture
10 Referendum Drive
Bolivia, NC 28442

RE: Engineering Services Agreement – DRAFT
Wastewater System Replacement Project
Southport, North Carolina

Dear Mr. Smith,

Please find enclosed for your review the draft USDA Contract Engineering Services Agreement (ESA) for the Wastewater System Replacement Project. The format includes all required USDA language and covers the engineering services for the design and construction phases.

Please note that the engineering fees included in the ESA are different than what was budgeted in the approved Preliminary Engineering Report (PER) as prepared by others. Our proposed design fees lined up closely with the PER, in fact, slightly less. However, the construction phase budget was extremely low. For construction administration the budget was shown at approximately \$2,800 per month over an 18-month construction period. This is less than half the fee it reasonably takes to administer the construction contract for this type and size project and then prepare the record drawings. When considering construction observation, the budget included an hourly rate of \$50 per hour. Again, these rates are significantly lower than our standard rate and thus, is less than half of the budget needed to provide full-time observation as required by USDA for the 18-month duration. Note that this is further underscored when considering that construction will likely not begin for another year. Thus, we believe that the fees provided in the ESA are justified and more in-line with typical fees for this type of contract.

Also, the budget did not account for any additional services. We included two (2) additional services that we believe are warranted at this time: Geotechnical Investigation and LGC Assistance. When reviewing the project, we believe that some geotechnical investigation will be necessary information to the contractor for bidding / construction purposes. Further, we added some fee for assisting the City with the LGC approval process.

We have also enclosed the completed NC-RD Engineering Services Agreement checklist. Below is the updated project milestone table with dates:

<u>Milestone</u>	<u>Date</u>
Authorization for Design	January 15, 2023
Plans & Specifications, and Design Complete	September 15, 2023
Permits Applications Submitted (if required)	September 25, 2023
Initial Advertisement for Bids	February 11, 2024
Project Bid	March 12, 2024
Notice to Proceed	June 1, 2024
Substantial Completion	October 31, 2025
Final Completion	November 30, 2025

Please let us know of any necessary revisions or comments on the draft ESA. In the meantime, please let me know if you have any questions or need further information.

Respectfully,

THE WOOTEN COMPANY

Walter Gross, PE
Project Manager

Enclosures: As Stated

cc: Bonnie Therrien, Manager - City of Southport

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of [] ("Effective Date") between
City of Southport, North Carolina ("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 System Replacement ("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows: **Preliminary / Final Design (including engineering survey) and Construction Phase Services for replacement of approximately 18,100 feet of 8-inch sanitary sewer, 1,400 feet of 4-inch force main extension, and replacement of the Leonard Street Pump Station.**

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer's services;
 - 2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. **Invoices must include a breakdown of services provided.** Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. 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; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has 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.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate. **Opinions of Probable Cost and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act 2017) and subsequent statutes mandating domestic preference.**

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

- B. **Opinions of Total Project Costs and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act 2017) and subsequent statutes mandating domestic preference.**

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* 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 any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, 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.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a) changes after the Effective Date to Laws and Regulations;

- b) the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c) changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2018 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor'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 Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner 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 due and owing 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.

- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer ~~shall~~ **may** jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out

of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services 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 terms hereof through no fault of the terminating party.
 - 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 or suspended for more than 90 days for reasons beyond

Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.

3) Engineer shall have no liability to Owner on account of such termination.

a) Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.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 thereof; 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 notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, 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.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, 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. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 Controlling Law

A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *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 6.08.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, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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 in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 - 2. 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.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then 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 such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and

expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, 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 this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 - 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 - 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 - 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 - 7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.

17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer ~~as an Additional Service~~ and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

38. **Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.**

B. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. ~~Exhibit F, Construction Cost Limit.~~ – **“NOT USED”**
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.
- L. RUS Certification Page 1 and 2

8.02 Total Agreement

- A. This Agreement, (together with the exhibits included above) 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 written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 *Federal Requirements*

A. Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 (2014) hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.

B. Audit and Access to Records. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

C. Restrictions on Lobbying. Engineer and each Consultant shall comply with ~~"Restrictions on Lobbying"~~ **"Byrd anti-lobbying amendment (31 U.S.C. 1352)"** if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal

contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

D. Suspension and Debarment. Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Involuntary Exclusion – lower tier transactions," to the Owner who will forward it to the USDA, Rural Development processing office.

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

Owner: **City of Southport, NC**

By: _____

Print name: **Joseph P. Hatem, MD, MPH**

Title: **Mayor**

Date Signed: _____

Engineer: **L.E. Wooten & Company dba**

The Wooten Company

By: _____

Print name: **W. Brian Johnson, PE**

Title: **Vice President**

Date Signed: _____

Engineer License or Firm's Certificate No. (if required):

F-0115

State of: **North Carolina**

Address for Owner's receipt of notices:

1029 N. Howe Street

Southport, NC 28461

Address for Engineer's receipt of notices:

120 N. Boylan Avenue

Raleigh, NC 27603

Designated Representative (Paragraph 8.03.A):

Bonnie Therrien

Title: **Interim City Manager**

Phone Number: **910-457-7988**

E-Mail Address: **btherrien@cityofsouthport.com**

Designated Representative (Paragraph 8.03.A):

Walter Gross, PE

Title: **Sr. Project Manager**

Phone Number: **910-660-0520**

E-Mail Address: **wgross@thewootencompany.com**

PRE-AUDIT STATEMENT

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

Finance Officer

Date

This is **EXHIBIT A**, consisting of ____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [____].

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase (NOT APPLICABLE)

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions: **N/A**
 - b. ~~If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, report, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions. In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.~~
 - c. ~~If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [____] **[insert specific number]** alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~
2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.
4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.

5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.
6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.
8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs. **The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency.**
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
10. When mutually agreed, **and approved by the Agency**, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.

13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
 14. Perform or provide the following other Study and Report Phase tasks or deliverables:
 - a) **Provide an Environmental Report as defined at 7 CFR 1970. The Environmental Report must be concurred in by the Agency.**
 15. Furnish n/a review copies of the Report and any other Study and Report Phase deliverables to Owner **and Agency** within n/a days of the Effective Date and review it with Owner. Within n/a days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 16. **Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and one electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within n/a days of receipt of Owner's and Agency's comments.**
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 Preliminary Design Phase

- A. After acceptance by Owner **and concurrence by Agency** of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner **and Agency** during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
 3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. ~~If no such scope of work and procedure for utility mapping has been selected and~~

Exhibit A – Engineer's Services

~~authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.~~ **Engineer shall provide Quality Level C as basic service.**

4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2018 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable. **Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.**

9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
N/A

10. Furnish 1 review copy of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within 90 days of authorization to proceed with this phase, and review them with Owner. Within 10 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner 1 copy of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 10 days after receipt of Owner's comments.

- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed

otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.

6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
9. Perform or provide the following other Final Design Phase tasks or deliverables:

The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards.

10. Furnish for review by Owner, its legal counsel, **and Agency**, and other advisors, **1** copy of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within **105** days of authorization to proceed with the Final Design Phase, and review them with Owner. Within **15** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit **1** final copy **and one [1] electronic copy** of such documents to Owner **and Agency** within **15** days after receipt of Owner's comments and instructions.
12. **Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer's Certification of Final Plans and Specifications (Exhibit A, Attachment 6) for this purpose.**

13. **Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron and steel products referenced in engineering analysis, the Plans, Specifications, Bidding Documents requiring design revisions are either produced in the United States or are the subject of an approved waiver; and services required to determine to the best of the engineer's knowledge and belief that approved substitutes, equals, and all iron and steel products proposed in the Plans, Specifications, and Bidding Documents are either produced in the United States or are the subject of an approved waiver under AIS.**
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables **and all final design phase deliverables have been accepted by Owner.**
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is 1. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
 1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents. **Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible.**

3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
4. Consult with Owner as to the qualifications of prospective contractors.
5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
6. **The Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved "or equals" and substitutes. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. ~~If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.~~ **Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron and steel products referenced in Bid Addenda requiring design revisions are either produced in the United States or are the subject of an approved waiver.****
7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.

9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables:
 - a) **Upon award of the Construction Contract, the Engineer shall furnish to Owner five [5] executed copies of the Contract Documents and one [1] electronic copy of the signed documents, including Drawings and Specifications.**
 10. **Provide copies of Manufacturers' Certifications to the Bidders on any brand name iron and steel products as sole-source in the Plans, Specifications and Bidding Documents. Manufacturers' Certifications are to be included in the Bidding Documents and must be kept in the engineer's project file and on-site during construction.**
 11. **Provide copies of Manufacturers' Certifications to the Contractor on any brand name iron and steel products specified as sole-source in the Plans, Specifications and Bidding Documents. Manufacturers' Certifications are to be included in the Bidding Documents and must be kept in the Engineer's project file and on-site during construction.**
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2018 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D. ***[If Engineer will***

not be providing the services of an RPR, then delete this Paragraph 2 by inserting the word "DELETED" after the paragraph title, and do not include Exhibit D as part of the Agreement.]

3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
4. *Pre-Construction Conference:* Participate in **and Chair** a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* ~~If requested by Owner to do so~~ **Maintain** and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine

in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
 - c. **The visits described in Article A1.05.A.9a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.**
- 10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
 - 11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
 - 12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* **Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, including Applications for Payment, to ensure compliance with AIS. Any iron and steel products included in any submittal by the General Contractor, must include a Manufacturer's Certification letter to verify the products were produced in the United States. Copies of Manufacturer's Certifications must be kept in the Engineer's project file and on-site during construction. In the event the Engineer requires an item to be sole-source, the Engineer must furnish the Manufacturers' Certification to the Contractor for said item.** Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, **but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Contract and applicable Agency regulations. Prior to approval of any substitute "or equal" review Manufacturers' Certifications provided by the Contractor to verify the product(s) meet AIS requirements. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction to ensure compliance with AIS.**
19. *Inspections and Tests:*

- a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
 - d. **Receive and review all Manufacturers' Certifications for materials required to comply with AIS. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction.**
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims. **(c) Review Change Proposals to ensure compliance with AIS.**
21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner **the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages,** maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. ~~Receive from Contractor and review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner.~~ The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages. Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner.
23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:

- a. **Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.**
25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E (“Notice of Acceptability of Work”) that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer’s knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
- a. **Obtain the Contractors’ Certification letter and copies of Manufacturers’ Certification letters for all American Iron and Steel products used in the project. Upon Substantial Completion, provide copies of Contractors’ and Manufacturers’ Certifications to the Owner and a copy of Contractor’s Certification to the Agency.**
26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
 - 1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 - 2. Together with Owner, visit the Project within one month before the end of the Construction Contract’s correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.

Exhibit A – Engineer’s Services

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3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
N/A

- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
 1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of ~~categorical exclusions~~ environmental assessments and impact statements **in A.2.01.A.1 not including preparation of the Environmental Report defined under Basic Services**; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities **including Quality Level B and A as required by ASCE 38**, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2, **but only if the Owner's request is made after completion of the Study and Report Phase.**
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
 7. Undertaking investigations and studies including, but not limited to:

- a. detailed consideration of operations, maintenance, and overhead expenses.
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities.
 - c. preparation of appraisals.
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing.
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
- 8. Furnishing services of Consultants for other than Basic Services.
 - 9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
 - 10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor and administering Owner's contract for such services.
 - 11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
 - 12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
 - 13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
 - 14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.

Exhibit A – Engineer's Services

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15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. ~~Preparing Record Drawings, and furnishing such Record Drawings to Owner.~~ **[Deleted]**
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

Exhibit A – Engineer's Services

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30. Assistance to Owner with preparation of Inter Local Agreement(s).
31. Providing Geotechnical Investigation for the project site(s).
32. Providing GPS Data Collection and GIS Mapping for the constructed project area(s).
33. Providing SRF Loan Administration Services, including DBE and MBE provisions.
34. Providing Loan and Grant Administration Services.
35. Preparing and Distributing Bidding Documents for use by Contractors during the Bidding Phase in excess of the number of copies identified under Exhibit A, Part 1, Section A1.03 (A.) (6.).
36. Performing Wetland and/or Riparian Buffer Delineation for 401/404 Certification or USACE Permitting.
37. Assistance to Owner with LGC application and approval process for USDA-RUS loan.

A2.02 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; **evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.** ~~services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.~~
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of **3** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2018 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.

3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: **N/A**

Exhibit B – Owner's Responsibilities

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B.2.02 Owners are ultimately responsible for compliance with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference and will be responsible for the following:

- a) **Sign** loan resolutions, grant agreements and letters of intent to meet conditions which include American Iron and Steel language, accepting American Iron and Steel requirements in those documents and in the letter of conditions.
- b) **Sign** change orders (i.e., C-941 of EJCDC) and partial payment estimates (i.e., C-620 of EJCDC) and thereby **acknowledge** responsibility for compliance with American Iron and Steel requirements.
- c) **Obtain** the certification letters from the consulting engineer upon substantial completion of the project and **maintain** this documentation for the life of the loan.
- d) Where the Owner directly procures American Iron and Steel products, **include** American Iron and Steel clauses in the procurement contracts and **obtain** manufacturers' certifications **provide** copies to consulting engineers and contractors.

This is **EXHIBIT C**, consisting of **6** pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated [REDACTED].

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. A Lump Sum amount of **\$686,800.00** based on the following estimated distribution of compensation:

a. Study and Report Phase	\$N/A
b. Preliminary Design Phase	\$240,400.00
c. Final Design Phase	\$322,800.00
d. Bidding and Negotiating Phase	\$13,900.00
e. Construction Phase	\$102,400.00
f. Post-Construction Phase	\$7,300.00
 2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner **and Agency**.
 3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.

4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (~~see Appendix 1 for rates or charges~~): **None**
 5. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.
- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 30 months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted **with concurrence of the Owner and Agency.**

COMPENSATION PACKET RPR-2: Resident Project Representative – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. **Resident Project Representative Services:** For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be **\$370,600** based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a **548** day construction schedule.
2. **If rate(s) for RPR services is not indicated in Appendix Two to Exhibit C, "Standard Hourly Rates Schedule," the Standard Hourly Rate for RPR services is \$ N/A per hour."**

B. Compensation for Reimbursable Expenses:

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of **1.1**.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of **July 1**) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

C. *Other Provisions Concerning Payment Under this Paragraph C2.04:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.1.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner **and Agency** written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner ~~at cost~~ **at no cost**.

**COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.

Description of Additional Service	Total Cost
1. – A.31 Geotechnical Investigations	\$25,000.00
2. – A.37 LGC Approval Assistance	\$3,500.00
3. –	
4. –	
5. –	
6. –	
Total Additional Services:	\$28,500.00

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.1.

**Exhibit C – Compensation Packet AS-1: Additional Services –
Standard Hourly Rates Method of Payment.**

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4. The Reimbursable Expenses Schedule will be adjusted annually (as of **July 1**) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

C. *Other Provisions Concerning Payment for Additional Services:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of **1.1**.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner ~~at cost~~ **at no cost**.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

8"x11" Copies/Impressions (Black & White)	\$ 0.08/page
8"x11" Copies/Impressions (Color)	\$ 0.35/page
Copies of Drawings (Full Size)	\$ 1.50/each
Copies of Drawings (Half Size)	\$ 0.50/each
Mileage (auto)	Federal Rate
Air Transportation	at cost
Meals and Lodging	at cost
Laboratory Testing	at cost

[Note to User: Customize this Schedule to reflect anticipated reimbursable expenses on this specific Project.]

This is **Appendix 2 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

Standard Hourly Rates Schedule

A. Standard Hourly Rates:

- Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

Wage Category	Hourly Billing Rate
Engineer I	\$ 120
Engineer II	\$ 147
Engineer III	\$ 184
Engineer IV	\$ 220
Engineer V	\$ 260
Architect I	\$ 104
Architect II	\$ 151
Designer I	\$ 87
Designer II	\$ 104
Designer III	\$ 128
Designer IV	\$ 159
Construction Admin I	\$ 120
Construction Admin II	\$ 168
Construction Admin III	\$ 229
Construction Observer / Resident Project Representative	\$ 114
Utility Coordinator II	\$ 134
Utility Coordinator III	\$ 171
Survey Technician I	\$ 54
Survey Technician II	\$ 70
Survey Technician III	\$ 91
Survey Technician IV	\$ 107
Survey Technician V	\$ 127
Surveyor II	\$ 118
Surveyor III	\$ 138
Surveyor IV	\$ 191
GIS Analyst II	\$ 89
GIS Analyst III	\$ 125
GIS Analyst IV	\$ 139
Community Development Coordinator	\$ 142
Funding Coordinator I	\$ 85
Funding Coordinator II	\$ 109
Funding Coordinator III	\$ 163
Project Assistant	\$ 85

Reimbursables: Mileage will be billed at the current IRS Standard Mileage Rate, Subcontracted Services and other expenses at cost plus 10%.

Standard Hourly Rates apply only as specified in the original contract and are subject to annual review and adjustment. Future additions or amendments to the original contract may be subject to the rates in effect at the time of the modification.

Exhibit D - Resident Project Representative.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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Detailed Summary of Engineering Fees				
Description of Services (EJCDC E-500)	Total USDA Scope of Work		Non-Eligible Costs ⁽³⁾	Total
	USDA-RD ⁽¹⁾	Other Funding Agency ⁽²⁾		
C.2.01.A.1 Basic Services	\$ 686,800.00	\$ -	\$ -	\$ 686,800.00
1. Study and Report Phase:	\$ -	\$ -	\$ -	\$ -
a. Preliminary Engineering Report			\$ -	\$ -
b. Environmental Report	\$ -	\$ -	\$ -	\$ -
c. Other Tasks/Deliverables: ()	\$ -	\$ -	\$ -	\$ -
2. Preliminary Design Phase:	\$ 240,500.00	\$ -	\$ -	\$ 240,500.00
3. Final Design Phase:	\$ 322,700.00	\$ -	\$ -	\$ 322,700.00
4. Bidding or Negotiating Phase	\$ 13,900.00	\$ -	\$ -	\$ 13,900.00
5. Construction Phase:	\$ 102,400.00	\$ -	\$ -	\$ 102,400.00
6. Post Construction Phase:	\$ 7,300.00	\$ -	\$ -	\$ 7,300.00
**BS Reimbursable Expenses	\$ -	\$ -	\$ -	\$ -
C.2.04.A.1 - Resident Project Representative Services	\$ 370,600.00	\$ -	\$ -	\$ 370,600.00
1. RPR Hourly Rate Budget	\$ 355,600.00	\$ -	\$ -	\$ 355,600.00
**RPR Reimbursable Expenses	\$ 15,000.00	\$ -	\$ -	\$ 15,000.00
C.2.05.A.1 - Total Additional Services	\$ 28,500.00	\$ -	\$ -	\$ 28,500.00
1 A.?? - Geotechnical Investigations	\$ 25,000.00	\$ -	\$ -	\$ 25,000.00
2 A.37 - LGC Assistance	\$ 3,500.00	\$ -	\$ -	\$ 3,500.00
3		\$ -	\$ -	\$ -
4	\$ -	\$ -	\$ -	\$ -
5 -	\$ -	\$ -	\$ -	\$ -
6 -	\$ -	\$ -	\$ -	\$ -
7 -	\$ -	\$ -	\$ -	\$ -
8 -	\$ -	\$ -	\$ -	\$ -
9 -	\$ -	\$ -	\$ -	\$ -
10 -	\$ -	\$ -	\$ -	\$ -
**AS Reimbursable Expenses	\$ -	\$ -	\$ -	\$ -
Subtotal - USDA Scope of Work:	\$ 1,085,900.00	\$ -		
Totals	\$ 1,085,900.00	1,085,900.00	\$ -	\$ 1,085,900.00

(1) Rural Development will provide funding for reasonable engineering services based on costs observed on similar projects.

(2) If other services are required to meet third party funding requirements these should be itemized separately. Rural Development will not provide funding for the duplication of services. Any costs listed should be for services specifically covered by the third party funder. Specific details need to be provided in Exhibit J.

(3) Non-Eligible costs represent other services or costs not agreed to by Rural Development or a third party funder.

Rural Development will make funding determinations based on the Total USDA Scope of Work. Non-Eligible Costs will not be considered. The Owner will need to cover these costs in addition to the typical Owner Contribution expected as part of the overall project application. Furthermore, the costs listed above need to represent all engineering fees for this company. No secondary engineering agreement with this company shall be developed for this proposed project.

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

[Note to User: Delete this Exhibit D if Engineer will not be providing Resident Project Representative Services under Paragraph A1.05.A.2.]

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. **Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.**
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee; assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's On-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.

9. *Review of Work; Defective Work:*

- a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but are nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued after the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or logbook, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to

questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
- g. Maintain all Manufacturers' Certifications in the project file and on-site during construction to ensure compliance with AIS, as applicable.

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- ~~b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor. [Deleted]~~
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT E**, consisting of **3** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

[Notes to User]

- 1. Exhibit A, Paragraph A1.05.A.25 of this Agreement indicates that in connection with recommending final payment of the Construction Contractor, the Engineer will also provide a notice to Owner and Contractor of the acceptability of the Work, subject to stated limitations. The form for that purpose, "Notice of Acceptability of Work," is attached on the following pages of this Exhibit E.***
- 2. The Notice of Acceptability of Work should be served in compliance with the requirements for service of notice under the Construction Contract. See Paragraph 18.01, Giving Notice, of EJCDC C-700 (2018), Standard General Conditions of the Construction Contract.]***



NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER: City of Southport, NC

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER: L.E. Wooten & Company dba The Wooten Company

NOTICE DATE:

To: City of Southport, NC
Owner

And To: _____
Contractor

From: L.E. Wooten & Company dba The Wooten Company
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

Exhibit E – Notice of Acceptability of Work.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is **EXHIBIT G**, consisting of **3** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

a. Workers' Compensation: **Statutory**

b. Employer's Liability:

- 1) Bodily injury, each accident: **\$ 500,000**
- 2) Bodily injury by disease, each employee: **\$ 500,000**
- 3) Bodily injury/disease, aggregate: **\$ 500,000**

c. General Liability:

- 1) Each Occurrence (Bodily Injury and Property Damage): **\$ 1,000,000**
- 2) General Aggregate: **\$ 2,000,000**

d. Excess or Umbrella Liability:

- 1) Per Occurrence: **\$ 9,000,000**
- 2) General Aggregate: **\$ 9,000,000**

e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):

\$ 1,000,000

f. Professional Liability:

- 1) Each Claim Made **\$ 2,000,000**
- 2) Annual Aggregate **\$ 4,000,000**

2. By Owner:

a. Workers' Compensation: **Statutory**

b. Employer's Liability --

- | | |
|--|--------------------|
| 1) Bodily injury, Each Accident | \$2,000,000 |
| 2) Bodily injury by Disease, Each Employee | \$2,000,000 |
| 3) Bodily injury/Disease, Aggregate | Statutory |

c. General Liability --

- | | |
|---|--------------------|
| 1) General Aggregate: | N/A |
| 2) Each Occurrence (Bodily Injury and Property Damage): | \$2,000,000 |

d. Excess Umbrella Liability

- | | |
|-----------------------|------------|
| 1) Per Occurrence: | N/A |
| 2) General Aggregate: | N/A |

e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

\$2,000,000

f. Other (specify): **\$[]**

B. *Additional Insured:*

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insured:

a. L. E. Wooten & Company, dba The Wooten Company
Engineer

b. []
Engineer's Consultant

c. []
Engineer's Consultant

d. []
[other]

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 Dispute Resolution

- A. *Mediation:* Owner and Engineer agree that they shall first submit all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by **Perkinson Mediations / Ron Perkinson, Attorney at Law**. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. Limitation of Engineer's Liability

1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement

B. Indemnification by Owner:

To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer: **L.E. Wooten & Company dba The Wooten Company**

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- _____ Additional Services to be performed by Engineer
- _____ Modifications to services of Engineer
- _____ Modifications to responsibilities of Owner
- _____ Modifications of payment to Engineer
- _____ Modifications to time(s) for rendering services
- _____ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:
City of Southport, NC

By: _____
Print
Name: _____

Title: _____

Date Signed: _____

ENGINEER:
**L.E. Wooten & Company dba
The Wooten Company**

By: _____
Print
Name: **W. Brian Johnson, PE**

Title: **Vice President**

Date Signed: _____

NC-RD - Engineering Services Agreement (ESA) - Amendment Table				
	Column #1	Column #2	Column #3	Column #4
Description of Services (EJCDC E-500)	Original Agreement Dated:	Agreement as of Amendment #__:	Changes as of Amendment #__:	Total Current Agreement as of:
	<insert date>	<insert amend date>	<insert amend date>	<insert amend date>
C.2.01.A.1 Basic Services	\$ -	\$ -	\$ -	\$ -
1. Study and Report Phase:				
a. Preliminary Engineering Report	\$ -	\$ -	\$ -	\$ -
b. Environmental Report	\$ -	\$ -	\$ -	\$ -
c. Other- Tasks/Deliverables: ()	\$ -	\$ -	\$ -	\$ -
2. Preliminary Design Phase:	\$ -	\$ -	\$ -	\$ -
3. Final Design Phase:	\$ -	\$ -	\$ -	\$ -
4. Bidding or Negotiating Phase	\$ -	\$ -	\$ -	\$ -
5. Construction Phase:	\$ -	\$ -	\$ -	\$ -
6. Post Construction Phase:	\$ -	\$ -	\$ -	\$ -
**BS Reimbursable Expenses	\$ -	\$ -	\$ -	\$ -
C.2.04.A.1 - Resident Project Representative Services	\$ -	\$ -	\$ -	\$ -
1. RPR Hourly Rate Budget	\$ -	\$ -	\$ -	\$ -
**RPR Reimbursable Expenses	\$ -	\$ -	\$ -	\$ -
C.2.05.A.1 - Total Additional Services	\$ -	\$ -	\$ -	\$ -
1 -	\$ -	\$ -	\$ -	\$ -
2 -	\$ -	\$ -	\$ -	\$ -
3 -	\$ -	\$ -	\$ -	\$ -
4 -	\$ -	\$ -	\$ -	\$ -
5 -	\$ -	\$ -	\$ -	\$ -
6 -	\$ -	\$ -	\$ -	\$ -
7 -	\$ -	\$ -	\$ -	\$ -
8 -	\$ -	\$ -	\$ -	\$ -
9 -	\$ -	\$ -	\$ -	\$ -
10 -	\$ -	\$ -	\$ -	\$ -
**AS Reimbursable Expenses	\$ -	\$ -	\$ -	\$ -
Totals	\$ -	\$ -	\$ -	\$ -

Rural Development Concurrence:

*RD concurs as the lender of funds to defray costs of this contract, and without liability for any payments thereunder.

Column #1:	<i>This column represents the original engineering services agreement approved by the Owner and Rural Development. Note this column should remain unchanged.</i>
Column #2:	<i>This column represents the total agreement per any previous amendments (amendments prior to that shown in Column #3) approved by Owner and Rural Development. Note this column should remain blank for Amendment #1.</i>
Column #3:	<i>This column represents the specific changes per the proposed amendment.</i>
Column #4:	<i>This column represents the total engineering services agreement proposed.</i>

NC-RD - Resident Project Representatives (RPR) - Plan

**This inspection plan needs to be finalized by the Engineer once construction contracts are awarded. This plan needs to be approved by Owner and Rural Development prior to the issuance of the Notice to Proceed for any construction contract.*

RD Project : _____

Date: _____

Owner: City of Southport, NCEngineering (ENG) Firm: The Wooten Company

Owner/Eng. Project#: _____

Resident Inspection Services - Budget:

Proposed Inspector	Contracts Assigned		Estimated Cost
1	0		\$ -
2	0		\$ -
3	0		\$ -
4	0		\$ -
5	0		\$ -
RPR Reimbursable Expenses			\$ -
<i>Subtotals</i>			\$ -

Construction Contract Summary:

Contracts		Award Amount	Contract Time ⁽¹⁾ Subs. Completion	Contract Time ⁽¹⁾ Final Payment
Contract #1	<insert contractor's name>	\$ -		
Contract #2		\$ -		
Contract #3		\$ -		
Contract #4		\$ -		
Contract #5		\$ -		
Contract #6		\$ -		
<i>Subtotal:</i>		\$ -	⁽¹⁾ Contract times in days	

Signatures:

The Wooten Company
(Name of Engineering Firm)

(Engineer's Signature)

(Printed Name & Title)

(Owner's Signature)

(Printed Name & Title)

** By signing this invoice the Owner represents, to the best of their knowledge, that the Engineer has provided the services as billed for to date.*

**As Engineer on this Project, I hereby certify that the proposed Resident Project Representation personnel listed above are recommended by my company to provide the services as detailed in Exhibit D of the Engineering Services Agreement for this Project and that the proposed budget noted above has been prepared in good faith to provide inspection services until completion of the construction phase and will not be exceeded without written amendment approved by Owner and Agency.*

Rural Development Concurrence:

(RD Representative's Signature)

(Printed Name & Title)

** RD concurs as the lender of funds to defray costs of this contract, and without liability for any payments thereunder.*

Owner: City of Southport, NC
 ENG Firm: The Wooten Company
 RD Project: 0

Date: 1/0/1900

	Total Budget
C.2.04 - Compensation Packet RPR-2: RPR Services-Standard Hourly Rates:	\$ -

**The total estimate under this Article equals cumulative hours charged to the Project by each class of Engineer's personnel, times standard Hourly Rates for each applicable billing class for all RPR services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. This estimate should be based upon full-time RPR services on an eight-hour workday, Monday through Friday, over the construction contract time. Total compensation shall not exceed the estimated budget amount unless documented by amendment and approved in writing by the Owner and Agency.*

Estimated Contract Time (Calendar Days) =		days	Total Contract Hours (8hr/day)
Actual Work days (Mon. - Fri.) =	0	days	0 hrs.

Estimated Budget:					
Inspector ⁽¹⁾	Classification ⁽²⁾	Contracts Assigned	Estimated Hours	Hourly Rate \$/hr. ⁽²⁾	Estimated Cost
1					\$ -
2					\$ -
3					\$ -
4					\$ -
5					\$ -
RPR Reimbursable Expenses ⁽³⁾ :					\$ -
		Subtotals:	0		\$ -

The following documents need to be attached to this inspection plan:	
1.	Copies of all resumes for each of the proposed inspectors listed above. Resumes should detail a level of experience that supports the proposed classifications.
2.	A copy of Appendix 2 to Exhibit C "Standard Hourly Rate Schedule" as provided in the Engineering Services Agreement (ESA). The classification of each proposed inspector needs to be appropriate for the type of contract assigned. Rural Development defines the following: Advanced Inspector - At least five years experience with similar construction (limited supervision by Engineer); Intermediate Inspector - One to five years experience with similar construction; Entry Level Inspector - Less than one year experience with similar construction (needs direct supervision by Engineer). Proposed hourly rates should reflect the experience level of the proposed inspector and represent a reasonable cost for the proposed services.
3.	A detailed breakdown that justifies the proposed budget for the RPR Reimbursable Expenses. The costs included in this budget need to correspond to Appendix 1 to Exhibit C "Reimbursable Expenses Schedule" as provided in the Engineering Services Agreement (ESA).

***Per Article C2.04.B.4 - To the extent necessary to verify Engineer's charges, Engineer shall make copies of such records available at no cost.**

U.S. DEPARTMENT OF AGRICULTURE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, **Federal Register** (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

L.E. Wooten & Company dba The Wooten Company

Organization Name

West Stanly WWTF Phase 2 Expansion

PR/Award Number or Project Name

W. Brian Johnson, PE

Name(s) and Title(s) of Authorized Representative(s)

Vice President

Signature(s)

Date

Instructions for Certification

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(signature)

(date)

W. Brian Johnson, PE / Vice President

(name / title)

oOo

(08-21-91) PN 171

RUS CERTIFICATION PAGE

PROJECT NAME: Wastewater System Replacement

The Engineer and Owner hereby concur in the Funding Agency required revisions to E-500.
In addition, Engineer certifies to the following:

All modifications required by RUS Bulletin 1780-26 have been made in accordance the terms of the license agreement, which states in part that the Engineer “must plainly show all changes to the Standard EJCDC Text, using “Track Changes” (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions.” Such other means may include attachments indicating changes (e.g., Supplementary Conditions modifying the General Conditions).

SUMMARY OF ENGINEERING FEES

Note that the fees indicated on this table are only a summary and if there is a conflict with any provision of Exhibit C, the provisions there overrule the values on this table. Fees shown in will not be exceeded without the concurrence of the Agency.

Basic Services	<u>\$686,800.00</u>
Resident Project Observation	<u>\$370,600.00</u>
Additional Services	<u>\$28,500.00</u>
TOTAL:	<u>\$1,085,900.00</u>

Any adjustments to engineering fees or changes to maximum estimated values must be approved by the Agency and must include a table of what specific category or categories of fees are being changed, what fees were before and after the change, and the resulting total fee.

L.E. Wooten & Company dba The Wooten Company

Engineer

Date

W. Brian Johnson, PE / Vice President

Name and Title/Signature**City of Southport, North Carolina**

Owner

Date

Joseph P. Hatem, MD, MPH/Mayor

Name and Title/Signature**Agency Concurrence:**

As leader or insurer of funds to defray the costs of this Contract, and without liability for any Payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

Agency Representative

Name and Title (Please Print)

Date

Basic Services - Submittal Schedule

The below list represents the typical Agency expectations in regards to the overall submittal requirements associated with Basic Services. As noted in Article C2.01 of Compensation Packet BC-1 (lump sum) any reimbursable expenses not included in the lump sum fee shall be specifically detailed. The below items should be included in the lump sum fee for basic services and used as a budgeting tool when BC-2 (hourly rates) is used. This list needs to be finalized by the Owner and Engineer prior to executing the engineering services agreement (ESA).

			Copies Needed			
#	Document	Details	Agency		Owner	
Study and Report Phase:			E.C.	H.C.	E.C.	H.C.
1	Draft PER	Use RUS Bulletin 1780-2 w/ NC Supplement.	0	2		4
2	Draft ER	Use RUS Bulletin 1794A-602.	0	2		4
3	Revised/final PER	Engineer should expect at least one revision.	2	2	1	4
4	Revised/final ER	Final number of copies depends on the level of review.	2	2	1	4
5	Other Deliverables	Specific details need to be provided by Owner.				
Preliminary Design Phase:						
6	Draft Prelim. Docs. (Plans/Specs)	Email RD Area Office notification of submittal to Owner.	0	0		4
7	Final Prelim. Docs. (Plans/Specs)	Email RD Area Office notification of submittal to Owner.	0	0		4
8	Revised Opinion of Probable Construction Cost (A1.02.A.11)	Email RD Area Office notification of submittal to Owner.	0	0		
9	Other Deliverables	Specific details need to be provided by Owner.				
Final Design Phase:						
10	Draft Bidding Documents	Email RD Area Office notification of submittal to Owner.	0	0		4
11	Final Bidding Documents	Use NC-RD_Att #5 (RD will need one full-sized set).	1	1		4
12	Revised Opinion of Probable Construction Cost (A1.03.A.4)	RD will provide a cursory review.	*	1		
13	Other Deliverables	Specific details need to be provided by Owner.				
Bidding or Negotiating Phase:						
14	Bid Addenda	Email RD Area Office copies. See note #8.	*	0		
15	Recommendation of Award	Review overall project budget with RD Area Office.	*	1	1	4
16	Executed Contract Documents	Use RD Attachment #5. Rural Development requires one final bound copy of the executed contract(s) which includes all addenda and one 1/2 sized set of the final plans.	1	1	1	1
17	Other Bidding Phase Deliverables	Specific details need to be provided by Owner.				
Construction Phase:						
18	Pre-construction Conference Minutes	Meeting to be chaired by Engineer. RD will review items as detailed in NC-RD_Attachment#7.	*	1		6
19	Engineer's Inspection plan	Use NC-RD_Attachment #3.	*	1		3
20	Engineer's Invoice	Use NC-RD_Attachment #4.	*	1		3
21	Monthly Progress Meeting Minutes	Meeting to be chaired by Engineer who will also prepare and circulate meeting minutes.	*	0		3
22	Engineer's Monthly Reports	Engineer shall visit site and observe construction at least monthly and document visit (A1.05.A.9).	*	0		
23	RPR Daily Inspection Reports	Reference D1.01.C.11 and RUS Bulletin 1780-18.	*	1		2
24	Change Orders	Use EJCDC C-941.	*	1		4
25	Substantial Completion	Use EJCDC C-625. Needs to include final punch-list.	*	1		4
26	Final Close-out documents	Reference NC-RD_Attachment #7 for a full list of the typical close-out documents. Note RD will require one electronic copy of the Record Drawings.	1	1		4
27	Other Bidding Phase Deliverables	Specific details need to be provided by Owner.				

Basic Services Submittal Schedule Notes:

- (1) E.C. = Electronic Documents - These items need to be submitted on a CD in electronic portable document format (PDF). Where an asterisk "*" is shown a PDF copy sent by email is acceptable. The Owner is responsible to determine how many electronic copies they will need of each document. Note the Supplementary Conditions SC 2.02.A per RUS Bulletin 1780-26 requires the Owner to provide the Contractor at least one electronic PDF copy of the Contract Documents.
- (2) H.C. = Hardcopy. The Owner is responsible to determine how many hardcopies they will need of each document. Note the Supplementary Conditions SC 2.02.A per RUS Bulletin 1780-26 requires the Owner to provide the Contractor at least five hardcopies of the Contract Documents.
- (3) All efforts should be made by the Engineer to minimize printing costs during the bidding period. Rural Development recommends allowing bidders to provide a deposit and return suitable bidding documents in order to reduce the total number of plans sets that need to be reproduced.
- (4) The Engineer should check with the Rural Development Area Office prior to a full re-submittal of Final Bidding Documents. If only minor changes are required the Engineer may only have to re-submit the specific changes.
- (5) The Rural Development Area Office shall retain one fully executed bound copy of the contract(s) and one 1/2 sized set of plans throughout the construction period. After final construction close-out the 1/2 sized set of plans on file with RD will be replaced by the electronic copy of the Record Drawings.
- (6) The Rural Development Area Office will determine if RPR Daily Inspection Reports are kept in the file. At a minimum the Engineer will provide copies of all reports by email on a monthly basis.
- (7) The Engineer is responsible for reviewing the overall requirements regarding RUS Bulletin 1780-26 and NC PSS Memo FY2014-001. Any concerns or questions regarding these documents should be discussed with Rural Development prior to submitting the executed engineering services agreement.
- (8) The RD Area Office needs to be emailed copies of all bid addenda. Significant changes issued by bid addenda need to be concurred in by Rural Development prior to bid opening. The RD Area Office will determine if a review is warranted by the RD State Engineer.

LOBBYING CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including contracts, subcontracts, and sub grants under grants and loans) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(Signature)

(Date)

(Name/Title)



United States Department of Agriculture

AD-1048

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552(a), as amended). This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, and 2 C.F.R. §§ 180.300, 180.355, Participants' responsibilities. The regulations were amended and published on August 31, 2005, in 70 Fed. Reg. 51865-51880. Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

According to the Paperwork Reduction Act of 1995 an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0027. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal and civil fraud privacy, and other statutes may be applicable to the information provided.

(Read Instructions On Page Two Before Completing Certification)

- A. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
- B. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ORGANIZATION NAME

PR/AWARD NUMBER OR PROJECT NAME

NAME(S) AND TITLE(S) OF AUTHORIZED REPRESENTATIVE(S)

SIGNATURE(S)

DATE

The U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

Instructions for Certification

- (1) By signing and submitting this form, the prospective lower tier participant is providing the certification set out on page 1 in accordance with these instructions.
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
- (3) The prospective lower tier participant shall provide immediate written notice to the person(s) to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, at 2 C.F.R. Parts 180 and 417. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- (5) The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- (6) The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the System for Award Management (SAM) database.
- (8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (9) Except for transactions authorized under paragraph (5) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

NC-RD ENGINEERING SERVICES AGREEMENT CHECKLIST

(2014 Edition of the EJCDC E-500, Agreement Between Owner and Engineer for Professional Services)

Notes to User: This exhibit provides a checklist for Owner and Engineer to use to assemble the Engineering Services Agreement for a RUS-funded project. Questions should be directed to the responsible NC-RD Area Specialist.

	Contents	Form / Notes
☒	01 - Engineering Agreement	EJCDC E-500 as modified by RUS Bulletin 1780-26 (2019) Exhibit C, Attachment 1
☒	02 - Exhibit A: Engineer's Services	as modified by RUS Bulletin 1780-26 (2019) Exhibit C, Attachment 1
☒	03 - Exhibit B: Owner's Responsibilities	as modified by RUS Bulletin 1780-26 (2019) Exhibit C, Attachment 1
☒	04a - Exhibit C: BC-1: Basic Services - Lump Sum*	as modified by RUS Bulletin 1780-26 (2019) Exhibit C, Attachment 1
☐	04b - Exhibit C: BC-2: Basic Services - Standard Hourly Rate*	as modified by RUS Bulletin 1780-26 (2019) Exhibit C, Attachment 1
☐	05a - Exhibit C: RPR-1: RPR Services - Lump Sum*	as modified by RUS Bulletin 1780-26 (2019) Exhibit C, Attachment 1
☒	05b - Exhibit C: RPR-2 RPR Services - Hourly Rate*	as modified by RUS Bulletin 1780-26 (2019) Exhibit C, Attachment 1
☒	06 - Exhibit C: AS-1: Additional Services - Hourly Rate	as modified by RUS Bulletin 1780-26 (2019) Exhibit C, Attachment 1
☒	07 - Appendix 1 to Exhibit C: Reimbursable Expenses Schedule	If Exhibit C: BC-1 is used the lump sum amount shall include reimbursable expenses
☒	08 - Appendix 2 to Exhibit C: Standard Hourly Schedule	Hourly rates for RPRs need to be listed; rates effective "on or after" date of agreement
☒	09 - Exhibit D: RPR Duties and Responsibilities	as modified by RUS Bulletin 1780-26 (2019) Exhibit C, Attachment 1
☒	10 - Exhibit E: Notice of Acceptability	
☐	11 - Exhibit F: Construction Cost Limit (if applicable)	as modified by RUS Bulletin 1780-26 (2019) Exhibit C, Attachment 1
☒	12 - Exhibit G: Insurance	NC-RD strongly recommends all agreements to include adequate professional liability coverage
☒	13 - Exhibit H: Dispute Resolution	
☒	14 - Exhibit J: Special Provisions	Add provision that 2018 EJCDC C-Series documents with RD modifications will be used
☐	15 - Exhibit K: Amendment to Agreement	
☒	16 - NC-RD ESA Amendment Table	Form provided by NC-RD - all amendments to this agreement shall include a copy of this form
☒	17 - NC-RD RPR Plan	Form provided by NC-RD - prepared and executed after construction contracts are awarded
☒	18 - NC-RD ESA Invoice	Form provided by NC-RD - this invoice will be used for all ESA reimbursement requests
☒	19 - Debarment Certification	Form AD-1048
☒	20 - Lobbying Certification	RD Instruction 1940-Q Exhibit A-1
☒	21 - Engineering Agreement Certification	RUS Bulletin 1780-26 (2019) Exhibit C, Attachment 2, Page 1
☐	22 - Owner's Pre-Audit Statement	Example form provided by NC-RD (Included on Signature page)

- NOTES:
1. EJCDC documents are available from EJCDC, the National Society of Professional Engineers, the American Council of Engineering Companies, or the American Society of Civil Engineers. RD offices cannot distribute EJCDC documents.
 2. For questions and copies of RD documents please contact the responsible NC-RD Area Specialist.

* Indicates that only one of the two options should be used for items 04 and 05.



BOARD OF ALDERMEN AGENDA ITEM SUMMARY

DATE: 1/12/2023 DEPARTMENT: Parks and Recreation

PRESENTED BY: Heather Hemphill / Dr. Jim Herstine

ITEM SPONSORED BY: Parks and Recreation Department

ITEM/TOPIC: Proposed 2023-2028 Parks Recreation and Open Space Master Plan

COST: Multiple Projects BUDGET LINE ITEM: Future Budgets

JUSTIFICATION: This 5-year master plan, developed from citizen input, helps guide the development of activities and facilities for the Southport Parks and Recreation Department. It also is very instrumental in obtaining any State and Federal grant money.

IMPACT IF NOT APPROVED: City will not have clear guidelines for development of facilities and activities and will not have an advantage when applying for grant funds on any level.

DEPARTMENT HEAD COMMENTS: The development of the Parks and Recreation Master plan is only as good as having them adopted by the governing board. This proposed 5 year master plan encompasses and is driven with citizen input. This document is the guiding force for the future of Parks and Recreation in Southport.

CITY MANAGER COMMENTS: This document was well researched and put together by Dr. Herstine, the Commission and the staff of Parks and Recreation with the public's input. The City needs to have a Master Plan for this Department and all other Departments and facilities of the City.

ATTACHMENTS: Copy of the Parks and Recreation Plan

REQUESTED ACTION: Request that the Board of Alderman formally adopt the proposed 2023-2028 Parks, Recreation and Open Space Master Plan as recommended by the Parks and Recreation Commission.

PROPOSED MOTION: Motion for the Board of Aldermen to adopt the Resolution adopting the Parks and Recreation Master plan as recommended by the Parks and Recreation Committee, and to utilize this blueprint as a guideline for future budgeting and grant opportunities for Parks and Recreation.

**CITY OF SOUTHPORT, NORTH CAROLINA
RESOLUTION ADOPTING THE 2023 CITY OF SOUTHPORT
PARKS AND RECREATION MASTER PLAN**

WHEREAS, the City of Southport has operated an active Parks and Recreation Department for many years; and

WHEREAS, the Parks and Recreation Committee was established in 1978 with the adoption of Article IV. Division 1, which lists the responsibilities and authority of the Parks and Recreation Committee; and

WHEREAS, one of the primary responsibilities of the Committee is to provide, acquire, construct, equip, operate, and maintain parks and facilities for the public's use; and

WHEREAS, as the City of Southport grows, there is a need to update plans and facilities to better accommodate the recreational needs of the citizens; and

WHEREAS, the Parks and Recreation Committee and private consultant have developed a Parks and Recreation Master Plan, which identifies the City's potential needs, strengths, and goals for the future.

WHEREAS, the City has reviewed the draft plan and accepts the plan as a tool to enhance the Park and Recreation department and public facilities.

NOW, THEREFORE, the Board of Aldermen for the City of Southport approves and adopts the Parks and Recreation Master Plan as presented by the consultant and Committee and understands the importance of recreation to the happiness of welfare of its citizens and others that visit Southport.

Adopted this _____ day of January 2023.

Joseph P. Hatem, M.D., M.P.H.
Mayor, City of Southport

Dorothy Dutton, City Clerk

Dorothy Dutton

From: Dorothy Dutton
Sent: Tuesday, January 3, 2023 12:08 PM
To: Southport abc; William Davis; Angela Wadsworth
Cc: Bonnie Therrien; Joseph P. Hatem
Subject: ABC Board Interviews
Attachments: Perry Fotinatos Resume 4_2011.docx; Steadman_10-31-22-full-esigned.pdf; Brian Kolhoff ABC Appointment Application.pdf; Kolhoff resume 2022[74].pdf; Ryan Morgan app.pdf; Zach Zuelke Nov 2022.pdf

Good afternoon!

I have scheduled the interviews for the ABC Board as requested.
Here is the schedule:

January 4th (Wednesday): Indian Trail Meeting Hall

2:00 p.m. Perry Fontinatos
2:20 p.m. Ryan Morgan
2:40 p.m. Zach Zuehlke (Unless he has Jury Duty)
3:00 p.m. Adam Steadman
3:20 p.m. Brian Kolhoff

I have attached their resumes/applications.
Another group has reserved the building at 4:00 p.m., so please keep that in mind. Also, please ensure the space is back as it was if you move anything around. If you need help, just let me know! Please let me know if you need me to attend or open the space before 2:00 p.m.

Also, we are adding this item to the January agenda. Please let me know if no recommendation will be made or if you have questions.

Thanks so much!

Dorothy Dutton
City Clerk
City of Southport
(910) 457-7900 x1010



The applicants from earlier in the year were still being considered for the appointments, with the exception of Jennifer Crumpler and Kenneth Harris, who withdrew their applications. Heather Kos never returned my message.



APPLICATION FOR APPOINTMENT TO BOARDS AND COMMITTEES

The undersigned is interested in community service and provides this information for use by the Board of Aldermen in considering their qualifications for appointment to the following boards or committees.

Name Perry Fotinatos

Spouse Name *(If married)* Diana Fotinatos

Appointment(s) for which you are applying:

☒ ABC Board

☐ Forestry Committee

☐ Beautification Committee

☐ Parks and Recreation Committee

☐ Board of Adjustment

☐ Planning Board

Do you have a preference? ABC Board

Physical Address: 3901 Marshfield Drive Southport NC 28461

Mailing Address: 3901 Marshfield Drive Southport NC 28461

Resident of Southport ☒ Yes ☐ No

How Many Years? 9

State and County of Legal Residence NC, Brunswick County

Main Phone Number 917-363-5465

Secondary Number _____

E-mail Address perry.fotinatos@gmail.com

You may submit a resume along with your application detailing the following section if you so choose.

Education Queens College - one year

Present Job/Employer Retired

Past Employment Vice President Goldman Sachs and Co., Atlantic Health, JVC Corp.

Current Civic/Community Participation Member of; St. James Service Club, Friends of the Library (Lifetime), Southport Historical Society

Reasons you are qualified for this appointment *(optional)* _____

Before I retired, I held executive positions in Technology in the Financial, Healthcare, and Consumer Products sectors.

My responsibilities included strategic planning, software development, operations, budgeting and forecasting,

vendor management, solutions development and engineering, and client relations. (Resume attached).

Do you anticipate any conflicts of interest if appointed? Yes ☐ No ☒

Signature _____ Date 10/28/2022

Please Return to: City Clerk, Dorothy Dutton

ddutton@cityofsouthport.com or City of Southport Clerk: 1029 N. Howe Street Southport, N.C. 28461



INSTRUCTIONS AND BOARD AND COMMITTEE LISTINGS

- ✓ You are encouraged to attend and observe meetings of any board or committee of which you desire appointment and to obtain other information about the duties and work.
- ✓ The information you provide will be used by the City of Southport in making appointments and may be used in news releases to identify you if you are appointed.
- ✓ Any additional information you feel will be of use to the Aldermen in reviewing your application is welcomed. Please attach additional sheets, if necessary.
- ✓ If appointed, please bear in mind the importance of attending meetings. A good attendance record is required to maintain membership.

ABC Board

Term: 3-year term
Membership Composition: 3 Members
Meetings: 2nd Wednesday of each month at 6:30 p.m.
Major Function(s): To review and recommend actions and policies to the local governments and the State governing body. The Southport ABC Board of Directors oversees the management and services of the municipal local ABC Store in accordance with all State Regulations and procedures governing the establishment and functioning of the store. The responsibilities include the control and sale of spirituous beverages while providing a customer friendly experience in a modern and efficient store.

Beautification Committee

Term: 2-year term
Membership Composition: 8 Members (residents of the city)
Meetings: 1st Tuesday every month, 5:00 p.m.
Major Function(s): Review, recommend actions and participate in public beautification projects. This may include planting, weeding, community appearance, cemetery cleanup, staining benches and picnic tables, monthly workdays and pop-up workdays as needed, participation in the garden stewardship program, assist with seasonal activities (holiday decorations, nature fest, day of service, etc.)

Board of Adjustment

Term: Members chosen as statutory terms expire
Membership Composition: 6 members within city limits (5 regular positions, and 1 alternate)
3 members from the ETJ (2 regular positions, and 1 alternate)
Meetings: 4th Tuesday at 4:30pm, and other times, as needed
Major Function(s): Act as a Quasi-Judicial body to hear appeals of Building, Inspector's decisions, Special-Use permits, and other interpretations of the Zoning Ordinance. Varies on an as-needed basis



Forestry Committee

Term:	2-year term
Membership Composition:	7 Members
Meetings:	2 nd Tuesday every month, 5:00 p.m.
Major Function(s):	Review and recommend actions to preserve and enhance the community's trees. Recognizing that the historical personality of the town is in part defined by its trees, in particular the live oaks. The committee's actions will include protection of existing trees, tree replenishment, public education and other functions related to the community's forest environment.

Parks and Recreation Committee

Term:	2-year term
Membership Composition:	6 members within city limits, 1 from the ETJ
Meetings:	2 nd Tuesday every month, 6:30 p.m.
Major Function(s):	To support the mission statement of the Southport Parks and Recreation Department, which is, <i>"To enhance the quality of life of the residents and visitors of the City of Southport through quality recreational programs for residents of all ages, and to provide and maintain safe and beautiful parks and facilities for the enjoyment of active and passive recreational activities."</i>

Planning Board

Term:	Members chosen as statutory terms expire
Membership Composition:	6 members within city limits (5 regular positions, and 1 alternate) 3 members from the ETJ (2 regular positions, and 1 alternate)
Meetings:	3 rd Thursday of the month, 6:00 p.m.
Major Function(s):	Develop and administer the Unified Development Ordinance, and CAMA Core Land Use Plan

Infrastructure and Software Development Manager

IT Infrastructure and software development executive recognized for building strategic solution driven systems and strong teams of delivery focused technologists. Accomplished technical manager with expertise in leading geographically distributed development and support staff. Demonstrated stewardship of 80 critical systems with a staff of up to 50 people and a budget of over five million dollars. Proven leader of large, enterprise wide initiatives requiring results driven, cross-functional client participation and collaboration. Inventor on 3 US technology patents.

- *Infrastructure Engineering*
- *Solutions Development*
- *Web Based Software Dev.*
- *Process Redesign*
- *Outsourcing*
- *Client Relations*
- *Resource Management*
- *Disaster Recovery*
- *Strategic Planning*
- *Risk Management*
- *Vendor Management*
- *Budgeting and forecasting*

Professional Experience

ATLANTIC HEALTH, Morris Plains, NJ

***Disaster Recovery Coordinator and Virtualization Project Manager* 2009 – 2021 (Retired)**

Lead the strategy and development of a resilient architecture for all technology processing platforms in this multi-hospital organization. Led the server virtualization initiative and achieved a seventy percent physical to virtual conversion of the servers that could be virtualized.

- Evaluate and implement disaster recovery plans for critical processing environments and address potential risks (people, processing, technology) that may impact the organization.
- Liaise with technology business units to provide oversight and support for disaster recovery planning.
- Establish a testing program for all processing environments (Core Infrastructure / Applications) working with Technology Infrastructure.
- Recommend and provide a continuing roadmap for the technology to be utilized within the disaster recovery programs.
- Provide management reporting for the identification of potential processing risks and regulatory concerns.

GOLDMAN SACHS AND COMPANY, New York, NY

1986 – 2009

VP, Technology Infrastructure Software Development

1998 - 2009

Led the global software development and evaluation team of Technology Infrastructure within Goldman Sachs which has a client base of 1500 Infrastructure technologists.

- Utilized a follow the sun development approach to maximize productivity and enhance delivery timelines in support of our Network Mgmt., Enterprise Storage, Provisioning, Workflow, Telecom, Trouble Ticketing, Identity Mgmt., Change Mgmt. and Data Center systems.
- Leveraged a strong functional knowledge of Infrastructure Technology to develop strategic systems such as our **patented** Application Directory. This application acts as a global inventory of our applications giving us a multi-layer application view of our physical environment.
- Partnered with our Services and Engineering teams to design and deliver our workflow driven Data Center Move Add Change system (TMAC). The TMAC system is being used globally to schedule, coordinate, provision/de-provision, inventory and risk assess the movement of entire datacenters to new locations as well as manage inter datacenter activity.
- Consolidated a number of disparate infrastructure software development groups using different skill sets into one cohesive team with a defined direction and focused development methodology. Introducing this initiative enabled career growth and employee retention for over 100 technology professionals.

- Assumed additional divisional responsibility following an organizational restructure. Expanded our technology footprint by absorbing the Firmwide Corporate Services Technology department along with 40 new applications and minimal staff.

VP, Firmwide Systems - Human Capital Management Technology 1994-1998

Transitioned from technical DBA to functional software development manager to take advantage of strong delivery and troubleshooting abilities.

- Assumed management responsibility for a group of 30 software developers and the delayed implementation of a PeopleSoft Human Resource Management System to get the project back on track and meet aggressive new abbreviated timelines.
- Successfully managed to influence our client base away from an expensive home grown custom tailored HR system to a generic industry standard HRMS with minor modifications and enhanced functionality.

VP, Enterprise Technology - Data Base Administration 1986-1994

Lead responsibility, as the Senior DBA, for the design and implementation of data base systems which solved strategic organizational and operational needs.

- The systems implemented encompassed access to IDMS and DB2 data bases as well as SYBASE Client Server architecture for Trade Processing, Multi-Currency Payment and Receipt, Sales Trade Entry and Management, Post Settlement Trade Processing, Customer Control (Customer Margin Evaluation), Customer Activity Inquiry, Government Clearance, MBS Clearance, and Customer Position.
- Key competencies included: logical and physical DB design, DB implementation and maintenance, application technical support, performance evaluation and tuning, recovery analysis and design as well as development of DBA standards, procedures and training.

DATRONICS INC., New York, NY 1985-1986

Staff Consultant - MIS consulting firm.

Client - Goldman Sachs & Co.

Responsibilities included data base and data dictionary coordination between the TPS Application Area and Data Administration, user interface, program specifications, program implementations, and unit and system testing for all Product Master modules.

JVC COMPANY OF AMERICA, Elmwood Park, NJ 1979-1985

Systems Analyst/DBA 1983-1985

Functioned as an IDMS-DBA, participating in the implementation and analysis of a major distribution system encompassing order entry, inventory control, accounts receivable and master file maintenance using CICS, IDMS and COBOL. Areas of responsibility included creation of all production and test data bases, IDMS/COBOL coding of all unload/reload programs as well as utilization of all IDMS utilities.

Programmer Analyst/Systems Analyst 1979-1983

Managed two hardware and software conversions. The first conversion was from a Microdata Reality System to three IBM System/34's. The second conversion encompassed converting three IBM System/34's to two IBM 4341's.

Perry Fotinatos
201-236-9135
8 Stone Fence Road – Allendale, NJ 07401
perry.fotinatos@verizon.net

MANUFACTURERS HANOVER TRUST CO., New York, NY

1977-1979

Programmer Analyst.

Responsibilities included analysis and programming of the Wholesale Demand Deposit Accounting System which accounted for 10 million dollars of transaction processing daily. Produced user documentation and trained the staff in all aspects of data entry.

PATENTS:

Application Directory - US Pat. 20080133594 - Filed Dec, 2006 - Goldman, Sachs & Co.

Global Inventory Warehouse - US Pat. 20080208897 - Filed Feb, 2007 - Goldman Sachs & Co.

Data Reconciliation - US Pat. 20090070237 - Filed Sep, 2007 - Goldman Sachs & Co.

EDUCATION:

Montclair State College, Montclair, NJ

Management Information Systems, 1991-1992

Queens College, Queens, NY

History Major, 1969-1970.

Professional Courses: Leadership, Mentorship, Conflict Resolution, Negotiations.

COMMUNITY SERVICE: Annual volunteer for Habitat for Humanity

REFERENCES: Furnished upon request.



APPLICATION FOR APPOINTMENT TO BOARDS AND COMMITTEES

The undersigned is interested in community service and provides this information for use by the Board of Aldermen in considering their qualifications for appointment to the following boards or committees.

Name Ryan C. Morgan
Spouse Name (If married) Paige L. Morgan

Appointment(s) for which you are applying:

- | | |
|---|--|
| ☒ ABC Board | ☐ Forestry Committee |
| ☐ Beautification Committee | ☒ Parks and Recreation Committee |
| ☐ Board of Adjustment | ☒ Planning Board |

Do you have a preference? _____

Physical Address: 817 Cape Harbor Dr. Southport, NC 28461

Mailing Address: 817 Cape Harbor Dr. Southport, NC 28461

Resident of Southport ☒ Yes ☐ No How Many Years? 32

State and County of Legal Residence Brunswick County, NC

Main Phone Number (910) 523-1801 Secondary Number (910) 477-0996

E-mail Address ranger12521@gmail.com

You may submit a resume along with your application detailing the following section if you so choose.

Education High School Diploma / Some college

Present Job/Employer Shift lead at Military Ocean Terminal Sunny Point

Past Employment U.S. Army

Current Civic/Community Participation NONE

Reasons you are qualified for this appointment (optional) _____

Born and raised in the Southport/Boiling Spring Lakes area. Loyal and devoted to my hometown. Military veteran that has moved up in rank very fast and has led/supervised people of all backgrounds and job descriptions.

Do you anticipate any conflicts of interest if appointed? Yes ☐ No ☒

Signature Ryan Morgan Date 03 May 2022

Please Return to: City Clerk, Dorothy Dutton

ddutton@cityofsouthport.com or City of Southport Clerk: 1029 N. Howe Street Southport, N.C. 28461



APPLICATION FOR APPOINTMENT TO BOARDS AND COMMITTEES

The undersigned is interested in community service and provides this information for use by the Board of Aldermen in considering their qualifications for appointment to the following boards or committees.

Name Zach L Zuehlke

Spouse Name (If married) NA

Appointment(s) for which you are applying:

☒ ABC Board

☐ Forestry Committee

☐ Beautification Committee

☐ Parks and Recreation Committee

☐ Board of Adjustment

☐ Planning Board

Do you have a preference? _____

Physical Address: 701 N Howe Street ,Unit 8, Southport, NC

Mailing Address: 701 N Howe Street, Unit 8, Southport, NC 28461

Resident of Southport ■ Yes No

How Many Years? 15+

State and County of Legal Residence Brunswick County, North Carolina

Main Phone Number 910-269-1200

Secondary Number NA

E-mail Address zlzuehlke@gmail.com

You may submit a resume along with your application detailing the following section if you so choose.

Education Masters Degree

Present Job/Employer Retired

Past Employment See Resume

Current Civic/Community Participation ABC Board Member, Special Projects Volunteer-Visitors Center

Reasons you are qualified for this appointment (optional) reappointment

Current ABC Board Member, experience in management, board leadership, retail management, see resume

Do you anticipate any conflicts of interest if appointed? Yes ■ No

Signature _____

Date November 4, 2022

Please Return to: City Clerk, Dorothy Dutton

or City of Southport Clerk: 1029 N. Howe Street Southport, N.C. 28461

Zach L. Zuehlke

701 North Howe Street Unit 8, Southport, North Carolina 28461

zlsruhlke@gmail.com

910-269-1200

Skill Highlights:

- Experienced working in professional, administrative, managerial, developmental and direct service roles.
- Trained and experienced in designing, developing, coordinating and facilitating workshops, training sessions, informational presentations and public relations activities.
- Worked in and managed retail operations and assisted in helping others with small business development.
- Knowledge, training and skill in counseling, human development theory, organizational development & intervention.
- Ability to engage a variety of constituencies from diverse backgrounds using interpersonal communication skills.
- Capable of supervising, training and evaluating personnel and programs using quality performance measures.
- Successful in integrating transferable skills into a new work setting with the ability to learn new skills quickly.
- Ability to work independently with minimal supervision and as a team member.

Work Experience:**Part Time Sales Associate** – CardSmart – Southport, NC -2013 -2019 – Store Closed**Program Coordinator, Temporary /Part-time**– NC Maritime Museum at Southport- Southport, NC – 2008 to 2010**Manager** – Moore Antiques – Southport, NC- 2008**Vocational Specialist/Marketing** – CorVel Corporation – Raleigh/Wilmington, NC- 2002 to 2008**Interim Director** – Brunswick County JobLink Career Center – Supply, NC – 2001-2002 – Part-time Contract**Assistant Director**- Small Business Center/Brunswick Community College – Bolivia, NC – 2000-2001- Interim**Customer Service/Resource Specialist** – Brunswick County JobLink Career Center – Supply, NC – 1998-2000**Associate Dean of Student Affairs** – Sarah Lawrence College- Bronxville, NC- 1994-1997**Director of Student Development** – The Atlanta College of Art- Atlanta, GA – 1989-1994**Relevant Presentations:**

Quality Customer Service

Program Planning and Facilitation

Events Coordinating & Evaluation

Community Service:

Southport ABC Board Member – Southport, NC, 2019- Current

Southport Visitors Center – Special Projects Volunteer - Current

Board of Directors – City Works Foundation, Inc. Arts & Crafts Center – Southport, NC – Past President

Board of Directors – The Maxwell Institute, Substance Abuse Treatment Center – Bronxville, NY

St. Jude's Wilmington Foundation – President, Wilmington, NC, 2018 - Current

Downtown Southport, Inc. – Strategic Planning Committee & Taste of Southport Committee – Southport, NC

Waterfront Market/DSI – Marketing Materials Designer & Coordinator – Southport, NC

Choices, Increasing Your Options Facilitator, Brunswick County Schools – Brunswick County, NC

Volunteer Administrative and Marketing Assistant – City of Southport, Department of Tourism – Southport, NC

Education:**Master of Arts** – The Ohio State University- Columbus, Ohio – Student Personnel Work/Educational Leadership**Bachelor of Arts** – Saint John's University, Collegeville, Minnesota – Sculpture & Art History*References available upon request*



APPLICATION FOR APPOINTMENT TO BOARDS AND COMMITTEES

The undersigned is interested in community service and provides this information for use by the Board of Aldermen in considering their qualifications for appointment to the following boards or committees.

Name Adam Michael Steadman

Spouse Name (If married) n/a

Appointment(s) for which you are applying:

☒ ABC Board

☐ Forestry Committee

☐ Beautification Committee

☐ Parks and Recreation Committee

☐ Board of Adjustment

☐ Planning Board

Do you have a preference? n/a

Physical Address: 5968 Dutchman Creek Road, Southport, NC 28461

Mailing Address: 5968 Dutchman Creek Road, Southport, NC 28461

Resident of Southport ☒ Yes ☐ No How Many Years? 7.5

State and County of Legal Residence North Carolina, Brunswick

Main Phone Number 910.850.0932 Secondary Number n/a

E-mail Address astead@thesteadmanlawfirm.com

You may submit a resume along with your application detailing the following section if you so choose.

Education University of North Carolina School of Law, University of Virginia School of Engineering and Applied Science

Present Job/Employer The Steadman Law Firm PLLC

Past Employment [see resume]

Current Civic/Community Participation North Carolina Bar Association, Trinity United Methodist Church

Reasons you are qualified for this appointment (optional) I would bring a legal perspective to the ABC Board, ensuring that decisions made by the Board comply with relevant state statutes, particularly those enumerated in N.C.G.S. Chapter 18B.

Furthermore, I would collaborate with fellow board members to ensure that all issues related to alcoholic beverage regulation are addressed in full consideration of the ethical concerns and financial interests of Southport and its residents.

Do you anticipate any conflicts of interest if appointed? Yes ☐ No ☒

Signature  Date October 31, 2022

Please Return to: City Clerk, Dorothy Dutton

ddutton@cityofsouthport.com or City of Southport Clerk: 1029 N. Howe Street Southport, N.C. 28461

Adam M. Steadman

The Steadman Law Firm PLLC
5968 Dutchman Creek Road
Southport, NC 28461

910.850.0932
astead@thesteadmanlawfirm.com

Qualifications

Registered Patent Attorney: United States Patent and Trademark Office *October 2008*

Licensed to Practice Law: North Carolina *September 2008*

Experience

The Steadman Law Firm PLLC

January 2011 – Present

- *Member-Manager – Primary Clients include IBM Corporation and Kyndryl Inc.*
 - Draft patent applications, prepare USPTO case responses and appeal briefs, and adapt foreign patent applications for domestic filing in the fields of electronics and computers
 - Conduct interviews with USPTO examiners and collaborate with domestic and foreign inventors
 - Evaluate patent search reports and invention disclosures

IBM Corporation, Research Triangle Park, NC

May 2008 – December 2010

- *Virtual Law Firm*
 - Prepared USPTO case responses and appeal briefs and revised foreign patent applications for domestic filing in the fields of electronics and computers

Fletcher Yoder, P.C., Houston, TX

July – August 2007

- *Summer Associate specializing in Patent Prosecution*
 - Prepared USPTO case responses and drafted patent applications in the fields of electronics and computers

Coats & Bennett, P.L.L.C., Cary, NC

May – June 2007

- *Summer Associate specializing in Intellectual Property Litigation and Patent Prosecution*
 - Drafted memoranda for litigation matters involving copyrights and trademarks
 - Prepared USPTO case responses and prior art search reports in the fields of mechanics, medical devices, and computers

University of North Carolina School of Law, Chapel Hill, NC

Summer 2006

- *Research Assistant for Professor Andrew Chin*
 - Performed legal research in the areas of antitrust law and intellectual property law

The Yarborough Law Firm, Fayetteville, NC

January – August 2005

- *Legal Clerk*
 - Performed field investigation, document review, and legal research
 - Provided assistance at client meetings and general technical support for the firm

Education

University of North Carolina, Chapel Hill, NC

May 2008

School of Law

Juris Doctor with Honors

- **North Carolina Law Review** 2006 - 2007
- **Chancellors' Scholarship**

University of Virginia, Charlottesville, VA

January 2005

School of Engineering and Applied Science

Bachelor of Science in Computer Engineering with Highest Distinction

- **A. Thomas Young Scholarship for Academic Excellence**
- **Timothy Grembowski Scholarship for Academic Excellence**
- **UVA Student Council Representative** 2001 - 2004
- **Tau Beta Pi Engineering Honor Society** Spring 2004
- **University of Virginia Hispanic Studies Program, Valencia, Spain** Spring 2003

Expertise

Computer: Microsoft Visual C++, HTML, JavaScript, Microsoft Visio

Languages: Written Spanish



APPLICATION FOR APPOINTMENT TO BOARDS AND COMMITTEES

The undersigned is interested in community service and provides this information for use by the Board of Aldermen in considering their qualifications for appointment to the following boards or committees.

Name Brian Kolhoff

Spouse Name (If married) Valerie Kolhoff

Appointment(s) for which you are applying:

☒ ABC Board

☐ Forestry Committee

☐ Beautification Committee

☐ Parks and Recreation Committee

☐ Board of Adjustment

☐ Planning Board

Do you have a preference? _____

Physical Address: 1020 Bonner Bussells Drive

Mailing Address: 1020 Bonner Bussells Drive

Resident of Southport ☐ Yes ☐ No How Many Years? 3.5

State and County of Legal Residence North Carolina, Brunswick

Main Phone Number 440-822-8554 Secondary Number _____

E-mail Address brian.kolhoff@me.com

You may submit a resume along with your application detailing the following section if you so choose.

Education Ohio State Univ. Bachelor's in Mechanical and Electrical Engineering

Present Job/Employer Principle of Wise One Solutions

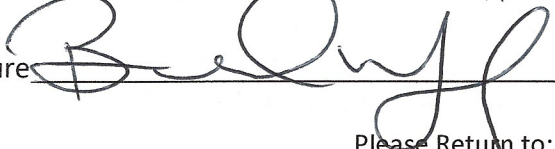
Past Employment Director of Engineering @ BIOT

Current Civic/Community Participation Volunteer Fireman for Southport FD

Reasons you are qualified for this appointment (optional) I believe my experince with owning a buisness for the last 15 years will

assist the board with the management, leadership and proper guidance the ABC store requires.

Do you anticipate any conflicts of interest if appointed? Yes ☒ No

Signature  Date 10-31-22

Please Return to: City Clerk, Dorothy Dutton

ddutton@cityofsouthport.com or City of Southport Clerk: 1029 N. Howe Street Southport, N.C. 28461

Brian Kolhoff

brian.kolhoff@me.com | 440-822-8554 | Southport, NC

Education

Ohio State University

Bachelor of Engineering, Mechanical, Electrical
Concentration: Mechanical; Minor: Business

April 1994

Certifications

State Certified Ohio, Pennsylvania, Colorado, Texas
and New York Mechanical Engineer licenses.

CPR and AED certified

American Heart Association

June 1999-2022

January 2020

United States Marine Corps 1991-1995

Work Experience

Wise One Solutions Southport, NC

October 2020 - Present

Principle

- Oversee and manage 7.9 million sqft of commercial property.
- Oversee and manage approx. 790 million dollars in customer budget requirements
- Oversee and manage 98 outside vendors for work and project execution
- Manage 4 direct reports that oversee 40 plus employees.
- Manage, oversee, and assist with multiple large portfolio-based companies' operational budgets.
- Provide long term budget, operational and engineering and grant consulting for sites across the US and Europe.

Boone Energy/BIOT USA

April 1999 – October 2020

Principle

- Owned and managed a mechanical and electrical engineering firm, with an eleven person energy consulting division.
- Managed modules of the NY state Energy program projects of 650 million dollars and higher
- Managed 32 employees in 8 different states
- Managed a yearly A/P of 290 million plus

Volunteer Experience and Community Involvement

Southport Fire Department NC

2022

- Volunteer Fireman

American Legion, Ohio

2016 - 2021

- American Legion State director and North Ridgeville Board member

North Ridgeville City Schools, Oh

1998-2011

- Coached Football and wrestling at the elementary and high school level



APPLICATION FOR APPOINTMENT TO BOARDS AND COMMITTEES

The undersigned is interested in community service and provides this information for use by the Board of Aldermen in considering their qualifications for appointment to the following boards or committees.

Name JAMES POPPE

Spouse Name (If married) GINA POPPE

Appointment(s) for which you are applying:

☒ ABC Board

☐ Forestry Committee

☐ Beautification Committee

☐ Parks and Recreation Committee

☐ Board of Adjustment

☐ Planning Board

Do you have a preference? ABC BOARD

Physical Address: 6174 Cottage Creek Road SOUTHPORT, NC 28461

Mailing Address: " " " "

Resident of Southport ☒ Yes ☐ No How Many Years? 9

State and County of Legal Residence BRUNSWICK COUNTY, NC 28461

Main Phone Number 910 338 6860 Secondary Number

E-mail Address jamespoppe@gmail.com

You may submit a resume along with your application detailing the following section if you so choose.

Education High School

Present Job/Employer RETIRED - DISTRICT DIRECTOR "SCORE" NORTH CAROLINA

Past Employment REGIONAL VICE PRESIDENT TRADER JOE'S MARKET - 31 YEARS

Current Civic/Community Participation VOLUNTEER 9 YEARS AT SCORE

Reasons you are qualified for this appointment (optional) MY INVOLVEMENT/EMPLOYMENT AT TRADER JOE'S BRINGS OPERATIONAL SKILLS FROM ONE OF THE NATION'S TOP FOOD & ALCOHOL RETAILERS. Additionally my wife and I OWNED UNCOCKED by the SEA from 2015 thru 2019.

Do you anticipate any conflicts of interest if appointed? Yes ☐ No ☒

Signature [Signature] Date 4/29/2022

Please Return to: City Clerk, Dorothy Dutton

ddutton@cityofsouthport.com or City of Southport Clerk: 1029 N. Howe Street Southport, N.C. 28461



APPLICATION FOR APPOINTMENT TO BOARDS AND COMMITTEES

The undersigned is interested in community service and provides this information for use by the Board of Aldermen in considering his/her qualifications for appointment to the following boards or committees. (See attached listing for boards and committees)

ABC Board
First Preference

Second Preference

Third Preference

Name Jennifer Crumpler Spouse Name David
(if married)

Home Address 10099 Turtlewood Dr. Southport, NC 28461 Telephone Number (910) 624-3933

Business Address _____ Telephone Number _____

E-mail Address jennifer.a.gasque@gmail.com

Resident of Southport Yes ☒ No ☐ How Many Years? 3

State and County of Legal Residence Brunswick County, NC

Education BS. Ag Business Management BA Communications - NC State University

Present Job/Employer Bayer Crop Science - Head of Industry Affairs

Past Employment BASF

Current Civic/Community Participation _____

Reasons qualified for this appointment (optional) _____

Do you anticipate any conflicts of interest if appointed? Yes ☐ No ☒

Jennifer D. Crumpler
Signature of Applicant

4-29-2022
Date

Jennifer Gasque Crumpler

Jennifer.a.gasque@gmail.com

(910) 624-3933

PROFILE

Highly accomplished Global sustainability business builder and marketing leader who leverages deep industry and subject matter knowledge driving organizations to market prominence. Extensive experience in the Global Cotton, textile, and apparel industries. Poised for a leadership role driving worldwide industry initiatives, providing new strategic services, and promoting the use of sustainable cotton Globally. Extensive sales and marketing background. Well-versed directing multiple, simultaneous projects from initiation to implementation, along with finesse in interfacing with internal cross-functional stakeholders to ensure adoption of change. Commanding director of diversified employee teams co-located across global sites. Superior knowledge of agriculture and downstream industrial consumption.

- Strategic Marketing & Branding
- New Business Development
- Self-Starter & Goal-Driven
- Team Leadership & Mentorship
- Competitive Analysis & Positioning
- Product Development & Management
- Business Process Improvement
- Navigates complex business situations
- Industry Relations & External Stakeholder Management
- Professional Education & Training
- Strategic Partner & Alliance Identification/Development
- Internal Cross-Functional Relationship Management
- Government Program Management
- Digital Marketing
- Trade Show/Seminar Management
- Project & Program Management

EXPERIENCE & ACHIEVEMENTS

BASF Corporation, Raleigh, NC

North American Regional Seed Sustainability Manager

September 2021 - Present

Working with a team of marketing and environmental professionals, develops and implements a Go-To Marketing strategy for Sustainability initiatives for BASF's portfolio of Agricultural Seed products. Ensures BASF alignment with all Seed Industry Sustainability commitments. Development, implement and evaluate Sustainability metrics to manage program contributions to Corporate and Industry sustainability commitments. Manage direct reports responsible for grower and supply chain stakeholders.

Key Accomplishments:

- Integrate a downstream marketing initiative into Agricultural Seed products beyond cotton.
- Develop a Go-to-Market strategy to implement Sustainability objectives of the corporation.
- Create an effective communications program to drive sustainability messaging across multiple platforms, including online social media, as well as conventional media outlets.
- Successfully launched and host Global Podcast "The Modern Cotton Story" that is among top 10% of podcasts listened to globally

Fiber Development Manager**November 2019 - August 2021**

Successfully developed and managed largest grower enrolled Cotton sustainability initiative in the United States, the e3 sustainability program. Created influential partnerships with clothing and apparel brands to get branded e3 clothing in brand / retail collections. Initiated and managed all e3 sustainable Cotton opportunities and initiatives through various channels, representing BASF Cotton sustainability business across the supply chain in apparel and home goods industry. Consolidated and led all of BASF's Cotton sustainability programs.

Key Accomplishments:

- Represented BASF's Cotton seed business with external and internal stakeholders.
- Aligned cross-division and cross-functional BASF's business goals with demands of end users of Cotton.
- 2020 BASF Agro Business Award Finalist.
- 2021 BASF Business Excellence Award Finalist (First North American project chosen since 2017).
- Successfully lead PR campaign to earn \$3.8m in earned media opportunities
- Global Sustainability thought leader participating in various industry panels and chosen to address global audience as Key Note Speaker

Senior Seed Advisor**August 2018 - November 2019**

Represented BASF branded Stoneville & Fibermax Cotton seed and Credenz Soybean seed. Exceeded goals to be top five sales representative for two years running.

Key Accomplishments:

- Managed and implemented BASF Go-to Market strategy through grower, retail & distributor channels.
- Served as Southeast district representative on Cotton Engagement Team co-developing the Go-to Market communication and marketing tactics.

Bayer Crop Science, Raleigh, NC**Senior Technical Sales Consultant****January 2014 - July 2018**

Responsible for representing Bayer branded Stoneville Cotton seed, Credenz Soybean seed, and Crop Protection portfolio within 14 county sales territory. Exceeded goals to be within top five sales representatives for three years running.

Key Accomplishments:

- Initiated and managed multiple projects amongst sales district, region, and company level with retail and grower channel to develop and improve relationships.
- Achieved seed and chemical sales goals by capitalizing on opportunities within sales territory.

Bayer Animal Health, Overland Park, KS**Animal Health Consultant****October 2008 - January 2014**

Developed and maintained strong business relationships with veterinarians in territory. Top sales representative for company in 2011, top three sales representative in company for three consecutive years.

Key Accomplishments:

- Designed and implemented new Go-To Market Strategy for flea & tick portfolio.

- Represented EPA / FDA Bayer Animal Health Product Portfolio to veterinarians within territory.
- Obtained and surpassed sales goals for assigned sales territory.

DVM Resource, West Lake, TX

Territory Sales Representative

November 2007 - September 2008

Proven strength and excellence in sales execution by consistently exceeding sales goals and increasing profitability.

Key Accomplishments:

- Managed sales territory which exceeded company territory goals every month.
- Increased gross profit margins by working closely with inside sales rep and through new account generation.
- Coordinated all details for customer outings working closely with manufacturer representatives.
- Proven to be expert communicator and information resource for customers allowing them to increase profitability & overall company success

Monsanto Company, St. Louis, MO

Trait & Seed Sales Representative

May 2004 - August 2007

Managed all aspects of customer business accounts within assigned sales territory including exceeding sales targets while managing \$500K+ budget. Developed business plans with key accounts establishing product trial usage, market development tactics, sales targets and goals, product mix, and top target customers.

Key Accomplishments:

- Coordinated details for customer meetings including scheduling speakers, promotional and recreational activities, session topics, and overall meeting details.
- Collaborated with sales teams to develop marketing programs, team strategies, team building, and proactively addressed current and potential market issues.
- Successfully developed Field Sales Trainee Program for new hires.

EDUCATION

North Carolina State University, Raleigh, NC

2004

Bachelor of Science Degree, Agriculture Business Management

Bachelor of Arts in Communications (concentration in Public and Interpersonal Communication)

PROFESSIONAL ORGANIZATIONS

NC State University - Ag Foundations Board of Directors for NC Extension
 Crop Protection Association of NC - NC Crop Protection School Committee
 Textile Exchange Sustainable Cotton Committee
 BASF Women in Business Employee Resource Group

APPLICATION FOR APPOINTMENT TO BOARDS AND COMMITTEES

The undersigned is interested in community service and provides this information for use by the Board of Aldermen in considering his/her qualifications for appointment to the following boards or committees. (See attached listing for boards and committees)

ABC Board

First Preference

Zoning Board of Adjustment

Second Preference

Forestry Committee

Third Preference

Name Heather L.Kos

Spouse Name _____
(if married)

Home Address 105 Park Ave

Telephone Number 704-277-1155

Business Address _____

Telephone Number _____

E-mail Address heatherkos99@gmail.com

Resident of Southport Yes ☒ No ☐

How Many Years? 1yr

State and County of Legal Residence Brunswick County, North Carolina

Education _____

Present Job/Employer T-Mobile USA

Past Employment Sprint/Nextel

Current Civic/Community Participation Daughters of the American Revolution,

League of Women Voters, York co SC

Reasons qualified for this appointment (optional) I bring experience learned in over 22yrs

of Project and Program management for a Fortune 100 company. As a remote employee I have also gained softskills and have the ability to partner with people to drive positive outcomes.

Do you anticipate any conflicts of interest if appointed? Yes ☐ No ☒

Heather L.Kos
Signature of Applicant

4/29/22

Date

Instructions and Committee Listings

1. You are encouraged to attend and observe meetings of any board to which you desire appointment and to obtain other information about the Board's duties and work.
2. The information will be used by the City of Southport in making appointments and may be used in news releases to identify you, if appointed.
3. Any additional information you feel will be of use to the Aldermen in reviewing your application is welcomed. Please attach additional sheets, if necessary.
4. If appointed, please bear in mind the importance of attending meetings. A good attendance record is required to maintain membership.

Please return to: City Clerk, Dorothy Dutton
ddutton@cityofsouthport.com or
City of Southport Clerk: 1029 N.
Howe Street Southport, N.C.
28461

Southport Beautification Committee

Terms:	2 year term
Membership Composition:	8 members (residents of the city)
Meetings:	1st Tuesday every month, 5:00 p.m.
Major Function:	Review and recommend action on all public beautification projects including AIA Plan, Planting Plans, Adopt-a-block cleanup programs, Street Scape, Sea Scape, community appearance, cemeteries

Planning Board

Terms: Members selected as statutory terms expire
Membership Composition: 6 members within city limits, 3 members from ETJ
Meetings: Meets third Thursday of the month, 6:00 p.m.
Major Function: Develop and administer the Unified Development Ordinance, and CAMA Core Land Use Plan

Board of Adjustment

Terms: Members chosen as statutory terms expire
Membership Composition: 6 members within city limits, 3 members from ETJ
Meetings: Varies on an as needed basis
Major Function: Act as Quasi Judicial body to hear appeals of Building Inspector's decisions on interpretation of Zoning Ordinance

Southport Forestry Committee

Terms: 2 year term
Membership Composition: 7 members
Meetings: 4th Monday of each month, 5: 00 p.m.
Major Function: To review and recommend actions to preserve and enhance the community's trees. Recognizing that the historical personality of the town is in part defined by its trees, in particular the live oaks. The committee's actions will include protection of existing trees, tree replenishment, public education and other functions related to the community's forest environment.

January, 5 2023

Dorothy Dutton
Southport City Clerk
1029 N. Howe Street
Southport, NC 28461

Subject: Appointment of member to the Southport ABC Board

Dear Madame Clerk and City of Southport.

After interviewing and considering all candidates for the opening on the Southport ABC Board. The Board including myself Board Chairman William Davis and Board member Angela Wadsworth have decided that Zach Zuehlke should be reappointed to the Southport ABC Board.

Sincerely

A handwritten signature in black ink, appearing to read 'William Davis', with a stylized, cursive script.

William Davis

Southport ABC Board Chairman



APPLICATION FOR APPOINTMENT TO BOARDS AND COMMITTEES

The undersigned is interested in community service and provides this information for use by the Board of Aldermen in considering their qualifications for appointment to the following boards or committees.

Name Fred Fiss

Spouse Name *(If married)* Emma Thomas

Appointment(s) for which you are applying:

☐ ABC Board

☐ Forestry Committee

☐ Beautification Committee

☐ Parks and Recreation Committee

☐ Board of Adjustment

☒ Planning Board

Do you have a preference? This is a re-application for the Planning Board as a voting member

Physical Address: 216 N Atlantic Ave, Southport NC

Mailing Address: Same

Resident of Southport ☒ Yes ☐ No How Many Years? 16

State and County of Legal Residence NC, Brunswick

Main Phone Number 910-269-6901

Secondary Number _____

E-mail Address Ffiss@bellsouth.net

You may submit a resume along with your application detailing the following section if you so choose.

Education _____

Present Job/Employer Green Harmony Inc

Past Employment _____

Current Civic/Community Participation Planning Board, Forestry Committee

Reasons you are qualified for this appointment *(optional)* I feel I bring useful knowledge and also offer

Perspective as a residential builder. I would like to continue to serve our wonderful community.

Do you anticipate any conflicts of interest if appointed? Yes ☐ No ☒

Signature _____

Date 9-18-22

Please Return to: City Clerk, Dorothy Dutton

ddutton@cityofsouthport.com or City of Southport Clerk: 1029 N. Howe Street Southport, N.C. 28461



INSTRUCTIONS AND BOARD AND COMMITTEE LISTINGS

- ✓ You are encouraged to attend and observe meetings of any board or committee of which you desire appointment and to obtain other information about the duties and work.
- ✓ The information you provide will be used by the City of Southport in making appointments and may be used in news releases to identify you if you are appointed.
- ✓ Any additional information you feel will be of use to the Aldermen in reviewing your application is welcomed. Please attach additional sheets, if necessary.
- ✓ If appointed, please bear in mind the importance of attending meetings. A good attendance record is required to maintain membership.

ABC Board

Term:	3-year term
Membership Composition:	3 Members
Meetings:	2 nd Wednesday of each month at 6:30 p.m.
Major Function(s):	To review and recommend actions and policies to the local governments and the State governing body. The Southport ABC Board of Directors oversees the management and services of the municipal local ABC Store in accordance with all State Regulations and procedures governing the establishment and functioning of the store. The responsibilities include the control and sale of spirituous beverages while providing a customer friendly experience in a modern and efficient store.

Beautification Committee

Term:	2-year term
Membership Composition:	8 Members (residents of the city)
Meetings:	1 st Tuesday every month, 5:00 p.m.
Major Function(s):	Review, recommend actions and participate in public beautification projects. This may include planting, weeding, community appearance, cemetery cleanup, staining benches and picnic tables, monthly workdays and pop-up workdays as needed, participation in the garden stewardship program, assist with seasonal activities (holiday decorations, nature fest, day of service, etc.)

Board of Adjustment

Term:	Members chosen as statutory terms expire
Membership Composition:	6 members within city limits (5 regular positions, and 1 alternate) 3 members from the ETJ (2 regular positions, and 1 alternate)
Meetings:	4 th Tuesday at 4:30pm, and other times, as needed
Major Function(s):	Act as a Quasi-Judicial body to hear appeals of Building, Inspector's decisions, Special-Use permits, and other interpretations of the Zoning Ordinance. Varies on an as-needed basis



Forestry Committee

Term:	2-year term
Membership Composition:	7 Members
Meetings:	2 nd Tuesday every month, 5:00 p.m.
Major Function(s):	Review and recommend actions to preserve and enhance the community's trees. Recognizing that the historical personality of the town is in part defined by its trees, in particular the live oaks. The committee's actions will include protection of existing trees, tree replenishment, public education and other functions related to the community's forest environment.

Parks and Recreation Committee

Term:	2-year term
Membership Composition:	6 members within city limits, 1 from the ETJ
Meetings:	2 nd Tuesday every month, 6:30 p.m.
Major Function(s):	To support the mission statement of the Southport Parks and Recreation Department, which is, <i>"To enhance the quality of life of the residents and visitors of the City of Southport through quality recreational programs for residents of all ages, and to provide and maintain safe and beautiful parks and facilities for the enjoyment of active and passive recreational activities."</i>

Planning Board

Term:	Members chosen as statutory terms expire
Membership Composition:	6 members within city limits (5 regular positions, and 1 alternate) 3 members from the ETJ (2 regular positions, and 1 alternate)
Meetings:	3 rd Thursday of the month, 6:00 p.m.
Major Function(s):	Develop and administer the Unified Development Ordinance, and CAMA Core Land Use Plan



APPLICATION FOR APPOINTMENT TO BOARDS AND COMMITTEES

The undersigned is interested in community service and provides this information for use by the Board of Aldermen in considering their qualifications for appointment to the following boards or committees.

Name Rebecca Kelley

Spouse Name (if married) Chris Kelley

Appointment(s) for which you are applying:

- | | |
|---|---|
| ☐ ABC Board | ☐ Forestry Committee |
| ☐ Beautification Committee | ☐ Parks and Recreation Committee |
| ☒ Board of Adjustment | ☒ Planning Board |

Do you have a preference? I would like to be wherever will serve the public the best.

Physical Address: 5971 Dutchman Creek Rd, Southport, NC 28461

Mailing Address: 5971 Dutchman Creek Rd, Southport, NC 28461

Resident of Southport ☒ Yes ☐ No How Many Years? 22

State and County of Legal Residence NC, USA

Main Phone Number 910-443-0371 Secondary Number _____

E-mail Address REBECCANCKELLEY@GMAIL.COM

You may submit a resume along with your application detailing the following section if you so choose.

Education BS in Hospitality and Tourism Management, BS in Business Administration

Present Job/Employer Kelley Hospitality, LLC (The Inn at River Oaks) & Island Vacations Inc, Real Estate Broker

Past Employment Silver Coast Winery, Provision Co, Luxury Resorts and Hotels, The Charleston Harbor Resort & Marina

Current Civic/Community Participation 4th of July Festival Committee & Volunteers at the Southport Christian School

Reasons you are qualified for this appointment (optional) As a resident of Southport since my time at Southport

Elementary School, I have seen the changes both good and bad that have come to our city. As both a business owner and a resident I have a unique perspective on the effects that projects will have on our city. People feel comfortable coming to me to request assistance and explain their views.

Do you anticipate any conflicts of interest if appointed? Yes ☒ No

Signature  Date 10/20/22

Please Return to: City Clerk, Dorothy Dutton
ddutton@cityofsouthport.com or City of Southport Clerk: 1029 N. Howe Street Southport, N.C. 28461



APPLICATION FOR APPOINTMENT TO BOARDS AND COMMITTEES

The undersigned is interested in community service and provides this information for use by the Board of Aldermen in considering their qualifications for appointment to the following boards or committees.

Name Thomas Zilinek

Spouse Name (if married) DIANE ZILINEK

Appointment(s) for which you are applying:

- | | |
|---|---|
| ☐ ABC Board | ☐ Forestry Committee |
| ☐ Beautification Committee | ☐ Parks and Recreation Committee |
| ☐ Board of Adjustment | ☒ Planning Board |

Do you have a preference? _____

Physical Address: 211 Joshuas Way, Southport

Mailing Address: 211 Joshuas Way, Southport, NC 28461

Resident of Southport ☒ Yes ☐ No How Many Years? 4
NC, Brunswick

State and County of Legal Residence _____

Main Phone Number 732-259-1077 Secondary Number _____

E-mail Address tzilinek@gmail.com

You may submit a resume along with your application detailing the following section if you so choose.

Education See attached resume

Present Job/Employer see attached resume

Past Employment see attached resume

Current Civic/Community Participation _____

Reasons you are qualified for this appointment (optional) 30 plus years of municipal engineering experience.

Heavy emphasis on development plan review and code and ordinance interpretation.

Do you anticipate any conflicts of interest if appointed? ☒ Yes ☒ No

Signature [Signature] Date 10/19/2022

Please Return to: City Clerk, Dorothy Dutton

ddutton@cityofsouthport.com or City of Southport Clerk: 1029 N. Howe Street Southport, N.C. 28461

Thomas Zilinek III

211 Joshuas Way, Southport, NC 28461

732-259-1077

tzilinek@gmail.com

PROFILE

Retired Municipal Engineer and Public Works Director with 33 years of municipal government experience. Accomplished in technical development plan review. Skillful in interpreting municipal codes and ordinances.

EXPERIENCE

Township Engineer/Director of Public Works, Franklin Township, NJ

July 2004 to June 2018

- Supervise Engineering Department consisting of 8 employees in the planning, design, construction and control of all civil engineering projects done by and for the municipality. Projects range from road construction to building repair to park construction to water system improvements.
- Develop long and short term capital improvements plans and budgets for roads, buildings, parks and water system.
- Provide engineering advice and assistance to the governing body, boards and commissions of the Township.
- Supervision of Public Works Department consisting of 60 employees in roads, parks, buildings and water utility.

Township Engineer, Readington Township, NJ

February 2001 to June 2004

- Supervise and participate in the planning, design, construction and control of all civil engineering projects done by and for the municipality. Projects range from road construction to building demolition and construction to sanitary sewer system improvements.
- Assist long and short term capital improvements plans and budgets for roads, and sanitary sewer system.
- Provide engineering advice and assistance to the governing body, boards and commissions of the Township. Heavy emphasis on technical plan reviews for the Planning Board.
- Supervision of construction inspection and administration of land development projects for Planning Board and Board of Adjustment.
- Preliminary review of NJDEP Letters of Interpretation for Planning Board, Environmental Commission and Board of Health.

Borough Engineer/Director of Public Works, Chatham Borough, NJ

July 1992 to February 2001

- Responsible for all aspects of municipal engineering including planning preparation and submission of grant applications, project design and management. Projects range from road construction to stream bank protection to water and sewer system improvements. Solicit consultants when necessary and supervise same.
- Conduct technical plan reviews for Planning Board and Board of Adjustment.
- Supervision of Public Works Department consisting of roads, parks, sewer collection system, water utility and mulch area.

Assistant Municipal Engineer, City of Orange Township, NJ

April 1989 to July 1992

- Supervision of Public Works Department, Water Filter Plant and office.
- Responsible for the submission of various state and federal grant applications.
- Supervision of consultants and contractors for maintenance and rehabilitation projects of municipal streets, parks, buildings, reservoir, well repairs and refuse collection.
- Technical adviser to Planning Board and Board of Adjustment.

Senior Engineer, Hudson County, NJ

June 1985 to July 1992

- Performed extensive field and office engineering work with emphasis on design, construction and maintenance of roads, bridges, storm drainage and public grounds.
- Resident Engineer for Powerhouse Rehabilitation project involving coordination of various contractors and subcontractors under three separate phases of simultaneous construction.

EDUCATION

Steven Institute of Technology, Hoboken, NJ

Bachelor of Engineering (Civil Engineering) 1985

LICENSES AND PROFESSIONAL ORGANIZATIONS

- New Jersey Professional Engineers License No GE35345
- New Jersey Certified Municipal Engineer No. CME 457
- New Jersey Society of Municipal Engineers, Past President
- New Jersey Municipal Engineering Institute, Board of Governors
- New Jersey Water Association, Board Member



BOARD OF ALDERMEN

AGENDA ITEM SUMMARY

DATE: 1/3/2023 DEPARTMENT: Administration

PRESENTED BY: D. Dutton/B. Therrien

ITEM SPONSORED BY: NCLM

ITEM/TOPIC: Designating a voting delegate

COST: n/a BUDGET LINE ITEM: n/a

JUSTIFICATION: The City of Southport should be represented in decisions about proposed legislative goals at the State level.

IMPACT IF NOT APPROVED: Laws could be proposed to be changed, deleted or added that might different than what is best for Southport's residents and taxpayers

DEPARTMENT HEAD COMMENTS: The deadline for reporting the delegate is January 12th. Once a member has been appointed, the City Clerk will submit the information that night, to avoid the deadline being missed.

CITY MANAGER COMMENTS: This is a Board decision, but it is important we have someone represent Southport in this group.

ATTACHMENTS: Email print out with information about the delegate's role and responsibilities. Also included is the list of potential legislative goals that will be voted on.

REQUESTED ACTION: Please appoint one City official to serve as the voting delegate.
The appointed delegate must be able to complete their online voting no later than January 13, 2023.

The appointed delegate could be the Mayor, an Alderman, or administrative position.

PROPOSED MOTION: I make a motion to appoint _____ as the voting delegate for the 2023-2024 Biennium Legislative Goals development process.



Dec. 9, 2022 | nclm.org

2023-2024 Biennium Legislative Goals | Designate Your Municipality's Voting Delegate

The League's member-driven legislative goals development process coincides with the start of each new legislative biennium. During even-numbered years, members come together to submit their legislative goals and priorities. Over the last few months, the Legislative Policy Committee has been considering these ideas and will present its recommendations to the Board of Directors this month. The Board will refine the position further before sending them to the full League membership for a final vote. After the final voting period closes, cities and towns will have a focused advocacy agenda to pursue at the state and federal levels.

Identify Your Municipality's Voting Delegate

Each member municipality is eligible to cast a single vote in this goal setting process. Each member municipality shall designate one voting delegate who is responsible for casting the municipality's vote. Take action NOW to designate your municipality's voting delegate by following this link:

[Designate your voting delegate here.](#)

Voting delegates must be designated by Thursday, Jan. 12, 2023.

- The designated voting delegate shall receive their credentials and voting instructions.
- The designated voting delegate shall vote on the proposed Legislative Goals package electronically.
- The Legislative Goals will be shared with the membership electronically following the voting period.

The League is grateful to the 65-member legislative policy committee and its two co-chairs, Mayor Melinda Bales of Huntersville and Mayor Lynda Sossamon of Sylva for their hard work and many meetings over the past months.

For questions, please contact Derrick Applewhite, dapplewhite@nclm.org, 919-715-1229.

Dorothy Dutton

From: Erin Wynia <nclm@mail.nclm.org>
Sent: Wednesday, January 4, 2023 9:05 AM
To: Dorothy Dutton
Subject: Reminder: 2023-2024 Biennium Legislative Goals | NCLM Board Proposed Recommended Goals



January 4, 2023

Dear NCLM Members,

Happy New Year! As a reminder, the League's legislative goals development process is almost complete. All that remains is for member cities and towns to review the proposed goals and cast their votes—we need your help and participation in this last, and most important, step in the process.

Thank you for the work you have already completed; we have received over 400 ideas from 148 individuals representing 111 municipalities. After the dedicated work by the Legislative Policy Committee to compile and refine the submitted goals, the NCLM Board of Directors has reviewed, approved and now submits [16 proposed legislative goals for your consideration](#).

If you haven't already done so, your job now is to review and vote on the proposed goals so that cities and towns have a focused state and federal advocacy agenda for the 2023-2024 legislative biennium, which begins in January at the N.C. General Assembly.

Each municipality will cast a single vote by selecting 10 of the [16 proposed advocacy goals](#). To vote, your municipality must:

STEP 1.

Designate a single Voting Delegate who will cast the municipality's vote by January 12, 2023. If your municipality has not yet designated its Voting Delegate, please do so using [this form](#). Official voting instructions and the ballot will be sent directly to the Voting Delegate.

STEP 2.

Review, discuss and determine which of the proposed legislative goals your municipality supports. Each municipality may select 10 of the 16 proposed goals.

STEP 3.

Submit the online ballot by January 13, 2023. The Voting Delegate will receive voting instructions and the online ballot directly.

Thank you for your continued participation in this legislative goals development process, which is so critical to our advocacy efforts. Establishing these advocacy goals with wide participation by all cities and towns allows our organization to speak with confidence and sincerity as we pursue each with state and federal policymakers. It truly allows us to live up to our motto, "Working as one, advancing all."

Sincerely,

Erin Wynia

Director of Government Affairs



WORKING AS ONE. ADVANCING ALL.

CONTACT US



Stay Connected with the North Carolina League of Municipalities

434 Fayetteville Street, Suite 1900, Raleigh, NC 27601

184494014a5f1a15ecaa24662.svc.dynamics.com/f/w/manageSubscriptions?msdynunsubscribeid=rIQcoQCjIY146Eli5bl3AxhYTwQnDFc

LEGISLATIVE GOAL STATEMENTS

RECOMMENDED BY THE NCLM BOARD OF DIRECTORS

The following goal statements are grouped by subject area but NOT listed in any priority order.

- Expand federal and state resources for affordable housing.
 - Housing affordability is a growing problem across North Carolina, affecting cities and towns of all sizes and people across different income levels.
 - Increasingly, the lack of affordable housing acts as a major impediment to business and workforce recruitment.
 - Ongoing state and federal revenue streams to address housing affordability are extremely limited, with much of the burden for solutions left with cities and towns
- Revitalize vacant and abandoned properties with enhanced legal tools and funding.
 - Abandoned and vacant properties, often the subject of so-called tangled titles, can affect the ability of communities to revitalize areas and improve economic conditions.
 - The abandoned properties, with enhanced legal tools to help heirs clear up title issues and sell properties at market rates, could help address local housing needs.
 - Many towns do not have the funding to adequately address abandoned properties.
-
- Create an adequate and permanent funding stream for local infrastructure.
 - Infrastructure – including roads, water, sewer, stormwater, parks and beaches – are critical to economic development and job creation.
 - Many cities in the state are growing, creating a constant need for investment to keep pace with population growth; many cities and towns also have aging infrastructure that must be replaced.
 - Creating more permanent funding streams for local infrastructure, such as a dedicated tax source, would allow for better planning to meet needs.

- Allow municipalities to use local resources and capabilities to expand broadband access in their communities through innovative partnerships.
 - Slow and unreliable internet service threatens educational and professional opportunities, and the economic future of entire communities.
 - Municipalities own existing infrastructure – including dark fiber, towers and electric poles – that could be utilized in innovative partnerships and assist in making broadband service more affordable.
 - Failure to utilize local government assistance and assets will continue to create digital gaps that have real-world consequences for North Carolinians.

- Extend deadlines for completion of federal infrastructure projects.
 - Current deadlines for the allocation and expenditure of American Rescue Plan Act funding may make more complex infrastructure projects unrealistic.
 - High inflation and worker shortages are leading to higher project costs; extending ARPA and other funding deadlines will spread projects out and may help lower costs.
 - Cities and towns require flexible deadlines to get the best bang for their buck out of this funding.

-

- Expand state transportation funding streams for construction and maintenance for municipal and state-owned secondary roads.
 - Current Powell Bill and other state funding is not adequate to address transportation needs, particularly as they affect municipal and state-owned secondary roads.
 - In many cities and towns, major commuting corridors are not receiving the level of investment needed to keep pace with traffic.
 - More investment is needed for these roads if existing residents are to embrace business and residential growth.

- Support integrated and multi-modal transportation solutions.
 - Today, cities and towns seek to make downtowns and other areas accessible to residents and visitors, whether traveling by foot, bike, car, mass transit and other means.
 - Making areas accessible in this manner requires integrated planning and funding with the state.
 - Only through recognizing the need for multi-modal transportation solutions can cities and towns maximize tourism and other economic opportunities, ensuring that local businesses thrive.
- Increase state funding for public transportation operations.
 - Road construction is not keeping pace with transportation needs in any many areas, and public transportation provides a means to reduce the burden of building roads.
 - Investment in public transportation can improve traffic safety, air quality and residents' accessibility to businesses and public services.
 - One of the biggest impediments to economic growth is traffic and commuting times, which can be alleviated through public transportation options.
-
- Expand incentives and funding for local economic development.
 - Funding is simply inadequate in many cities and towns to encourage job growth.
 - State grants and incentives are often targeted in ways that fail to assist the areas in greatest need of job creation.
 - Maintaining or expanding funding for film tax credits, major industrial site development, downtown development and renewable energy tax credits helps cities and towns across the state.

- Expand incentives that encourage regionalization of water and sewer, as well as other municipal services, when appropriate.
 - A number of municipal water and sewer systems continue to financially struggle with deferred maintenance needs.
 - These challenges came about largely due to population and job losses in rural areas, leading to an erosion of taxpayer and ratepayer bases.
 - While legislators and municipalities have begun to address these issues with the creation of the Viable Utility Reserve and the use of ARPA funding, state estimates show needs still exceed expenditures by several billion dollars.
-
- Enhance state systems and resources for local law enforcement officer recruitment, training, and retention.
 - Municipalities across the state are facing law enforcement staffing shortages, in many cases severe shortages.
 - State training resources are limited, and the cost of local law enforcement agencies to send recruits and existing officers to NC Justice Academy locations can be prohibitive.
 - Grant writing assistance is one of several options that might provide better access to the large volume of federal law enforcement grant funding that is available.
- Provide state assistance for yearly financial audits, ensuring that an adequate number of auditors is available.
 - Several dozen local governments have been placed on the state Unit Assistance List due to late audits.
 - Often these audits are late due to staffing shortages, changes in financial personnel and a growing shortage of private auditors willing to perform this work.
 - Addressing this challenge would lessen negative portrayals of local government financial controls.

- Revise state contracting laws to better protect public entities from the effects of inflation.
 - Labor and materials costs have been rising at a rapid rate, leaving municipalities with few options when project bids and costs exceed expectations.
 - Additional flexibility regarding the contracting process could assist municipalities in protecting taxpayers from inflation and escalating costs.
 - Without contracting law flexibility, projects can be delayed and costs can further increase.

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- Update annexation petition thresholds to make voluntary annexations easier to initiate.
 - Voluntary annexation by petition currently requires 100 percent consent from all property owners, a threshold that can be impossible to meet even if a majority of property owners can benefit by utilizing their property for business or residential purposes.
 - Lowering the threshold from 100 percent represents a middle ground that would still reflect the will of property owners but not handicap communities' ability to economically thrive.
 - The ability of a city or town to grow and reflect its urban footprint is vital to its financial health; city services are relied on by residents whether they live in or near municipal boundaries.
- Provide authority to municipal water systems to recoup costs of clean-up from polluters.
 - Local municipal water systems are increasingly being looked to for the clean-up of PFAS and other "forever" chemicals found in surface waters.
 - State regulators plan to set surface water standards for these chemicals and propose Maximum Contaminant Levels for PFAS chemicals in drinking water.
 - To date, cities' only recourse to try to recoup the cost for utility ratepayers is through the courts.
- Provide local revenue options beyond property tax.
 - Roughly 40 percent of municipal general fund revenue is generated by local property taxes.
 - Cities have little to no authority to raise significant revenue in other ways.
 - A lack of diverse, local tax options can affect economic growth, as well as cause large swings in revenue based on economic changes.



BOARD OF ALDERMEN

AGENDA ITEM SUMMARY

DATE: January 5, 2023 **DEPARTMENT:** City Manager/Parks and Recreation

PRESENTED BY: Bonnie Therrien, Interim City Manager

ITEM SPONSORED BY: Same

ITEM/TOPIC: Yacht Basin Dredging Project

COST: \$4300.00 **BUDGET LINE ITEM:** _____

JUSTIFICATION: There have been discussions ongoing for a number of years about the need to dredge the City's portion of the Yacht Basin. In order for us to obtain a grant, a survey of material must be in hand.

IMPACT IF NOT APPROVED: We will not be able to apply for a grant where the State will contribute \$3.00 for every \$1.00 the City spends. This grant cannot include dredging for private dock areas.

DEPARTMENT HEAD COMMENTS: The last time this area was dredged was in the late 90's and it is in need of being dredged again for the safe navigation of our waters.

CITY MANAGER COMMENTS: I met with Eric King of Southport Marina and they are going to be dredging in February of 2024 so we may be able to piggyback on his project in order to have a place to put the dredge material and coordinate the projects, so we need to have the survey first done so we can apply for the grant as February of 2023 will be here before you know it.

ATTACHMENTS: 1) Information on the State grant program. 2) Two quotes for survey work pre dredging work and post dredging.

REQUESTED ACTION: Authorization to utilize funds from Parks and Recreation and the City to have the survey done for the amount of dredge material so we can apply for the State grant.

PROPOSED MOTION: Motion to authorize the use of \$3100 from the Parks and Recreation Budget (line item 10-80-6120-3502) and \$1200 from Contract Services (10-00-4110-4400) to conduct a dredging material survey of the yacht basin so we can apply for a State grant to dredge the basin.

TI Coastal Services, Inc
387-B North Green Meadows Drive
Wilmington, NC 28405
910.821.1358



October 6, 2022

Ms. Karen Mosteller
City of Southport Alderman
VIA E-MAIL: KMosteller@cityofsouthport.com

RE: Proposal for Conditional Hydrographic Survey – Southport Yacht Basin, City of Southport, NC

Dear Ms. Mosteller,

Thank you for the opportunity to provide a quote for a conditional bathymetric survey for the Southport Yacht Basin. As we discussed on the phone, the City is planning on a dredging event this coming winter and a hydrographic survey is required to document current bottom conditions and to determine the volume of sediment to be removed from both the Federal Safe Anchorage area as well as City maintained portions of the basin. This information would be provided to TI Coastal prior to beginning survey work so we can ensure adequate coverage of the permitted dredge templates. The attached image shows our proposed survey coverage for this project, but final adjustments can and will be made if necessary upon our review of the permitted channel widths, depths, and confining boundaries.

In order to verify the current conditions and quantify the material within the dredge template, we propose to perform hydrographic surveys on 50 foot transect spacing perpendicular to the template centerline. Surveys will be performed at high tide and extend from marsh bank to marsh bank (or boat slip). TI Coastal will utilize a 17' Skiff equipped with a Trimble MPS-865 RTK GPS and Odom CV-100 single beam echosounder to perform the conditional survey. All RTK corrections will be provided by the North Carolina-VRS system and collected in Mean Lower Low Water (as specified by NOAA's VDatum conversion for your project area). The VRS RTK system provides accurate vertical and horizontal positioning and corrects all depth sounds to NAVD88 survey datum without the need to establish a tide gauge on site. The raw NAVD88 soundings will be converted in real time to MLLW by using the built in VDatum transformation in Hypack's survey software. Prior to initializing our survey effort, we will perform control work to QC our equipment and ensure that all survey data is "tied" to an existing National Geodetic Survey published monument.

Given the size of the basin and the proximity to our local office, we anticipate this project to take 1 day to complete (including hydrographic survey data and pole soundings with a Trimble GNSS rover and receiver around the community boat ramp/dock). The pole soundings will supplement our hydrographic survey in areas that the boat cannot reach. We will also survey in the existing position of the ramp and pier structures as reference points in the final drawings.

Final deliverables for the project would include plan view drawings with bathymetric soundings and color contours, cross-sectional profiles including our survey data and dredge template, and volumetric calculations. Given a written notice to proceed, we should be able to complete this work within 2 weeks and have deliverables ready one week after the data has been collected. Price for the surveys and deliverables are lump sum and would be **\$4,200 per survey event**. Thank you for the opportunity to provide you with a quote and please let me know if you have any questions.

Sincerely,

Jamie Pratt, Vice President
jcpratt@ticoastal.com



October 6, 2022

223033

Karen Mosteller
Southport Board of Alderman
City of Southport
1029 N. Howe Street
Southport, NC 28461

**Re: City of Southport N.C- Southport Yacht Basin-
Hydrographic Condition Survey**

Karen,

We are providing this proposal based on our phone conversation with regards to performing a hydrographic condition survey of the Southport Yacht Basin as shown in Figure 1. We will provide a dual frequency single beam survey of the Southport Yacht Basin to assist in volume calculations for a planned dredging event. It is proposed there will be a before dredge (BD) and after dredge (AD) survey.

For single-beam surveys we intend to use one of our fully equipped hydrographic survey vessels ranging from 22' to 24'. Our vessels are equipped with an *Odom CVM-100* single beam dual frequency echosounder that operates at a frequency of 200kHz and 33kHz. Positioning will be RTKGPS via our I2NS Integrated Inertia Navigation System. The I2NS is integrated with an Applanix POS-MV IMU (Inertial Measurement Unit). All data will be collected and processed using Hypack™ navigation software.

Surveys will be performed to meet or exceed the minimum performance standards for the Corps of Engineers Hydrographic Surveys, USACE specifications manual EM 1110-2-1003.

243 North Front Street

Wilmington, NC 28401

910.343.1048

Fax 910.251.8282

www.mckimcreed.com

Scope of Work

- Perform single beam dual frequency survey
- Survey limits will extend from the federal channel inside the yacht basin and work south out to the federal channel of the ICWW as shown in fig.1.
- Survey profiles lines will be spaced every 25' and be run perpendicular to the centerline of the federal channel.
- We will provide an xyz file of soundings, AutoCAD Civil 3D file, and volume calculations for the BD and AD to proposed depth plus over depth as requested.

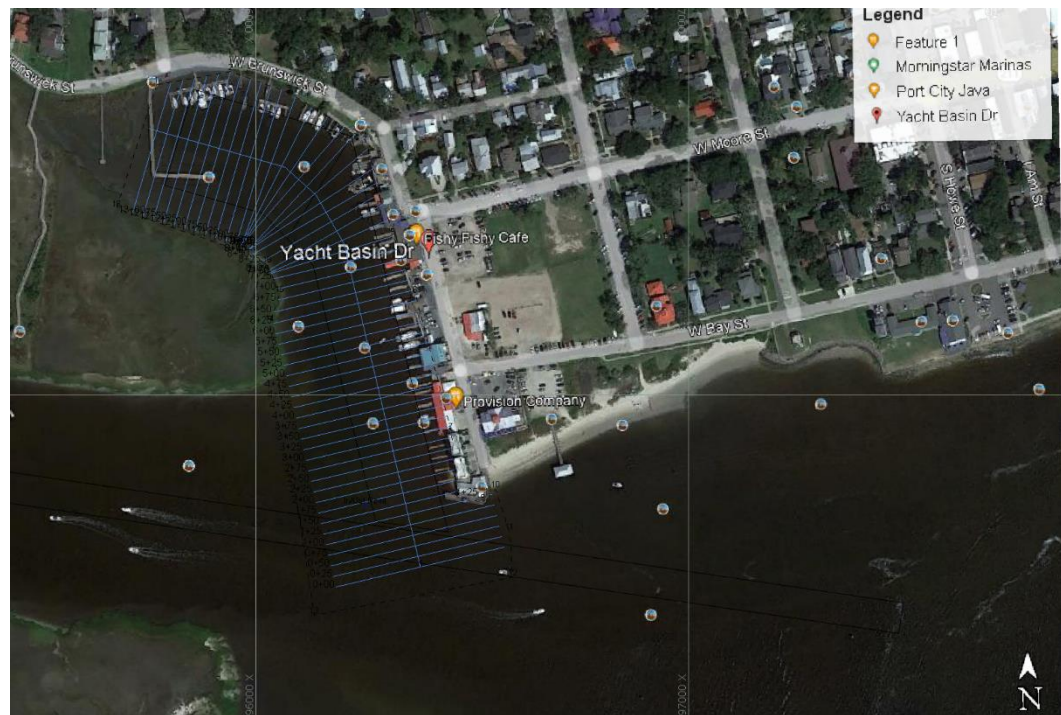


Fig. 1 Approximate Survey limits based on Client conversations

Schedule

We can begin work within 10-14 days of notice to proceed. We anticipate 1 day to complete the field work for each BD/AD event. We will provide the map of survey within 7-10 days of field work.

Fee

For services described in the above Scope of Work, the lump sum fee inclusive of reimbursable expenses broken down as follows:

Before Dredge (BD) Hydrographic Survey	\$4,800.00
After Dredge (AD) Hydrographic Survey.....	\$4,800.00

GENERAL CONDITIONS

This proposal is submitted contingent upon the negotiation of a contract with mutually acceptable terms and conditions prior to the commencement of any work.

This proposal is valid for 30 days from the date of the proposal. If the proposal is not accepted within 30 days, we reserve the right to revise or withdraw the proposal entirely at our discretion.

We appreciate the opportunity to provide this proposal to you and look forward to working on the project with you.

Sincerely,

McKIM & CREED, INC.



Jared Lambert
Hydrographic Project Manager

Water Resources Development Grant Program (WRDGP) Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund Guidelines FY 2022-2023

Administered by: N.C. Department of Environmental Quality (DEQ), Division of Water Resources (DWR), 1611 Mail Service Center, Raleigh, N.C., 27699-1611. Contact Kevin Hart at Kevin.Hart@ncdenr.gov or (919) 707-3607.

Authority: DWR is authorized to provide grants to local governments for water resources development projects by [S.L. 2022-74](#).

Who is Eligible: Units of local government

Application Deadlines: Applications can be received throughout the year for navigation projects on an as needed basis.

Funding Source: North Carolina Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund ([N.C. Gen. Stat. § 143-215.73F](#))

Eligible Purposes and Cost-Share Percentages: According to [N.C. Gen. Stat. § 143-215.73F](#), revenue in the Fund may only be used to provide the State's cost share of the costs associated with any dredging project designed to keep shallow draft navigation channels located in State waters or waters of the State located within lakes navigable and safe. The cost share for dredging projects shall be at least one non-State dollar for every three dollars from the fund ([S.L. 2022.74](#)). No cost-share shall be required for dredging projects located, in whole or part, in a development tier one area for a ferry channel maintained by the North Carolina Department of Transportation.

Ineligible Costs

The following costs will not be paid with State Shallow Draft Navigation funds nor used to provide the required local share:

- Costs incurred outside of the contract period.
- Indirect or overhead costs of the municipality, such as rent, telephone service, and general administrative support.
- Salaries and other expenses of elected officials, whether incurred for purposes of project direction, execution, or legislation, are not an eligible cost.
- Cost incurred for legal fees (including but not limited to Permit appeals or violations).
- Purchase of dredge machinery (including but not limited to barge and excavator).

Additional Information:

Funding provided from the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund must be primarily for general or recreational navigation purposes. Additional project outcomes from a navigation project such as beneficial placement of beach compatible material must be a secondary reason for the project (if applicable). Dredging around ship berths, piers, docks and access to private docks are not eligible for funding from the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund.

Application Submittal: All required forms and grant information can be found at the

Water Resources Development Grant Program (WRDGP)
Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund
Guidelines FY 2022-2023

[WRDGP website](#). Applications shall be considered accepted once an email confirmation has been provided.

Application Spreadsheet (MS Excel) - Applications shall be completed and returned via email to Kevin Hart at kevin.hart@ncdenr.gov. The complete application will be included in the DEQ contract documentation, and the project budget will serve as the basis for the contract's financial documentation should a project be recommended for funding. Therefore, it is very important that its contents are accurate and complete.

Project Plan and Location Maps – Project plans, a survey of the dredge site, and a survey of the dredge material disposal site (if applicable).

Official Resolution – As required in [15A NCAC 02G.0100](#), the Project Sponsor shall include a resolution adopted by the governing board stating the amount of State aid requested and accepting the Project Sponsor's responsibilities. The Official Resolution must be signed by a representative of the Project Sponsor with signatory authority and state that the local unit of government will:

1. Assume full obligation for payment of the balance of project costs.
2. Obtain all necessary State and Federal environmental permits.
3. Comply with all applicable laws governing the award of contracts and the expenditure of public funds by local governments.
4. Supervise construction of the project to ensure compliance with permit conditions and to agree to provide safe and proper construction in accordance with approved plans and specifications.
5. Obtain appropriate easements, rights-of-way or suitable dredge material disposal areas that may be necessary for the construction and operation of the project without cost or obligation to the State.
6. Ensure that the project is open for use by the public on an equal basis with limited restrictions (if on public property).
7. Hold the State harmless for any damages that may result from the construction, operation, and maintenance of the project.
8. Accept responsibility for operation and long-term maintenance of the completed project.

An Official Resolution template is available for download from the [WRDGP website](#). The Project Sponsor may not revise or eliminate provisions from the Official Resolution template unless they have submitted written justification to DWR and received DWR's approval. Supplementary provisions may be added to address unique circumstances of a particular project.

Conflict of Interest Policy – Project Sponsors must provide the local government's conflict policy that the Project Sponsor, Project Sponsor's subordinates and any person or persons designated to act on behalf of the Project Sponsor does not have an actual or apparent conflict of interest with respect to the project. An example of a Conflict of Interest policy can be found on the [WRDGP](#)

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[website](#). This policy shall be on the Project Sponsor's letterhead.

All Conflict of Interest Policies should include:

- 1) Policies must apply to management employees and members of its board of directors or other governing body.
- 2) Policies must apply to any grants involving State funds.
- 3) Policies must address situations in which individuals in #1 may directly or indirectly benefit from the disbursement of State funds (excluding any benefit they receive by virtue of their position as a disburser of the grant).
- 4) Policies must include actions to be taken by the grantee or individual to avoid conflicts of interest and the appearance of impropriety.
- 5) Policies must be filed with the State prior to grant fund disbursement

Supplementary Documentation – The Project Sponsor may provide supplementary documentation (reports, photos, letters of support, etc.) as separate attachments via email as part of the application submittal. Application supplementary documents should be emailed to Kevin Hart at Kevin.Hart@ncdenr.gov.

Note: It is the Project Sponsor's responsibility to ensure the application submitted to DWR is accurate and complete. Erroneous or incomplete information in an application may prevent a project from being recommended for grant funding and may delay processing of contracts and funds for approved projects.

Any changes to the original project budget and/or project scope submitted with the application will require the prior written approval of DWR and may also require a DEQ contract amendment. Unapproved changes to the project scope or budget throughout the course of a project will not be eligible for cost-share funding or reimbursement.

Grant Application Review and Approval

DWR reviews grant applications and either approves, approves in part, or disapproves those applications based on the following criteria:

1. The economic, social, and environmental benefits to be provided by the projects;
2. Regional benefits of projects to an area greater than the area under the jurisdiction of the local sponsoring entity;
3. The financial resources of the local sponsoring entity;
4. The environmental impact of the project;
5. Any direct benefit to State-owned lands and properties.

Post Grant Funding Award

Acceptance of a grant award will require the Project Sponsor to enter into a grant contract with DEQ. Any changes to the scope of the project or project budget after submission of a grant application will require the written approval of the DWR Grant Administrator and may also require a DEQ contract amendment. In seeking DWR approval, the Project Sponsor must submit,

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at a minimum, a justification for any proposed changes, revised scope of work narrative, and a revised budget. Unapproved changes to the project scope or budget shall not be eligible for, and may result in additional reductions to, cost-share funding or reimbursement.

A DEQ grant contract is considered “fully-executed” once it has been signed by both a signatory authority of the Grantee and DEQ Financial Services. A copy of the fully-executed contract shall be provided to the Grantee after being signed by DEQ. No portion of work or expenditure of funds for the project, plan or services shall begin prior to receiving a fully-executed contract from DEQ. Unforeseen circumstances such as legislative, policy or funding allocation changes may delay award notifications.

Project Sponsor Obligation – Environmental Permitting

All proposed projects are subject to environmental review and permitting under applicable federal and State law. It is the Project Sponsor’s responsibility to prepare, provide and remain in compliance with all applicable environmental permitting requirements.

Extension Request

Grant award recipients may request a contract extension if a justification for the extension can be sufficiently documented. An extension is granted at the discretion of DWR. An extension request shall be submitted at least 45 days prior to the contract expiration date by the Project Sponsor or primary contact on official letterhead to Kevin Hart at Kevin.hart@ncdenr.gov. At a minimum, the extension request shall include:

1. Justification for the extension request
2. Summary of the current project status
3. Anticipated project schedule moving forward

Extension requests that are approved by DWR will require a grant contract modification by DEQ.

Grant Reimbursement Payments

The grant award amount is the maximum possible reimbursement amount. Only expenditures incurred after a fully executed contract that are detailed in the contract budget are eligible for reimbursement. Allowable expenditures are expenditures associated with the work performed for a specific invoicing cycle that are in accordance with the DWR-approved application budget sheet for the project. Reimbursements will provide 75% of the total amount spend on the project as of the date of the request for Tier 1 counties, as defined in N.C. Gen. Stat. § 143B-437.08. Reimbursements will provide 100% of the total amount spent for dredging projects located, in whole or part, in a development tier one area (as defined in N.C. Gen. Stat. § 143B-437.08) for a ferry channel maintained by the North Carolina Department of Transportation. Reimbursement requests can be submitted no more frequently than monthly. DWR will normally pay the Grantee by check or electronically within 30 days of receipt of the statement of expenses, provided the expenses are in accordance with the project information shown in the initial request or as amended. If the Grantee decides that significant changes to a project’s scope from that in the original application are necessary, the Grantee must send a request in writing to the DWR Grant

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Administrator and receive approval of those changes. Unapproved changes will not be eligible for state cost-sharing.

Reimbursement requests shall include:

1. Cover letter on grantee letterhead that includes:
 - a) DEQ grant contract number
 - b) Total amount of reimbursement request
 - c) Actual cost (expenses) by approved budget categories
 - d) Total amount spent on the project to date of the request
2. Complete Grant Reimbursement Template (both sheets labeled “Invoices” and “Request 1 Itemized”) located on the [WRDGP website](#).
3. Copies of invoices or other documentation for materials, services and other project costs detailed on the “Request 1 Itemized” sheet. Invoices submitted shall be on either the Grantee or the Grantee’s subcontractor letterhead.

DWR will retain 10% of the total grant award amount until after the final project has been inspected and accepted by DWR staff. The reimbursement request and supporting documentation should be submitted electronically to Kevin Hart at Kevin.Hart@ncdenr.gov.

Requests for Additional Funding

Grant recipients can submit a request for additional funding to DWR. Requests for additional funding must be submitted by the Project Sponsor on official letterhead via email. The following information shall be submitted by the Grantee to DWR for additional funding consideration:

1. A narrative describing the circumstances/need for an increased funding award, summary of current project status and anticipated project implementation schedule.
2. Copies of all subcontractor invoices for design, permitting, surveying, construction, construction oversight and project administration.

Upon receiving all relevant information from the Grantee, DWR will respond to the Grantee with within 30 calendar days with a decision regarding increased funding. Funding increases are subject to the availability of funds. DWR may not be able to grant requests for additional funding caused by inaccurate or incomplete information in the application or project budget provided by the Project Sponsor or Co-Project Sponsor.

Project Close-Out

The Grantee shall notify the DWR Grant Administrator upon project completion and provide DWR with the most recent set of permits, as-built/record, post-surveys of the dredge site, and post-surveys of the spoil site (if applicable) in Adobe PDF format prior to the project close-out.

DWR Grant Administrator may schedule a close-out inspection of the completed project with a representative of the Grantee. This inspection will verify that the project was implemented in

Water Resources Development Grant Program (WRDGP) Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund Guidelines FY 2022-2023

accordance with the information provided in the grant application, along with the approved plans and specifications.

The Grantee shall address any remedial or compliance actions identified during this close out inspection prior to DWR project acceptance. After the project is inspected and accepted, DEQ will review the accounting statements and reimburse the Grantee for the remaining 10% of the State's share of the non-federal cost.

Additional References for the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund:

[S.L. 2013-360](#)

[S.L. 2015-241](#)

[S.L. 2016-94](#)

[S.L. 2017-57](#)

[S.L. 2018-5](#)

[S.L. 2021-180](#)

[S.L. 2022-74](#)



BOARD OF ALDERMEN AGENDA ITEM SUMMARY

DATE: January 5, 2023 DEPARTMENT: City Manager's Office

PRESENTED BY: Bonnie Therrien, Interim City Manager

ITEM SPONSORED BY: Board of Aldermen and City Manager's Office

ITEM/TOPIC: Meal and Beverage Tax Increase

COST: N/A BUDGET LINE ITEM: N/A

JUSTIFICATION: During the past yearly Budget Goal Setting Workshops, discussions have been held about requesting the State to approve a 1% increase in the meal and beverage tax for Southport.

IMPACT IF NOT APPROVED: The current rate of 6.75% would stay as is for the upcoming fiscal year.

DEPARTMENT HEAD COMMENTS: N/A

CITY MANAGER COMMENTS: Adding an additional tax to the meals and beverage tax for the use by the City for infrastructure improvements has been talked about for many years. In 2017, this was sent to the State for their approval, but there was no State consensus to move forward with an increase for Southport and it was denied. We can request between a half-percent and one percent increase.

ATTACHMENTS: Page from January 2022 workshop, Email from Chris McLaughlin with the UNC School of Government, and the Draft Resolution

REQUESTED ACTION: The Board should consider whether they wish to request the State to allow Southport to add 1/2% or 1% to the 6.75% current tax rate with additional funding to be used towards infrastructure improvements.

PROPOSED MOTION: See attached resolution.

Prepared Meals Tax

- ▶ Currently the state of North Carolina assesses a 1% prepared meals tax upon meals that are prepared at restaurants. It does not include food that the retailer only slices or repackages.
- ▶ The authority to collect such a tax is give in §105-164.3(28)-Sales and Use Tax. Most local jurisdictions have requested and additional 0.5% tax. But legally, the highest local meal tax in NC is 1%.
- ▶ The fees do not apply to alcohol sales, or foods that require cooking to prevent food borne illnesses.
- ▶ The General Assembly must approve the use of additional taxes assessed my local jurisdictions. Currently only (14) local jurisdictions have the right to charge an additional assessment. Historically, if included as a voter referendum, the voters have not voted in favor of the additional 1% tax.
- ▶ The revenue collected under this provision must be used for tourism or cultural events. If the jurisdiction can show a high level of tourism, which will generate a larger number of food sales, it is more likely that the state government and taxpayers will be in support of this tax. Especially if it can be used instead of raising property taxes.
- ▶ The city would have to garner our Legislator's support and ask him to introduce the bill and guide it through the process, if the Board decided to pursue the additional taxes.

Dorothy Dutton

From: McLaughlin, Christopher B <mclaughlin@sog.unc.edu>
Sent: Wednesday, January 12, 2022 5:55 PM
To: Dorothy Dutton
Subject: RE: food/prepared meals tax

Follow Up Flag: Follow up
Flag Status: Flagged

Dorothy, there is no statewide tax specifically on prepared foods. Instead, prepared foods are subject to the “regular” sales tax that applies to the sale of most goods in NC. That tax is 4.75% plus whatever additional local sales tax that has been adopted by the county. I believe that additional tax is 2% for Brunswick (see a list of local sales taxes [here](#)), which means sales of prepared foods in your city are already subject to a sales tax of 6.75%. If the town were to get approval from the General Assembly and the voters to adopt a 1% prepared food tax, then sales of prepared food in Southport would be subject to a combined state/local tax of 7.75%.

Chris

Christopher B. McLaughlin (he/him/his)

Professor of Public Law and Government
School of Government
The University of North Carolina at Chapel Hill
Campus Box 3330, Knapp-Sanders Building
Chapel Hill, NC 27599-3330
919.843.9167
www.sog.unc.edu



From: Dorothy Dutton <Ddutton@cityofsouthport.com>
Sent: Wednesday, January 12, 2022 3:10 PM
To: McLaughlin, Christopher B <mclaughlin@sog.unc.edu>
Subject: RE: food/prepared meals tax

Good afternoon,

**CITY OF SOUTHPORT BOARD OF ALDERMEN
RESOLUTION REQUESTING SUPPORT OF A PREPARED MEALS TAX**

WHEREAS, the City of Southport is in need of many improvements to its infrastructure that will require significant funding; and

WHEREAS, Southport is home to many residents but is also a very popular vacation and tourist destination which increases the impact on the City's infrastructure; and

WHEREAS, all individuals who enjoy living or visiting Southport should participate in the needed infrastructure improvements instead of only the taxpayers of the City;

NOW, THEREFORE, BE IT RESOLVED that the City of Southport Board of Aldermen request the NC General Assembly to establish a Prepared Meals Tax of one-half or one percent (1/2 or 1%) and dedicate the funds to infrastructure in the City of Southport.

RESOLVED, this 12th day of January 2023.

Joseph P. Hatem, MD, MPH.
Mayor, City of Southport

Dorothy Dutton, City Clerk



BOARD OF ALDERMEN

AGENDA ITEM SUMMARY

DATE: January 4, 2023 DEPARTMENT: Board of Aldermen

PRESENTED BY: Alderman Allen

ITEM SPONSORED BY: Alderman Allen

ITEM/TOPIC: Schedule of Board Workshops on a Monthly Basis

COST: N/A BUDGET LINE ITEM: N/A

JUSTIFICATION: At the December Board meeting, Alderman Allen requested a second Board Meeting to be used as a workshop to move business along in an efficient manner.

IMPACT IF NOT APPROVED: Projects and decisions by the Board will be delayed which can cause cost increases and lead to delays with staff moving forward with projects.

DEPARTMENT HEAD COMMENTS: N/A

CITY MANAGER COMMENTS: I have attached a tentative list of Workshops/Interviews that need to be solidified for January and February. A decision should be made on regular monthly workshops dates and times. I concur with the need for a second meeting of the Board especially with all of our current projects underway.

ATTACHMENTS: Tentative Schedule for January and February meetings

REQUESTED ACTION: Decision on January and February workshops and a decision on whether to hold regular workshops and if so, a date and time on a monthly basis. The Community Relations Dept. has confirmed the most available date is the Friday before the Board meetings. They have reserved the building already.

PROPOSED MOTION: Motion to accept the Workshop schedule for January and February as attached and select a regular date and time for future workshops.

TENTATIVE DATES FOR JANUARY/FEBRUARY MEETINGS

January 17th	City Attorney Interviews
January 19th (ALL DAY)	Team Building/Leadership Training – AM Budget Strategic Planning – After Lunch
February 7th	Right of Way Discussion and Presentation
Sometime in February	Public Information Session on Sewer Expansion And Sewer Projects (Timing Depends on Engineering Firms)



BOARD OF ALDERMEN AGENDA ITEM SUMMARY

DATE: January 3, 2023 DEPARTMENT: City Manager's Office

PRESENTED BY: Bonnie Therrien, Interim City Manager

ITEM SPONSORED BY: Same

ITEM/TOPIC: Process to Select City Attorney/Firm

COST: To Be Determined BUDGET LINE ITEM: Contract Line Item

JUSTIFICATION: The City is in need of a City Attorney or a Law Firm that can assist the Mayor,
Board of Aldermen and staff with answering legal questions and give us guidance on City matters

IMPACT IF NOT APPROVED: We would have no one to guide us in North Carolina and Federal law
so the City can be protected against lawsuits, and we run the City in accordance with the law.

DEPARTMENT HEAD COMMENTS: N /A

CITY MANAGER COMMENTS: We have received background information along with pricing from
four firms who are interested in serving as our City Attorney. You must now decide how to proceed in
making your final selection. We can have staff interview the 4 firms and give you recommendations
of two to interview or you can interview all four in open session.

ATTACHMENTS: Resumes of the four interested Attorney or firms.

REQUESTED ACTION: Develop a process to interview the interested firms with staff's input. Tentative
date to do this is January 17th in open session as this position is contractual in nature.

PROPOSED MOTION: We do not need a formal policy but direction as to how and when you wish
to interview firms. We need to have someone in place as City Attorney as soon as possible.

LAW OFFICES OF G. GRADY RICHARDSON, JR., P.C.

ATTORNEYS AND COUNSELORS AT LAW
1908 EASTWOOD DRIVE, SUITE 224
LUMINA STATION
WILMINGTON, NORTH CAROLINA 28403

G. GRADY RICHARDSON, JR.
SUSAN GROVES RENTON*
JENNIFER L. CARPENTER**
RUSS C. BRYAN†

TELEPHONE: (910) 509.7166
FACSIMILE: (910) 509.7167
E-MAIL: grady@ggrlawoffice.com
susan@ggrlawoffice.com
jennifer@ggrlawoffice.com
russ.bryan@ggrlawoffice.com

*Of Counsel; Licensed in VA & NC

**Associate, Licensed in NC & HI

†Attorney on Contract; Licensed in NC & DC

20 December 2022

VIA EMAIL ATTACHMENT ONLY

CITY OF SOUTHPORT

c/o: Ms. Bonnie Therrien, Interim City Manager
Ms. Dorothy Dutton, City Clerk
1029 North Howe Street, Suite 100
Southport, North Carolina 28461
Email: btherrien@cityofsouthport.com
Email: ddutton@cityofsouthport.com

Re: Response to Request for Proposal
For Legal Services

Dear Ms. Therrien, Ms. Dutton, and City of Southport:

I am pleased to provide this correspondence as my law firm's response to the request for proposal for legal services by the City of Southport ("City").

Information about the Law Firm, Attorney Biographical Information, and Details about Municipal Experience and Land Use Law

The Law Offices of G. Grady Richardson, Jr., P.C. ("Firm") is presently comprised of four attorneys: G. Grady Richardson, Jr., Susan Groves Renton, Jennifer L. Carpenter, and Russ C. Bryan (collectively, "Firm"). The Firm is a full-service provider of legal services and representation.

Mr. Richardson was licensed to practice law by the State of North Carolina in 1998 and has been practicing law for 24 years. In 2005, Mr. Richardson founded his Firm. Mr. Richardson is a native of Wilmington, North Carolina and even attended Southport Elementary School for a few years while his family lived in Oak Island, North Carolina. Mr. Richardson graduated from E.A. Laney High School in 1990 and obtained his Bachelor of Arts degree in Political Science from the University

of North Carolina at Wilmington in 1994. Mr. Richardson attended and obtained his Juris Doctor degree in 1998 from the Campbell University School of Law. In 2005, Mr. Richardson served as the 58th President of the North Carolina Azalea Festival. Mr. Richardson is married to his wife of twenty-four years, Amy Sizemore Richardson, and they have three children (Graham [21], Abigail [19], and Luke [15]). Amy is also a native of Wilmington, North Carolina.

Mr. Richardson and his Firm have served as the Town Attorney for the Town of St. James since 2005.

Mr. Richardson and his Firm have served as the Town Attorney for the Town of Sunset Beach since 2014.

In his capacity as the Town Attorney for the Towns of St. James and Sunset Beach, Mr. Richardson serves all of the needs of St. James and Sunset Beach which expressly covers general municipal advice and counseling, land use law, litigation over a wide variety of areas of law including zoning, land use, employment and personnel, and condemnation, as well as drafting, reviewing, negotiating and finalizing deeds, easements, and contracts and agreements of all kinds.

Previously in 2011, Mr. Richardson and his firm also successfully litigated for the City of Southport against the Southeast Brunswick Sanitary District and completely defeated the District's multi-million dollar lawsuit against the City. The successful trial court ruling Mr. Richardson obtained for the City was affirmed by the North Carolina Court of Appeals and a copy of that appellate opinion is enclosed as Exhibit 1. Mr. Richardson also has prior experience serving as special counsel for the City of Wilmington's Board of Adjustment.

Mr. Richardson has been recognized by his peers in the legal community as one of The Best Lawyers in America continuously from 2013 through the most recent 2023 edition in the fields of Civil Litigation, Land Use and Zoning. Recently, Mr. Richardson's Firm was also recognized by its peers and clients as one of the Best Law Firms in America for 2023 in the fields of Civil Litigation, Land Use and Zoning. Earlier this year, Mr. Richardson was admitted to practice before the Supreme Court of the United States and is also admitted to practice in the Eastern, Middle and Western Districts of Federal Court in North Carolina. Having lived and practiced law in Wilmington and surrounding areas, including the City of Southport and Brunswick County, Mr. Richardson is very knowledgeable and familiar with the growth, needs, and issues confronting local municipalities.

At all times over his 24-year career, Mr. Richardson has maintained a general practice with an emphasis in civil litigation, municipal law, real property, land use and zoning, contracts, commercial law, appellate law, and business law. Mr. Richardson has been primary counsel in numerous appeals to the North Carolina Court of Appeals and the North Carolina Supreme Court.

Over the course of his career, Mr. Richardson has represented private parties before several municipal agencies, boards and/or departments including, the Town of Leland, the New Hanover County Board of County Commissioners, City Council for the City of Wilmington, Pender County

Board of County Commissioners, Town of St. James, Town of Sunset Beach Board of Adjustment, Town of Sunset Beach Planning Board, and the Town of Surf City. In doing so, Mr. Richardson has advocated both for and against development projects and land use development applications.

Mr. Richardson also has extensive experience in coastal issues and/or disputes involving the Coastal Area Management Act, North Carolina Department of Environment and Natural Resources, Coastal Resources Commission, Division of Coastal Management and/or the United States Army Corps of Engineers.

In addition to Mr. Richardson's qualifications, attorney Susan Groves Renton is of counsel with the Firm. Mrs. Renton has been with the Firm continuously since 2009, a period of approximately 13 years. In 2001, Mrs. Renton obtained her Bachelor of Science degree from Washington & Lee University. In 2004, Mrs. Renton obtained her Juris Doctor degree from the prestigious University of Virginia School of Law. Mrs. Renton maintains and observes all conflicts of interest and confidentiality with the Firm's clients. Mrs. Renton has been practicing law for approximately 18 years. Mrs. Renton maintains active law licenses in both Virginia and North Carolina. Mrs. Renton is admitted to practice in the Eastern and Middle Districts of Federal Court in North Carolina. During her tenure with the Firm, Mrs. Renton has worked closely with Mr. Richardson on all matters highlighted and summarized above, including attending Town Council meetings for St. James and Sunset Beach, and researching, analyzing, and providing legal advice and counseling for St. James and Sunset Beach. Mrs. Renton is particularly gifted in her legal research and writing skills.

Jennifer L. Carpenter is an associate attorney with Mr. Richardson's Firm. Mrs. Carpenter joined the Firm in January of 2018. Mrs. Carpenter obtained her undergraduate degree in Economics from Arizona State University. In 2004, Mrs. Carpenter earned her Juris Doctor degree from the William S. Richardson School of Law in Honolulu, Hawaii. During law school, Mrs. Carpenter served as a law clerk to Hawaii's Intermediate Court of Appeals, and she earned a number of scholarships and advocacy awards including "Best Oralist" and the CALI Excellence Award for appellate advocacy. Mrs. Carpenter has been licensed to practice law in the State of North Carolina since March 2017. Mrs. Carpenter is admitted to practice in the Eastern and Middle Districts of Federal Court in North Carolina. Over the span of her employment with the Firm, Mrs. Carpenter has been vital in researching and analyzing a variety of legal issues across the Firm's broad general practice areas. Mrs. Carpenter has drafted pleadings, legal memoranda, and assisted Mr. Richardson and Mrs. Renton as co-counsel in multiple cases. Mrs. Carpenter also attends, as needed, the meetings of Sunset Beach Town Council, Planning Board, and Board of Adjustment. Mrs. Carpenter has also appeared and argued in Court on several motions in various cases and has taken depositions in cases. Mrs. Carpenter has a strong work ethic and ability to quickly grasp complicated legal disputes and issues.

Finally, Russ C. Bryan is a part-time attorney at the Firm. Mr. Bryan obtained his Bachelor of Arts degree in Political Science from the University of North Carolina at Wilmington in 1994. Mr. Bryan attended and obtained his Juris Doctor degree in 1997 from the Campbell University School

of Law. Mr. Bryan is licensed to practice law in North Carolina and the District of Columbia. Mr. Bryan has been with the Firm on a part-time basis since 2020. Mr. Bryan's legal experience is one of a general practice in civil litigation, real property, land use and zoning, contracts, commercial law, and business law.

In summary, given the Firm's unique practice and extensive municipal representation, we possess significant knowledge and experience on all sides of positions that routinely arise before municipalities such as the City, whether it be representing and defending a municipality, suing a municipality, or advocating for our clients' positions before a municipal body. Even after the initial determinations administratively or otherwise, this Firm's attorneys successfully advocate their clients' positions at all levels of appeal from any adverse decisions, including boards of adjustment, the State's Office of Administrative Hearings, and all levels of our State and Federal Courts.

The Firm maintains \$1,000,000.00 of professional malpractice insurance coverage on all of its attorneys. Mr. Richardson and his Firm have been continuously professionally insured over the entirety of his 24-year career, which includes all 17 years since the Firm was established in 2005.

Statement of Interest in Providing Service to the City

The Firm and its attorneys are very interested in serving the City and its best interests. The Firm's attorneys possess a uniquely diverse legal background and set of skills that many lawyers and firms do not possess. Mr. Richardson, Mrs. Renton, Mrs. Carpenter, and Mr. Bryan all share a love and passion for practicing law and in vigorously serving, protecting, and representing the Firm's clients. The opportunity to represent the City on its various legal needs is exciting and personal to the Firm particularly considering the Firm's long-standing role as the Town Attorneys for St. James and Sunset Beach.

Ability to Provide Timely and Efficient Service to the City

Everything in the Firm's practice areas, particularly civil litigation, are driven by deadlines imposed by the Courts, as well as client expectations. The Firm's attorneys are always careful to ascertain the client's needs, goals, and expectations, including all dates or deadlines by which they expect our service, opinions, and product. The City would be no different – and this Firm's prompt, efficient, timely, and diligent professional services and representation will satisfy and exceed the City's expectations.

The Firm will devote as much time to the City's business and legal needs and representation as necessary to make sure to get the job done with a high degree of quality and effectiveness.

If this Firm's attorneys do not provide impeccable service and effort for the clients, then both the Firm's practice and clients will suffer, which is completely unacceptable. Over the course of Mr. Richardson's 24-year career and ever since the Firm's establishment in 2005, the Firm's clients have never suffered from any untimely or inefficient service and representation. This Firm and its attorneys

do not intend for the City to ever have that experience if this Firm is afforded the opportunity to represent it.

Suggested Contractual Terms, as well as Hourly Rates.

The Firm's typical contractual term with its clients is hourly billing, with detailed time and/or costs entries, submitted on a monthly basis. Payment is typically due on receipt of the Firm's invoices for professional services rendered. The hourly rate charged by all attorneys at the Firm to its two current municipal clients – St. James and Sunset Beach – is and has been \$325 per hour.

Notwithstanding the Firm's typical contractual terms above, we would be open to other contractual terms depending on the nature of the dispute or needs of the City. These other alternatives could include, for instance, a flat fee agreement, contingency fee agreement, a pre-determined, fixed payment amount paid on a monthly basis that remains constant irrespective of how little or how much work is needed by the City and/or performance-enhanced agreements based on the outcome from the litigation. Mr. Richardson will be happy to discuss any such alternatives with the City.

Other Factors or Information Thought to be Important
to the City in Considering the Firm's Proposal

Other than what is highlighted above, it should be noted that Mr. Richardson and his Firm have seen and been involved in just about every conceivable legal dispute imaginable. The experience of the Firm's attorneys range from breach of contract actions to land boundary disputes, adverse possession, construction defects and disputes, closely-held corporate disputes, asset purchase and sale transactions, personal injury claims, constitutional and vested rights disputes, land use and zoning disputes, and appeals, as well as matters involving employment law counseling and representation. This diversity affords the Firm uncommon, first-hand perspectives and experience for the benefit of its clients.

Additionally, please find enclosed with this submission the following legal writing samples:

Exhibit 1: The 2011 opinion of the North Carolina Court of Appeals in favor of the City against the Southeast Brunswick Sanitary District which affirmed the Firm's successful ruling before the trial court.

Exhibit 2: Mr. Richardson's Memorandum of Law submitted on behalf of the City of Southport in the litigation against the Southeast Brunswick Sanitary District wherein the District's damages claims of between 12-18 million dollars from the City were completely defeated.

Exhibit 3: The Firm's appellate brief to the North Carolina Court of Appeals in the *Holcombe v. Oak Island Aircraft Housing, LLC* case. In this matter, the Firm obtained a favorable ruling from the trial court against the defendants, which was subsequently affirmed in all respects by the Court of Appeals.

The Firm is happy to provide more examples of legal writings upon request.

References

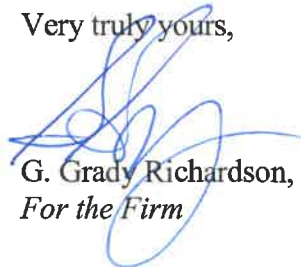
Mr. Richardson and this Firm would encourage the City to contact the Town of Sunset Beach (Lisa Anglin, Town Manager) and the Town of St. James (Mayor Jean Toner and/or Town Manager, Jeff Repp). The Firm can also provide additional references upon request.

Conclusion

If the City has any questions or concerns regarding the matters contained herein or needs anything further, please do not hesitate to contact Mr. Richardson. Thank you for the opportunity to submit this response to the City's request for information in its search for a new City Attorney.

With best regards, I remain

Very truly yours,



G. Grady Richardson, Jr.
For the Firm

GGR/

Enclosures

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA09-1369

NORTH CAROLINA COURT OF APPEALS

Filed: 1 February 2011

SOUTHEAST BRUNSWICK
SANITARY DISTRICT,
Plaintiff,

v.

Brunswick County
No. 08 CVS 3266

CITY OF SOUTHPORT,
Defendant.

Appeal by plaintiff from order entered 22 July 2009 by Judge Ola M. Lewis in Brunswick County Superior Court. Heard in the Court of Appeals 14 April 2010.

Andresen & Arronte, PLLC, by Mark E. Carlson, for plaintiff-appellant.

Law Offices of G. Grady Richardson, Jr., P.C., by G. Grady Richardson, Jr., for defendant-appellee.

GEER, Judge.

Plaintiff Southeast Brunswick Sanitary District ("the District") appeals from an order granting summary judgment to defendant City of Southport ("the City"). The District contends on appeal that genuine issues of material fact exist with respect to its claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and breach of quasi-contract. Our review of the record reveals, however, that the uncontroverted evidence establishes that the District's own anticipatory breach of



the parties' agreement excused the City from its obligations under the agreement. Consequently, no material issue exists as to whether the City breached the parties' contract. With respect to the implied covenant of good faith and fair dealing, the District has not demonstrated that the City acted in bad faith with respect to any obligations arising under the contract. Finally, the District's quasi-contract claim is barred by the existence of an express contract governing the same subject matter. We, therefore, affirm the trial court's summary judgment order.

Facts

Beginning in at least 1996 and continuing up until 2004, the District and the City entered into a series of agreements pursuant to which the District furnished wastewater treatment services to the City. On 8 October 2004, the District and the City entered into a contract ("the Contract") providing for a three-phase project that, when fully completed, would enable the District to meet all of the City's wastewater treatment needs – projected in the Contract to be up to 951,000 gallons per day ("gpd"). The Contract superseded all prior agreements and anticipated that upon completion of the three phases, the City's present and future projected wastewater needs would be fully satisfied.

The Contract set out specific sewer usage and impact fees that the City would be required to pay the District. In addition, the Contract provided that so long as the District "is capable of providing to [the City] its sewerage treatment needs, [the City] shall not acquire or produce sewer treatment capacity from any

source other than the [District] without the express written consent of the [District]" The Contract could "be terminated, modified or amended only with the written consent of the parties"

The Contract specified that the parties would retain the engineering firm of W.K. Dickson & Co. ("WKD") to perform engineering studies and cost estimates relating to modifications of the wastewater collection system, expansion of the wastewater facilities, and adequate disposal of the effluent resulting from expansion. Further, both parties agreed to a March 2003 preliminary design report prepared by WKD ("the 2003 Report") "as the basis for each parties [sic] cost estimate, construction and scheduling of the services in order to accomplish the services contemplated herein." The 2003 Report was incorporated into the Contract by reference.

Beginning in 2006, even before phase one was completed,¹ the parties entered into negotiations and discussions related to the District's desire to expand its treatment capacity to 1.5 million gpd and to amend other terms of the Contract. Neither party disputes that they both engaged in regular communications concerning possible changes to a number of provisions in the Contract. The parties' discussions covered several topics, including the District's desire to increase and otherwise modify the fees the City would be required to pay the District for its

¹Phase one of the Contract was completed in September 2006. After its completion, temporary service interruptions occurred in December 2006 and August 2007.

treatment of the City's wastewater, as well as the possibility of merging phases two and three of the project into one phase. The parties also met with WKD on multiple occasions to discuss proposals.

On or about 17 November 2006, the District circulated its first proposed mark-up of the Contract to the City with suggested changes for the City's review. On 26 March 2007, the City informed the District that the City's manager and utilities director were meeting to discuss the proposed amendments to the Contract. In May 2007, WKD prepared another preliminary engineering report ("the 2007 Report") modifying the three-phase project by combining the second and third phases into a single phase and updating cost projections.

On 21 May 2007, the City sent the District a memorandum outlining the City's position with respect to the proposed amendments. The City stated: "Under our present agreement, the City is obligated to purchase allocation in the [District] plant by the gallon, and pay for actual treatment by the gallon as well. We believe this philosophy should be the basis of any revised agreement dealing with disposal." The following day, the District responded by e-mail that "[s]ince each of us are [sic] currently seeking funding and grant assistance we both need to agree on the future course of action quickly."

On 4 June 2007, the District sent the City a letter with "two options for the City to consider." The first option was to keep the existing Contract, but to revise one sewer rate. The second

option was to revise the Contract to reflect increased treatment at the District's plant, add a third sewer rate, and purchase spray from the City. The District stated that the "new sewer fees are reflective of the City's portion of the expansion costs of the treatment plant, calculated over forty (40) years and include a credit for impact fees collected." In its response to the proposal, the City emphasized its belief that the Contract was "valid and binding, particularly with regard to the fees and rates previously negotiated in good faith." It also noted ongoing concerns with the District's inability to adequately handle the City's phase one wastewater treatment needs under the Contract. The City, however, suggested counterproposals for the District's consideration.

On 7 November 2007, the District submitted to the City another proposed amendment to the Contract. The City rejected this proposal by letter dated 16 November 2007. The City explained that since it had been notified that it could reduce its per gallon residential reservation requirement, it was confident that the amount agreed upon in the Contract (951,000 gpd) was more than adequate for the City "now and into the distant future"; thus it saw no need for continued discussion "related to possible revision" to the Contract.

On 17 December 2007, the District sent the City an e-mail addressing the status of the parties' discussions concerning the Contract. The e-mail indicated that recent events had caused the District's board to re-evaluate the Contract. It further stated:

"Without a new agreement we cannot proceed ahead with the current project and schedule. Our deadline is March 31, 2008." On 25 January 2008, the District sent another e-mail to the City setting out two options: Updating the Contract or terminating the Contract. The District stated that "[t]he date to make a decision, either together or unilaterally, is March 31, 2008."

On 19 March 2008, the District sent the City another letter, emphasizing the importance of the 31 March 2008 date and stating, "We will also need to amend [the Contract] to reflect today's environment. Since 2004, wastewater treatment costs and expansion costs have increased." Shortly afterwards, on 25 March 2008, the District sent another letter to the City offering proposed rate structures and revised terms to the Contract. The following month, however, the City began discussions with Brunswick County ("the County") to acquire wastewater treatment services from the County.

Although there was never any written amendment to the Contract, the District sent the City a letter on 3 June 2008 stating that the District was "ready and agreeable to continue the partnership with the City of Southport pursuant to the terms of the [Contract] dated October 08, 2004, as amended by the continuing engineer reports and the rate structure presented to the City" by the District's 25 March 2008 letter. Then, on 10 June 2008, the District sent the City another letter offering new proposed rates and revised terms from those previously proposed in the 25 March 2008 letter. The letter concluded by asserting: "All agreed that if the City does continue with the District, the 2004 agreement

will be modified to reflect the above rates and also other needed changes to the agreement."

By mid-2008, when the City and the District had not yet agreed to a new contract, the City entered into an agreement with the County to handle the City's present and future wastewater needs. In response, the District filed suit against the City, alleging breach of contract, breach of the implied covenant of good faith and fair dealing, and, alternatively, breach of quasi-contract. The District asserted that the City's "well-publicized negotiations with the County regarding plans to obtain wastewater treatment services from the County constitute clear and unequivocal intent to breach the [Contract] and any amendments thereto." The City filed an answer that included a counterclaim seeking a declaratory judgment that the Contract had terminated as a result of the District's actions, as well as counterclaims for breach of contract, attorneys' fees and costs, and the right to refund or reimbursement.

On 8 June 2009, the City filed a motion for partial summary judgment as to all of the District's claims. The trial court held a hearing on the City's motion on 29 June 2009. On 2 July 2009, the court entered an order granting the City's motion as to all of the District's claims. The District filed a motion to alter or amend the order, after which the trial court entered an amended order purporting to certify the decision for immediate appeal pursuant to Rule 54(b) of the Rules of Civil Procedure. The District appealed the amended order to this Court.

Interlocutory Appeal

Since the City's counterclaims remain pending, this appeal is interlocutory. See *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) ("An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy."). An interlocutory order is immediately appealable under only two circumstances: (1) when the order or judgment is final as to some but not all of the claims or parties, and the trial court certifies the case for appeal pursuant to Rule 54(b) of the Rules of Civil Procedure; and (2) if the order or judgment affects a substantial right of the appellant that would be lost in the absence of immediate review. *Embler v. Embler*, 143 N.C. App. 162, 164-65, 545 S.E.2d 259, 261 (2001).

The District first contends that the trial court's designation of the order as "a final judgment" and certification of the order "for immediate appeal" made the judgment immediately appealable under Rule 54(b). In order to fall within Rule 54(b), however, the trial court must have determined not only that the order is final as to one or more parties or claims, but must also have "determine[d] that there is 'no just reason for delay' and include[d] a statement to that effect in the judgment" *Cunningham v. Brown*, 51 N.C. App. 264, 266, 276 S.E.2d 718, 721 (1981) (quoting N.C.R. Civ. P. 54(b)).

When an order or judgment "does not state that the judge found no just cause for delay . . . , the order is not an immediately appealable 'final judgment' under Rule 54(b)" *Id.* at 266-67, 276 S.E.2d at 721-22. See also *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994) ("Because the trial court in the case *sub judice* made no certification as required by Rule 54(b) of the North Carolina Rules of Civil Procedure, the first avenue of appeal is closed to [appellant]."); *Hall v. Hall*, 28 N.C. App. 217, 218, 220 S.E.2d 158, 158 (1975) (dismissing appeal from interlocutory order because "judge did not find there is no just reason for delay"). Since the order in this case did not include a finding that there is "no just reason for delay," Rule 54(b) cannot provide a basis for appellate jurisdiction.

Therefore, in order for the District to immediately appeal the summary judgment order, the District must demonstrate that a substantial right will be adversely affected if this order is not reviewed before entry of final judgment on the remaining issues. *Jeffreys*, 115 N.C. App. at 379, 444 S.E.2d at 253-54. The District argues that the dismissal of its claims affects a substantial right because there are factual issues common to the dismissed claims and the pending counterclaims.

In *Green v. Duke Power Co.*, 305 N.C. 603, 608, 290 S.E.2d 593, 596 (1982), the Supreme Court recognized that, generally, the right to avoid two trials is not a substantial right, but the right to avoid two trials *on the same issues* may involve a substantial

right. "Ordinarily the possibility of undergoing a second trial affects a substantial right only when the same issues are present in both trials, creating the possibility that a party will be prejudiced by different juries in separate trials rendering inconsistent verdicts on the same factual issue." *Id.* See also *J & B Slurry Seal Co. v. Mid-South Aviation, Inc.*, 88 N.C. App. 1, 9, 362 S.E.2d 812, 817 (1987) (holding that summary judgment order as to plaintiff's claims, leaving defendant's counterclaims pending, affected substantial right because of "presence of identical factual issues in both proceedings" that could "produce inconsistent verdicts").

Here, the District's claims and the City's defenses and counterclaims hinge on the issue of which party breached the Contract. Were separate trials to take place as to the City's counterclaims and the District's claims, identical factual issues would be present, and the respective juries could render inconsistent verdicts based on their findings as to whether the District or the City breached the Contract. We, therefore, conclude that the summary judgment order in this case affects a substantial right, and the appeal is, therefore, properly before us. See *Bob Timberlake Collection, Inc. v. Edwards*, 176 N.C. App. 33, 38, 626 S.E.2d 315, 321 (concluding, where buyer's counterclaim asserted fraud, negligent misrepresentation, unfair and deceptive trade practices, and breach of contract claims against seller, that seller's claims and buyer's claims involved identical issues of fact, and if buyer's interlocutory appeal was not allowed, there

was possibility of inconsistent verdicts resulting from same factual issues), *disc. review denied*, 360 N.C. 531, 633 S.E.2d 674 (2006).

Denial of Motion for Continuance

Turning to the merits of the appeal, the District first contends that the trial court should have granted the District's motion to continue the summary judgment hearing. The trial court had entered a scheduling order setting a deadline for completion of discovery and mediation 30 days prior to the 30 November 2009 trial date. In early May 2009, after the exchange of written discovery and the taking of initial depositions, counsel for the District e-mailed counsel for the City, suggesting that it was "apparent that a great deal of further discovery is required."

The next month, on 18 June 2009, nine days after the City moved for summary judgment and noticed the hearing for 29 June 2009, the District served subpoenas duces tecum and notices of non-party depositions of two individuals with WKD. On 22 June 2009, the District filed a motion to continue the summary judgment hearing. On 2 July 2009, the court entered a written order denying the District's motion for a continuance.

Our Supreme Court has noted that "[o]rdinarily it is error for a court to hear and rule on a motion for summary judgment when discovery procedures, which might lead to the production of evidence relevant to the motion, are still pending and the party seeking discovery has not been dilatory in doing so." *Conover v. Newton*, 297 N.C. 506, 512, 256 S.E.2d 216, 220 (1979). As a

general principle, a summary judgment motion should not be decided until the parties have had a reasonable opportunity to complete discovery necessary to any issues likely to be raised on summary judgment. *See Ussery v. Taylor*, 156 N.C. App. 684, 686, 577 S.E.2d 159, 161 (2003) ("Thus, motions for summary judgment generally should not be decided until all parties are prepared to present their contentions on all the issues raised.").

Rule 56(f), however, specifically provides that, "[s]hould it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just." The Court has repeatedly held that where a party moves for a continuance but fails to file an affidavit pursuant to Rule 56(f), the trial court does not abuse its discretion in denying the party's motion to continue. *See, e.g., Draughon v. Harnett County Bd. of Educ.*, 158 N.C. App. 208, 214, 580 S.E.2d 732, 736 (2003) ("A trial court does not abuse its discretion when it denies motions to continue a hearing on a motion for summary judgment if a party fails to file and give notice of a motion to continue and submit an affidavit pursuant to Rule 56(f)."), *aff'd per curiam*, 358 N.C. 131, 591 S.E.2d 521 (2004); *Berkeley Fed. Sav. & Loan Ass'n v. Terra Del Sol, Inc.*, 111 N.C. App. 692, 711, 433 S.E.2d 449, 459 (1993) (holding defendants failed to demonstrate abuse of discretion where, *inter alia*,

"defendants did not file any affidavits detailing the facts necessary to justify their request for a continuance as required by G.S. § 1A-1, Rule 56(f)", *appeal dismissed and disc. review denied*, 335 N.C. 552, 441 S.E.2d 110 (1994).

Here, the record reveals that the District's motion to continue the hearing did not attach any Rule 56(f) affidavits explaining the reasons why further discovery was necessary in order to present facts "essential" to its summary judgment opposition. Moreover, we note that in its brief on appeal, the District does not even acknowledge the existence of Rule 56(f). The District asserts generally that depositions it could have taken from WKD affiliates were "likely to provide key testimony" and were "likely to yield substantial evidence material to the issues of contract formation, modification and breach," but the District still does not articulate why such testimony was necessary to the District's opposition. Because the District failed to attach any affidavits pursuant to Rule 56(f), we conclude that the trial court did not abuse its discretion in denying the District's motion for a continuance.

Summary Judgment

The District next argues that the trial court erred in granting the City's motion for summary judgment because issues of fact exist. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a

judgment as a matter of law." N.C.R. Civ. P. 56(c). The party moving for summary judgment has the burden of establishing the lack of any triable issues. *Collingwood v. Gen. Elec. Real Estate Equities, Inc.*, 324 N.C. 63, 66, 376 S.E.2d 425, 427 (1989).

Once the moving party meets its burden, then the non-moving party must "produce a forecast of evidence demonstrating that [it] will be able to make out at least a prima facie case at trial." *Id.* Rule 56(e) provides that the non-moving party "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." This Court reviews de novo a trial court's decision to grant summary judgment. *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 470, 597 S.E.2d 674, 693 (2004).

A. Breach of Contract Claim

In arguing that a genuine issue of material fact exists with respect to whether the City breached the Contract, the District points out that the City entered into a contract with the County for sewage treatment services in violation of the Contract provision limiting the City's right and ability to obtain wastewater treatment services from any entity other than the District. The City, however, contends that prior to its negotiations with the County, the District repudiated the Contract, thus excusing the City from its obligations under the Contract.

"The doctrine of anticipatory breach is well known: when a party to a contract gives notice that he will not honor the

contract, the other party to the contract is no longer required to make a tender or otherwise perform under the contract because of the anticipatory breach of the first party." *Dixon v. Kinser*, 54 N.C. App. 94, 101, 282 S.E.2d 529, 534 (1981), *disc. review denied*, 304 N.C. 725, 288 S.E.2d 805 (1982). Our Supreme Court has observed, however, that when "a seller refuses to perform his contract at the agreed price and demands a higher price," the buyer may be deemed to have waived the breach if it goes ahead and pays the higher price unless the buyer shows that it paid the higher price under economic duress. *Rose v. Vulcan Materials Co.*, 282 N.C. 643, 664-65, 194 S.E.2d 521, 535 (1973).

Here, Louis Roberti, the District's chairman, sent the City an e-mail on 17 December 2007 stating:

Recent events have caused changes and they have necessitated the Board to re-evaluate a number of items in the current Agreement.

. . . I will explain each item that needs to be changed, why the change, and a new format to the current agreement.

The District anticipates spending almost \$15M to expand its facilities to accommodate our needs and the needs of Southport. *Without a new agreement we cannot proceed ahead with the current project and schedule. Our deadline is March 31, 2008.*

(Emphasis added.) On 25 January 2008, Roberti again e-mailed the City, stating: "Our options, on one hand, is [sic] to update the October 8, 2004 agreement based upon today's environment or, the other extreme, to terminate the agreement." Then, on 19 March 2008, Roberti sent a letter stating:

We need to come to closure, by March 31, 2008, on your commitment to the District to continue its treatment of Southport's wastewater and the required plant expansion. . . .

March 31, 2008 is a critical date since the engineers will be submitting, April 1, 2008, Environmental Assessments (EA) and Preliminary Engineering Reports (PER) to the USDA in support of funding requests to them for the City and the District. They will not allow us to go ahead without both of our commitment to our agreement.

We will also need to amend the agreement to reflect today's environment. Since 2004, wastewater treatment costs and expansion costs have increased.

The District thus repeatedly told the City that the City would have to agree to amend the Contract to provide more favorable terms to the District, or the District would terminate the Contract. While Roberti, in his deposition, characterized these communications as "a threat to be quite honest," he claimed that the District would not have unilaterally terminated the Contract: "Would we have unilaterally, you know, no, of course not. We wouldn't have done that." It is, however, the District's actual representation to the City and not the District's secret motivation or intention that mattered with respect to anticipatory breach of contract. *See Millis Constr. Co. v. Fairfield Sapphire Valley, Inc.*, 86 N.C. App. 506, 510-11, 358 S.E.2d 566, 569 (1987) ("In order to constitute a repudiation, a party's statement must be sufficiently positive to be reasonably interpreted that a party will not or cannot substantially perform. . . . [I]f a party to the contract states that he cannot perform except on some condition which goes outside the terms of his contract then the statement

will constitute a repudiation." (emphasis added) (internal quotation marks omitted)); *Dixon*, 54 N.C. App. at 101, 282 S.E.2d at 534 ("[W]hen a party to a contract gives notice that he will not honor the contract, the other party to the contract is no longer required to make a tender or otherwise perform under the contract because of the anticipatory breach of the first party." (emphasis added)).

Since the undisputed evidence establishes that the District notified the City that it would not perform the Contract unless the City agreed to amend the terms of the Contract, the District repudiated the Contract, and the City was no longer obligated to perform under the Contract. The District argues, however, that a genuine issue of material fact existed as to whether the Contract was amended.

The District contends that WKD's 2007 Report superseded the 2003 Report (which was incorporated by reference in the Contract) and that the 2007 Report was thus incorporated in and effectively modified the terms of the Contract. N.C. Gen. Stat. § 160A-16 (2009), however, specifically requires that "[a]ll contracts made by or on behalf of a city shall be in writing." While the District argues that "it is possible that a modification of the 2003 Report could effect a modification of the underlying 2004 Contract, so long as any such modification was in writing as required by N.C. Gen. Stat. § 160A-16," the District does not point to any evidence that the City agreed in writing that the 2007 Report would modify the terms of the Contract. The District cites no authority to

support its theory that N.C. Gen. Stat. § 160A-16's writing requirement does not require that the City's agreement be in writing, but rather can be met by a writing prepared by a third party and not adopted in writing by the City. We, therefore, reject the District's suggestion that WKD's preparation of the 2007 Report effected a modification of the Contract. See *Concrete Machinery Co. v. City of Hickory*, 134 N.C. App. 91, 95, 517 S.E.2d 155, 158 (1999) (holding that even if private corporation orally consented to modify easement given to city to construct and maintain sewer, oral agreement to relocate easement was not enforceable, since, *inter alia*, all contracts made by city had to be in writing).

In accordance with N.C. Gen. Stat. § 160A-16, we further reject the District's suggestion that "[t]he real question is whether the parties established sufficient mutual assent with respect to the modification of the 2004 Contract by virtue of the modification of the 2003 Report." Since the City did not agree in writing to increase the rates, the District was not entitled to demand any terms other than those provided for in the Contract.

The District's repeated threats – that if the City did not assent to a new agreement, then the District would terminate the Contract – amounted to an anticipatory breach of the Contract. The City was, therefore, excused from its obligations under the Contract, and there was no material issue whether the City breached the Contract by negotiating with the County. See *Phoenix Ltd. P'ship of Raleigh v. Simpson*, ___ N.C. App. ___, ___, 688 S.E.2d

717, 725 (2009) ("Because by their words and conduct, defendants indicated that they would no longer honor the contract, plaintiff was excused from its obligation to tender the purchase price and had an action for breach of contract."). See also *Millis*, 86 N.C. App. at 511, 358 S.E.2d at 569 (holding contractor's statement that "he was 'busted,' 'belly-up' and would be unable to complete the contract unless he received retainage" which he was not yet entitled to could have constituted repudiation, raising jury issue of anticipatory breach); *Dixon*, 54 N.C. App. at 103, 282 S.E.2d at 535 (holding any failure of second party to fully comply with terms and provisions of option contract was excused because of first party vendor's anticipatory breach when that party, through her attorney, said that she would not go through with agreement). The trial court, therefore, did not err in granting summary judgment to the City on the District's breach of contract claim.

B. Breach of Implied Covenant of Good Faith and Fair Dealing Claim

The District further contends that the trial court erred in granting summary judgment on its claim for breach of the implied covenant of good faith and fair dealing. "It is a basic principle of contract law that a party who enters into an enforceable contract is required to act in good faith and to make reasonable efforts to perform his obligations under the agreement. Good faith and fair dealing are required of all parties to a contract; and each party to a contract has the duty to do everything that the contract presupposes that he will do to accomplish its purpose."

Weyerhaeuser Co. v. Godwin Bldg. Supply Co., 40 N.C. App. 743, 746, 253 S.E.2d 625, 627-28 (1979) (internal quotation marks omitted).

At the outset, we note that the District's theory on appeal regarding how the City breached the implied covenant is not the same as the one alleged in the complaint. In the complaint, the District alleged that the City acted in bad faith when it sought to acquire services from the County in April 2008. On appeal, however, the District argues that the City failed to act in good faith when, as early as 2005, the City knowingly and intentionally failed to disclose to the District that the City was pursuing a reduction in its future treatment capacity needs while at the same time working with the District to pursue an even more aggressive expansion of the District's treatment plant than was originally contemplated.

In any event, there is no allegation that the City did anything in bad faith with respect to fulfilling its existing obligations "under the agreement." *Id.* The District's argument in its brief merely characterizes the City as having possibly negotiated in bad faith with the District regarding a new or amended agreement relating to higher rates and increased capacity. And, with respect to the allegations concerning the City's 2008 negotiations with the County, those negotiations could not have been a breach of any implied covenants, as they occurred after the District's anticipatory breach. We, therefore, hold that the trial court also properly granted summary judgment to the City on the

claim of breach of the implied covenant of good faith and fair dealing.

C. Breach of Quasi-Contract Claim

Finally, the District contends that the trial court erred in granting the City's motion for summary judgment on the District's claim for breach of quasi-contract. It is, however, "a well established principle that an express contract precludes an implied contract with reference to the same matter. . . . 'There cannot be an express and an implied contract for the same thing existing at the same time. It is only when parties do not expressly agree that the law interposes and raises a promise. No agreement can be implied where there is an express one existing[.]'" *Vetco Concrete Co. v. Troy Lumber Co.*, 256 N.C. 709, 713-14, 124 S.E.2d 905, 908 (1962) (quoting 12 Am. Jur. *Contracts* § 7 (1938)). See also *Booe v. Shadrick*, 322 N.C. 567, 570, 369 S.E.2d 554, 556 (1988) ("A quasi contract or a contract implied in law is not a contract. The claim is not based on a promise but is imposed by law to prevent an unjust enrichment. If there is a contract between the parties the contract governs the claim and the law will not imply a contract.").

Here, there was an express agreement between the parties: the Contract. Consequently, there can be no implied contract with reference to the same matter — i.e., the rates the District would charge the City for its wastewater treatment services. The trial

court, therefore, did not err in granting the City's motion for summary judgment on this claim.²

Affirmed.

Judges ROBERT C. HUNTER and STEPHENS concur.

Report per Rule 30(e).

²Because we reach this conclusion, we need not address the District's argument regarding whether the City had sovereign immunity.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08-CVS-3266

**SOUTHEAST BRUNSWICK
SANITARY DISTRICT,**

Plaintiff,

VS.

CITY OF SOUTHPORT,

Defendant.

CITY OF SOUTHPORT'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT

* * * * *

NOW COMES the City of Southport ("City") through its undersigned counsel and respectfully submit this Memorandum of Law in support of its Motion for Partial Summary Judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure.

* * * * *

STATEMENT OF CASE

23 December 2008: Complaint filed by Southeast Brunswick Sanitary District (“District”)

7 January 2009: District serves its First Set of Interrogatories; Request for Production of Documents; and, Request for Admissions (“District First Discovery”)

9 March 2009: (1) City’s Motions: Answer to Complaint; and, Counterclaims
(2) City’s Notice of Deposition of District



(3) City's First Request for Production of Documents/Things ("City First Discovery")

27 March 2009: City's Responses to District First Discovery, Including Documents Numbered 1-233

9 April 2009: District's Second Request for Production of Documents to City ("District Second Discovery")

13 April 2009: District's Reply to City's Counterclaims

17 April 2009: District's Responses to City First Discovery, Including Documents Numbered 1-298

27 April 2009: City's Deposition of District's Designee, Louis J. Roberti, Including Roberti Deposition Exhibits 1-6

4 May 2009: City's Responses to District Second Discovery, Including Documents Numbered 234-468; and, District's Deposition of City's designees: Ed Boguskie; Paul Fisher; and, Ralph Cardwell

8 June 2009: (1) City's Motion for Partial Summary Judgment
(2) City's Supplemental Records to District First and Second Discovery, Including Documents Numbered 469-780

18 June 2009: (1) District's Motion to Continue City's Summary Judgment Hearing
(2) District's Subpoenas to W.K. Dickson for Depositions 14 July 2009

22 June 2009: Order by the Honorable Ola M. Lewis Denying District's Motion to Continue City's Summary Judgment Hearing

* * * * *

DISCOVERY CONDUCTED

In advance of the City's subject Motion, the parties have exchanged over 1,500 pages of documents pursuant to cross-discovery requests and have each conducted extensive N.C. R. Civ. P. 30(b)(6) depositions of each other's designees.

* * * * *

PRELIMINARY STATEMENT

On 8 October 2004, the City and District entered into a document entitled, "master agreement," for the provision of wastewater treatment services by the District to the City based upon the terms therein ("Master Agreement"). (Exhibit 1, attached). Since at least 1996, the District and the City have had contractual relationships concerning wastewater treatment services (collectively, "Prior Contracts"). (*Pl. Complaint* [Exh. 3], ¶¶ 4-11; and, *City Answer* [Exh. 4], ¶¶ 4-11). In each and every instance involving the Prior Contracts, the Prior Contracts have been in writing and duly signed/executed by both parties. (*District Depo.*, p. 20.; and, Exhibit 2, attached).¹ There has been no written contract entered into by the District and the City since the Master Agreement in 2004. (*District Depo.*, p. 20; and, *Pl. Complaint (all)*).

Despite the parties' Master Agreement, the undisputed evidence in the case *sub judice* reveals that the District was not able to comply with the terms of the Master Agreement and/or sought amendments to the Master Agreement with the City. The City and District never entered into any valid contractual amendment to the Master Agreement as required under the law (discussed, *infra*). Given the District's inability or refusal to perform under and/or follow the

¹ Exhibit 2 is a collective compilation of the Prior Contracts.

Master Agreement and the fact that no subsequent valid contract amendment was ever entered into by the City and District, the District's claims against the City must be dismissed as a matter of law.

* * * * *

STATEMENT OF PERTINENT FACTS

On 8 October 2004, the City and District entered into the aforementioned "Master Agreement" attached hereto as Exhibit "1". The Prior Contracts between the parties, collectively attached as Exhibit 2, were dated 5 August 1996 ("Agreement"); 4 October 2001 ("Working Agreement"); 17 December 2001 ("Agreement"); and, 14 July 2003 ("Amendment"). All of the Prior Contracts were in writing and signed by the City and the District.

Among other things, the parties' Master Agreement included specific provisions concerning the sewer usage and impact fees to be paid by the City to the District (Section E - Fees); that the parties' Prior Contracts were superseded, nullified and voided (Section H - Previous Agreements); and, the implementation of an advisory committee to oversee the parties' services under the Master Agreement and/or recommended amendments or changes to the Master Agreement (Section T - Advisory Committee). Completely absent from the Master Agreement is any language that the fees to be paid by the City to the District would be increased over time, or formula or mode by which the City obligated itself to pay any changes in fees to the District. Moreover, nothing obligated either party to agree to any changes to the Master Agreement, irrespective of how any such request arose and regardless of whether the Advisory Committee may have recommended any particular amendment to the Master Agreement.

The Master Agreement specified a three-phased project which, when fully completed, the District would provide all of the City's wastewater treatment needs. The total amount of wastewater treatment needs projected by the City and agreed to by the District, was 951,000 gallons

per day (“gpd”). Upon the completion of the three phases in the Master Agreement, the City’s present and future projected wastewater needs for its citizens would be fully satisfied. In doing so, the City would also be able to eliminate its wastewater discharge into Cabbage Creek of the Intracoastal Waterway.

Once completed, Phase I of the Master Agreement would effectuate a flow reversal of wastewater such that the City would send up to 200,000 gpd of its wastewater to the District for the District’s treatment. Phase I of the Master Agreement was completed in or about September of 2006. (*District Depo.*, pp. 36-37). However, almost immediately after the City began to send its Phase I wastewater to the District for treatment, the District’s facilities malfunctioned and could not handle the City’s wastewater needs. It would not be until April/May of 2008, before the District could adequately treat the City’s wastewater needs up to 200,000 gpd. (Exhibit 6, p. 39).²

Following the parties’ Master Agreement, in 2006 negotiations and discussions ensued between the City and District concerning the *District’s* desire to expand its plant operations to up to 1.5 million gpd and to amend the Master Agreement accordingly. (Exhibit 6, all). Neither party disputes the fact that both sides engaged in consistent communications concerning changes to the Master Agreement and proposed amendments regarding a number of the provisions of the Master Agreement, including the *District’s* desire to *increase and/or modify*, to the detriment of the City, the fees the City was to pay for the District’s treatment of its wastewater. (*Id.*; see also, *Pl. Complaint* [Exh. 3], ¶ 14; *City Answer* [Exh. 4], ¶ 14; and, *Pl. Reply* [Exh. 5], ¶ 19). Highlights from Exhibit 6, include the following:

² Exhibit 6 is a collective and chronological compilation numbering 42 pages, starting with minutes of a meeting dated 13 January 2006 between the City, District and WK Dickson, and ending with a letter dated 10 June 2008 by the District to the City. Exhibit 6 is by no means exhaustive of documented negotiations between the parties concerning proposed amendments to the Master Agreement but it does clearly demonstrate the fact that amendments to the Master Agreement were discussed by the parties.

13 January 2006: Minutes of meeting between City, District and WK Dickson wherein the District “directed WK Dickson to design a Wastewater Treatment Plant expansion for 1.5 MGD” and that “WKD to provide proposal to [District] with fees for February meeting. (Project cost will drive [District’s] decisions.).”

27 February 2006: Minutes from another meeting between City, District and WK Dickson wherein they state, “[District] wants to expand the wastewater treatment plant (WWTP) to 1.5 MGD.”

17 November 2006: District circulates its first “mark-up” of the Master Agreement with the City with the “suggested changes” proposed by the District for the City’s review and comment.

26 March 2007: Email between District representatives noting that then-City manager, Rob Gandy, was meeting with then-City public utilities director, Bob Grant, “to see where we were on the [proposed amendments] to the [Master Agreement].”

April and May of 2007: Exhibit 7 contains the cover sheets of the “*Preliminary Design Summary of the Wastewater Master Plan*” and the “*Preliminary Engineering Report*” for the City and the District, prepared by WK Dickson.

21 May 2007: A memorandum is sent by the City to the District outlining the City’s philosophy if any amendments regarding the Master Agreement are going to be agreed upon with the District.

22 May 2007: Email by the District in response to the City’s above-reference memorandum and reciting that, “. . . we both need to agree on the future course of action quickly.”

4 June 2007: Letter by the District to the City that provides, *inter alia*, the District’s rationale for seeking to modify the fees/rates to be paid by the City under an amendment to the

Master Agreement and proposing “two options for the City to consider.” The District goes on in this letter to state, “[t]he first option is to remain with the current [Master] agreement and revise only one sewer rate. [. . .] The second [option] is to revise the current [Master] agreement to reflect increased treatment at the [District] plant, add a third sewer rate and purchase spray from the City.” The letter concludes by saying the District would like to meet with the City to “discuss the options and hopefully move forward.”

13 June 2007: The City responds in a memorandum to the District concerning its above-referenced 4 June 2007 correspondence. In the City’s response, the City notes its ongoing concerns with the District’s operational problems in handling the City’s wastewater under Phase I of the Master Agreement, and unequivocally noting the City’s position that the fees and rates “previously negotiated in good faith” and which are recited in the Master Agreement were valid and binding – and not subject to change by the District. Lastly, the City submitted counterproposals for the District’s consideration for possibly amending the Master Agreement.

10 September 2007: Letter by City to District documenting the ongoing problems of the District in handling and treating the City’s wastewater needs under Phase I of the Master Agreement.

7 November 2007: On this date, as reflected separately in Exhibit 8, the District submitted yet another proposed, revised, amendment to the City regarding the Master Agreement. Also included in Exhibit 8 is the City’s response of 16 November 2007 rejecting the District’s latest, proposed amendment to the Master Agreement and noting the ongoing problems of the District’s ability (or lack thereof) to handle the City’s Phase I wastewater needs. Most importantly, however, the City notified the District in this letter that it saw no need for continued discussion about possibly amending the Master Agreement.

17 December 2007: Email is sent by District to City stating “[r]ecent events have caused changes and they have necessitated the Board to re-evaluate a number of items in the current [Master] Agreement.” The District’s email further states, “I will explain each item that needs to be changed, why the change, and a new format to the current agreement. [. . .] *Without a new agreement we cannot proceed ahead with the current project and schedule. Our deadline is March 31, 2008.*” (emphasis added).

8 January 2008: Minutes of a meeting between the District and WK Dickson wherein it is noted that “[District] desires to revise current agreement via an amendment to reflect updated user fees for [City]. *If [City] disagrees to revised user fees, [District] would consider termination of the current agreement.* [. . .] [District] stated current agreement [with City] has a valid termination clause with appropriate notice.” (emphasis added). The minutes further recite that “[District] plans to raise [City] bulk rates, existing and future.”

25 January 2008: (1) Email by the District to the City that states, “[o]ur options, on one hand, is to update the [Master Agreement] based upon today’s environment or, the other extreme, to terminate the agreement. We have been trying to amend this agreement since August of 2006. The date to make a decision, either together or unilaterally, is March 31, 2008.”

(2) Letter by District to WK Dickson that recites, “March 31st is the date that [City] needs to tell us whether they want to proceed or not. We will pursue that with them. If it means canceling the project, then we will. It is not our option of choice, but that is a reality given what we know now.”

19 March 2008: Letter by District to City stating, *inter alia*, “[w]e will also need to amend the [Master Agreement] to reflect today’s environment. Since 2004, wastewater treatment costs and expansion costs have increased.” The District further acknowledges the ongoing

problems with handling City's Phase I wastewater needs and that by April/May of 2008 the District would be ready to accept the full 200,000 gpd from the City.

25 March 2008: Letter by District to City proposing new rate structures and revised terms/provisions to the Master Agreement.

3 June 2008: Letter by District to City that it is "ready and agreeable to continue the partnership with the [City] pursuant to the terms of the Master Agreement dated October 08, 2004, *as amended by the continuing engineer reports and the rate structure presented to the City by my letter of March 25, 2008.*" (emphasis added).

10 June 2008: Letter by District to City proposing, yet again, new rate structures and revised terms/provisions to the Master Agreement from those proposed by letter of 25 March 2008. The letter concludes by stating, "[a]ll agreed that if the City does continue with the District, the 2004 agreement will be modified to reflect the above rates and also other needed changes to the agreement."

The City never agreed to any of the proposed, revised rate structures or terms/provisions proposed by the District as set forth above. The District acknowledges that there is no such written agreement that reflects any amended contract with the City, but that the Master Agreement was *de facto* amended by the parties' on-going negotiations and discussions from 2006 forward.

Ultimately, the City entered into a new agreement with Brunswick County for it to provide the City with all of its present and future wastewater needs. In response, the District eventually filed suit against the City alleging that the City: (1) breached the Master Agreement; (2) breached an "implied covenant of good faith and fair dealing" under the Master Agreement; and, alternatively, (3) breached a "quasi-contract" with the District. (*Pl. Complaint (all)*). For the reasons and controlling law that follow, the City is entitled to summary judgment as to all of the

District's claims against the City. Specifically, the foregoing pertinent facts and undisputed evidence demonstrates that the District was unable to perform its obligations under the Master Agreement per its own admissions. Again, nothing required the City to agree to any revisions, amendments or rate/fees changes under the Master Agreement. If the District contends to the contrary (as appears to be the case), then, alternatively, the Master Agreement was little more than an "agreement to agree," leaving as uncertain and indefinite any agreement on or made by the parties to determine material terms of the supposed contract. As such, the Master Agreement was not a contract at all and is void under North Carolina law.

* * * * *

ARGUMENT

I. STANDARDS GOVERNING SUMMARY JUDGMENT MOTIONS

Granting summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. 1A-1, Rule 56(c); *Caldwell v. Deese*, 288 N.C. 375, 218 S.E.2d 379 (1975). In deciding a motion for summary judgment, a trial court must consider the evidence in the light most favorable to the non-moving party. *Summey v. Barker*, 357 N.C. 492, 496, 586 S.E.2d 247, 249 (2003). The moving party bears the burden of showing a lack of triable issues of fact. *Pembee Mfg. Corp. v. Cape Fear Constr. Co.*, 313 N.C. 488, 491, 329 S.E.2d 350, 353 (1985). If the moving party meets this burden, the nonmoving party must "produce a forecast of evidence demonstrating that the [nonmoving party] will be able to make out at least a prima facie case at trial." *Collingwood v. Gen. Elec. Real Estate Equities, Inc.*, 324 N.C. 63, 66, 376 S.E.2d 425, 427 (1989).

The purpose of summary judgment is to dispense with formal trials in cases where only legal issues remain “by permitting penetration of an unfounded claim or defense in advance of trial and allowing summary disposition for either party when a fatal weakness in the claim or defense is exposed.” *Elliott v. Duke University, Inc.*, 66 N.C. App. 590, 592, 311 S.E.2d 632, 634 (1984).

There is no genuine issue of material fact where a party demonstrates that the claimant cannot prove the existence of an essential element of his claim or cannot surmount an affirmative defense which would bar the claim. *Vares v. Vares*, 154 N.C. App. 83, 86, 571 S.E.2d 612, 615 (2002), *disc. review denied*, 357 N.C. 67, 579 S.E.2d 576 (2003). An issue is genuine if it “may be maintained by substantial evidence.” *Koontz v. City of Winston-Salem*, 280 N.C. 513, 518, 186 S.E.2d 897, 901 (1972). An issue is material if the facts would affect the result of the action. *Id.* at 518, 186 S.E.2d at 901. The purpose of summary judgment “is to foreclose the need for a trial when, based upon the pleadings and supporting materials, the trial court determines that only questions of law, not fact, are to be decided.” *Robertson v. Hartman*, 90 N.C. App. 250, 252, 368 S.E.2d 199, 200 (1988). Even where an issue of fact arises, a party may show that it is not a genuine issue of material fact by showing that the opposing party will not be able to present “substantial evidence” which would allow the issue to be resolved in his favor. *Best v. Perry*, 41 N.C. App. 107, 110, 254 S.E.2d 281, 284 (1979).

Summary judgment is appropriate and available in breach of contract claims. *See, Cater v. Barker*, 172 N.C. App. 441, 617 S.E.2d. 113 (2005), *aff’d*, *Cater v. Barker*, 360 N.C. 357, 625 S.E.2d 778 (2006) (Court affirmed trial court’s grant of summary judgment in favor of plaintiffs on their breach of contract claim); *Kotis Properties, Inc. v. Casey’s Inc.*, ___ N.C. App. ___, 645 S.E.2d 138 (2007) (Court affirmed trial court’s grant of summary judgment in favor of plaintiff on its breach of contract claim); *Miller v. Rose*, 138 N.C. App. 582, 532 S.E.2d 228 (2000) (Court

affirmed trial court's grant of summary judgment in favor of defendants against plaintiffs on plaintiffs' claims of breach of contract). "Under the general rules of contract construction, where an agreement is clear and unambiguous, no genuine issue of material fact exists and summary judgment is appropriate." *Carolina Place Joint Venture v. Flamers Charburgers*, 145 N.C. App. 696, 551 S.E.2d 569 (2001) (other citations omitted).

In the instant case, the pleadings, discovery, and testimony in the record do not raise any genuine issues of material fact as to any of the District's three claims against the City. The substantial, uncontroverted evidence demonstrates that the District breached the Master Agreement with the City. To hold otherwise would necessarily mean that the Master Agreement is merely an "agreement to agree" which is a nullity and not a contract at all under North Carolina law, which also supports entry of summary judgment in favor of the City for the reasons more specifically set forth hereinbelow. Accordingly, by operation of contract law, the City's sovereign immunity, and/or the requirements of N.C. Gen. Stat. §160A-16, summary judgment against the District on all three of its claims must be entered in favor of the City.

II. THE LAW GOVERNING MUNICIPAL CONTRACTS

The City is a municipal corporation existing under the laws of the State of North Carolina. (*Pl. Complaint*, ¶2). N.C. Gen. Stat. § 160A-11 grants authority to municipalities to enter into contracts. However, a municipality's power to contract may be exercised only by a city council sitting in an open meeting. *Insurance Co. v. Guilford County*, 225 N.C. 293, 301-02, 34 S.E.2d 430, 435 (1945) ("[I]n order to make a valid and binding contract the board of commissioners must act in its corporate capacity in a meeting held as prescribed by law."); *Craven County Hospital v. City of Kinston*, 75 N.C. App. 453, 456, 331 S.E.2d 690, 692 (1985); *Concrete Machinery Co. v. City of Hickory*, 134 N.C. App. 91, 95, 517 S.E.2d 155, 157-58 (1999); *O'Neal v. Wake County*,

196 N.C. 184, 145 S.E. 28 (1928). Furthermore, and most importantly, N.C. Gen. Stat. § 160A-16 expressly provides:

“§ 160A-16. Contracts to be in writing; exception

All contracts made by or on behalf of a city shall be in writing. A contract made in violation of this section shall be void and unenforceable unless it is expressly ratified by the council.”

Id.

It has been repeatedly held and it is well-established law in this State that if a contract is not in writing with a municipality, then the contract is not valid and is void and unenforceable by virtue of sovereign immunity. *See, Whitfield v. Gilchrist*, 348 N.C. 39, 43, 497 S.E.2d 412, 415 (1998) (“Only when the State has implicitly waived sovereign immunity by *expressly* entering into a *valid* contract through an agent of the State expressly authorized by law to enter into such contract may a plaintiff proceed with a claim against the State upon the State’s breach.”) (emphasis in original); *Eastway Wrecker Services, Inc. v. City of Charlotte*, 165 N.C. App. 639, 644, 599 S.E.2d 410, 413 (2004) (In affirming the denial of plaintiff’s claim of an implied contract or *quantum meruit* against the City of Charlotte, the Court stated “Without both an express contract and a valid contract, the State has not waived its sovereign immunity. This dual requirement necessarily precludes any recovery in *quantum meruit* against the State regardless of the reason why the alleged contract fails.”); *Concrete Machinery Co., supra*, 134 N.C. App. at 95, 517 S.E.2d 157-58 (holding that if a contract with a city is not in writing, it is void and unenforceable); *Data General Corp. v. County of Durham*, 143 N.C. App. 97, 102, 545 S.E.2d 243, 247 (2001) (Court held that “in the absence of a valid contract, a state entity may not be subjected to contractual liability” and that sovereign immunity may not be defeated on claims of estoppel or *quantum meruit*); and, *Craven County Hospital, supra*, 75 N.C. App. at 456, 331 S.E.2d at 692 (citing N.C. Gen. Stat. § 160A-16, and the

fact that no agreement under said statute had been entered, the Court affirmed the trial court's dismissal of the plaintiff's claim against the city of Kinston).

"[W]henver the State of North Carolina, through its authorized officers and agencies, enters into a valid contract, the State implicitly consents to be sued for damages on the contract in the event it breaches the contract." *Whitfield*, 348 N.C. at 42, 497 S.E.2d at 414 (other citations omitted). "A quasi contract or a contract implied in law is not a contract." *Id.*, at 42, 497 S.E.2d at 415 (other citations omitted). Accordingly, and as our Supreme Court held, "[a] contract implied in law – as opposed to an express valid contract – simply will not form a sufficient basis for a court to make a reasonable inference that the State has intended to waive its sovereign immunity." *Id.*, at 45, 497 S.E.2d at 416; *accord*, *Eastway Wrecker Services, Inc.*, 165 N.C. App. at 643, 599 S.E.2d at 412; *Data General Corp.*, 143 N.C. App. 103-04, 545 S.E.2d at 248.

In light of the foregoing case and statutory law pertaining to municipal contracts, for any contract with the City to be enforceable, it must be satisfy two prongs or requirements, *to wit*: it must be both an "express" *and* "valid" contract. Thus, through operation of sovereign immunity and/or statutory law, claims of implied or "quasi" contracts will not suffice against a municipality or the State because such claims are not contracts at all and are certainly not "express" contracts. As our Courts have repeatedly held, the more stringent and exacting standards for municipal contracts, and the heightened burden a party must demonstrate to overcome sovereign immunity, is because:

"[P]arties dealing with governmental organizations are charged with notice of all limitations upon the organizations' authority, as the scope of such authority is a matter of public record. (citations omitted)." [Thus], "parties dealing with public entities are presumed to know the law applicable to such agencies, including that the officials and agents of such entities may not waive the entity's sovereign immunity or act in violation of statutory requirements, and such parties act at their peril."

Data General Corp., 143 N.C. App. at 104, 545 S.E.2d at 248.

As our State's Supreme Court held in one of the leading opinions on the issue, in order to constitute a "valid" contract, "the parties 'must assent to the same thing in the same sense, and their minds must meet as to all the terms. If any portion of the proposed terms is not settled, there is no agreement.'" *Boyce v. McMahan*, 285 N.C. 730, 734, 208 S.E.2d 692, 695 (1974) (other citations omitted). "The courts generally hold a contract, or offer to contract, leaving material portions open for future agreement is nugatory and void for indefiniteness. 'The reason for this rule is that there would be no way by which the court could determine what sort of a contract the negotiations would result in; no rule by which the court could ascertain what damages, if any, might follow a refusal to enter into such future contract on the arrival of the time specified. Therefore, a contract to enter into a future contract must specify all its material and essential terms, and leave none to be agreed upon as a result of future negotiations.'" *Id.* (other citations omitted).

"While a meeting of the minds is essential to form an agreement between the parties, a contract is 'nugatory and void for indefiniteness' if it leaves any 'material portions open for future agreement.'" *The Currituck Associates Ptshp. v. Hollowell*, 166 N.C. App. 17, 601 S.E.2d 256 (2004), *quoting*, *Boyce, supra*. "For an agreement to constitute a valid contract, the parties' 'minds must meet as to all the terms. If any portion of the proposed terms is not settled, *or no mode agreed on by which they may be settled*, there is no agreement.'" *Chappell v. Roth*, 353 N.C. 690, 548 S.E.2d 499 (2001) (emphasis added), *quoting*, *Boyce, supra*; see also, *Miller, supra*, 138 N.C. App. 582, 532 S.E.2d 228.

A party, such as the District in the instant case, asserting a breach of contract claim "must show: (1) existence of a valid contract; and (2) breach of terms of that contract." *Cater, supra*, 172 N.C. App. at 445, 617 S.E.2d at 116 (other citations omitted). However, a party asserting breach of contract must have first performed his promise or offered to do so in order to preserve his rights

under the contract. *Boyd v. Watts*, 73 N.C. App. 566, 570, 327 S.E.2d 46, 49 (1985), *rev'd on other grounds*, 316 N.C. 622, 342 S.E.2d 840 (1986) (citations omitted). "Non-performance of a valid contract is a breach thereof . . . unless the person charged . . . shows some valid reason which may excuse the non-performance; and the burden of doing so rests upon him." *Cater*, 172 N.C. App. at 447, 617 S.E.2d at 117 (citations omitted). Stated differently, "'one who prevents the performance of a condition, or makes it impossible by his own act, will not be permitted to take advantage of the nonperformance.'" *Id.*, at 446, 617 S.E.2d at 117, *quoting*, *Propst Construction Co. v. Dept. of Transportation*, 56 N.C. App. 759, 762, 290 S.E.2d 387, 388 (1982).

"The general rule governing bilateral contracts provides that if either party to the contract is materially in default with respect to performance of his obligations under the contract, the other party should be excused from the obligation to perform further." *Schenkel & Shultz, Inc. v. Fox & Assocs. Inc.*, 180 N.C. App. 257, 269, 636 S.E.2d 835, 843 (2006) (citations omitted).

Lastly, "[i]n every contract there is an implied covenant of good faith and fair dealing that neither party will do anything which injures the right of the other to receive the benefits of the agreement." *Bicycle Transit Authority, Inc. v. Bell*, 314 N.C. 219, 228, 333 S.E.2d 299, 305 (1985) (citations omitted); *Claggett v. Wake Forest University*, 126 N.C. App. 602, 610, 486 S.E.2d 443, 448 (1997) ("[E]very contract or agreement implies good faith and fair dealing between the parties to it, and a duty of cooperation on the part of both parties."), *quoting*, *Gallimore v. Daniels Construction Co.*, 78 N.C. App. 747, 751, 338 S.E.2d 317, 319 (1986).

III. BASED ON THE LAW GOVERNING SUMMARY JUDGMENT AND MUNICIPAL CONTRACTS, ALL OF THE DISTRICT'S CLAIMS AGAINST THE CITY FAIL AS A MATTER OF LAW

The essence of the District's three claims against the City is that, because of the history of the parties and that the City took efforts in furtherance of possible amendments to the Master

Agreement (as discussed between the City and District) by way of, *inter alia*, applying for grants and authorizing engineering efforts, the City has breached the Master Agreement, “*as amended*.” (*Pl. Complaint*, ¶¶ 14; 16-19; and, Exhibit 6 (all) (*See*, Statement of Pertinent Facts, *supra*). The fallacy in the District’s position is that the only valid contract that exists with the City, if at all, is the Master Agreement. There have been no new express, written contracts or express, written contractual amendments to the Master Agreement to support the District’s position against the City. Therefore, the District’s claims must rise or fall on the Master Agreement and the parties’ obligations thereunder.

Based on the documents and matters referenced in the Statement of Facts, *supra*, it is clear the District breached the Master Agreement by its inability to perform under its terms and/or its refusal to perform under its terms. The District’s inability or refusal to perform under the Master Agreement constituted a breach of the parties’ contract as a matter of law. *Boyd, supra*, 73 N.C. App. at 570, 327 S.E.2d at 49; *Cater, supra*, 172 N.C. App. at 447, 617 S.E.2d at 117; and, *Schenkel, supra*, 180 N.C. App. at 269, 636 S.E.2d at 843. Moreover, the City and District never entered into any written contract or agreement modifying the Master Agreement as is specifically required by N.C. Gen. Stat. § 160A-16 and the controlling case law that has applied said statutory law. *Whitfield*, 348 N.C. at 43, 497 S.E.2d at 415; *Insurance Co.*, 225 N.C. at 301-02, 34 S.E.2d at 435; *Craven County Hospital*, 75 N.C. App. at 456, 331 S.E.2d at 692; *Concrete Machinery Co.*, 134 N.C. App. at 95, 517 S.E.2d at 157-58; *O’Neal*, 196 N.C. 184, 145 S.E. 28 (1928); *Eastway Wrecker Services, Inc.*, 165 N.C. App. at 644, 599 S.E.2d at 413; and, *Data General Corp.*, 143 N.C. App. at 102, 545 S.E.2d at 247.

Given that the District breached the Master Agreement with the City, the City did not, indeed could not have, breached any implied covenant of good faith and fair dealing with the

District. At all times under the Master Agreement, the City complied with its obligations to the District until the District's breach of same compelled the City to look elsewhere for its wastewater needs.

Alternatively, if, as the District contends, the City was required to agree to its proposed future revisions and/or amendments of material terms in the Master Agreement or, that the District's new, proposed material terms to the Master Agreement could somehow be inserted into the parties' contract over the City's objection when no such provisions for doing so exist in the parties' Master Agreement, then the parties' Master Agreement was an illusory "agreement to agree" which is void and unenforceable under North Carolina law. *Boyce*, 285 N.C. at 734, 208 S.E.2d at 695; *The Currituck Associates Ptshp.*, 166 N.C. App. 17, 601 S.E.2d 256; *Chappell*, 353 N.C. 690, 548 S.E.2d 499. If there was no valid, express contract between the City and the District, the District's claim of a "quasi contract" must fail as a matter of law based on the operation of sovereign immunity.

* * * * *

CONCLUSION

In light of all of the above undisputed facts and controlling law, and for such other reasons as may be offered at the hearing, the City is entitled to judgment as a matter of law as to all of the District's claims, pursuant to Rule 56 of the North Carolina Rules of Civil Procedure.

Respectfully submitted, this the ____ day of June, 2009.

LAW OFFICES OF G. GRADY RICHARDSON, JR., P.C.

G. Grady Richardson, Jr.
N.C.S.B. #25508
Attorney for City of Southport
1213 Culbreth Drive
Wilmington, NC 28405
Telephone: (910) 509-7166
Facsimile: (910) 509-7167
Email: grady@ggrlawoffice.com

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing and attached CITY OF SOUTHPORT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT was this date served by facsimile and first class U.S. mail to the parties in this action as follows

VIA FACSIMILE (704) 377.8880;
AND, FIRST CLASS U. S. MAIL

Mark E. Carlson, Esq.
Kenneth P. Andresen, Esq.
ANDRESEN & ARRONTE, PLLC
2319 Crescent Avenue
Charlotte, North Carolina 28207

This the ____ day of June, 2009.

G. GRADY RICHARDSON, JR.

No. COA 17-1081

FIFTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

CLAUDIA HOLCOMBE; TOM PELTON;)
DOS AVES, LLC, A North Carolina)
Limited Liability Company; And, ROBERT)
MARTIN And Wife, NAOMI MARTIN,)

Plaintiffs-Appellees,)

vs.)

717, NC, LLC, a North Carolina Limited)
Liability Company; BRIAN KEESEE; and)
DICK J. THOMPSON,)

Defendants-Appellants; and)

OAK ISLAND AIRCRAFT HOUSING,)
LLC, A North Carolina Limited Liability)
Company; JOHN M. MARTIN; KEVIN)
W. STEPHENSON; OAK ISLAND)
AIRCRAFT MANAGEMENT, INC., A)
Former North Carolina Corporation)
And/Or, Past and/or Present Business)
Trade Name; and ROBERT WEINBACH,)

Defendants.)

From Brunswick County
File No. 15-CVS-2123

PLAINTIFFS-APPELLEES' BRIEF



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OVERVIEW

Defendants-Appellants Brian Keesee (“Keesee”) and 717, NC, LLC (“Keesee’s LLC”) readily allowed Plaintiffs-Appellees to join Oak Island Aircraft Housing, LLC (the “Company”) in 2009, benefitting from the Plaintiffs’ collective payments of \$155,000 to purchase their respective ownership interests and rights in the Company. (R pp 4-27). Keesee, Keesee’s LLC, and Defendant Dick J. Thompson¹ (collectively, “Appellants”) treated Plaintiffs as members of the Company, allowed Plaintiffs to use their personal funds to pay the Company’s debts, and represented that Plaintiffs were members of the Company to third parties such as taxing authorities. (R pp 9-11, 14, 251). Plaintiffs stored their planes in the hangar leased by the Company at the Brunswick County Airport (“Hangar”) without interference from Appellants, and for six and a half (6 ½)

¹ Appellants’ Brief filed in this matter on 30 November 2017 was identified twice therein as “Brief of Defendant/Appellants 717 NC, LLC & Brian Keesee.” (*Appellants’ Brief* pp i, 1). Accordingly, it appears Defendant Dick J. Thompson (“Thompson”) has not filed a timely brief in this matter. Plaintiffs have concurrently herewith filed a Motion to Dismiss the appeal as to Thompson pursuant to N.C. R. App. P. 13(c) [App. 48-49]. However, in an abundance of caution, Plaintiffs will include Thompson in the references to Appellants as used in this Brief, pending the Court’s decision on Plaintiffs’ Motion to Dismiss.

years, Appellants never questioned Plaintiffs' membership rights in the Company. (R pp 9, 11).

That all changed in August 2015 when Appellants decided to circumvent Plaintiffs' right of first refusal which was provided for in the Company's Operating Agreement in order to benefit themselves. (R pp 14, 16). Appellants began inventing alleged reasons as to why Plaintiffs did not own full membership rights in the Company and were not eligible to exercise any rights of first refusal. (R p 14). Appellants' allegations against Plaintiffs varied from claiming, *inter alia*, Plaintiffs' purchase documents did not contain original signatures to claiming Plaintiffs were in default under the Company's Operating Agreement. (R pp 64-65). At the same time, Appellants also began challenging Plaintiffs' right to store more than one plane within its floor space in the Hangar. (R p 16). In response to Appellants' actions, Plaintiffs were forced to bring this action to protect and enforce their rights and interests.

The trial court correctly recognized that Appellants' actions and pleadings in the case *sub judice* were without any basis in law or fact, and this Court should affirm the trial court's order of summary judgment and award of fees and costs in all respects. (R pp 409-16).

STATEMENT OF THE CASE

On 25 November 2015, Plaintiffs-Appellees Claudia Holcombe

(“Holcombe”), Tom Pelton (“Pelton”), Dos Aves, LLC (“Dos Aves”), and Robert and Naomi Martin (the “Martins”) (collectively, “Plaintiffs”) filed their Verified Complaint and asserted six causes of action against Appellants: (1) Injunctive Relief (First Cause of Action); (2) Declaratory Relief (Second Cause of Action); (3) Breach of Contract (Third Cause of Action); (4) Breach of Company Documents (Fourth Cause of Action); (5) Attorneys’ Fees, Costs and Expenses (Fifth Cause of Action); and (6) Tortious Interference with Contract Rights (Sixth Cause of Action). (R pp 4-118).

Default was entered against Defendant Robert Weinbach (“Weinbach”) on 22 April 2016. (R pp 175-76). Appellants filed a verified Answer on 18 March 2016 including a “twelfth defense” which actually asserted a claim for declaratory judgment. (R pp 147-70). On 9 May 2016, the trial court concluded Appellants’ twelfth defense should be “realigned and designated as a Counterclaim against Plaintiffs.” (R p 177). On 8 June 2016, Plaintiffs replied to Appellants’ Counterclaim asserting several affirmative defenses including waiver, estoppel, laches, and statutes of limitation. (R pp 179-97).

On 3 March 2017, Plaintiffs filed their Motion for Summary Judgment, Declaratory Judgment, and Permanent Injunction against Appellants (“Plaintiffs’ Summary Judgment Motion”) and also filed Pelton’s Affidavit and the Martins’ Affidavit in support of their Motion. (R pp 234-36, 238-49, 250-326). By first

class mail delivered on 6 March 2017, Plaintiffs' counsel received an unfiled Motion for Summary Judgment and accompanying Notice of Hearing from Appellants. (13 March 2017 *Hearing T.* 10 [App. 33]). On 9 March 2017, Appellants served Plaintiffs with unfiled copies of the Affidavits of Weinbach and Defendant Brian Keese ("Keese"). (R pp 398-408).

On 13 March 2017, the Honorable James Gregory Bell heard the parties' cross-motions for summary judgment. (13 March 2017 *Hearing T.* 10 [App. 33]; *Appellants' Brief* p 4; and, R pp 409-12). Judge Bell also heard and considered Plaintiffs' preliminary Motion to Strike (i) Weinbach's Affidavit in its entirety, and (ii) those portions of Keese's Affidavit which were alleged "on information and belief" and which contradicted Keese's deposition testimony. (R pp 409-12).

On 23 March 2017, Judge Bell entered his Order (i) granting Plaintiffs' Motion to Strike; (ii) granting Plaintiffs' Summary Judgment Motion as to Plaintiffs' First through Fourth and Sixth Causes of Action; (iii) permanently restraining and enjoining Appellants and Weinbach from engaging in any similar violative conduct as alleged in Plaintiffs' Complaint that challenged and interfered with Plaintiffs' rights in the Company, access to and use of the Hangar, and/or challenged the authority of the Company's Operating Agreement; (iv) specifically ordering Thompson to perform his contract with Plaintiffs agreeing to sell his share of ownership in the Company; (v) dismissing Appellants' Counterclaim with

prejudice; (vi) denying Keesee's Motion for Summary Judgment (all of the foregoing collectively, the "Trial Court's Order"); and (vii) ordering Appellants to pay Plaintiffs' attorneys' fees, costs, and expenses ("Fees Award"). (R pp 409-16).

On 5 June 2017, all remaining Defendants except Appellants and the defaulted Weinbach entered into a consent order with Plaintiffs, agreeing to be bound by Judge Bell's Order ("Consent Order"). (R pp 417-20). Following the entry of the Consent Order, Plaintiffs dismissed, without prejudice, any remaining claims against those Defendants who were a part of the Consent Order. (R pp 421-22).

On 21 April 2017, Appellants filed their Notice of Appeal. (R pp 424-26). On 29 September 2017, Appellants filed their Record. (R pp i; 436-41). Appellants Keesee and Keesee's LLC filed their Brief on 30 November 2017 ("Appellants' Brief")². Concurrently with this Brief, Plaintiffs have also filed a Motion to Dismiss the appeal as to Defendant-Appellant Thompson.

STATEMENT OF FACTS

On 17 June 2005, the Company was formed through the filing of Articles of Organization ("Articles") with the Secretary of State for North Carolina. (Doc. Ex. 1-6). The Articles state the Company is member-managed. (*Id.*). The Articles have never been changed or amended. (*Id.*).

² See *supra* fn 1.

The Company leases the airplane Hangar it operates from the Brunswick County Airport Commission. (R pp 6-7). The Hangar's interior floor space for storing planes is approximately 10,000 square feet. (R p 7).

At the time the Company was formed in 2005, Defendants John Martin ("J. Martin"), Kevin Stephenson ("Stephenson") and Weinbach were the sole member-managers and equal co-owners of the Company. (R p 6). A couple of months after forming the Company, J. Martin and Stephenson transferred their combined two-thirds interest in the Company to Oak Island Aircraft Management, Inc. ("OIM"), and Weinbach transferred his one-third interest in the Company to Key Marco Consulting and Marketing, Inc. ("Key Marco"). (R p 7). On or about 1 August 2006, Keesee by and through Keesee's LLC, purchased a 20% ownership interest in the Company. (*Id.*). As a result of that transaction, the ownership in the Company was held as follows as of the end of 2006:

OIM: 53.33%

Key Marco: 26.67%

Keesee's LLC: 20.00%.

On 5 March 2009, Holcombe and Pelton through their then-named company "Cielo, LLC," paid \$80,000 to the Company to purchase a 20% ownership interest in the Company.³ (R p 8). Dos Aves purchased its interest in the Company based on the

³ Holcombe, Pelton, Cielo, LLC, and, as noted later, Dos Aves, LLC, shall be

representations of J. Martin, on behalf of the Company, and documentation negotiated by Dos Aves with J. Martin and the Company's attorney that memorialized Dos Aves was purchasing 20% of the Hangar's floor space, or approximately 2,000 square feet, to accommodate the storage of two small aircraft. (R pp 7-9). All then-members of the Company, specifically including Defendants J. Martin on behalf of OIM, Keesee on behalf of Keesee's LLC, and Weinbach on behalf of Key Marco, signed a members' Resolution dated 4 March 2009, agreeing to admit Cielo, LLC as a member of the Company ("March 2009 Resolution"). (Doc. Ex. 7).

When Plaintiffs Holcombe and Pelton later had to change the name of their company at the direction of the Secretary of State and renamed it "Dos Aves, LLC," the same Defendants – OIM, Keesee, and Weinbach – signed a second members' Resolution dated 4 June 2009, approving the change of name for this member ("June 2009 Resolution"). (R p 9; and, Doc. Ex. 8). "Dos aves" means "two birds," "bird" being a commonly accepted colloquial term for a plane. (R p 9). From March 2009 through the present, Dos Aves has stored the same two small planes belonging to Holcombe and Pelton in less than Dos Aves' 20% or 2,000 square feet of floor space in the Hangar. (R p 9; and, Doc. Ex. 9-20). Neither in March 2009 nor in June 2009 did any of the Defendants or present Appellants challenge or question Dos Aves' collectively referred to hereinafter as "Dos Aves."

purchase documents, status as a member of the Company, or right to store two planes in its share of the Hangar. (R pp 9-10; and, Doc. Ex. 10).

On 4 June 2009, the Martins paid \$75,000 to the Company to purchase their 20% ownership interest in the Company and received a Bill of Sale. (R pp 255-57). At the time of their purchase, the Martins were given a copy of the operating agreement for the Company (hereinafter, "The Operating Agreement"). (R pp 251; 259-88; and, Doc. Ex. 21-50 [App. 1-30]). The Operating Agreement provides the Company is member-managed, in accordance with the Articles, and does not limit the number of aircraft a member may store in the Hangar. (Doc. Ex. 21-50 [App. 1-30]). After the Martins' purchase in June 2009, the Company's ownership was as follows:

OIM:	20.00%
Key Marco:	20.00%
Keesee's LLC:	20.00%
Dos Aves:	20.00%
Martins:	20.00%

(R p 10). Ever since their purchase in June 2009, the Martins have continuously stored a single personal aircraft in the Hangar. (*Id.*).

Between September 2010 and April 2011, Thompson purchased Key Marco's 20% ownership interest in the Company, and the then-members of the Company – J.

Martin on behalf of OIM, Keesee on behalf of Keesee's LLC, Holcombe on behalf of Dos Aves, and the Martins – all signed a members' Resolution dated 1 September 2010 agreeing to admit Thompson as a member of the Company ("September 2010 Resolution"). (Doc. Ex. 52). Thus, as of the September 2010 Resolution, the Company's ownership was as follows:

OIM:	20.00%
Thompson:	20.00%
Keesee's LLC:	20.00%
Dos Aves:	20.00%
Martins:	20.00%

Several years passed without the admission or departure of any members and without issue or dispute among the members as to ownership of the Company or use of the Hangar. Continuously throughout these years, Dos Aves stored its two planes in the Hangar, and the Martins stored their plane in the Hangar. (R pp 9-10, 251; and Doc. Ex. 10; 51). Then, in July 2015, Thompson informed the Company's other members, including Plaintiffs, that he was entertaining offers to purchase his ownership interest in the Company. (R pp 11-12). Thompson notified the Company's members so that they could choose to exercise their right of first refusal provided by Section 8.8 of Article VIII of The Operating Agreement. (*Id.*, Doc. Ex. 21-50 [App. 1-30]). On 8 October 2015, Dos Aves and the Martins notified

Thompson they were exercising their rights of first refusal to purchase Thompson's interest. (R p 13). Keesee and/or Keesee's LLC likewise indicated their intent to purchase a *pro rata* share of Thompson's interest. (R pp 12-13). Thus, on 12 October 2015, Plaintiffs' counsel prepared proposed bills of sale showing Dos Aves, the Martins, and Keesee and/or Keesee's LLC were each purchasing 6.67% of Thompson's interest and forwarded the same to Thompson. (R pp 13, 252). However, on 13 October 2015, Thompson notified Plaintiffs he had determined only Keesee's LLC was a legitimate member of the Company who could purchase Thompson's interest. (R p 14). Thompson proceeded to purportedly sell and convey his entire 20% interest in the Company to Keesee's LLC. (R p 168).

It was in August 2015 that Defendant Keesee – *for the first time ever* – challenged Plaintiffs' ownership interests and membership status in the Company and then asserted Dos Aves could not store two planes in the Hangar. (R pp 14, 16; and Doc. Ex. 10-11). While addressing Keesee's challenges to their membership rights in August 2015, Plaintiffs uncovered two conflicting, signed, and written operating agreements bearing the Company's name. (R p 181). One of these documents is The Operating Agreement, which was given to the Martins in June 2009 and matches the Articles and actual practice of the Company in allowing for member-management of the Company and containing no limitation on the number of planes to be stored within a member's share of the Hangar. (R p 251; and. Doc. Ex. 21-50 [App. 1-30]).

The other operating agreement propounded by the Appellants provides for the Company to be manager-managed and limits each member to the storage of one (1) plane within the Hangar. (Doc. Ex. 53-82). Appellants' challenge to Plaintiffs' membership rights and use of the Hangar led Plaintiffs to file the present action on 25 November 2015. (R pp 4-118).

ARGUMENT

I. PRELIMINARY STATEMENT REGARDING ISSUES ON APPEAL NOT BRIEFED BY APPELLANTS.

Despite potentially conflicting representations in Appellants' Notice of Appeal and/or Assignments of Error listed in the Record, Appellants have not included within their Brief any discussion of the Trial Court's Order granting Plaintiffs' Motion to Strike portions of Keesee's Affidavit. Additionally, Appellants' Brief does not address the Trial Court's Order denying of Appellants' Motion for Summary Judgment. "Issues not presented and discussed in a party's brief are deemed abandoned." N.C. R. App. P. 28(a), 28(b)(6) [App. 50-54]; and, *Larsen v. Black Diamond French Truffles, Inc.*, 241 N.C. App. 74, 79, 772 S.E.2d 93, 96 (2015). Accordingly, Plaintiffs will not address these portions of the Trial Court's Order which have not been placed before this Court by Appellants.

II. THE COURT SHOULD AFFIRM THE TRIAL COURT'S ORDER TO STRIKE THE DEFAULTED DEFENDANT'S AFFIDAVIT.

The trial court appropriately granted Plaintiffs' Motion to Strike the entire

Affidavit of defaulted Defendant Weinbach.

A. Standard of Review for Motion to Strike.

This Court reviews a trial court's ruling on a motion to strike an affidavit for an abuse of discretion. *Blair Concrete Services, Inc. v. Van-Allen Steel Co.*, 152 N.C. App. 215, 219, 566 S.E.2d 766, 768 (2002). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

B. The Trial Court's Order Was Proper.

"The effect of an entry of default is that the defendant against whom entry of default is made is deemed to have admitted the allegations in plaintiff's complaint and is prohibited from defending on the merits of the case." *Spartan Leasing, Inc. v. Pollard*, 101 N.C. App. 450, 460, 400 S.E.2d 476, 482 (1991) (internal citation to following Rule omitted); see also, N.C. Gen. Stat. § 1A-1 Rule 8(d) [App. 36-37] ("Averments in a pleading to which a responsive pleading is required...are admitted when not denied in the responsive pleading."). The defendant against whom default has been established has no standing to contest the merits of the plaintiff's claims or the merits of the plaintiff's right to recover. *Spartan*, 101 N.C. App. at 460, 400 S.E.2d at 482.

On 22 April 2016, default was entered against Weinbach due to his failure to

answer or otherwise respond to Plaintiffs' Verified Complaint. (R pp 175-76). Weinbach did not appear or participate in this action whatsoever, except and until Appellants' counsel filed the Affidavit by Weinbach on 10 March 2017, just three (3) days before the hearing on Plaintiffs' Summary Judgment Motion. (R pp 406-08). Weinbach's Affidavit contained assertions directly contradictory to allegations in Plaintiffs' Verified Complaint which he had already admitted by virtue of his default. (R pp 406-07; *compare* R pp 18-19, ¶¶ 81-86). Weinbach's Affidavit, thus, was an impermissible attempt to contest the merits of Plaintiffs' case. *Spartan*, 101 N.C. App. at 460, 400 S.E.2d at 482; and, N.C. Gen. Stat. §1A-1 Rule 8(d) [App. 36-37].

Appellants argue that *Harris v. Carter*, 33 N.C. App. 179, 234 S.E.2d 472 (1977), shows the Court has allowed defaulted defendants to give deposition testimony in a case, suggesting that Weinbach's Affidavit should be permitted. (*Appellants' Brief* pp 23-24). However, Appellants misinterpret that case which is readily distinguishable from the present facts. In *Harris*, the defaulted defendant was allowed to give a deposition, but the Court pointedly acknowledged the defaulting defendant was "cooperating completely with the plaintiff in an attempt to further her cause against the [other defendants]." *Id.*, 33 N.C. App. at 183, 234 S.E.2d at 475. Thus, the defaulted defendant did not run afoul of *Spartan* because he was not contradicting nor contesting the plaintiff's case, as Weinbach's Affidavit attempts to do in the present case. See, *Spartan*, 101 N.C. App. at 460, 400 S.E.2d at 482.

At the trial court hearing on 13 March 2017, Plaintiffs' counsel moved the Court to strike the entire Weinbach Affidavit, and the Court properly granted Plaintiffs' motion. (R pp 409-16). For all these reasons, the Trial Court's Order should be affirmed.

III. THE COURT SHOULD AFFIRM THE TRIAL COURT'S ORDER GRANTING PLAINTIFFS SUMMARY JUDGMENT AS TO APPELLANTS' COUNTERCLAIM AND PLAINTIFFS' FIRST THROUGH FOURTH AND SIXTH CAUSES OF ACTION.

The trial court appropriately granted Plaintiffs' Summary Judgment Motion as to Appellants' Counterclaim and Plaintiffs' First through Fourth and Sixth Causes of Action.

A. Standard of Review for Summary Judgment.

This Court reviews a summary judgment order *de novo*, reviewing the record in the light most favorable to the non-movant or losing party. *Broughton v. McClatchy Newspapers, Inc.*, 161 N.C. App. 20, 26, 588 S.E.2d 20, 25 (2003). Granting summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. 1A-1, Rule 56(c) [App. 38-39]; *Caldwell v. Deese*, 288 N.C. 375, 218 S.E.2d 379 (1975). "Summary judgment may be entered, when otherwise proper...in an action for a declaratory judgment." *Blades v. The City of Raleigh*, 280 N.C. 531, 544, 187 S.E.2d 35, 42-43 (1972).

Even where an issue of fact arises, a party may show it is not a genuine issue of material fact by showing that the opposing party will not be able to present “substantial evidence” which would allow the issue to be resolved in his favor. *Best v. Perry*, 41 N.C. App. 107, 110, 254 S.E.2d 281, 284 (1979). The purpose of summary judgment is to dispense with formal trials in cases where only legal issues remain “by permitting penetration of an unfounded claim or defense in advance of trial and allowing summary disposition for either party when a fatal weakness in the claim or defense is exposed.” *Elliott v. Duke University, Inc.*, 66 N.C. App. 590, 592, 311 S.E.2d 632, 634 (1984). ““Summary judgment is appropriate if...the non-moving party is unable to overcome an affirmative defense offered by the moving party.”” *Erthal v. May*, __ N.C. App. __, 736 S.E.2d 514, 517 (2012) (quoting, *Griffith v. Glen Wood Co.*, 184 N.C. App. 206, 210, 646 S.E.2d 550, 554 (2007) (citation, footnote, and quotation marks omitted)).

Parties who submit cross-motions for summary judgment concede there is no question of material fact. *Kessler v. Shimp*, 181 N.C. App. 753, 756, 640 S.E.2d 822, 824 (2007). Where there is “no substantial controversy as to the facts disclosed by the evidence” but instead “[t]he controversy is as to the legal significance of those facts,” the case is appropriate for summary judgment. *Blades*, 280 N.C. at 545, 187 S.E.2d at 43.

B. The Trial Court's Order Granting Plaintiffs Summary Judgment as to Plaintiffs' First and Second Causes of Action and Appellants' Counterclaim was Proper.

Plaintiffs' first two causes of action seek a declaration of Plaintiffs' rights of ownership in the Company and rights to use the Hangar in accordance with their prior six years' worth of practice (Second Cause of Action) and a permanent injunction prohibiting Appellants from further threatening, challenging, and/or interfering with Plaintiffs' ownership rights in the Company and use of the Hangar (First Cause of Action). (R pp 17-19). In other words, Plaintiffs' First and Second Causes of Action sought the Court's declaration and injunction to preserve the *status quo* of the parties' operation of the Company and use of the Hangar. (*Id.*).

Conversely, Appellants' Counterclaim sought to undo six years of the Company's operations and sought a declaratory judgment that Plaintiffs lacked standing within the Company and that the Company's "true" operating agreement is the version propounded by Appellants. (R pp 163-69). In reply to Appellants' Counterclaim, Plaintiffs asserted several affirmative defenses including waiver, estoppel, statutes of limitation, and laches. (R pp 179-97).

Equitable estoppel should be applied "when any one, by his acts, representations, or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts exist, and such other rightfully relies and acts on such belief, so that he will

be prejudiced if the former is permitted to deny the existence of such facts." *Whitacre P'ship v. Biosignia, Inc.*, 358 N.C. 1, 17, 591 S.E.2d 870, 881 (2004) (internal citations omitted). "Under a quasi-estoppel theory, a party who accepts a transaction or instrument and then accepts benefits under it may be estopped to take a later position inconsistent with the prior acceptance of that same transaction or instrument." *Id.*, 358 N.C. at 18, 591 S.E.2d at 882. Laches has been defined as such neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity. *Harris & Gurganus, Inc. v. Williams*, 37 N.C. App. 585, 588, 246 S.E.2d 791, 794 (1978). Finally, a three-year statute of limitations applies to claims involving contracts. N.C. Gen. Stat. § 1-52(1) [App. 40-41].

Continuously from 2009 until July 2015, Appellants treated Plaintiffs as members of the Company, allowed and observed Plaintiffs storing all three of their planes in the Hangar, allowed Plaintiffs to pay fees associated with operation of the Hangar and/or the Company, presented Plaintiffs to state and federal taxing authorities as members of the Company, and directly and/or indirectly accepted the benefit of Plaintiffs' payments for their respective ownership interests in the Company. (R pp 9-11, 14, 251). Keesee signed the March 2009 Resolution and June 2009 Resolution, in each instance, accepting and acknowledging Dos Aves as a member of the Company. (Doc. Ex. 7-8). Keesee signed the September 2010

Resolution accepting and acknowledging both Dos Aves and the Martins as members of the Company. (Doc. Ex. 52). In fact, when both Dos Aves and the Martins signed the September 2010 Resolution accepting and acknowledging Thompson as a member of the Company, none of the Appellants objected to or challenged Plaintiffs' authority to admit Thompson to the Company. (*Id.*; and, R p 251).

In August 2015 and contrary to all of the foregoing upon which Plaintiffs reasonably relied, Appellants asserted Plaintiffs were not full members or members in good standing and claimed that Dos Aves could not store more than one aircraft in its share of the Hangar. (R pp 14, 16; and Doc. Ex. 10-11). The timing of Appellants' challenges to Plaintiffs' status and rights was not accidental. It coincided directly with Thompson's decision to sell his ownership interest in the Company and Keesee's claim that Keesee's LLC was the sole member of the Company able to exercise a right of first refusal and purchase Thompson's interest. (R pp 14-16).

It was in the midst of addressing Appellants' baseless contention against Plaintiffs' ownership and membership rights in August 2015 that Plaintiffs first discovered The Operating Agreement and the Appellants' propounded operating agreement. (R p 181). Despite having submitted their own cross-motion for summary for judgment before the trial court on 13 March 2017 and, thereby,

conceding there is no genuine issue of material fact in this matter, Appellants now argue that the mere existence of two signed operating agreements is sufficient to create an issue of fact precluding summary judgment. *Kessler*, 181 N.C. App. at 756, 640 S.E.2d at 824; *Blades*, 280 N.C. at 545, 187 S.E.2d at 43; and, (13 March 2017 *Hearing T.* 4, 10 [App. 32-33]; and, *Appellants' Brief* p 4). Further, Appellants point to emails between Holcombe and J. Martin, and/or the Company's attorney as allegedly creating issues of fact. (*Appellants' Brief* pp 15, 27). These emails from 2009 show that Holcombe negotiated changes to the *unsigned* copy of the operating agreement she was provided in 2009. (*Id.*; and Doc. Ex. 93-95). Appellants argue these emails prove Holcombe and, therefore, Dos Aves knew the Company restricted members to storing only one plane in the Hangar. (Doc. Ex. 93-95). To the contrary, the emails cited by Appellants show (1) Dos Aves was not given or shown the purported signed operating agreement Appellants proffer as genuine at the time of Dos Aves' purchase of its membership interest; and, (2) Dos Aves always intended to store two planes within the Hangar, which J. Martin and the Company's attorney knew. (*Id.*). The emails irrefutably show Dos Aves paid \$80,000 to purchase its membership in the Company dependent and in reliance upon the Company permitting it to store two planes in the Hangar. (*Id.*). Where the dispute among the parties relates not to the "facts disclosed by the evidence" but to the "legal significance of these facts," the Court may properly enter

summary judgment. *Blades*, 280 N.C. at 545, 187 S.E.2d at 43.

The trial court correctly determined there were no genuine issues of material fact as to which operating agreement governed the Company's business. Only *one* of these – The Operating Agreement – expresses the true intention of the members of the Company as shown by its consistency with the Company's Articles and consistency with the actual operation and actions by the members of the Company for at least six years. (Doc. Ex. 21-50 [App. 1-30]). The Operating Agreement, just like the Company's Articles, provides that the Company will be member-managed. (*Id.*; Doc. Ex. 1-6). The Operating Agreement also contains no limit on the number of planes a member may store within their share of the Hangar's floor space, which, again, is consistent with the members' practice and course of conduct over the span of at least six years in permitting Dos Aves to store two planes within the Hangar. (Doc. Ex. 21-50 [App. 1-30]).

The Appellants' propounded operating agreement, however, conflicts with the Company's Articles by stating the Company will be manager-managed, which has never been the case, as evidenced by, *inter alia*, the member-executed March 2009, June 2009, and September 2010 Resolutions. (Doc. Ex. 7, 8, 52, 53-82). The Appellants' desired operating agreement also limits each member to storing only one plane per membership within the Hangar, conflicting with the actual practice of the members over the past six years. (Doc. Ex. 10-11, 53-82; and, R pp 10, 16). In sum,

extent Appellants claim signatures on Plaintiffs' purchasing documents were insufficient, Appellants' challenges to written purchase documents is well beyond any applicable statute of limitations. N.C. Gen. Stat. § 1-52(1) [App. 40-41]. Appellants' Brief does not include any arguments of fact or law contesting Plaintiffs' affirmative defenses of statute of limitations, estoppel, or laches or their application to the facts in this matter. See, N.C. R. App. P. 28(b)(6) [App. 50-54]; and, *Larsen*, 241 N.C. App. at 79, 772 S.E.2d at 96 (issues not addressed within an appellant's brief are deemed abandoned).

In light of Plaintiffs' overwhelming evidence, the conjectural and immaterial nature of Appellants' arguments and evidence, and Plaintiffs' significant affirmative defenses, the trial court properly granted Plaintiffs summary judgment as to Plaintiffs' First and Second Causes of Action and Appellants' Counterclaim.

C. The Trial Court's Order Granting Plaintiffs Summary Judgment as to their Third, Fourth, and Sixth Causes of Action was Proper.

The trial court's Order correctly found there was no genuine issue of material fact precluding summary judgment to Plaintiffs on their Third, Fourth, and Sixth Causes of Action.

1. Plaintiffs' Third Cause of Action for Breach of Contract.

Plaintiffs' Third Cause of Action asserts Thompson breached his contract to sell Plaintiffs *pro rata* portions of Thompson's ownership share in the Company.

(R p 19). Plaintiffs have moved to dismiss Thompson's purported appeal, but until this Court considers that motion, Plaintiffs will briefly address the Third Cause of Action.

A claim for breach of a contract requires the existence of a valid contract and the breach of the terms of the contract. *Long v. Long*, 160 N.C. App. 664, 668, 588 S.E.2d 1, 4 (2003). Specific performance is a remedy available in claims for breach of contract, and its purpose is "to compel a party to do precisely what he ought to have done without being coerced by the court." *The Munchak Corp. v. Caldwell*, 301 N.C. 689, 694, 273 S.E.2d 281, 285 (1981).

When Thompson decided to sell his ownership interest in the Company, he initially followed the appropriate protocols set forth in The Operating Agreement by providing the Company's other members notice and a right of first refusal. (R pp 11-12, 251-52; Doc. Ex. 41 [App. 21]). On 8 October 2015, pursuant to Thompson's notice, Dos Aves and the Martins notified Thompson they were all exercising their rights of first refusal to purchase his interest, and an agreement was reached whereby Dos Aves, the Martins, and Keesee would each purchase their *pro-rata* 6.67% of Thompson's interest. (R pp 13, 252). Plaintiffs were (and still are) ready, willing, and able to perform their part of this agreement by purchasing Thompson's interest, as shown by Plaintiffs' counsel forwarding to Thompson their proposed bills of sale

on or about 12 October 2015.⁴ (R pp 13, 19, 252). Despite all of the foregoing, on 13 October 2015, Thompson breached his agreement with Plaintiffs by claiming only Keesee's LLC was a legitimate member of the Company who could purchase Thompson's interest. (R p 14).

Contrary to his assertion, Thompson formed a valid contract with Dos Aves and the Martins to sell each 6.67% of his ownership interest in the Company. *Long*, 160 N.C. App. at 668, 588 S.E.2d at 4. Thompson's actions in breaching this contract are without merit and without defense.

The Trial Court's Order correctly held there was no genuine issue of material fact precluding summary judgment in favor of Plaintiffs as to their Third Cause of Action, and Thompson has not filed a Brief contesting this holding. The Trial Court's Order with respect to Plaintiffs' Third Cause of Action should be affirmed.

2. Plaintiffs' Sixth Cause of Action for Tortious Interference with a Contract.

Plaintiffs' Sixth Cause of Action alleges Keesee and/or Keesee's LLC

⁴ Given the substantial fees and costs Plaintiffs have incurred unnecessarily as a result of Appellants' unlawful actions and perpetuation of their defenses and claims in this lawsuit despite the complete lack of any justiciable issue of law or fact, any such payment due to Thompson should be offset by all such fees and costs incurred by Plaintiffs as stated in the Trial Court's Order and Fees Award.

tortiously interfered with Plaintiffs' contract to purchase *pro rata* portions of Thompson's ownership share in the Company. (R p 21).

"A claim for tortious interference with contract exists where the defendant knows of a contractual relationship between two parties and without justification induces one party to breach the contract" entitling the non-breaching party to recovery of its damages. *United Laboratories, Inc. v. Kuykendall*, 335 N.C. 183, 191, 437 S.E.2d 374, 379 (1993) (citing *United Laboratories, Inc. v. Kuykendall*, 322 N.C. 643, 661, 370 S.E.2d 375, 387 (1988)).

Keesee was copied on Thompson's communications with Plaintiffs and knew Thompson had agreed to sell his ownership interest in the Company in equal parts to the Plaintiffs and Keesee. (R p 70). Nevertheless, Keesee sent his own communications that challenged Plaintiffs' membership status and induced Thompson to breach his agreement with Plaintiffs and to sell Thompson's entire 20% ownership interest in the Company solely to Keesee's LLC. (R p 69). Appellants' Brief argues Keesee's actions were appropriate because Plaintiffs were not entitled to exercise any rights of first refusal. (*Appellants' Brief* pp 17-22). In support of this position, Appellants argue Dos Aves had dissolved, reformed, and was either a different legal entity than had purchased an interest in the Company and/or could not purchase Thompson's share while in dissolution. (*Id.*). Appellants also argue the Martins' bill of sale for their payment of \$75,000 to purchase an ownership interest in

the Company was not sufficient to admit them as full members in the Company since they could not produce a written resolution of the members agreeing to their admission. (*Id.*).

Appellants' argument that Dos Aves dissolved and reformed as a different legal entity as evidenced by a change in the company's Secretary of State identification number is a theory that was not raised by Appellants at the trial court level. (*Appellants' Brief* pp 7, 17). Appellants improperly cite to the Secretary of State's website materials which were not presented to the trial court and are not part of the Record in this matter. (*Id.*). Likewise, Appellants' argument that Dos Aves could not purchase Thompson's share because of the statutory limitations on the actions of a company in dissolution is a newly raised argument not presented before the trial court. (*Id.* p 18). "This Court has long held that issues and theories of a case not raised below will not be considered on appeal." *Westminster Homes, Inc. v. Town of Cary Zoning Bd. of Adjust.*, 354 N.C. 298, 309, 554 S.E.2d 634, 641 (2001); see also, N.C. R. App. P. 10 [App. 46-47] (providing the process by which issues may be preserved for appellate review).

Plaintiffs will only address these arguments, which exceed the permissible issues on appeal, to point out that Appellants have tried to confuse the issue within their Brief by using the names "Dos Aves(1)" and "Dos Aves(2)." (*Appellants' Brief* pp 17-18). There has never been a change in Dos Aves' name nor has there

ever been a number associated with its corporate identity. Appellants have not alleged and cannot allege that from the Company's viewpoint, per the Company's records, and/or per the parties' dealings that there was any change in Dos Aves or its ownership of a 20% interest in the Company.

Additionally, Section 8.1 of The Operating Agreement makes clear that Dos Aves' attempted transfer to Holcombe and Pelton would have been void *ab initio* with no further penalty to Dos Aves' good standing within the Company. (Doc. Ex. 39-40 [App. 19-20]). If that were not enough, Section 9.1 of The Operating Agreement provides Dos Aves an opportunity to cure any default after its receipt of written notice from a non-defaulting member. (Doc. Ex. 42 [App. 22]). In Paragraph 28 of their Counterclaim, Appellants admitted Dos Aves cured any purported default by reforming Dos Aves via lawful filings on or about 23 September 2015, which is true. (R p 167). Further, Dos Aves was reformed before it notified Thompson on 8 October 2015 it was exercising its right of first refusal. (R p 13, 167). Thus, Appellants' argument that Dos Aves attempted to exercise this right while in dissolution is incorrect. (*Appellants' Brief* p 19).

With respect to the Martins, Appellants would have this Court believe that because the Martins can only produce a bill of sale and not a Company resolution agreeing to admit them as members, the Martins effectively paid \$75,000 to obtain merely an "economic interest" in the Company without full rights, powers, and

privileges of membership, including the right of first refusal under The Operating Agreement. (*Appellants' Brief* pp 21-22). This suggestion is absurd and unsupported by Appellants' own actions toward the Martins and course of conduct over six years. Appellants should be estopped from taking this position. Not only did Appellants indirectly benefit from the Martins' payment of \$75,000 to the Company in June 2009, but Appellants treated the Martins as full members of the Company continuously from June 2009 through July 2015 without incident. The Appellants signed corporate resolutions alongside the Martins such as the September 2010 Resolution that admitted Thompson as a member of the Company. (Doc. Ex. 52). Furthermore, Appellants treated all Plaintiffs as full members with all associated rights and privileges whenever it benefitted Appellants, such as when Plaintiffs used their personal funds to pay the Company's debts even though Appellants refused to contribute payment of their portion of said debts. (R p 14, 251).

Appellants have not raised any genuine issue of material fact that Keesee was justified in interfering with Plaintiffs' contract with Thompson. To the contrary, Keesee's interference was unjustified, denied Plaintiffs the opportunity to purchase Thompson's interest, denied Plaintiffs the right to increase their respective ownership interests in the Company, and forced Plaintiffs to file the present lawsuit to enforce their rights under their agreement with Thompson. Plaintiffs were appropriately

awarded summary judgment against Appellants on their Sixth Cause of Action. *United Laboratories*, 335 N.C. at 191, 437 S.E.2d at 379.

3. Plaintiffs' Fourth Cause of Action for Breach of Company Documents.

Plaintiffs' Fourth Cause of Action alleged Appellants breached the Company's documents and, thereby, injured Plaintiffs. (R p 20). The operating agreement of a limited liability company is considered and treated as a contract under North Carolina law. *N.C. State Bar v. Merrell*, __ N.C. App. __, 777 S.E.2d 103, 114 (2015); and N.C. Gen. Stat. § 57D-2-31 [App. 44].

The Operating Agreement in this case is a contract between Plaintiffs and Appellants. *N.C. State Bar*, __ N.C. App. at __, 777 S.E.2d at 114. Appellants breached that contract by failing to perform their obligations under The Operating Agreement. Specifically, Appellants failed to pay their portion of the Company's past-due taxes and lease payments and refused to honor Plaintiffs' rights, title, and interests in the Company and unrestricted use of the Hangar. (R pp 14-15, 20). Appellants' have presented no argument within their Brief challenging the trial court's Order insofar as it found Appellants breached their obligations to pay portions of amounts due by the Company and owed past due amounts in the total amount of \$14,767.39. (R pp 409-16). Accordingly, Appellants have waived any right to appeal this portion of the Trial Court's Order. N.C. R. App. P. 28(b)(6) [App. 50-54]; and, *Larsen*, 241 N.C. App. at 79, 772 S.E.2d at 96. As previously discussed above in

Section III.B. of this Brief, Appellants have not set forth any evidence of a genuine issue of material fact precluding summary judgment for Plaintiffs that Appellants breached the Company's documents in refusing to honor Plaintiffs' rights, title, and interests in the Company and the Hangar. Accordingly, the Trial Court's Order granting Plaintiffs summary judgment on their Fourth Cause of Action should be affirmed.

IV. THE COURT SHOULD AFFIRM THE TRIAL COURT'S AWARD OF FEES TO PLAINTIFFS.

The trial court appropriately found Appellants' Answer, defenses, and Counterclaim were "without basis in law or fact, misleading at best, and presented no justiciable issue of law or fact as to Plaintiffs' membership and ownership interest in the Company" and properly awarded Plaintiffs their attorneys' fees, costs, and expenses spent in defending against the same. (R pp 409-16).

A. Standard of Review for N.C. Gen. Stat. § 6-21.5.

"In any civil action...the court, upon motion of the prevailing party, may award a reasonable attorney's fee to the prevailing party if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading." N.C. Gen. Stat. § 6-21.5 [App. 43]. A justiciable issue is one that is "real and present, as opposed to imagined or fanciful." *Sunamerica Financial Corp. v. Bonham*, 328 N.C. 254, 257, 400 S.E.2d 435, 437 (1991) (quoting, *K&K Development Corp. v. Columbia Banking Fed. Savings &*

Loan, 96 N.C. App. 474, 479, 386 S.E.2d 226, 229 (1989) (internal citations omitted)). Although the granting of a motion for summary judgment “is not in itself a sufficient reason for the court to award attorney's fees, *[it] may be evidence to support the court's decision to make such an award.*” N.C. Gen. Stat. § 6-21.5 [App. 43] (emphasis added); see also, *Sunamerica*, 328 N.C. at 259, 400 S.E.2d at 439.

In deciding whether to grant a motion under N.C.G.S. § 6-21.5 [App. 43], a trial court may consider all evidence in the matter, including evidence both before and after the pleading at issue has been filed. *Id.*, 328 N.C. at 258, 400 S.E.2d at 438. The purpose of N.C. Gen. Stat. § 6-21.5 is “to discourage frivolous legal action...[which] can occur at any stage of the proceeding.” *Credigy Receivables, Inc. v. Whittington*, 202 N.C. App. 646, 655, 689 S.E.2d 889, 895 (2010) (quoting, *Short v. Bryant*, 97 N.C. App. 327, 329, 388 S.E.2d 205, 206 (1990)). The determination of whether there exists a justiciable issue is a question of law for the court to be reviewed by this Court *de novo*. *Wayne Street Mobile Home Park, LLC v. North Brunswick Sanitary District*, 213 N.C. App. 554, 561, 713 S.E.2d 748, 753 (2011).

B. Appellants' Answer, Defenses, and Counterclaim Presented No Justiciable Issue of Fact or Law.

Appellants knew from the moment they filed their Answer, defenses, and Counterclaim their pleadings contained no justiciable issue of fact or law. Despite this, they persisted in litigation in furtherance of the same for approximately a year

until the Trial Court's Order and Fees Award.

In the face of Appellants' general denials within their Answer, and assertion of various defenses including their Counterclaim, Plaintiffs were forced to expend substantial time, effort, and money proving, *inter alia*, Plaintiffs' ownership and membership in the Company, despite Appellants' acknowledgement and acceptance of the same for the six years leading up to the present lawsuit. Likewise, given Appellants' denial of and challenges to The Operating Agreement, Plaintiffs were forced to expend additional, time, effort, and money proving that which Appellants already knew at the time they asserted their Answer, defenses, and Counterclaim, *i.e.*, that the Company had been operating consistently with only one operating agreement, which is The Operating Agreement propounded by Plaintiffs. Appellants were aware all of the past Resolutions they had signed were member-executed actions. (Doc. Ex. 7, 8, 52). At all times Appellants knew and were aware that only The Operating Agreement is consistent with the Company's Articles, consistent with the Company being member-managed, and consistent with the actual practice of the Company in permitting more than one aircraft in a member's space within the Hangar. (Doc. Ex. 1-6, 7-8, 10, 21-50 [App 1-30], 52; and R p 10). It was no accident that Keesee only tried to raise the issue of Plaintiffs' membership rights when doing so benefitted him in purchasing Thompson's share.

In their Brief, Appellants argue the Fees Award does not contain a "required"

finding that the Appellants were not aware at the time of filing their Answer, defenses, and Counterclaim that the pleading contained no justiciable issues.

(*Appellants' Brief* p 27). However, the Fees Award states the following:

Finding of Fact 4:

Defendants Keesee and Keesee's LLC have at all times from March 2009 until August 2015 acknowledged and treated Plaintiffs as members in and owners of the Company. Defendant Thompson has at all times from September 2010 until October 2015 acknowledged and treated Plaintiffs as members in and owners of the Company.

Finding of Fact 6:

Despite their unequivocal knowledge and acceptance of Plaintiffs as members in and owners of the Company, on 18 March 2016, Keesee, Keesee's LLC, and Thompson through their Answer, defenses, and Counterclaim challenged and denied Plaintiffs' membership in and ownership of the Company.

The trial court's findings of fact sufficiently support the Fees Award. See, *Brooks v. Giesey*, 334 N.C. 303, 310, 432 S.E.2d 339, 343 (1993).

The trial court correctly found there was no justiciable issue of law or fact in Appellants' Answer, defenses, and Counterclaim, and properly relied on the Court's award of summary judgment to support its award of fees. N.C. Gen. Stat. § 6-21.5 [App. 43].

C. The Trial Court Did Not Abuse Its Discretion in Its Award to Plaintiffs.

The decision to award attorneys' fees under N.C. Gen. Stat. § 6-21.5 [App. 43]

is left to the sound discretion of the trial court and can only be overturned upon showing an abuse of discretion. *Wayne Street*, 213 N.C. App. at 561, 713 S.E.2d at 753. The abuse of discretion standard “is intended to give great leeway to the trial court and a clear abuse of discretion must be shown.” *Brown v. Brown*, 112 N.C. App. 614, 617, 436 S.E.2d 404, 406 (1993) (quoting, *Central Carolina Nissan, Inc. v. Sturgis*, 98 N.C. App. 253, 264, 390 S.E.2d 730, 737, *disc. rev. denied*, 327 N.C. 137, 394 S.E.2d 169 (1990)). “Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *Hennis*, 323 N.C. at 285, 372 S.E.2d at 527.

Additionally, “[e]vidence admitted without objection is properly considered by the court and, on appeal, the question of its competency cannot be presented for the first time.” *Joyner v. Garrett*, 279 N.C. 226, 234, 182 S.E.2d 553, 559 (1971). “An assignment of error is not a substitute for an exception.” *Id.* (quoting *Clark Equipment Company v. Johnson*, 261 N.C. 269, 273, 134 S.E.2d 327, 330 (1964)). “[I]ssues and theories of a case not raised below will not be considered on appeal.” *Westminster Homes*, 354 N.C. at 309, 554 S.E.2d at 641; see also, N.C. R. App. P. 10 [App. 46-47] (providing the process by which issues may be preserved for appellate review).

Appellants contest the inclusion of costs and fees in the Fees Award, but their Brief contains no citation to case law stating costs and fees cannot be part of the fees

awarded under N.C. Gen. Stat. § 6-21.5 [App. 43]. (*Appellants' Brief* p 28). Moreover, Plaintiffs have been openly requesting both their costs and fees since filing their Verified Complaint, but Appellants have just now, on appeal, chosen to contest for the first time Plaintiffs' entitlement to recover their costs. (R p 21). When Plaintiffs asked the trial court at the hearing on 13 March 2017 for recovery of their attorneys' fees and costs, Appellants did not object. (13 March 2017 *Hearing T.* 21, 23 [App. 34-35]). When Plaintiffs' counsel filed their *unopposed* affidavits to the trial court including a statement of their costs and expenses, Appellants did not object to the admission of the affidavits, did not challenge the contents of the affidavits, and did not seek to examine Plaintiffs' counsel or submit their own opposing affidavits. *Joyner*, 279 N.C. at 234, 182 S.E.2d at 559. Having not been raised below, the issue of Plaintiffs' ability to recover their costs and expenses cannot be raised for the first time on appeal. N.C. R. App. P. 10(a)(1) [App. 46-47]; *Joyner*, 279 N.C. at 234, 182 S.E.2d at 559.

Further, the award of costs and fees was made under N.C. Gen. Stat. § 6-21.5 [App. 43] "and the inherent authority of the Court." (R p 414, Finding of Fact 9). One such inherent basis of authority is N.C. Gen. Stat. § 6-18(2) [App. 42] which allows, as of course, costs to the prevailing plaintiff in an action to recover the possession of personal property. Plaintiffs' action was commenced to reclaim, defend, and protect Plaintiffs' membership rights in and to the Company and use of

the Hangar. "An ownership interest [in a limited liability company] is personal property." N.C. Gen. Stat. § 57D-5-01 [App.45]. Thus, the Fees Award is supported by the inherent authority given to the courts by N.C. Gen. Stat. § 6-18(2) [App. 42] to award Plaintiffs their costs and expenses.

The Fees Award correctly found that the Plaintiffs' counsel's time, efforts, and rates were justified, reasonable, and proper. (R pp 409-16). In fact, Plaintiffs' counsel's affidavits and invoices showed Plaintiffs had incurred attorneys' fees far exceeding the amount awarded in the Fees Award. (R pp 328-84). Appellants have not carried their burden of showing a clear abuse of discretion by the trial court. *Brown*, 112 N.C. App. at 617, 436 S.E.2d at 406; and, *Hennis*, 323 N.C. at 285, 372 S.E.2d at 527.

For all of the foregoing reasons, Appellants raised no justiciable issue of law or fact in their Answer, defenses, and Counterclaim; there has been no abuse of the trial court's discretion; and, the Fees Award should be affirmed in all respects.

CONCLUSION

Based upon all of the foregoing, the Trial Court's Order and Fees Award entered 23 March 2017 are proper and should be affirmed.

Respectfully submitted, this the 1st day of February 2018.

LAW OFFICES OF G. GRADY RICHARDSON, JR., P.C.



G. GRADY RICHARDSON, JR.
1213 Culbreth Drive
Wilmington, North Carolina 28405
North Carolina State Bar No. 25508
Telephone: 910-509-7166
Facsimile: 910-509-7167
E-Mail: grady@ggrlawoffice.com

I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it. N.C. R. App. P. 33(b)

Charles D. Meier, Esquire
MARSHALL, WILLIAMS & GORHAM, LLP
P.O. Drawer 2088
Wilmington, NC 28402-2088
North Carolina State Bar No. 13039
Telephone: (910) 763-9891
Facsimile: (910) 343-8604

Attorneys for Plaintiffs—Appellees

CERTIFICATE OF COMPLIANCE

I hereby certify that Plaintiffs-Appellees' Brief complies with the type-volume limitations set forth in Rule 28(j) of the North Carolina Rules of Appellate Procedure and contains no more than 8,750 words (excluding covers, indexes, tables of authority, certificates of service, signature blocks, appendixes, and this certificate of compliance) as reported by word-processing software.

This the 1st day of February 2018.

LAW OFFICES OF G. GRADY RICHARDSON, JR., P.C.



G. GRADY RICHARDSON, JR.

NCSB #25508

1213 Culbreth Drive

Wilmington, North Carolina 28405

Telephone: 910-509-7166

Facsimile: 910-509-7167

Email: grady@ggrlawoffice.com

Attorney for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

This is to certify that on this date the undersigned has served the foregoing upon the other parties to this action via first class United States mail service to:

Benedict J. Del Re, Jr., Esquire
THE DEL RE LAW FIRM, PLLC
1111 Sabbath Home Rd. SW
Holden Beach, NC 28462
Facsimile: (910) 842-8545

Christopher A. Chleborowicz, Esquire
Elijah A. T. Huston, Esquire
Chleborowicz Law Firm, PLLC
720 North Third Street, Suite 201
Wilmington, North Carolina 28401
Facsimile: (910) 254-2008
*Attorneys for Defendants – Appellants 717, NC, LLC;
Brian Keese; and Dick J. Thompson*

Kimberly L. Moore, Esquire
Johnson & Moore, P.A.
8505 E. Oak Island Drive, Ste 2
Oak Island, NC 28465
Facsimile: (910) 278-6525
Attorney for Defendant John Martin

Randy James, Esquire
Randolph M. James, P.C.
116 North Spruce Street 27101
P.O. Box 20069
Winston-Salem, NC 27120
Facsimile: (336) 724-9722
Attorney for Defendant Kevin Stephenson

This the 15th day of February 2018.


G. GRADY RICHARDSON, JR.

December 30, 2022

Via Email to ddutton@cityofsouthport.com

The City of Southport
c/o Ms. Dorothy Dutton, City Clerk
1029 N. Howe Street
Southport, NC 28461

Re: Southport City Attorney Position

Dear Ms. Dutton,

On behalf of The Brough Law Firm, PLLC, I am writing to submit our proposal for the Southport City Attorney position.

Our firm practices throughout North Carolina and includes seven lawyers located in offices in Chapel Hill, Concord, and Raleigh. Each attorney in our firm focuses on local government and land use law, and we serve as general counsel for Person County and twenty-three North Carolina municipalities, including Aberdeen, Boiling Spring Lakes, Carrboro, Carthage, Clemmons, Creedmoor, Foxfire Village, Gibson, Godwin, Hamlet, Hillsborough, Hoffman, Mocksville, Oakboro, Pinebluff, Robbins, Roxboro, Sedalia, Stanfield, Stem, Summerfield, Vass, and Whispering Pines.

We have extensive experience, individually and collectively, in all aspects of local government law, including board governance, the State open meetings and public records laws, zoning and land use law, ordinance drafting, contracts, public finance, employment law, and litigation in state and federal trial and appellate courts. The only local government matters we do not handle are specialized bond counsel work and real property closings. While we regularly conduct real property research, we typically ask local real estate attorneys to conduct title searches and closings because they can do so on a more cost-effective basis.

The firm also provides special litigation services for the Town of Cary, the City of Concord, Brunswick County, Cabarrus County, Currituck County, Robeson County,

and Rockingham County, and members of our firm have argued numerous cases in the N.C. Court of Appeals and N.C. Supreme Court on behalf of local governments. In addition to litigation, we frequently assist numerous other cities and counties throughout the State in matters ranging from ordinance drafting to serving as outside counsel for board of adjustment cases.

We typically designate two attorneys to serve each local government we represent. One of them acts as the primary counsel and principal contact, and the other serves as backup and as an additional point of contact. Additionally, all seven of our attorneys work together as a team to meet the needs of our clients. This arrangement ensures that each of our local government clients has full access to our services not only during normal business hours but also during evenings and weekends. We propose to have Mr. Brady Herman serve as the primary attorney and Mr. Robert "Bob" Hornik serve as backup.

Mr. Herman currently serves as the Town Attorney for Carthage and Vass and has considerable experience working with government entities of all sizes and types. Mr. Hornik currently serves as general counsel for the City of Boiling Spring Lakes; the Towns of Hillsborough, Hoffman, Stem, and Summerfield; and Foxfire Village. Both attorneys are partners with the firm. More information about both attorneys and the other members of our firm can be found in the enclosed firm brochure.

Our fee proposal is straightforward. We charge an hourly rate for all work performed, except for attending Board of Aldermen meetings. Our hourly rate is \$215.00 per hour for Mr. Herman and Mr. Hornik, and this rate would increase to \$225.00 per hour on July 1, 2023 and to \$235.00 per hour on July 1, 2024. We would charge a flat fee of \$900.00 per meeting to attend regular and special Commissioners meetings, which would include our travel time to and from meetings. Although this is our preferred fee model, we are open to other arrangements such as a retainer model, if the City would prefer that instead.

We recognize that the Board of Commissioners will likely consider other firms, and it is fair to ask why you should select the Brough Law Firm over others? The short answer is experience, our team approach, flexibility, and our competitive rates. Since it was founded in 1988, our firm has focused almost exclusively on local government and land use law, and every attorney in our firm focuses on these practice areas, which means there will always be an attorney available to answer questions and to attend meetings. The Board of Commissioners and City staff will have the opportunity to work with our attorneys who not only have broad and deep experience with local government law but who also understand the practical and political realities of governance. We value public service, and we believe our job is to help our local government clients anticipate legal issues and to avoid or resolve them. Moreover, we take a flexible approach that allows us to tailor the work we provide to the needs of the City. Should the need for litigation counsel arise, we could either

handle the City's litigation needs through our firm or we could work with local firms already working on behalf of the City.

Moreover, although we may be located further from the Southport City Hall than other attorneys, we have found that telephone, email, and now video conferencing software such as Zoom allow us to work effectively with local government clients located a considerable distance from our offices. For example, we have found that technology and flexibility have allowed us to represent the nearby Town of Boiling Spring Lakes for some time now.

I have enclosed our Compensation for Services schedule, a list of references, our public sector client list, and firm brochure. Additional information can be found on our Web site at <https://broughlawfirm.com/>. We would be pleased to attend a Board of Commissioners meeting or provide you any other information that you might require. Thank you for your consideration.

Sincerely,

THE BROUGH LAW FIRM, PLLC

A handwritten signature in dark ink, reading "T.C. Morphis, Jr." followed by a stylized flourish.

T.C. Morphis, Jr., Managing Partner

TCM:las
Enclosures

cc: Mr. Brady Herman (via email)
Mr. Bob Hornik (via email)



COMPENSATION FOR SERVICES

Statements for services rendered by The Brough Law Firm, PLLC will be prepared at the end of each calendar month for the work performed during the previous month. Your monthly statement will consist of two parts: an itemized breakdown of professional services and a list of expenses and costs advanced. The professional services portion of your statement will be based upon the following hourly rates for the attorneys and other staff who work on your case. Our firm bills in increments of 1/10th of an hour.

Attorney	Current Rate	Effective 07/01/2023	Effective 07/01/2024
Senior Attorney	\$215.00	\$225.00	\$235.00
Associate	\$200.00	\$205.00	\$210.00
Legal Assistant	\$120.00	\$125.00	\$130.00

The Law Firm shall charge the following flat per-meeting fee to attend regular meetings of the Hickory City Council. This rate includes travel time to and from meetings:

Current Rate	Effective 07/01/2023	Effective 07/01/2024
\$900.00	\$950.00	\$1,000.00

Your statement will indicate the services performed and the date, the attorney performing the services, the hourly rate, and the total. It will also include an itemized list of additional expenses and costs advanced. These include:

- Photocopy charges for non-routine copying done for the client outside the office.
- Private express mail carriers such as Federal Express.
- Mileage and travel expenses outside Cabarrus, Catawba, Chatham, Davie, Durham, Granville, Guilford, Moore, Orange, Union and Wake counties.
- Filing, service of process, and other fees associated with litigation.
- Fees for recording deeds and other instruments.

Statements will be mailed by the 10th of each month and are overdue if payment is not received by the end of that month. Interest at the rate of 1 ½% per month shall accumulate on balances not paid within thirty days after the date such balances become overdue. Any retainer received from you will be deposited in our trust account and used to pay your monthly statements. To the extent our statements exceed the retainer amount, payment will be expected as indicated above. If payment in full is not received by the 15th of the month following the month in which a statement is issued, no additional services will be performed in your behalf and thereafter services will be performed only if and to the extent that additional funds are deposited in our trust account to ensure payment of our statements as they become due.

Payments can be made by check, credit card, or “e-check.” We will add a processing fee of 1.95% for Visa, Mastercard, and Discover payments and a processing fee of 2.95% for other cards, including American Express. E-check payments are limited to \$5,000 per payment.

The Brough Law Firm, PLLC
Partial Reference List

Feel free to contact any of the public entities we represent. Below are specific references from five of our municipal clients:

Town of Carthage

Ms. Emily Yopp, Manager
(910) 947-2331
townmanager@townofcarthage.org

Town of Vass

Ms. Mabel Walden, Administrator
(910) 245-4676
mwalden@townofvass.com

Town of Hillsborough

Mr. Eric Peterson, Manager
(919) 732-2104
eric.peterson@hillsboroughnc.org

Town of Summerfield

Mr. Scott Whitaker, Manager
(336) 643 8655
swhitaker@summerfieldnc.gov

Town of Stem

Hon. Casey Dover, Mayor
(919) 693-6125
Casey.dover@stemnc.org

PUBLIC ENTITY CLIENT LIST

The following is a complete listing of public entities our firm has represented:

Entity	Position Held	Years of Service
Town of Aberdeen, NC	Town Attorneys	Approx. 2000 – present
City of Asheboro, NC	Outside Litigation Counsel	Approx. 1991 – 1992
Town of Ayden, NC	Outside Litigation Counsel	Approx. 1999
Town of Bath, NC	Outside Litigation Counsel to the Board of Adjustment	Approx. 2009
Town of Boiling Spring Lakes, NC	Town Attorney	2022 – present
Town of Boone, NC	Outside Litigation Counsel	Approx. 1991 - 1992
City of Burlington, NC	Outside Litigation Counsel	Approx. 1993 – 1994
Cabarrus County, NC	Outside Litigation Counsel	2011 – 2012
Town of Cameron, NC	Town Attorneys and Litigation Counsel	Approx. 1998 – 2021
Town of Canton, NC	Town Attorneys	2012 – 2014
Town of Cape Carteret, NC	Outside Litigation Counsel	Approx. 1999
Town of Carolina Beach	Outside Counsel regarding a personnel matter	2015
Town of Carrboro, NC	Town Attorneys	Approx. 1980 – present
Town of Carthage, NC	Town Attorneys	2014 – present
Town of Cary, NC	Outside Litigation Counsel	Approx. 2000 – present
Town of Chapel Hill	Counsel to the Historic District Commission	Approx. 2021 – present
Chatham County, NC	Outside Litigation Counsel	2000
Chatham County, NC Board of Adjustment	Board Attorney	2016 - present
Town of Clemmons	Town Attorneys	2022 – present
City of Concord, NC	Outside Litigation Counsel and Counsel to the Board of Adjustment Mr. Benshoff served as in house City Attorney	2004 – present 2003 to 2014
Currituck County, NC	Outside Litigation Counsel	Approx. 2012; 2014 – present
Town of Duck	Outside Counsel for a zoning matter	2015
Town of Elizabethton, NC	Outside Litigation Counsel	2004 – 2005
Foxfire Village, NC	Village Attorneys	2010 – present
Gaston County, NC	Outside Litigation Counsel	Approx. 1992 – 1993
Town of Green Level, NC	Town Attorneys	Approx. 2007 – 2010
Town of Gibson, NC	Town Attorneys	2021 – present
City of Hamlet, NC	City Attorneys	2014 – present
Henderson County, NC	Outside Litigation Counsel	Approx. 1988 – 1989
City of Hickory, NC	Economic development issue; board training	2014; 2015

Town of Hillsborough, NC	Town Attorneys and Litigation Counsel	Approx. 1988 – present
Town of Hoffman, NC	Town Attorneys	2014 – present
Town of Holly Springs	Prepared development ordinance amendments	1995-1996
Town of Hope Mills, NC	Town Attorneys and Litigation Counsel	2012 – 2016
City of Jacksonville, NC	Outside Litigation Counsel	2015 – present
City of Kannapolis, NC	Outside Litigation Counsel	2014 – present
Town of Kill Devil Hills, NC	Outside Litigation Counsel	Approx. 1996 – 1997
Town of Landis, NC	Outside counsel for an annexation matter	Approx. 2005
Lumberton Visitors Bureau; Lumberton Airport Authority	Attorney	Approx. 1999-2003
City of Lumberton	City Attorney	1997 to 2003
Town of Maiden, NC	Outside Counsel for code rewrite	2009 – 2011
Village of Marvin, NC	Outside Litigation Counsel	2018 – present
Town of Mocksville	Town Attorney	2017 to present
City of Monroe	Board of Adjustment Attorney	2020 to present
Town of Nags Head, NC	Outside Litigation Counsel	Approx. 1997 – 1998
City of New Bern, NC	Outside Litigation Counsel	Approx. 2007 – 2008
Town of Oakboro, NC	Town Attorneys	2015 – present
Person County	County Attorneys	2021 – present
Town of Pinebluff, NC	Town Attorneys and Litigation Counsel	Approx. 2000 – present
Town of Princeville, NC	Town Attorneys	2018 – 2019
Robeson County, NC	Outside Litigation Counsel	2018 - present
Town of Robbins, NC	Town Attorneys	2014 – present
Rockingham County, NC	Outside Litigation Counsel	2013 – 2015
Rockingham County Schools	General Counsel	2019 – present
City of Roxboro, NC	City Attorneys and Litigation Counsel	Approx. 1998 – present
Town of Rutherfordton, NC	Outside Counsel for code rewrite and Outside Litigation Counsel	Approx. 1999; 2002
City of Sanford, NC	Attorney to the Board of Adjustment and Historic Properties Commission.	2015 – present
City of Salisbury, NC	Outside Litigation Counsel	2005 – 2007
Town of Sedalia, NC	Outside Counsel	2015 – present
City of Shelby, NC	Outside Litigation Counsel	Approx. 2001 – 2002
Siler City, NC	City Attorneys	Approx. 1996 – 2014
Town of Summerfield, NC	Town Attorneys	2019 – present
Town of Stem, NC	Town Attorneys	2012 – present

Town of Tarboro, NC	Town Attorneys and Litigation Counsel	Approx. 1992 – 2013
Town of Taylortown, NC	Town Attorneys	Approx. 2000 – 2014
City of Trinity, NC	City Attorneys	2015 – 2017
City of Troy, NC	Outside Litigation Counsels	2014 – 2015
Town of Unionville, NC	Outside Litigation Counsel	2006 – 2009
Town of Vass, NC	Town Attorneys	2014 – present
Village of Whispering Pines	Village Attorneys and Litigation Counsel	Approx. 2002 – present
City of Wilmington, NC	Outside Litigation Counsel	1997; 2010
Warren County, NC	Outside Litigation Counsel	Approx. 1993 – 1994
Town of Waxhaw, NC	Outside Counsel for code rewrite	2015 - present
City of Wilson, NC	Outside Litigation Counsel	2011 – 2013
Town of Yadkinville, NC	Outside Counsel to the Board of Adjustment	2014 – 2015



CHAPEL HILL • CONCORD • RALEIGH

1526 E. Franklin Street
Suite 200
Chapel Hill, NC 27514

CHAPEL HILL (919) 929-3905

CONCORD (980) 622-6440

RALEIGH (919) 349-8988

broughlawfirm.com

G. Nicholas (Nick) Herman
herman@broughlawfirm.com

Robert (Bob) E. Hornik, Jr.
hornik@broughlawfirm.com

T.C. Morphis, Jr.
morphis@broughlawfirm.com

Albert (Al) M. Benshoff
benshoff@broughlawfirm.com

S. Ellis Hankins
hankins@broughlawfirm.com

Kevin R. Hornik
khornik@broughlawfirm.com

Brady N. Herman
bherman@broughlawfirm.com

Lori Stuart
Office Administrator
office@broughlawfirm.com

Michael B. Brough founded the Brough Law Firm (now The Brough Law Firm, PLLC) in 1988 in Chapel Hill, North Carolina. Today, the Principals of the firm are G. Nicholas (Nick) N. Herman, Robert E. (Bob) Hornik, Jr., and T.C. Morphis, Jr. The other attorneys in the firm are Albert M. Benshoff, S. Ellis Hankins, Kevin R. Hornik, and Brady N. Herman. With offices in Chapel Hill, Concord, and Raleigh, the firm has a statewide practice primarily devoted to land use, local government, and school system work.

The firm regularly assists developers in obtaining zoning and other land use entitlements, and we also represent individuals, citizen groups, businesses, and other corporations in a broad range of capacities relating to planning, zoning and land-use related matters. We regularly assist clients with rezonings, variances, special and conditional use permits, annexations, condemnations, vested rights, subdivision development, historic district designations, and regulations under the N.C. Coastal Area Management Act, as well as other State and federal land use and environmental laws.

The firm also has a robust local government and school board law practice. We serve as general counsel to Person County and to twenty-two North Carolina municipalities, including Aberdeen, Boiling Spring Lakes, Carrboro, Carthage, Creedmoor, Foxfire Village, Gibson, Godwin, Hamlet, Hillsborough, Hoffman, Mocksville, Oakboro, Pinebluff, Robbins, Roxboro, Sedalia, Stanfield, Stem, Summerfield, Vass, and Whispering Pines. We represent the Rockingham County School System, and the firm also provides special litigation services for the Town of Cary, City of Concord, Currituck County, Rockingham County, Cabarrus County, Robeson County, and Brunswick County. We regularly assist numerous other cities and counties throughout the State in matters ranging from ordinance drafting to litigation, and we regularly handle matters as outside counsel that are considered too delicate for an in-house attorney to handle alone.

The members of the firm have extensive expertise in litigation and appellate matters, and they have argued over 135 cases in the North Carolina Supreme Court, North Carolina Court of Appeals, and the United States Court of Appeals for the Fourth Circuit. In addition, members of the firm have taught on the adjunct faculties at the University of North Carolina School of Law, North Carolina Central University School of Law, Duke University School of Law, Campbell University School of Law, North Carolina State University, Elon University, National Institute for Trial Advocacy, and at the School of Government in Chapel Hill. Collectively, the members of the firm have published 13 books and monographs, and over 100 articles (including Continuing Legal Education papers) on various areas of law in which the firm practices.



G. NICHOLAS (NICK) HERMAN

Nick Herman received his Bachelor of Arts degree from the University of North Carolina at Chapel Hill as a Morehead-Cain Scholar and his law degree from Duke University School of Law.

He has extensive litigation experience in state and federal court in a wide variety of areas of law, including municipal and county defense, zoning issues, constitutional law, civil rights, eminent domain, and employment law. He has also argued over 40 cases

in the North Carolina Supreme Court, North Carolina Court of Appeals, and the United States Court of Appeals for the Fourth Circuit.

Mr. Herman is also an Adjunct Professor at Campbell Law School and North Carolina Central University School of Law, and he has taught on the adjunct faculties at Duke Law School, UNC-CH Law School, and Elon University. He teaches courses in trial practice, the law of evidence, legal counseling and negotiating, arbitration, appellate advocacy, civil procedure, alternative dispute resolution, and pretrial litigation, among other courses. He has also taught on the faculty of the National Institute of Trial Advocacy in trial practice, negotiation and mediation, and deposition-taking skills. He is the author of: *North Carolina Civil Trial Practice* (Juris Publishing, Inc., 2nd ed. 2021); *Advocacy in Negotiation and Mediation* (Carolina Academic Press 2021); *Navigating the First Year of Law School* (Carolina Academic Press 2016); *Practical Evidence: The Law, Foundations, and Trial Techniques* (West Group, 2nd ed. 1999); *Plea Bargaining* (Juris Publishing, Inc. 5th ed. 2020); *Legal Counseling, Negotiating & Mediating: A Practical Approach* (Carolina Academic Press, 2nd ed. 2009); and *Client Interviewing, Counseling, and Decision-Making: A Practical Approach* (Carolina Academic Press, 2nd ed. 2021). He has also written over 60 articles on various subjects of law, litigation, and appeals.

Mr. Herman has been a lecturer at numerous Continuing Legal Education programs on topics such as land-use regulation powers, civil litigation and trial advocacy, eminent domain, the law of damages, witness preparation, disability law, and ethical considerations in civil litigation and appellate practice. He now serves as general counsel to the Town of Carrboro, the City of Roxboro, and the Rockingham County School System. He has served as special litigation counsel for Cabarrus County, Rockingham County, Brunswick County, Chatham County, Currituck County, Robeson County, the City of Concord, the City of Wilmington, the Town of Unionville, and the Town of Garner. His practice is otherwise primarily devoted to general representation and complex litigation and appeals involving areas such as county and municipal law, zoning issues, land use regulation, condemnation cases, nuisance abatement, constitutional law, employment law, and business litigation.

ROBERT E. (BOB) HORNIK, JR.

Bob Hornik received his Bachelor of Arts degree, with honors, in Political Science from LeMoyne College in Syracuse, New York, and his law degree from The Washington & Lee University School of Law in Lexington, Virginia. Before becoming a principal in the Brough Law Firm, he engaged in the private practice of law in Syracuse, New York, representing local governments and real estate developers.



Mr. Hornik's practice emphasizes municipal law, zoning and land use law, litigation, and ordinance drafting. He serves as general counsel to the Towns of Hillsborough, Hoffman, Pinebluff, Stem, and Summerfield and the City of Boiling Spring Lakes. In addition, Mr. Hornik supports others in the firm in their capacities as counsel for the Firm's other municipal clients. He has represented and advised municipalities in New York and North Carolina on issues including local finance, employment, annexation, zoning, planning and environmental law, and private developers in administrative and judicial proceedings at the State and Federal levels.

Mr. Hornik has extensive litigation experience in municipal, land use, and annexation matters in trial and appellate courts, including the North Carolina Supreme Court and the United States Supreme Court. He has also counseled clients in various commercial real estate transactions, including site acquisition, leasing and financing of multimillion-dollar commercial, retail and office ventures, and large scale residential subdivisions. Mr. Hornik's practice has included representation of several regional and national wireless telecommunication providers in the site acquisition and permitting processes for wireless telecommunications facilities, including State and Federal court actions brought under the Telecommunications Act.

Mr. Hornik is admitted to practice not only in North Carolina and New York, but also in the federal courts in the Northern and Western Districts of New York; in the Eastern, Middle and Western Districts of North Carolina; in the United States Court of Appeals for the Fourth Circuit; and in the United States Supreme Court. He is a member of the North Carolina, New York, and American Bar Associations. Mr. Hornik is active in the North Carolina Bar Association's Zoning, Planning, and Land Use Section, having served as a member of the Section's first Section Council. He served two terms as Chairman of the Section's Continuing Legal Education Committee, and he has presented continuing legal education programs for municipal attorneys and newly admitted attorneys on numerous occasions.



T.C. MORPHIS, JR.

T.C. Morphis grew up in Hickory, North Carolina. He received a Bachelor of Arts in Philosophy and History, his Law Degree, and a Master's Degree in City and Regional Planning from UNC-Chapel Hill.

Mr. Morphis' primary practice areas include municipal, zoning, land use, employment, code enforcement, environmental, and coastal area management law. He provides general legal counsel for the City of Hamlet, the Towns of Aberdeen and Robbins, and the Village of Whispering Pines. He also serves as outside counsel to the Chatham County Board of Adjustment, and regularly represents citizen groups and other private clients in land-use litigation throughout North Carolina. Mr. Morphis has experience at all stages of litigation, from quasi-judicial hearings before local boards to trial court work and appellate advocacy before the North Carolina Court of Appeals and North Carolina Supreme Court. Mr. Morphis also regularly advises local government clients on code enforcement and board governance issues.

Early in his career, Mr. Morphis served as a clerk with the Charlotte City Attorney's Office and as an extern for the Honorable Judge Linda McGee of the North Carolina Court of Appeals. Mr. Morphis' Masters-Degree Project compared land trusts and resource conservation efforts in North Carolina with forest conservation in India, and he was a recipient of a U.S. Department of Education Foreign Language Area Studies scholarship for the study of Hindi and Urdu. Mr. Morphis also received, at UNC-CH Law School, the Gressman-Pollitt Award for Oral Advocacy, the Best Overall award in the UNC Environmental Negotiation Competition, and recognition as a finalist in the Merhige National Environmental Negotiation Competition.

Mr. Morphis is admitted to practice in the State courts in North Carolina and in the United States District Court, Middle District of North Carolina. He currently serves on the North Carolina Association of Municipal Attorneys Board of Directors. Mr. Morphis is also a member of the North Carolina Bar Association, where he has previously served as the Chair of the Zoning, Planning, and Land Use Section Council and as the Co-Editor of the *Land Use Law Quarterly*. He also previously served on the Triangle Land Conservancy's Land Protection Committee and as the Chairman of the Advisory Committee to the City of Durham's Community and Family Life Center at Lyon Park.

ALBERT M. BENSHOFF

Al Benshoff graduated from the University of Michigan with a Bachelor of Science in Natural Resources. He briefly worked as a contractor for the U.S. Department of the Interior, Bureau of Outdoor Recreation (now the National Park Service) before working in environmental compliance for National Steel Corp. He later received a Master's Degree in Regional Planning from the University of Michigan.



For many years, he worked as a planner, first for the Beaufort County, S.C. Planning Commission, and then for the City of Cary, N.C. where he oversaw the adoption of the first Unified Development Ordinance, the construction of the first five miles of greenway, and several comprehensive plans. While working in Cary, he attended the evening law program at N.C. Central University School of Law, in Durham, NC.

After receiving his law degree, Mr. Benshoff became the City Attorney for Lumberton, N.C. and then served as the City Attorney for Concord, N.C. Some of his accomplishments in Concord include litigating a major zoning challenge to the new Cabarrus County jail, re-writing the Concord Development Ordinance, obtaining and defending Inter-Basin Transfer Permits from the Yadkin and Catawba Rivers to Concord and Kannapolis, assisting with the redevelopment of "Brownfield" sites, and organizing community development and the construction of the joint Albemarle-Concord- Kannapolis water pipeline.

Mr. Benshoff provides general legal counsel to the Towns of Gibson, Mocksville, Oakboro, Sedalia, and Stanfield. He has worked with other local government clients, including the Towns of Aberdeen, Carthage, Carrboro, Creedmoor, Selma, Holly Springs, Pinebluff, Robbins, the Lumberton Convention and Visitors Bureau, the Cities of Kannapolis and Roxboro, and the Village of Pinehurst. He practices in the areas of real estate development, code enforcement, contracts, economic development, annexation, land use and zoning, eminent domain, housing authorities, personnel, and community development, including U.S. Housing and Urban Development programs.

Mr. Benshoff is licensed in the North Carolina state courts and U.S. District Courts of the Eastern, Middle and Western Districts of North Carolina, as well as the U.S. Fourth Circuit Court of Appeals. He is an active member of the North Carolina Bar Association, where he has served on the Section Councils of both the Government & Public Sector Section and the Zoning, Planning and Land Use Law Section. Mr. Benshoff recently received the Grainger Barrett Award for Excellence from the Government & Public Sector Section. Also, from 2017 to 2019 Mr. Benshoff served on the Board of Directors of the NC Association of Municipal Attorneys. In the community, he serves as the President of the Board of Directors of two non-profit corporations providing housing to low income seniors in Cabarrus County, the Methodist Episcopal Senior Housing, Inc. and Housing Episcopal Methodist Presbyterian, Inc.



S. ELLIS HANKINS

Ellis Hankins earned his Bachelor of Arts, Master of Regional Planning, and Law degrees from UNC-Chapel Hill. As an attorney with the firm based in Raleigh, his practice focuses primarily on local government representation and appellate advocacy.

Mr. Hankins provides general legal counsel to Person County, the Town of Godwin, and the Rockingham County School System.

He also teaches as a visiting professor in graduate public policy and management programs at UNC-Chapel Hill, NC State, and Duke University, in the areas of state and local government, tax policy and public finance, public law and ethics, and intergovernmental relations. He also has assisted cities, counties, public risk pools, state municipal leagues, and county associations with executive searches and other management needs, as a member of a nationwide public sector consulting firm.

Mr. Hankins served as Executive Director of the North Carolina League of Municipalities, the statewide municipal association, and previously as the League's General Counsel and chief state legislative lobbyist. He has represented municipalities and other public and private sector entities and associations in state and federal trial and appellate courts and before congressional committees, as a member of the League staff and in private law practice. He is licensed to practice law in North Carolina and is admitted to practice before the US District Court for the Eastern District of North Carolina and the US Court of Appeals for the Fourth Circuit.

He is a former member of the National League of Cities Board of Directors; the NLC Mutual Insurance Company Board of Directors and Executive Committee (reinsurance company); the NCLM Risk Management Services Board of Trustees; the UNC School of Government Foundation Board of Directors; and the Wake County Parks and Recreation Commission. He assisted with the transition of North Carolina Governor-Elect Roy Cooper, leading the assessment team that evaluated the Governor's Office, Department of Administration and Office of State Human Resources. Ellis serves as a member of the Raleigh-Durham Airport Authority Board, as an appointee of the Wake County Board of Commissioners.

Mr. Hankins is a lifetime honorary member of the NC Municipal Attorneys Association, the NC City-County Management Association, and the NC League of Municipalities, and he received the Grainger Barrett Award for Excellence from the NC Bar Association Government and Public Sector Section. He is a member of the Order of the Long Leaf Pine, bestowed by Governor Pat McCrory for exemplary service to the State of North Carolina.

KEVIN R. HORNIK

Kevin Hornik received his Bachelor of Arts degree, with honors, in History from Queens University of Charlotte in Charlotte, North Carolina in 2013. He received his law degree in 2016, and was admitted to practice in all courts of this State in 2017.

While in law school, Mr. Hornik worked as a legal writing consultant and instructor, assisting and advising students on their legal writing assignments. He also worked as an intern at the school's Community and Economic Development Clinic, providing pro bono legal services to non-profit and community and economic development organizations in the Charlotte area and in the surrounding communities. He also was a member of the World Affairs Council of Charlotte, participating in and attending a lecture series in the greater Charlotte area through both the law school and The Magellan Society.

Mr. Hornik currently serves as the City Attorney for Creedmoor, the Town Attorney for Pinebluff, and the Assistant Town Attorney for Hillsborough and Summerfield. He also regularly provides outside counsel to the Town of Cary Board of Adjustment, the Town of Chapel Hill Historic District Commission, and the City of Sanford Board of Adjustment and Historic Preservation Commission. His experience includes local government and municipal land use matters, as well as non-profit and community economic development work. Mr. Hornik counsels the firm's numerous local government clients in land-use, regulatory, and employment matters, including all operational and transactional aspects of those local governments. In addition, he provides integral legal research, and litigation representation and support for cases litigated by the firm on behalf of local governments. This includes counsel and representation in administrative matters, quasi-judicial proceedings, trial proceedings, and appellate cases brought on behalf of the local governments represented by the firm in the NC Court of Appeals, NC Supreme Court, the federal district courts of North Carolina, and the US Court of Appeals for the Fourth Circuit.





BRADY N. HERMAN

Brady Herman received his B.A. degree from Elon University and his J.D. degree from Campbell University School of Law. While in law school, he concentrated his studies in litigation. He was also a named contributor to *Navigating the First Year of Law School*, a nationally-distributed book published by Carolina Academic Press.

Mr. Herman currently serves as the Town Attorney for Vass and provides general counsel services for the Town of Carthage. His practice is devoted to assisting private clients obtain zoning and land use entitlements and advising local government clients in a wide range of areas, including zoning and planning matters, code enforcement, quasi-judicial functions, ordinance drafting and interpretation, police and fire functions, storm water and other public-utility matters, employment matters, and contract and other transactional matters for local governments. Mr. Herman also provides legal research and litigation representation and support for cases litigated by the firm. This includes counsel and representation in negotiation and mediation, administrative matters, quasi-judicial proceedings, trial proceedings, and appellate cases brought on behalf of the local governments represented by the firm in the North Carolina and federal courts.

Brady is a contributing author to the regular updates for *North Carolina Civil Trial Practice—With Application of the N.C. Rules of Evidence*—which is North Carolina's leading trial-practice treatise published by Juris Publishing Company. He is admitted to practice in all North Carolina courts.

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- Plea Bargaining (Juris Publishing, Inc., 5th ed. 2020).
- Navigating The First Year of Law School (Carolina Academic Press 2016).
- Legal Counseling, Negotiating & Mediating: A Practical Approach (Carolina Academic Press, 2nd ed. 2009).
- The Nonconforming Use in North Carolina Zoning Law: Text and Model Ordinance (Institute of Government 1976).
- North Carolina Volunteer Fire Department Journal (1995 to present).
- The Order of The Golden Fleece at Chapel Hill, 1904-2004: America's First Honor Society For University Leaders (The University of North Carolina at Chapel Hill Library 2005).
- A Practical Approach to Client Interviewing, Counseling, and Decision-Making: For Clinical Programs and Practical-skills Courses (Carolina Academic Press 2009).
- Practical Evidence: The Law, Foundations, and Trial Techniques (West Group, 2nd ed. 1999).
- Preparing Ordinances Regulating Mobile Homes and Mobile Home Parks in North Carolina: A Guidebook (Institute of Government 1976).
- Selected Major Issues in North Carolina Zoning and Land Use Law (1986).
- A Unified Development Ordinance (American Planning Association 1985).
- The Zoning Board of Adjustment in North Carolina (Institute of Government, 2d. ed. 1984).

Articles

- "Pitfalls to Avoid in Written Decisions on Quasi-Judicial Matters," NC Association of Municipal Attorneys' Summer Conference (August 4-6, 2022)
- "The Future of Impact Fees in Light of *Quality Built Homes, Inc. v. Town of Carthage*," N.C. Bar Association, 2017 Zoning Planning & Land Use Section Annual Meeting (April 6, 2017).
- Op-ed article: Gorsuch on the Supreme Court Will Not Cause the Sky to Fall, *The Herald Sun* (February 10, 2017).
- "Illegal Fees and Attorneys' Fees, N.C. Bar Association, 2016 Zoning, Planning & Land Use Section Annual Meeting (March 18, 2016).
- Op-ed article: When Politics Becomes a Team Sport, We All Lose, *The News & Observer*, (February 2, 2016).
- "Arguing For a Broad Construction of the Zoning Power," N.C. Association of County Attorneys Winter Conference (UNC School of Government, February 6, 2015).

- "The Current Scope of Local Government Land-Use Regulation Powers: Have We Turned Back to the 1870s?," 18 *The North Carolina State Bar Journal*, No. 4 at 8-12 (Winter 2013).
- "Legal Talking Points for Interpreting Lanvale Contextually," N.C. Municipal Attorneys Winter Conference (UNC School of Government, March 14-15, 2013).
- "Major Overhaul of Annexation Statutes: What Does It Mean for Land Use Practitioners?," *Land Use Law Quarterly* (NC Bar Association January, 2012)
- "New Statute Makes Important Changes to the Statute of Limitations Applicable to Challenges to Zoning Ordinances," *Land Use Law Quarterly* (NC Bar Association October, 2011).
- "An Introduction to Form-Based Zoning," *Land Use Law Quarterly* (NC Bar Association April, 2010).
- "Land Use Options for Protecting Downtown as a Retail Destination," *Land Use Law Quarterly* (NC Bar Association, December, 2009).
- "Effective Advocacy in Mediation," 11 *The North Carolina State Bar Journal*, No. 2 at 16 (Summer 2006); reprinted in *Civil Trial From Start to Finish* at 54-58 (National Business Institute, Eau Claire, Wisconsin, July 2006); reprinted in *General Practice Plus* at 3 (Virginia State Bar, General Practice Section, Spring 2007).
- "How to Value a Case for Negotiation and Settlement," 10 *The North Carolina State Bar Journal*, No. 2 at 32 (Summer 2005); reprinted in 31 *The Montana Lawyer*, No. 3 (November, 2005).
- "10 Tools for Mediation Caucuses," 41 *TRIAL*, No. 5 at 66 (May, 2005).
- "Getting the Most Out of Your Appraiser (Updated)," CLE International Eminent Domain Conference (August 14-15 2003).
- "Local Regulation of Intensive Livestock Operations After *Craig v. County of Chatham*," North Carolina Bar Association CLE Program (October 4, 2002).
- "The Law of Depositions in North Carolina," North Carolina Academy of Trial Lawyers CLE Program (January 11, 2002).
- "Fighting Crime Through Nuisance Abatement," 19 *Campbell Law Observer* No. 19, at 1 (January 1998).
- "Appendices: Practice Pointers for Brief Writing, and Practice Pointers for Oral Argument," in Duncan & Solari, *North Carolina Appellate Advocacy*, (The Harrison Co., 1995 Supplement).
- "What's New About Punitive Damages," 43 *The North Carolina State Bar Quarterly*, No. 2, at 6 (Spring, 1996).
- "Enter Opening Statement: Staging the Case," 31 *Trial* No. 7, at 57 (July, 1995); reprinted for the Women Lawyers Assoc. of Los Angeles 2nd Annual Women Litigators Forum, Nov. 11, 1995, and the Philadelphia Bar Association Annual Education Conference on "Effective Trial Advocacy," December 4, 1996.
- "How to Master Direct Examination: Practical Perspectives," 31 *Trial* No. 4, at 70 (April, 1995); reprinted in 41 *The Trial Lawyers Guide*, No. 2 (Summer 1997); reprinted by the Pennsylvania Bar Institute, Continuing Legal Education (1997).

- "Chapter 15: Local Government Administrative Issues," *The North Carolina Administrative Law Guide* (1996).
- "Oral Deposition Taking," Chapter 6 in *Civil Discovery Practice in North Carolina* (Law Practice Handbooks, Inc. 1995).
- "Out of Focus: The Fuzzy Line Between Regulatory 'Takings' and Valid Zoning-Related 'Exactions' in North Carolina and Federal Jurisprudence," 16 *Campbell L. Rev.* 3 (1994).
- "Taking a Deposition Under North Carolina Law," 21 *N.C. Central Univ. Law Journal* No. 2, at 215 (1995).
- "A Practical System for Legal Research," 21 *N.C. Central Univ. Law Journal*, No. 1, at 85 (1994).
- "The New Amendments to the Federal Rules of Civil Procedure," 41 *The North Carolina State Bar Quarterly*, No. 2, at 26 (Spring, 1994).
- "Preserving the Record for Appeal Under North Carolina Law," 40 *The North Carolina State Bar Quarterly*, No. 4, at 32 (Fall 1993).
- "Preserving the Trial Record for Appeal," 29 *Trial*, No. 10, at 45 (1993).
- "Effective Appellate Oral Argument," 16 *The Champion*, No. 10, at 43 (December, 1992).
- "The Case for Submitting Written Instructions to the Jury," 39 *The North Carolina State Bar Quarterly*, No. 4, at 14 (Fall, 1992).
- "Practice Pointers for Appellate Oral Argument," 28 *Trial*, No. 10, at 64 (October, 1992); reprinted in Brinkos, Janet L., *Course Book on: "The Woman Advocate '94"* (Seminars sponsored by Prentice Hall Law & Business and the Section of Litigation of the American Bar Association, April 14-15, 1994 in New York City; May 5-6, 1994 in Chicago; and May 19-20, 1994 in San Francisco); reprinted for the *King Hall Civil Rights Clinic Student Manual*, University of California School of Law at Davis (1996); reprinted for the Federal Public Defender, District of New Mexico seminar on "How to Do a Federal Criminal Appeal," February 27, 1998 in Las Cruces, New Mexico; reprinted for St. John's University School of Law (summer course, 1999); reprinted for the Honorable Rhonda Reid Winston, Superior Court of the District of Columbia, presentation at the Charlotte E. Ray Inn of Court meeting, October 23, 2003.
- "How to Do a Federal Criminal Appeal," February 27, 1998 in Las Cruces, New Mexico.
- "Practice Pointers for Appellate Brief Writing," 28 *Trial*, No. 9, at 122 (September, 1992); reprinted for the Federal Public Defender, District of New Mexico seminar on "Effective Appellate Brief Writing," 16 *The Champion*, No. 7, at 35 (August, 1992).
- "Appellate Oral Argument in Epitome," 39 *The North Carolina State Bar Quarterly*, No. 3, at 8 (Summer, 1992).
- "Appellate Brief Writing in Epitome," 39 *The North Carolina State Bar Quarterly*, No. 2, at 6 (Spring, 1992).
- "The North Carolina Supreme Court's New Frivolous Appeal Rule," 36 *The North Carolina State Bar Quarterly*, No. 3, at 16 (Summer, 1989).

- "A Comparative Summary of Current State Drug-Testing Legislation," 3 *Employee Testing & the Law*, No. 6, at 1 (June 1988).
- "Limiting Litigation Over Land Use Decisions," *Public Risk*, (Public Risk Management Association, Sept./Oct. 1988).
- "Is North Carolina's Frivolous Appeal Rule Frivolous?," 9 *Campbell Law Observer*, Nos. 3 and 4 (April & May, 1988). (Effective July 1, 1989 the N.C. Supreme Court adopted a new Appellate Rule 34 as proposed in this article).
- "Negligence in Employee Drug Testing," 92 *Case & Comment*, No. 4, at 3 (July-Aug. 1987); reprinted in 1 *Employee Testing & the Law*, No. 4, at 1 (Dec. 1986), and 19 *Trial Briefs*, No. 3, at 27 (1987).
- "Intentional Infliction of Emotional Distress in Employee Drug Testing," 2 *Employee Testing & the Law*, No. 3, at 1 (1987).
- "Double Criminality and Complex Crimes," Chapter 12 in Nanda & Bassiouni, *International Criminal Law—A Guide to U.S. Practice and Procedure*, (Practicing Law Institute, 1987), at 365; reprinted for the National Association of Criminal Defense Lawyers Seminar, Feb. 12- 16, 1986, Acapulco, Mexico.
- "The Fourth Circuit Construes the Inscrutable Comprehensive Forfeiture Act of 1984 in *United States v. Harvey*," 4 *Inside Drug Law*, No. 4, at 1 (May/June 1987).
- "International Extradition in Drug Cases," 10 *N.C. Journal of International Law & Commercial Regulation*, No. 2, at 353 (Spring, 1985); reprinted in the Advanced Criminal Practitioners Seminars, National Association of Criminal Defense Lawyers, Fourth Annual Hawaii Seminar, Maui, May 10-17, 1985.
- "Fending off Forfeiture," 21 *Trial*, No. 12, at 70 (Dec. 1985).
- "International Extradition in CCE and RICO Cases," 9 *Inside Drug Law*, No. 2, at 5 (Nov., 1985).
- "Protecting Innocent Owners from Drug-Related Forfeiture," 2 *Inside Drug Law*, No. 2, at 1 (March, 1985).
- "Problems of Double Criminality," 21 *Trial*, No. 1, at 58 (January 1985).
- "Legal Implications of Human In Vitro Fertilization for the Practicing Physician in North Carolina," 6 *Campbell Law Review*, at 5 (Spring, 1984).
- "Saving Your Client's Ox: Some Fundamental Considerations and Defenses to Forfeiture Under 21 U.S.C. 881," 8 *The Champion*, No. 1, at 11 (Jan./Feb., 1984; reprinted in 15 *Trial Briefs*, No. 1 (1984).
- "Flexibility Without Arbitrariness in the Zoning System: Observations on North Carolina Special Exception and Zoning Amendment Cases," 53 *N.C. Law Review* 925-958 (1975).

PRESENTATIONS BY FIRM MEMBERS

- Faculty Presenter, "Navigating Local Land Use Hearings – Staying in the Channels and off the Rocks," NC Association of Municipal Attorneys' Summer Conference, August 4-6, 2022
- Faculty Presenter, "Zoning and Land Use Law Basics," Real Property Section (NC Bar Association, October 7, 2021)
- Faculty Presenter, "The 2019 Zoning, Planning and Land Use Debate," Zoning, Planning & Land Use Law Section Annual Meeting (NC Bar Association, April 5, 2019)
- "Amotion, Off the Rails and Then Some," NC Carolina Municipal Attorney's Association Winter Conference (UNC-School of Government, March 22, 2019)
- Faculty Presenter, "Local Government Compliance With the "Reasonable Accommodation" Requirement of the FHA, ADA, and RA," NC Municipal Attorney's Association Summer Conference, August 2-4, 2018
- "Quasi-Judicial Procedure: Evidence and Building a Record," City of Creedmoor Board of Adjustment (July 12, 2018)
- "Code Enforcement," N.C. Municipal Attorney's Association Winter Conference (UNC-School of Government, March 23, 2018)
- "Wireless Telecommunication Zoning after H.B. 310," NC Association of Zoning Officials (February 19, 2018)
- "Wireless Telecommunications Workshop," sponsored by the Town of Carthage and The Brough Law Firm, PLLC (NC Chapter of the American Planning Association, December 12, 2017)
- "Reexamining Checks and Balances: Legislative Changes to State and Local Government," Government and Public Sector Section (NC Bar Association, November 17, 2017)
- Telecommunication and Public Rights-of-Way Ordinances, Town of Carthage Board of Commissioners and Planning Board (August 23, 2017)
- "The Future of Water and Sewer Impact Fees," Zoning, Planning & Land Use Law Section Annual Meeting (NC Bar Association, April 6, 2017)
- "Local Government Overview," City of Creedmoor Board of Commissioners (May 17, 2016)
- "Illegal Fees and Attorneys' Fees," Zoning, Planning & Land Use Section Annual Meeting (NC Bar Association, March 18, 2016)
- "Trial Advocacy Tips," Campbell Law School Trial Advocacy Program (Campbell Law School, March 25, 2015)
- "Professionalism Issues for Local Government Counsel," Professionalism for New Attorneys Program (NC Bar Association, October 14, 2015)
- "Protecting Endangered Properties - Prevention of Demolition by Neglect and Other Preservation Tools," Preservation North Carolina Annual Conference. (Salisbury, NC, September 17, 2015)

- "A Reluctant Acceptance of Public Private Partnerships in North Carolina," Zoning Planning and Land Use Law Section Annual Meeting (NC Bar Association, March 27, 2015)
- "A Discussion of *Lanvale Properties v. County of Cabarrus*," NC Association of County Attorneys Winter Conference (U.N.C.-School of Government, February 6, 2015)
- "Quasi-Judicial Procedures," Town of Aberdeen Planning Board and Historic Preservation Commission (January 15, 2015)
- "Fair Housing and Local Government Land-use Regulations Affecting Persons with Disabilities," Town of Cary Board of Adjustment (October 6, 2014)
- "Fair Housing and Reasonable Accommodations by Local Governments," 2014 North Carolina Planning Conference (October 2, 2014)
- "Managing the Attorney-client Relationship and Organization of a Legal Department," Professionalism for New Admittees Program (NC Bar Association, May 15, 2014)
- "The State of Local Government Powers after *Lanvale Properties, LLC v. Cabarrus County* and into the Future," Joint Zoning, Planning & Land Use Section and Government/Public Sector Section C.L.E. Program (NC Bar Association, March 28, 2014)
- "The Aberdeen Board of Commissioners," Town of Aberdeen Board of Commissioners (February 27, 2014)
- "The Aberdeen Planning Board: An Introduction," Town of Aberdeen Planning Board (October 17, 2013)
- "Quasi-Judicial Procedure," City of Concord Board of Adjustment (August 28, 2012)
- "*Lanvale Properties, LLC v. Cabarrus County* and the City of Locust and Its Implications," N.C. Municipal Attorney's Association Winter Conference (UNC-School of Government, March 14-15, 2013)
- "Quasi-Judicial Procedure," Town of Cary Board of Adjustment (March 22, 2011)
- "Town of Aberdeen Historic Preservation Commission," Town of Aberdeen Historic Preservation Commission (March 21, 2011)
- Lecture on "Litigation in Real Estate Development Process" course at Kenan-Flagler School of Business (UNC-Chapel Hill, January 27, 2011)
- Testimony on behalf of the National League of Cities, National Association of Counties, National Sheriffs Association, National School Boards Association, International City-County Management Association, International Public Management Association for Human Resources, et. al. in Opposition to H.R. 413, Public Safety Employer-Employee Cooperation Act of 2009, before the U.S. House of Representatives Subcommittee on Health, Employment, Labor and Pensions, 111th Congress (March 10, 2010)
- "With a Little Help From My Friends—Negotiation Techniques," NC Bar Association CLE, "We Can Work It Out—15th Dispute Resolution Section Annual Meeting," (April 11, 2008)
- Leadership Lecture (Elon University Center for Leadership, March 12, 2008)
- "Constitution Day," Lecture to Elon University, College of Arts & Sciences: "Exploring Some Common Constitutional Myths" (September 19, 2007)

- "The Legal Responsibilities of the Landlord Under NC Law," Housing Workshop (City of Roxboro, N.C., July 23, 2007)
- "Professionalism in Your Practice" (Orange County Bar Association CLE Second Celebration of Professionalism, January 26, 2006)
- "Law Students and Lawyers in Professionalism" (Orange County Bar Association CLE on Professionalism, February 12, 2004)
- "Update on the City of Hickory Unified Development Ordinance" (Catawba County Bar Association meeting, June 12, 2009)
- "Development Agreements and Conditional Zoning in North Carolina" (Moore County Planning Retreat, August 15, 2008)
- "Origin, History, And Status Of Bill Dealing With Quasi-Judicial Land Use Decisions" (Law Seminars International Two-Day Conference, July 24-25, 2008)
- "Senate Bill 212: Land-Use Permit Appeals" (N.C. Bar Foundation, May 3, 2007)
- "Governmental Immunity" (UNC-School of Government, October 27, 2005)
- "Judicial Review of Quasi-Judicial Zoning Decisions" (NC Bar Foundation, May 7-8, 2004)
- "Getting the Most Out of Your Appraiser (Updated)" (CLE International Eminent Domain Conference, August 14-15, 2003)
- "Local Regulation of Intensive Livestock Operations After *Craig v. County of Chatham*" (NC Bar Association CLE Program October 4, 2002)
- "Getting the Most Out of Your Appraiser" (CLE International Eminent Domain Conference, June 27-28, 2002)
- "Neither Fish Nor Fowl: Conditional Use Zoning" (NC Bar Foundation, 2002)
- "The Law of Depositions in North Carolina" (N.C. Academy of Trial Lawyers CLE Program January 11, 2002)
- "A Proposed Statute Dealing With Appeals of Quasi-Judicial Land Use Decisions" (NC Bar Foundation, 2001)
- "How Land Use Regulations Can Affect Property Values" (NC Bar Foundation, 1999)
- "Appealing to and From the Board of Adjustment" (NC Bar Foundation, 1997)
- "Update in Telecommunications Law with an Emphasis on Cell Tower Permitting," NC Municipal Attorneys' Conference (August, 1997)
- "Punitive Damages," Seventh Annual Festival of Legal Learning (UNC-School of Law CLE, 1997)
- "Enforceability of Manager Employment Agreements," NC City-County Management Association Winter Conference (Chapel Hill, February 9, 1996)
- "Overview of the Telecommunications Act of 1996," NC Association of Municipal Attorneys Summer Conference (Pinehurst, August 3, 1996)
- "Ethics of Witness Preparation" (UNC-School of Law CLE, 1996)
- "Rate Regulation and Other Issues Affecting NC Municipalities in the Cable Television Consumer Protection and Competition Act of 1992 and FCC Regulations and Rulings," NC League of Municipalities Annual Convention (Asheville, October 18, 1994)

- “*Dolan vs. Tigard: The Supreme Court Advances Taking Law*” (NC Bar Foundation 1994)
- “Legal Issues in Obtaining Development Permission for Your Client Under Local Zoning and Subdivision Ordinances” (Wake Forest CLE, 1992)
- “Liability of Local Governments for Damages for Unlawful Land Use Decisions” (NC Bar Foundation, 1991)
- “Recent Developments in N.C. Land Use Law” (National Business Institute, Inc., 1990)
- “Legal Issues in Obtaining Development Permission for Your Client Under Local Zoning and Subdivision Ordinances” (Wake Forest CLE, 1990)
- “Local Watershed Protection Programs, Water Rights Resources and Quality,” NC Bar Foundation and Environmental & Natural Resources Law Section, NC Bar Association (1990)
- “Ethical Considerations in Civil Litigation & Appellate Practice” (NCCU School of Law CLE, 1990)
- “Land Use Litigation Procedural Issues, Land Use Regulation and Planning,” NC Bar Foundation and Real Estate Section, NC Bar Association (1988)
- “Vested Rights,” Land Use Litigation Seminar (NC Academy of Trial Lawyers, 1987)

ORGANIZATIONAL AFFILIATIONS OF FIRM MEMBERS

- North Carolina Bar Association, Zoning, Planning, and Land Use Law Section
- North Carolina Bar Association, Government and Public Sector Section
- North Carolina Association of Municipal Attorneys
- North Carolina Council of School Attorneys
- Scribes – The American Society of Writers on Legal Subjects
- North Carolina Council of School Attorneys

BAR MEMBERSHIPS FOR FIRM MEMBERS

- North Carolina State Bar
- US District Court, Eastern District, N.C.
- US District Court, Middle District, N.C.
- US District Court, Western District, N.C.
- US Court of Appeals for the Fourth Circuit
- United States Supreme Court

**LAW OFFICE OF
MATTHEW A. NICHOLS**

3205 Randall Parkway, Suite 104

Wilmington, NC 28403

Office: (910) 508-7476

Mobile: (910) 233-8169

Email: matt@mattnicholslaw.com

**Proposal to Provide Legal Services
to the City of Southport**

STATEMENT OF INTEREST AND QUALIFICATIONS

I am pleased to submit this application to provide legal services to the City of Southport.

For the past 22 years, I have focused my practice in the areas of real estate, zoning, land use and municipal law. On a regular basis, I have represented clients before numerous city, town and county boards in southeastern North Carolina on a wide variety of matters. My practice also includes advising clients in matters related to environmental and coastal/water dependent development regulations, including NCDEQ-DCM (CAMA) permitting, docks and piers, community boating facilities, marinas and dry-stack boat storage facilities, floodplain management regulations, county and city conservation overlay district and conservation resource regulations, and riparian and littoral issues.

I have significant experience with real estate transactions (commercial and residential) and real estate related litigation and appeals. My experience includes real estate closings, interpretation of local ordinances and other regulations affecting land use and related permitting, contract negotiations and document drafting, leases, covenants, easements, condominium law, encroachment agreements, title searches, title and boundary issues, title insurance matters and claims, street closure and property access issues.

From 1998 to 2000, I served as Law Clerk to The Honorable William Norton Mason, United States Magistrate Judge for the U.S. District Court for the Eastern District of North Carolina.

I have served as counsel to the Wilmington Urban Area Metropolitan Planning Organization (WMPO) since 2014. I have served as counsel to the Lower Cape Fear Water and Sewer Authority (LCFWASA) since 2020. As needed and requested by the Town, I also represent the Town of Carolina Beach Board of Adjustment.

My experience with local government law involving a number of different jurisdictions and projects, combined with my focused practice areas of real estate, zoning, land use and municipal law, provides me with the background, knowledge and legal skills necessary to serve as an effective and efficient attorney for the City of Southport.

Thank you for your time and consideration of my application.

Matthew A. Nichols

Law Office of Mathew A. Nichols
3205 Randall Parkway, Suite 104
Wilmington, NC 28403
Office: (910) 508-7476
Mobile: (910) 233-8169
Email: matt@mattnicholslaw.com

Bar Admissions

North Carolina, 1996
New York, 1998

Education

J.D. with Honors, University of North Carolina at Chapel Hill, 1996
North Carolina Law Review, Note Editor

B.A. with High Distinction, Departmental Honors in English, University of Kentucky, 1993
Phi Beta Kappa

Professional Experience

Law Office of Matthew A. Nichols, 2018 – present

Partner, Smith Moore Leatherwood LLP, 2016 – 2018

Partner, Shanklin & Nichols, LLP, 2005 – 2015

Associate, Law Office of Kenneth A. Shanklin, 2000 - 2004

Law Clerk to The Honorable William Norton Mason, United States Magistrate Judge,
U.S. District Court for the Eastern District of North Carolina, 1998 - 2000

Associate, Damon & Morey (Buffalo, NY), 1997 - 1998

Associate, Stevens, McGhee, Morgan, Lennon & O'Quinn, 1996 – 1997

Professional / Community

Former Member, Town of Wrightsville Beach Planning Board

Former Member, St. Mark Catholic Church Finance Council

Former Council Member, North Carolina State Bar Association, Zoning, Planning & Land Use Section.

Citizen of the Year, 2009-2010, Wilmington Elks Lodge

Published Works / Other

Victor v. Nebraska: The Reasonable Doubt Dilemma, 79 N.C. L. Rev. 1709 (1995).

Co-presenter, “Developing and Presenting a Land Use Case”, UNC Chapel Hill School of Law, *Festival of Legal Learning*, 2009.

Firm Organization, Size, Structure

The Law Office of Matthew A. Nichols is a sole proprietorship located in Wilmington, North Carolina, consisting of one attorney, Matt Nichols, and one paralegal, Nichole A. Cooper. Ms. Cooper is a North Carolina State Bar Certified Paralegal and a Notary Public and has worked with Matt Nichols since 2014.

Suggested discounted rates for the City of Southport

The following discounted rates are suggested:

Attorney: \$220 per hour

Paralegal: \$90 per hour

Relevant cases

- *Wilkie v. City of Boiling Spring Lakes*, 370 N.C. 540, 809 S.E.2d 853 (2018).
- *Jamestown Pender, L.P. v. North Carolina Department of Transportation and Wilmington Urban Area Metropolitan Planning Organization*, No. COA15–925 (N.C. App. 2016), *disc. reviewed denied*, --- N.C. ---, 797 S.E.2d 287 (2017).
- *Six at 109, LLC v. Town of Holden Beach*, 238 N.C. App. 469, 767 S.E.2d 400 (2014).
- *R.D. Furr Constr., Inc. v. Porter’s Neck Country Club, Inc.*, Nos. COA12-1092, COA-1095, 741 S.E.2d 512 (2013).
- *Carolina Marina & Yacht Club, LLC v. New Hanover County Bd. of Comm’rs*, 207 N.C. App. 250, 699 S.E.2d 646 (2010), *disc. review denied*, 365 N.C. 89, 706 S.E.2d 253 (2011).
- *Bailey & Associates, Inc. v. Wilmington Bd. of Adjustment*, 202 N.C. App. 177, 689 S.E.2d 576 (2010).
- *Four Seasons Mgmt. Servs. Inc. v. Town of Wrightsville Beach*, 205 N.C. App. 65, 695 S.E.2d 456 (2010).
- *Canady v. North Carolina Coastal Res. Comm’n*, COA09-545 (N.C. App. 2010) (unpublished Opinion).
- *Ward v. New Hanover County*, 175 N.C. App. 671, 625 S.E.2d 598, *disc. review denied*, 360 N.C. 582, 636 S.E.2d 200 (2006).
- *Bowen v. Parker*, 177 N.C. App. 563 (2006).
- *Beau Rivage Homeowners Assoc. v. Billy Earl, LLC*, 163 N.C. App. 325, 593 S.E.2d (2004).
- *Beau Rivage Homeowners Assoc. v. New Hanover County*, No. COA03-1323 (N.C. App. 2004) (unpublished Opinion).
- *Dobo v. City of Wilmington*, 149 N.C. App. 701, 562 S.E.2d 108 (2002), *reversed*, 356 N.C. 656, 576 S.E.2d 324 (2003).
- *Peal v. North Carolina Farm Bureau Mut. Ins. Co.*, 212 F. Supp.2d 508 (E.D.N.C. 2002).



THE DIGUISEPPE LAW FIRM, P.C.

Office Address: 4320 Southport-Supply Road, Suite 300, Southport, NC 28461

Mailing Address: P.O. Box 10790, Southport, North Carolina 28461

(tel.) 910-713-8804 / (fax) 910-672-7705 / (email) law.rmd@gmail.com

**Principal Attorney Raymond DiGiuseppe is licensed to practice in CA, D.C., N.C., and N.Y.*

December 21, 2022

Dorothy Dutton
City Clerk
City of Southport

Re: Nominee Submission for Southport City Attorney Position

Dear Dorothy:

I have the pleasure of being acquainted with many of the City's elected officials and essential personnel, so some of those reviewing this submission are already familiar with me and the general nature of my law practice. Through this submission, I hope to provide a better understanding of who I am, why I believe that I am well qualified to serve as City Attorney for Southport, and why I feel drawn to the position.

Background

I was born in Maryland and grew up in the suburbs of Washington, D.C. As a child, I was heavily influenced by the work of my stepfather, who was a chief litigator for the United States Department of Justice and primarily handled cases before the United States Supreme Court involving juridical boundary disputes between states. When I was 11 years old, my stepfather took a year of sabbatical to teach environmental and land use law at the University of San Diego School of Law, so I spent my 6th grade year in San Diego. After moving back to the D.C. area the following year, I developed an affinity for the study of music, specifically classical guitar, which I pursued into college, eventually joining the renown classical guitar program at East Carolina University in 1995. I immensely enjoyed the study. In my junior year, however, the earlier influences of the law took hold, and I decided to pursue a career in law after all. I changed majors and ended up graduating with a degree in Psychology and a minor in music performance. It was then 1998. Interestingly, as I would later discover, my studies of music and psychology had strong parallels to the study of law.

I had met my now-wife, Alison, while at ECU. She was still studying at the nursing school when I graduated. I moved back to Maryland and started working as a paralegal in large DC law firms to gain some experience in the field. Alison graduated



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with an RN-BSN degree in 1999, we got engaged, and she then moved up to Maryland. We married the following year in 2000. Alison was hired by Johns Hopkins Hospital in Baltimore, where she worked as a nurse in the neonatal intensive care unit.

In pursuing a law degree, I was drawn back to the University of San Diego, where my stepfather had taught during my 6th grade year, particularly since he and my mother had retired and were living out there again by this point. So, Alison and I made the move. She worked as a NICU nurse at a local hospital while I studied law. While in law school, I was selected for a clerkship in the Honor's Program of the California Attorney General's Office, where I was privileged to prepare legal briefs and argue cases before appellate courts as a law student. After graduating in May of 2003, I sat for and passed the three-day, 18-hour California Bar exam in July (a notoriously difficult test with dismal pass rates). I went into private practice for a couple of years, handling a variety of civil matters. In 2005, I was solicited for and appointed to the position of Deputy Attorney General with the California Attorney General's Office, in the same division where I had clerked in law school. Over the next five years, I handled more than 120 complex appellate matters as lead counsel, including before the California Supreme Court, maintaining greater than a 95% success rate for the State.

By this time, in 2010, Alison and I had been blessed with two children—our son, Julian (born in 2006), and our daughter, Emma (born in 2009). Throughout our time in California, we actually visited Southport multiple times a year, because Alison's mother and stepfather had retired to St. James. As Julian would be starting school soon, we began to seriously consider where we wanted to and should raise the children. We had come to appreciate the charm and close-knit community experience that Southport had to offer. So, we decided to leave Southern California for Southport.

Relocation to Southport

Aside from the need to trek all our worldly possessions nearly 3,000 miles across the country, we had the practical complication that I had wasn't licensed in North Carolina and had never studied North Carolina law. Still, we forged ahead in May of 2010 with the plan that we'd relocate to Southport in June, I'd study for the North Carolina bar exam, and then I'd sit for the next administration of the test in July. So, I resigned from my post at the Attorney General's Office in May, we packed up and put



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Mailing Address: P.O. Box 10790, Southport, North Carolina 28461

(tel.) 910-713-8804 / (fax) 910-672-7705 / (email) law.rmd@gmail.com

**Principal Attorney Raymond DiGiuseppe is licensed to practice in CA, D.C., N.C., and N.Y.*

everything on a moving truck, and then we flew across the country with three-year-old Julian and six-month-old Emma and landed in Southport at the beginning of June.

With most of our belongings in storage, we rented a condo in St. James while I studied for the bar exam, learning everything I could about North Carolina law in six weeks or so while Alison did her best to keep the kids occupied. On the first day of the two-day 12-hour exam, I was so tired that I was honestly struggling to stay awake. But, I dug deep, mustered up the wherewithal to plow ahead that day and the next day of the test. In the end, I felt confident in my performance, which fortunately bore out because I passed and was admitted to the North Carolina bar by September.

Shortly thereafter, we moved out of the St. James condo and into a rental home in Arbor Creek, where we lived for the next few years while I was establishing my law practice here. We liked the neighborhood, so we then bought a lot and built a home there in 2014. The kids have settled into school and life here quite well. Julian is now 16 and Emma is 13. Both are exceptional students at South Brunswick. Julian is a talented swimmer on the high school swim team, and Emma is a talented dancer with a professional ballet company in Wilmington. Alison has stayed busy from the start with volunteerism in the schools and the Doshier Memorial Hospital Foundation, where she has been an integral part of the Foundation's fundraising for several years now.

Early Development of the Law Practice

When people ask me what I “do” or what “kind” of law I practice, I explain that I offer a skills set that transcends the traditional notion of specialization or focus in any particular area of the law—it’s an expertise in identifying the relevant issues, finding the applicable law, and applying it so as to best resolve or develop solutions for most effectively dealing with legal issues. In essence, that is the definition of lawyering; it’s the level of diligence, fortitude, and intellectual effort with which the lawyer performs this task that makes the difference. This skills set is something I have been developing since my time at the Attorney General’s Office in California. Indeed, the experience and connections I made there have opened up many opportunities to take on novel and complex legal matters here and across the country, involving a wide variety of substantive areas at all levels of the state and federal judicial process.



THE DIGUISEPPE LAW FIRM, P.C.

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Along the way, while maintaining my North Carolina law license, I have been granted law licenses in the District of Columbia and New York, I have been admitted to practice before numerous federal district courts across the country (including in North Carolina), the Ninth Circuit, the First Circuit, and the U.S. Supreme Court. Over the course of this work, I have authored several hundred legal briefs in courts around the country, I have personally appeared countless times before trial and intermediate appellate courts, I have personally appeared before the California Supreme Court five times, and I have personally appeared before the Ninth Circuit Court of Appeals three times. I have achieved many successes in these cases, and all of them have had a significant impact on the development of the law. What ties together all this experience and the successes along the way is the ability to research, identify, analyze, and apply the relevant law and policy principles to the situation.

This same skills set has been the genesis of my locally based North Carolina practice, which has over time begun to comprise more and more of what I do every day. Early on here, I became known as someone willing and able to tackle the more complex, novel, or difficult legal matters for which people usually sought advice and representation beyond the borders of Brunswick County. I began to “fill a need,” so to speak, across a wide spectrum of cases substantive areas for a variety of clients whose needs simply weren’t being met by the existing legal industry in this area. Many of these matters directly and or indirectly concerned land use, property law, zoning, and other issues involving regulations at the local, county, and state level concerning competing rights and interests in real property, both residential and commercial.

My Current Practice

My practice has continued to grow in this way, all by word of mouth, as I have never done any advertising in the 12 years I have been here. While I continue to handle complex litigation matters situated in different state and federal courts (90% of that work is handled remotely through electronic filing and virtual appearances), the balance has gradually shifted towards a majority of locally-based North Carolina cases for individuals, corporate entities (non-profit and for-profit), and local governmental entities. Consistent with the nature of a practice centered around the skills set described above, the substantive areas continue to run the gamut of local, county, and state laws, although the issues also continue to frequently intersect with land use regulations and municipal law. Consequently, I have frequently researched, analyzed,



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and applied land use regulations affecting property interests in Southport and throughout Brunswick County, including the development ordinances, land use plans, and stormwater management regulations applicable in Southport City, the Town of Oak Island, the City of Boiling Spring Lakes, the Town of Leland, and Brunswick County at large. The specific cases are too numerous to list but suffice to say that I am familiar with interpreting and applying the very kind of laws and regulations that the City must interpret and apply, I am familiar with resolving the very kind of issues that the City must resolve, and I am confident in my ability to effectively address any other issues with which I am not specifically familiar or have not yet encountered.

Commitment to Southport and Community Service

I am driven by a strong sense of giving back to the community, particularly this community which my family and I have come to treasure. Indeed, I have been a volunteer with the local chapter of Habitat for Humanity since 2011, assisting the group with its legal affairs in various ways. Currently, I am Vice President of the Executive Board and Director of Legal Affairs—all pro bono of course. It would be a privilege to use my skills and experience to serve the City as well. I would do my best for the City by diligently and promptly providing assistance when called upon for legal advice and by attending any meetings at which my presence is requested to provide counsel to the City. I live only a short distance from downtown, and my wife and I now own a lot in the Landing, which we bought a few years ago with the plan of eventually moving downtown, so it's convenient and we are both frequently in the downtown area.

The going hourly rate for an attorney like myself, with almost 20 years of experience handling complex legal matters of the type that have defined my career, is between \$350 and \$450 in this region (though I personally don't charge that much), and even higher elsewhere. However, I would be happy to limit my hourly rate to \$200 for any work as City Attorney. It's definitely not about the money; it's about the rewarding service I could provide. I appreciate your time and consideration.

Sincerely,

Ray DiGuiseppe

Ray DiGuiseppe



BOARD OF ALDERMEN

AGENDA ITEM SUMMARY

DATE: January 4, 2023 DEPARTMENT: Public Services/Electrical

PRESENTED BY: Ellie Pittenger and Tom Stanley

ITEM SPONSORED BY: Same as above

ITEM/TOPIC: Electrical Upgrade for Osprey Landing

COST: \$185,500 BUDGET LINE ITEM: 30-93-7210-5900

JUSTIFICATION: With the addition of the Osprey Landing development, the City's primary distribution lines in that area must be upgraded.

IMPACT IF NOT APPROVED: There would not be sufficient electrical power/lines for that area of Southport

DEPARTMENT HEAD COMMENTS: Historically, the City has paid for the addition of or upgrades to the City's system. This is an improvement for our system but it is needed because of Osprey Landing being built. There is no ordinance in place to say who should pay for something like this.

CITY MANAGER COMMENTS: We do need to upgrade this system to accomodate Osprey Landing and the adjoining area. The question for the BOA is in the future, should we make a developer pay for this and is it legal to have them pay for these upgrades.

ATTACHMENTS: None

REQUESTED ACTION: Discussion on upgrading the electrical system for Osprey Landing and how to handle future electrical upgrades when it is due to a development being built.

PROPOSED MOTION: Motion to pay \$185,000 out of line item 30-93-7210-5900 (electrical fund balance) for the electrical system upgrade for the primary electrical system and distribution lines for the Osprey Landing development area.



BOARD OF ALDERMEN AGENDA ITEM SUMMARY

DATE: January 3, 2023 DEPARTMENT: City Manager/Police
PRESENTED BY: Bonnie Therrien, Interim City Manager and Chief Coring
ITEM SPONSORED BY: Same
ITEM/TOPIC: Feasibility Study/Space Needs for Police Station and City Hall
COST: \$43,720 plus expenses BUDGET LINE ITEM: \$25,000- Police Salaries: \$25,000-City Salaries

JUSTIFICATION: The Police Department is desperately in need of space outside of City Hall for their staff needs and better access by the public. At the same time, City Hall needs more space and if the Police move to a new location, how do we best utilize the present City Hall space?.

IMPACT IF NOT APPROVED: Conditions at City Hall and the Police Department will stay as is.

DEPARTMENT HEAD COMMENTS: Not applicable

CITY MANAGER COMMENTS: Since I have first arrived in Southport, I have seen the need for a new location for the Police Department for so many reasons and the first one is visibility for the public. With City Hall, we do not even have a Conference Room for Departments to meet that is not in a public area. We must look long term for all City Department to accommodate future space needs.

ATTACHMENTS: Quote from Stewart, Cooper and Nowell

REQUESTED ACTION: You would need to proceed with this study and agree on a budget transfer to fund this project now so we can start having the feasibility/space need study done as soon as possible.

PROPOSED MOTION: Motion to approve moving forward with a Feasibility/Space Need study done by Stewart, Cooper and Nowell at a cost not to exceed \$50,000 with \$25,000 coming from excess Police Salary funds and \$25,000 coming from City Hall salary money, specifically the City Engineer and Director of Development Services/Planner area. Money is leftover in these accounts due to the late hiring of personnel.

From: "Stumbo, James" <jstumbo@scn-architects.com>
Date: December 29, 2022 at 12:20:52 PM EST
To: Tony Burke <tburke@cityofsouthport.com>
Subject: Police and City Space Needs Study

Tony,

Thanks for your call, I enjoyed talking with you and appreciate the opportunity to assist you and the City.

I have roughed out the time involved with performing a Space Needs Study for both the Police Department and the remaining City Departments. To perform the Police Space Needs Study, we would estimate a cost of \$21,180 and for the City Departments Space Needs Study we would estimate a cost of \$30,740. This is assuming the projects are performed separately. If the City chooses to perform both studies concurrently, the City will see a reduction of \$ 8,200 for a total cost of \$43,720 due to the ability reduce the number of trips by combining these. Both estimates do not include "standard reimbursable" expenses such as travel, meals, or lodging, these would be billed per our standard rate schedule.

I hope this helps, please let me know if you need any further information or need any clarification.

Thank you,

Jim

James Stumbo, AIA, LEED AP BD+C, NFPA
Principal Architect / Partner



719 E Second Ave.
Gastonia, NC 28054

ph: 704.865.6311
scn-architects.com



BOARD OF ALDERMEN

AGENDA ITEM SUMMARY

DATE: 1/12/2023

DEPARTMENT: Development Services

PRESENTED BY: Travis Henley, Development Services Director

ITEM SPONSORED BY: City of Southport Historic Preservation Commission

ITEM/TOPIC: Review and Approval of Rules of Procedure for the City of Southport Historic Preservation Commission

COST: N/A

BUDGET LINE ITEM: N/A

JUSTIFICATION: The City of Southport Historic Preservation Commission's rules of procedure are essential to its function as a Board particularly in the area of the review and issuance of Certificates of Appropriateness, the primary regulatory feature of local historic districts. The Historic Preservation Commission drafted their rules of procedure at their December 7th, 2022 meeting and adopted them, as presented, at the January 4th, 2023 meeting.

IMPACT IF NOT APPROVED: The City of Southport's Historic Preservation Commission cannot discharge its full statutory duties without an adopted rules of procedure in place.

DEPARTMENT HEAD COMMENTS: The attached rules of procedure were drafted by the Historic Preservation Commission with the aide of Planning Staff. They are adapted from the City of Wilmington's rules of procedure for their Historic Preservation Commission, with additional influence from other local historic districts across North Carolina.

CITY MANAGER COMMENTS: Staff has been working with the Commission on this for some time and they feel comfortable with the proposed Rules as presented to you in this packet. We recommend the motion to be approved.

ATTACHMENTS: The proposed rules of procedure for the City of Southport Historic Preservation Commission, as adopted by the Commission on January 4, 2023.

REQUESTED ACTION: To review and consider adoption of the attached Rules of Procedure for the City of Southport Historic Preservation Commission.

PROPOSED MOTION: Motion to adopt the City of Southport's Historic Preservation Commission Rules of Procedure, as adopted by the Commission at their January 4th, 2023 meeting.

**RULES OF PROCEDURE
SOUTHPORT HISTORIC PRESERVATION
COMMISSION**

I. MEMBERS, OFFICERS, AND DUTIES.

- A. **General.** The commission shall be composed of seven members and two alternates, the majority of whom shall have demonstrated special interest, experience, or education in history, architecture, archeology, or related fields. All members shall be residents of the city of Southport. The commission may appoint advisory bodies and committees as appropriate.
- B. **Chair.** A chair shall be elected by the voting members of the historic preservation commission. Their term shall be for three years, and they may serve for no more than three consecutive terms. The chair shall decide all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the commission in session at the time. The chair shall appoint any committees found necessary to investigate any matters before the commission. The chair shall vote on all matters before the commission and shall have no extraordinary voting powers in the case of a tie vote.
- C. **Vice-chair.** A vice-chair shall be elected by the commission from among its members in the same manner as the chair and shall be eligible for re- election. They shall serve as acting chair in the absence of the chair, and at such times they shall have the same powers and duties as the chair.
- D. **Secretary.** The secretary to the historic preservation commission is the Development Services Director, or their designated representative. All records, minute taking, conduct of correspondence, and general supervision of clerical work of the historic preservation commission is the responsibility of the secretary. The secretary is not eligible to vote upon any manner.
- E. **Use of Parliamentary Practice.** The rules of parliamentary procedures in Roberts Rules of Order (A Manual of General Parliamentary Law) shall be parliamentary authority at the commission meetings except as otherwise provided in these rules or by law.
- F. **Attendance at Meetings.** Should a member fail to attend three regular meetings of the commission in a calendar year and should there be no adequate excuse for such absences, the chair, with the concurrence of a majority of the entire commission, shall recommend to the appropriate authority that a vacancy be declared and that the vacant position be filled. A member unable to attend a

special meeting does not constitute an unexcused absence.

- G. Conflicts of Interests.** Commissioners, including alternates, shall not participate in or vote on any quasi-judicial matter in a manner that would violate the affected person's constitutional rights to an impartial decision. Impermissible conflicts include but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a direct, substantial, and readily identifiable financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse themselves, the remaining members shall, by majority vote, rule on the objection. Commissioners, even after being recused, shall not present applications to the commission.
- H. Voting.** All regular members of the commission shall vote upon every issue that requires this procedure except as outlined in item G. above. Alternate members shall not be entitled to vote except when a regular member is absent from a meeting. Commissioners shall only vote on an issue if they are present for all the evidence. In the event a commission member abstains from voting for reasons other than a direct, personal, or financial interest, the abstention shall be ruled by the chairman as an affirmative vote. A tie vote of those present shall cause the motion in question to fail.
- I. Oath.** All members of the commission shall, before entering their duties, qualify by taking an oath of office.
- J. Minutes.** The secretary to the commission shall keep minutes of its proceedings.

II. MEETINGS:

- A. Regular Meetings.** Regular meetings of the commission shall be held on the first Wednesday of each month at 4 p.m. in the Indian Trail Meeting Hall or other suitable venue.
- B. Annual Meeting.** The annual meeting of the Southport historic preservation commission shall be the first regular meeting in the month of November of each year. Such meeting shall be devoted to the following:

 - 1. Election of officers;
 - 2. Annual report of the historic preservation commission;
 - 3. Establish schedules and deadlines; and
 - 4. Other business as scheduled by the historic preservation

commission.

- C. **Special Meetings.** Special meetings of the historic preservation commission shall be held at a time and place designated by the officer calling the same and shall be called by the chair or vice-chair. Notice thereof shall be given to all members not less than 48 hours in advance thereof. A member unable to attend a special meeting does not constitute an unexcused absence.
- D. **Cancellation of Meetings.** Whenever there is no business for the commission, the secretary may dispense with a regular meeting by giving notice to all members not less than 48 hours in advance.
- E. **Quorum.** A quorum shall consist of a majority of the commission membership. Once a quorum has been established for a meeting, it shall not be lost if a member cannot consider an item due to a conflict of interest, provided the member remains present at the meeting.
- F. **Conduct of Meetings.** Hearings for certificates of appropriateness are quasi-judicial in nature. All meetings shall be open to the public, subject to the North Carolina open meetings laws and the rules as contained herein. The order of business at regular meetings shall be as follows: introduction; swearing in of applicants and witnesses; approval of minutes; consideration of each agenda item; other business.
- G. **Legal Advisor.** The Southport city attorney shall be the legal advisor to the commission and shall be responsible for obtaining outside legal counsel to advise the commission when necessary.

III. **CONSIDERATION OF APPLICATIONS:**

Any party may appear in person or by agent or attorney at the meeting. The order of business for consideration of applications for certificates of appropriateness shall be as follows:

- A. The chair, or such person as he/she shall direct, shall introduce the application as an agenda item;
- B. All witnesses shall be sworn before providing testimony;
- C. Staff presents a report, including proposed findings of fact;
- D. The applicant presents their application;
- E. Parties with standing shall be provided the opportunity to participate in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments; and

- F. Parties to the proceeding shall be provided the opportunity for a full and fair presentation of their case. The chair or presiding officer may place time limits on opening and closing statements, public input, and repetitive or argumentative information and testimony presented to the commission.
- G. Non-parties may participate in the evidentiary hearing to present competent, material, and substantial evidence. The commission shall determine what weight, if any, to give the evidence presented in making its determination.
- H. The commission proceeds to deliberate whether to grant the certificate of appropriateness or to deny it. The commission's decision shall be based on the competent, material, and substantial evidence presented.
- I. The commission may, at its discretion, make an on-site inspection or obtain additional facts before arriving at a decision.
- J. The final decision of the commission shall be shown in the written order of the commission, which is signed by the secretary and the chair. Such order shall consist of findings of fact setting forth the decision of the commission, such findings of fact being based on the competent, material, and substantive evidence presented at the hearing.
- K. The board may hold closed sessions as provided by law. Only those actions authorized by statute may be taken in closed session.

IV. APPLICATION PROCEDURES

- A. Applications are filed in the planning division subject to deadlines established by the commission at the annual meeting. The applicant must include a detailed description of the proposed project, photographs of existing conditions, tax map, list of adjacent property owners, and accompanying stamped, addressed envelopes. In addition, site plans, elevations, sample of building materials and colors, and product information sheets may be required, as appropriate. Planning staff will not advance an incomplete application.
- B. A pre-application meeting with staff and the applicant is required for major works applications.
- C. The applicant, parties with standing, and witnesses presenting competent, material, and substantial evidence shall be given an opportunity to appear and be heard at the meeting at which the application is presented.

- D. Action on certificates of appropriateness and other, noninformational, items. A simple majority vote of those commission members present shall be sufficient to decide any of these actions; a tie vote shall cause a motion in question to fail.
1. Approval of an application for a certificate of appropriateness may be in the form as requested by the applicant or with reasonable conditions in conformity with the—*Southport Design Standards for Historic Districts and Landmarks* and the U.S. Secretary of the Interior's Standards for Rehabilitation.
 2. Denial – The applicant shall be informed by letter of the denial and the reasons therefore. The letter shall also inform the applicant of the appropriate procedures to appeal the commission's action.
 3. Continuance – A delay in consideration of an application for no more than 60 days. The commission shall state the reason(s) for the delay and shall specify the date of the meeting at which the application will be considered.
 4. Withdrawal – Acceptance of the applicant's request to withdraw their application from the agenda before it is considered by the commission.
 5. All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the application for a certificate of appropriateness is filed.
- E. If the application is approved or denied, the secretary for the commission shall transmit a letter to the applicant that clearly describes the type of work that has been approved or denied.

Compliance with Roberts Rules of Order shall not be necessary for a commission action to be valid.

V. AMENDMENT

The rules of procedure shall be adopted by the commission for the conduct of its business and the election of its officers. The Board of Aldermen shall approve the rules of procedure and any amendments prior to implementation.



BOARD OF ALDERMEN

AGENDA ITEM SUMMARY

DATE: 1/5/2023 DEPARTMENT: Administration/Parks and Rec

PRESENTED BY: B. Therrien

ITEM SPONSORED BY: Administration and Parks & Recreation

ITEM/TOPIC: Contract Approval for the Shoreline Stabilization project

COST: \$56,825.00 BUDGET LINE ITEM: 60-60-8112-5800

JUSTIFICATION: Olsen Associates was awarded this contract by the Board at the Regular meeting of July 14, 2022. They have prepared the attached contract which your approval.

IMPACT IF NOT APPROVED: We could lose \$5 million in funding that was provided by the state, specifically for this project.

DEPARTMENT HEAD COMMENTS: The kickoff meeting took place on 11/14/2022. The first step is to complete new surveys of the current existing conditions. They are allotting (90) days to complete the surveying and then they can work on the design.

CITY MANAGER COMMENTS: The survey must be redone because the last survey that was completed is out of date so we must have that in order to complete any other parts of this project.

ATTACHMENTS: The contract provided by Olsen Associates is included, and the ordinance establishing the stabilization budget line item for \$5,000,000 that was approved in December 2022 .

REQUESTED ACTION: Approve the contract and authorize the Mayor and /or City Manager to complete all required documentation and contracts.

PROPOSED MOTION: Motion to approve the contract with Olsen Associates and authorize the Mayor and/or the City Manager to complete the contract and other documentation as needed, moving forward.

January 4, 2023

Ms. Bonnie Therrien, Interim City Manager
City of Southport
Southport City Hall
1029 N. Howe Street, Suite 100
Southport, NC 28461



Re: City of Southport, North Carolina
Proposal for Updated Topographic/Hydrograph Survey of Site
Conditions and Cultural Resources Survey and Report

Dear Mr. Hargrove:

Olsen Associates, Inc. (OAI) presents for your consideration the following proposal for professional coastal engineering services to support a future design update and permitting of a shorefront improvement project for the City of Southport, North Carolina (City). An initial planning and design investigation was conducted by OAI in 2018 (Phase I) and a preferred plan was selected by the City at that time. The limited services described herein are intended to support future services associated with the reevaluation of the City's 2018 preferred plan, update the design information based on current (2023) conditions and future projections, as may be desired, or support selection of an alternate approach. Reevaluation, design update, and consideration of alternate project approaches will be included in a subsequent scope of work and Task Order. The currently proposed Task Order is limited to coordination and physical and cultural resource surveys of the project site. This Task Order is being submitted in advance of a Task Order for more detailed engineering analyses and permitting so that the field work, which is weather dependent, can begin immediately. These surveys will serve as basis for development and evaluation of the project need and approach.

- A) Coordination/Scoping/Liaison.** OAI shall work with the City of Southport to develop the general approach for reevaluating the project concept and coordinating with subconsultant to collect updated hydrographic/topographic survey of the project site. This will include a visit to the City of Southport to visit the project site, meet with City staff and officials to discuss the project and path forward. During the site visit, OAI will be available meet with City representatives to discuss overall project objectives and City goals regarding shorefront improvements. The previously selected plan will be used as the basis for the discussion. The site visit will include travel between Jacksonville, Florida and Southport, North Carolina and one (1) day in the field and in-person meeting(s) with City representatives, as directed by the City.
- B) Updated Hydrographic/Hydrographic.** OAI, through a qualified subconsultant, shall conduct a detailed hydrographic/topographic survey of the project site. The survey will update and provide greater details of the physical elevations and characteristics of the project shoreline. The survey will quantitatively describe the current physical condition of the dune, beach and nearshore along the 4,000 ft shorefront.

- C) Cultural Resource Survey.** OAI, through a qualified subconsultant, shall conduct a cultural resource survey of the subject shoreline. This survey results will support the design update and regulatory review of the proposed project plan.

Deliverables

- (1) Management of subconsultants and coordination with city staff and officials to develop scope of work. This will include one site visit to the City of Southport with travel between Jacksonville, Florida and Southport.
- (2) Results of topo/hydro survey including survey data reports, as available.
- (3) Results of cultural resource survey including summary report suitable for submittal to state and federal agencies as part of future permitting activities.

Cost Summary

- Task A (Coordination, Site Visit, Surveys scope development and subconsultant management, QA/QC):
 - \$7,500.00 (lump sum)
 - \$2,500.00 (budget allowance for travel expenses)
 - Task B: Topo/Hydro Survey (McKim and Creed¹): \$25,200.00 (lump sum)
 - Task C: Cultural Resource Survey (Tidewater Atl. Research²): \$21,625.00 (lump sum)
-
- | | |
|---|--------------------|
| • Total Lump Sum: | \$ 54,325.00 |
| • <u>Total Allowance for Travel Expenses:</u> | <u>\$ 2,500.00</u> |
| • Total: | \$ 56,825.00 |

Please let me know if you have any questions regarding this submittal. Thank you for the opportunity to present this proposal to the City of Southport.

Sincerely,



Christopher G. Creed, P.E., D. CE
Principal Engineer, Vice President

¹ McKim and Creed offices in Wilmington, NC.

² Dr. Gordon Watts office in Washington, NC.

March 04, 2022

220756

Christopher G. Creed, P. E., D. CE
Principal/Vice President
Olsen Associates, Inc.
2618 Herschel Street
Jacksonville, Florida 32204

Re: Professional Surveying Services
Southport Shoreline Improvement- Brunswick County, North Carolina

Dear Mr. Creed,

McKim & Creed would like to present our proposal for professional surveying services in connection with the above referenced project. We understand the scope of work from our email correspondence and our phone conversations. Olsen Associates, Inc is interested in hydrographic and LiDAR survey data to assist in design and improvement of the Southport Shoreline located in Brunswick County, North Carolina.

HYDROGRAPHIC APPROACH

Bathymetry will be collected on one of our Survey vessels using a fully automated hydrographic survey system. For this project we intend to use an **R2 Sonic** Multi-beam Echo Sounder with an I2NS Inertial Navigation System. This system operates at a frequency range of 170 kHz to 450 kHz.

Multibeam echosounders have limitations in waters below 6-8', where 100% coverage is not obtainable. Therefore, once the shallow depth is reached, we will angle the multibeam as far landward as possible to collect a last line of data and supplement using single-beam sonar. We will run profiles at high tide into the beach at approximately 50' spaced lines to tie in the hydrographic data with the lidar data set.

Surveys will be performed to meet or exceed the minimum performance standards for the Corps of Engineers Hydrographic Surveys, USACE specifications manual EM 1110-2-1003.

243 North Front Street

Wilmington, NC 28401

910.343.1048

Fax 910.251.8282

www.mckimcreed.com

McKim & Creed will provide equipment, materials, labor, insurance, and supervision to perform the above-described scope of work.

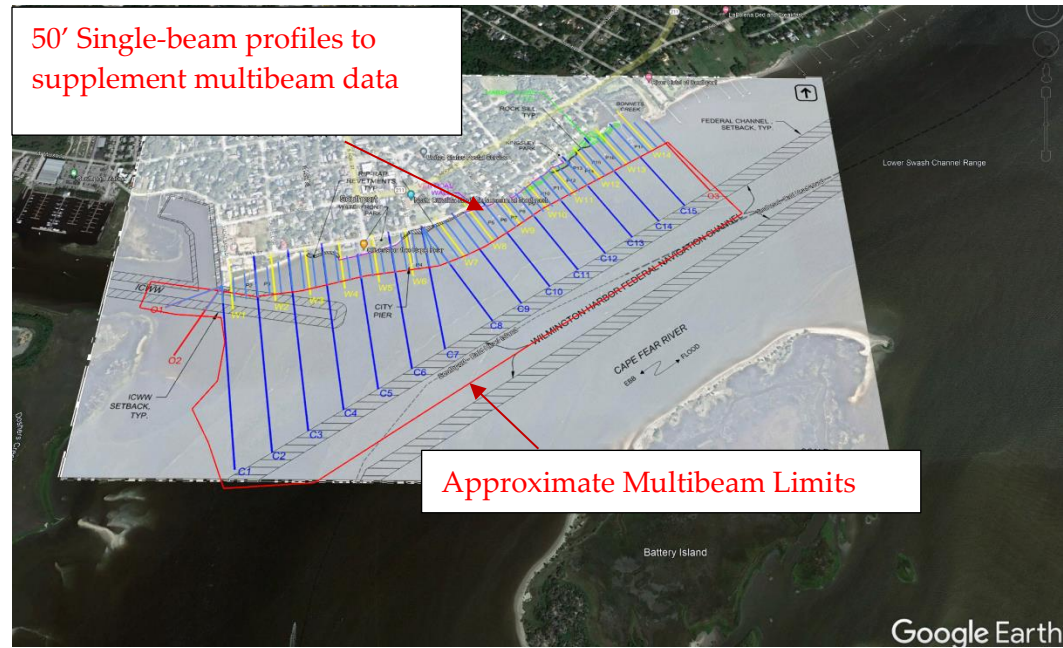


Figure 1 Proposed Hydrographic Approach

HYDROGRAPHIC SCOPE OF WORK

- Perform multi-beam survey to acquire 100% coverage with 10% overlap of adjoining passes except where limited by obstructions, depth, or topography.
- Multi-beam survey limits will run from the center of the federal channel and work parallel to the Southport shoreline until limited by depth as shown in *fig 1*.
- To bridge the data gap between the multibeam data set and lidar, additional supplemental single beam data will be collected along profile lines spaced approximately every 50' throughout the project area as seen in *fig.1*
- The following hydrographic deliveries will be provided:
 - xyz files in depth/elevation
 - AutoCAD file showing plan and profile views
 - Color matrix showing depth
 - Contours

AERIAL LiDAR APPROACH

Task 1. Ground Survey

McKim & Creed personnel will establish survey control on the site and set and obtain coordinates on aerial panels. These control points will be used for ground truthing the LiDAR data set and triangulating the aerial imagery. Preferred locations for the points have been selected and are provided in the attached google earth file.

All survey data will be adjusted to the **State Plane Coordinate System, NAD83, NAVD 88, US Survey Feet** with an accuracy of 2.5 cm (1/4th the accuracy of the proposed derived mapping product of 10 cm). Points shall be surveyed on flat or uniformly sloped open terrain with slopes of 10% or less and should avoid vertical artifacts or abrupt changes in elevation.

Twenty (20) ground check shots (X,Y,Z) will be collected and spatially distributed around the site. These points would be used in assessing the RMSEz of the collected data, with results provided in .txt or .pdf format.

Task 2. LiDAR\Image Acquisition

Simultaneous LiDAR and Imagery will be collected with a unmanned aircraft. The LiDAR data will be collected at a density of ~200 points per square meter (ppsm). The color aerial photography will be collected with the LiDAR and will be at a Ground Sample Distance (GSD) of ~2.5 cm. The imagery will be captured with a minimum of 60% forward lap and 30% sidelap coverage.

Task 3. Data Processing

LiDAR Processing

To ensure geometric accuracy of the point cloud, we will calibrate the LiDAR swaths relative to each other and the ground control.

The LiDAR will be classified using a combination of automated and manual edit/reclassification processes to support the generation of one-foot contours, and will be coded as:

1 – processed, but unclassified, 2 – Bare-earth ground, 3 – Vegetation, 7 – noise (low or high; manually identified; if needed), 9 – Water

Obscured and Obstructed Features

The LiDAR sensor we propose for this project has proven successful for similar projects and is especially suited to collecting ground returns through vegetation. Based on the provided Area of Interest we do not expect to see any obscured areas; however, in areas that are obscured and/or obstructed, terrain and feature collection may be limited. These areas will be outlined with an “obscured area” polygon. Additional ground survey may be required to collect data in these areas.

Orthophotography

Collected imagery will be rectified to the new LiDAR surface model, and the individual 1-inch pixel ortho image files will be processed to ensure a seamless appearance and will be tonally balanced to produce a uniform contrast and tone across the entire project area. The orthophotography will be delivered in tiled TIF/TFW and ECW/EWW formats.

DATA ACCURACIES

Based on ASPRS 1" = 50' scale and 1' contours

Horizontal

Data set will be produced to meet ASPRS Positional Accuracy Standards for Digital Geospatial Data (2014) for a 15 cm RMSE_x / RMSE_y Horizontal Accuracy Class which equates to Positional Horizontal Accuracy = +/- 36.7 cm at 95% confidence level.

Vertical

Data set will be produced to meet ASPRS Positional Accuracy Standards for Digital Geospatial Data (2014) for a 10 cm RMSE_z Vertical Accuracy Class equating to NVA = +/- 19.6 cm at 95% confidence level and VVA = +/- 30 cm at the 95th percentile.

AERIAL DELIVERABLES

Final products included:

- CAD
 - TOPO.dwg (containing surface model)
 - Contours.dwg (cartographically smoothed)
 - Tile_Index.dwg
- Orthos
 - “tile#”.tif/.tfw
 - “tile#”.ecw/.eww
- LiDAR
 - Bare Earth LAS
 - “tile#”.las

- All Points LAS
 - "tile#" .las

SCHEDULE

Hydrographic condition survey is expected to take 2 days to complete. We can begin work within 2 weeks of notice to proceed and provide final deliverables within 1 week of completed field work. We anticipate LiDAR acquisition to take place 1-2 weeks from Notice to Proceed and placement of panels and approximately 2 weeks from receipt of aerial data and ground control to complete the LiDAR deliverables.

BASIS OF COMPENSATION

For services described in the above Scope of Work, the lump sum fee inclusive of reimbursable expenses broken down as follows:

Hydrographic and LiDAR Data Acquisition and Deliveries\$25,200.00

All work not described in the above scope of work will be deemed additional services and must be approved by authorized individuals of the client and McKim & Creed in writing prior to beginning the additional services.

This proposal is valid for 30 days from the date of the proposal. If the proposal is not accepted within 30 days, we reserve the right to revise or withdraw the proposal entirely at our discretion.

McKim & Creed General Conditions (07/2016-2) will be deemed as part of this proposal and agreement:

We appreciate the opportunity to provide this proposal to you and look forward to working on the project with you.

Sincerely,

McKIM & CREED, INC



Jared Lambert

Hydrographic Project Manager

OLSEN ASSOCIATES, INC.

By: _____ Date: _____
(Print or Type Name)

(Signature)

Title: _____

Attest: _____ Date: _____
(Print or Type Name)

(Signature)

Title: _____

Going Green Option

In an effort to reduce paper waste and expedite invoice processing, McKim & Creed, Inc. is offering you the option to receive electronic invoices. The invoice would come via email in a PDF format. Please select a preferred billing option below:

___ Email all invoices to _____ @ _____.

___ Email all invoices to _____ @ _____
and provide a hard copy to the address listed in this Agreement or send to:

_____.

___ Provide a hardcopy only of the invoice to the address listed in the Agreement
or send to: _____

Proposed Scope of Work Entitled:

***Submerged Cultural Resource Remote-Sensing and Visual Survey,
Southport Waterfront Project Site, Brunswick County, North Carolina***

Submitted to:

**Christopher G. Creed, P.E., D.CE
Principal/Vice President
Olsen Associates, Inc.
2618 Herschel Street
Jacksonville, Florida 32204**

Submitted by:

**Gordon P. Watts, PhD, RPA
Tidewater Atlantic Research, Inc.
P.O. Box 2494
Washington, North Carolina 27889**

Submittal Date:

11 March 2022

In response to a request for the conduct of a submerged cultural resource survey off the Southport, North Carolina waterfront (Figure 1), Tidewater Atlantic Research, Inc. (TAR) of Washington, North Carolina would like to propose the following Scope of Work (SOW).

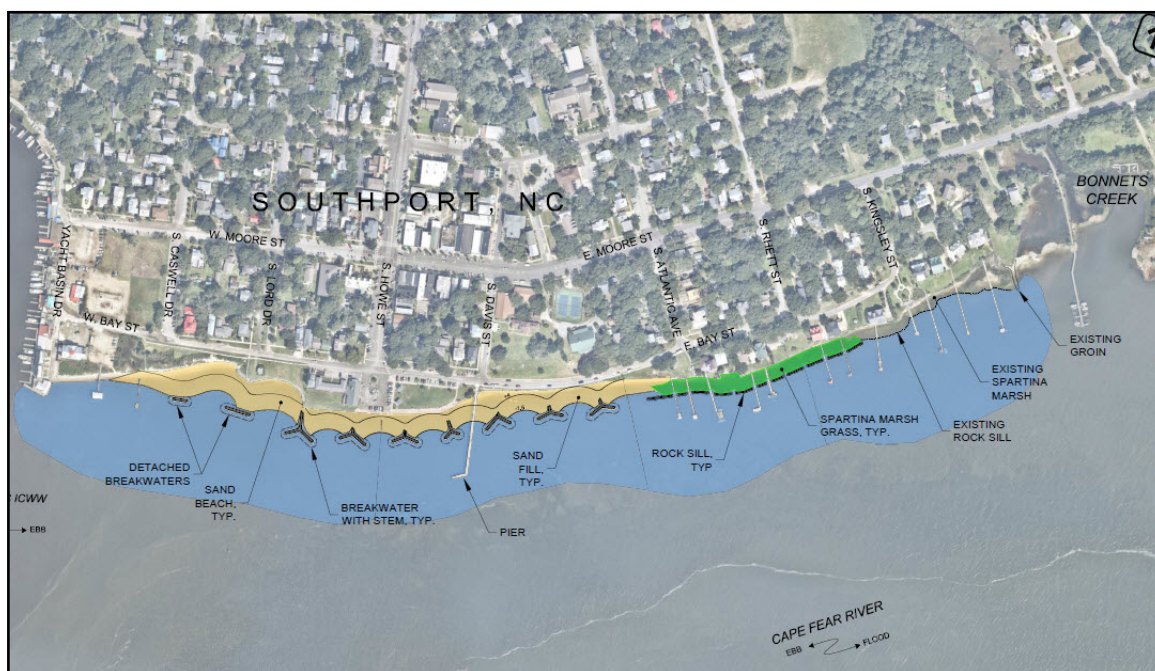


Figure 1. Southport shoreline project area with proposed stabilization areas.

In the western area of the attached image identifying "Detached Breakwaters" and "Sand Fill", TAR proposes to carry out a remote-sensing survey. That survey would be carried out with sidescan sonar, cesium magnetometer and (if water depth permits) a sub-bottom profiler. Positioning and recorded data would be georeferenced to North Carolina NAD 83, U. S. Survey foot coordinates using a Trimble and/or Hemisphere differential global satellite positioning interfaced with HYPACK survey software. That area would be surveyed on a 50-foot lane spacing and carried out into the Cape Far River to include bottom depths to minus ten feet. The remote-sensing survey will be scheduled around high tide to cover the intertidal zone.

The project survey will be extended east-northeast to cover the area identified in green and designated to identify a previously constructed "Rock Sill" and "Spartina Marsh Grass" planting (Figure 2). As the proposed improvement of the rock sill and increase in elevation of the marsh grass planted area will not impact a previously undisturbed area, TAR will conduct a low tide visual survey of the river bottom adjacent to the rock sill to identify any submerged cultural resources in the intertidal zone immediately offshore. That visual survey of the low tide river bottom will be extended to cover the "Existing Rock Sill" further east-northeast to an "Existing Groin" (Figure 3). Due to the amount of debris associated with the waterfront in the area surveyed with remote sensing (Figure 4), TAR will also conduct a low tide visual survey of that area.



Figure 2. Water front in the area of "Rock Sill" and "Spartina Marsh Grass".



Figure 3. "Existing Rock Sill" further east-northeast extending to an "Existing Groin".



Figure 4. Debris along the Southport waterfront in the remote-sensing survey area.

All identified remote-sensing magnetic anomalies and sonar targets will be identified and analyzed to assess their potential association with cultural material. That assessment will include recommendations for avoidance or additional investigation if avoidance is not an option. Likewise, if any evidence of potentially significant cultural resources is identified by visual investigation in the east-northeastern areas, assessment will include similar recommendations for avoidance or additional investigation if avoidance is not an option.

Prior to the conduct of field work on the Southport waterfront, TAR will carry out historical research to refine an existing historical context for the project area and support assessment of any archaeological resources. In addition to archival research, TAR will carry out an Internet survey of photographs, historical maps, and charts to support identification of features associated with development along the Southport waterfront.

Based on results of the submerged/intertidal cultural resource surveys and archival investigations, TAR will then prepare a report which follows criteria outlined by the North Carolina Department of Natural and Cultural Resources.

**Archaeological Remote Sensing Survey & Report Preparation
Southport Waterfront
Brunswick County, North Carolina**

Submitted 1/4/2023

UAB Coordination, Mob/Demob, Travel and Remote Sensing Survey

	Units (days)	Unit Cost	Total
Personnel			
Principal Investigator	5	\$350	\$1,750.00
Archaeologist/Remote Sensing Operator	4	\$300	\$1,200.00
Archaeologist/Remote Sensing Operator	3	\$300	\$900.00
Overhead		0.98	\$3,773.00
		Sub total	\$7,623.00
24' Survey Boat (With Fuel and Dockage)	2.5	\$1,050.00	\$2,625.00
Geometrics 882 Cesium Magnetometer & Computer	2.5	\$225.00	\$562.50
Klein 3900 Side Scan Sonar & Computer	2.5	\$550.00	\$1,375.00
DGPS & Computer Marine Navigation System	2.5	\$200.00	\$500.00
		Sub total	\$5,062.50
Travel (domestic)			
Lodging	9	\$144.00	\$1,296.00
Per diem	12	\$44.00	\$528.00
Mileage (towing)	374	\$1.12	\$418.88
Milage	245	\$0.44	\$107.80
		Sub total	\$2,350.68
			Total
			\$15,036.18

Historical Research, Data Analysis, Report Preparation & Revision

	Units (days)	Unit Cost	Total
Personnel			
Principal Investigator	4	\$350.00	\$1,400.00
Senior Historian	3	\$300.00	\$900.00
Computer Graphics Technician	2	\$250.00	\$500.00
Administrative & Clerical	2	\$200.00	\$400.00
Overhead		0.98	\$3,136.00
		Sub total	\$6,336.00
Travel			
Lodging	0	\$65.00	\$0.00
Per diem	0	\$30.00	\$0.00
Airfare	0	\$0.00	\$0.00
Mileage	0	\$0.37	\$0.00
		Sub total	\$0.00
Publishing			
Printing & Binding Cost	2	\$90.00	\$180.00
Graphics	1	\$40.00	\$40.00
Supplies	1	\$30.00	\$30.00
		Sub total	\$250.00
			Total
			\$6,586.00

Fixed Price Budget Proposal

Total \$21,265.00
(rounded up to nearest \$5)

**Tidewater Atlantic Research, Inc.
P.O. Box 2494
Washington, N.C. 27889**



**Planning Board Meeting Minutes
Southport Community Building
223 E. Bay Street
December 15, 2022
6:00 P.M.**

Members Present: Sue Hodgins, Will Hewett, Gustavo Mibelli, Scott Jones, Dick Sloan, Donnie Joyner, and Fred Fiss.

Members Absent: Chris Jones

Staff Present: Tanya Shannon, Deputy Clerk
Mo Meehan, City Planner

Others: Mr. Gaines Brown

Board of Aldermen Liaisons: Karen Mosteller and John Allen

A. Chair Sue Hodgins called the meeting to order at 6:00 p.m.

B. Mr. Donnie Joyner gave the Invocation.

C. Chair Hodgins led the Pledge of Allegiance.

Mr. Fred Fiss was appointed as a voting member in the absence of Mr. Chris Jones.

D. Motion to approve the November 17, 2022, meeting minutes By Mr. Joyner and seconded by Vice-Chair Hewett. ***Unanimous vote; Motion carried.***

E. Motion to approve the Meeting Agenda with the amendment to remove agenda item I) *Other Business: Discussion on Review Committee Scheduling*, by Vice-Chair Hewett and seconded by Mr. Dick Sloan. ***Unanimous vote; Motion carried.***

F. Public Comment:

Mr. Joyner made a Motion to enter Public Comment and seconded by Mr. Sloan.
Unanimous vote; Motion carried.

There was no Public Comment.

Mr. Scott Jones made a Motion to close Public Comment and seconded by Mr. Sloan.
Unanimous Vote, Motion carried.

G. Old Business:

1. Update and Discussion of Bullfrog Corner Project, 101 E. Moore Street:

City Planner Mo Meehan stated that the Review Committee for this submission - consisting of Scott Jones, Sue Hodgins, and Fred Fiss – will not be scheduling a meeting for continued review until the Applicant has provided more information on their resolution of parking and easement concerns.

2. Update and Discussion of 115 N. Howe Street:

Chair Hodgkin gave an update on the December 14th Review Committee meeting. Committee Members Fred Fiss, Gustavo Mibelli, and herself, as well as attorneys for both the Applicant and the City were in attendance. She stated that the Applicant had submitted renderings with some changes from the original submission. The building design remains largely contemporary, considerably different from the Central Business District's historical character.

The Committee posed questions of the Applicant/Builder and with the appropriate City department representation involved at the September Technical Review Meeting. Some of the concerns of the Review Committee include the number of exists for emergencies, and traffic impacts (the Traffic Study provided was based on the 200-number occupancy that the Applicant provided). Other concerns of, and questions from the Committee pertain to the restroom requirements for all the retail spaces; the addition and placement of dumpsters; and the placement of furniture and accessories for the rooftop bar area that would exceed the 40' height limit.

There are continuing apprehensions about parking, but the Applicant rejected the Committee request for the production of a Parking Study.

There are also concerns about the impacts on the City's Infrastructure (water/sewer usage). Chair Hodgkin explained that with the submitted plan's max occupancy of 600+, the System Development Fees would be over \$1M, and sewer capacity would be equivalent to 65 3-bedroom homes in one building on one city block. She stated that with the owner-stipulated occupancy of 200, the System Development Fees would still be around \$385K, and the usage of 1.4% of the City's sewer capacity equating to 29 3-bedroom homes. Even with Public Works stating that either usage amount was within capacity, the Committee still wanted the amounts noted.

Chair Hodgkin said that the stated items of concern were relayed to the Applicant, and several items were requested from the applicants. The Review Committee will schedule another meeting to review updates provided by the Applicant.

3. Update on Southport's Sunny Point Property

City Planner Ms. Meehan gave an update on the City property located adjacent to the Sunny Point Military Terminal. She reiterated that the mission of the Planning Board is to provide a recommendation to the Board of Aldermen regarding whether the property should be detained by the City or be put up for sale. No other factors should be considered, such as the land usage or to whom the land should be sold if that was the Board of Aldermen's decision. Chair Hodgkin noted that the Board had been informed that MOTSU had formally withdrawn its interest in the property.

The Committee established for this review consists of Vice-Chair Hewett, Mr. Jones, and Mr. Joyner. The Committee will be scheduling a meeting in early January.

4. Update Short-term Vacation Rental Ordinance

Ms. Meehan reported that Staff is drafting language for the amendments to the Short-Term Vacation Rental Ordinance. She said that once the draft is ready, the initial STR Review Committee (Mr. Jones, Mr. Sloan, and Chair Hodgkin) will reconvene to discuss Staff's revisions.

5. Update on Application Submission Guidelines Review

Ms. Meehan announced that the Review Committee would have its first meeting on December 19th to discuss the application submission process and to clarify the procedures and guidelines for accepting new applications. The Committee consists of Mr. Fiss, Mr. Jones, and Chair Hodgins.

H. New Business

1. Abandonment of a Portion of a City-owned Alley running parallel with N. Caswell.

City Planner Meehan gave a brief description of the proposed request. At its regular monthly meeting on December 8th, the Board of Aldermen was presented with the request from the Applicants for the City to abandon a portion of an alley at the above-specified location. The Planning Board was tasked with the review of the proposal and ensuring that the procedure for permanently closing streets and alleys is in accordance with the City's codes and applicable State law before making a recommendation to the Board of Aldermen. The Applicant, Mr. Gaines Brown, was in attendance to answer any questions.

A statement by letter was submitted to the Board of Aldermen by the applicants and was provided to the Planning Board; the letter stated verbatim:

Dear Mayor, City Manager, and Board of Aldermen,

I'm writing on behalf of a neighbor, Ms. Tina Monk. Ms. Monk and I request the abandonment of a portion of an alley as described in N C State Statute 160A-299 (see attached documents). Ms. Monk is in the process of developing the property that enters from West Ninth Street and runs parallel with North Caswell Avenue. I currently own lots #20,21,22 on North Caswell that back up to the alley. The north end of the alley terminates in a dead-end and serves no thru access or other purpose. Our request is to abandon a portion (shown in yellow on the attachment) of the unopened alley, creating a green space between the rear of lots 20, 21, and 22 on N. Caswell Ave. and a wedged-shaped portion of Ms. Monk's property.

Please advise me of any other information I need to provide. I respectfully submit this request for the Board's consideration and approval.

*Sincerely,
Gaines Brown*

It was the consensus of the Board to establish a Review Committee to discuss this further. Mr. Jones, Vice-Chair Hewett, and Mr. Joyner were appointed to the Committee.

I. Other Business: (removed from agenda)

~~Discussion Review Committee Scheduling~~

J. Announcements:

Mr. Joyner invited everyone to the Yule Tide Christmas Concert and Sing Along at Mt. Carmel AME Church on December 18th at 4:00 PM.

Chair Hodgins wished everyone a Merry Christmas and Happy New Year, and thanked all Members for their work during 2022.

There being no other business or announcements, Chair Hodgins confirmed Mr. Fiss back to City

Alternate status.

Chair Hodgkin requested a Motion to adjourn. A Motion was made by Vice-Chair Hewett to adjourn the meeting and was seconded by Mr. Sloan. ***Unanimous vote; Motion carried.***

Adjournment: 6:18 P.M.

Deputy Clerk, Tanya Shannon

Chair, Sue Hodgkin

DRAFT

City of Southport ABC Board Minutes

Date: Nov 14, 2022 Minutes taken by: Harold Todd Dunn

Location: Indian Trail Meeting Hall

Quorum determined: Meeting called to order by Chairman Davis at: 6:30pm

In Attendance: Board Chairman- William Davis, Board Members – Zach Zuehlke and Angela Wadsworth, GM – Harold Todd Dunn ABC Liaison – Mayor Hatem

Guests: Adam Steadman

Approval of Oct 12 2022 Minutes: Minutes amended, approved by Zach and seconded by Angela.

1. Old Business

- A. Discussed progress on the new construction and what needed to still be completed.
- B. Discussed and going to have a walk through with foreman on 11/22/22 at 10am
- C. Discussed pros and cons of renting or buying power jack – Decided to rent one for 1 month to see if it meets our needs Zach motioned and Angela seconded

2. New Business

- A. Discussed outdoor lighting – Going to get some information and prices from BEMC
- B. Discussed Christmas Holiday Closure and agreed to close the Monday Dec 26th and 27th
- C. Discussed the first bourbon release – will let board know the date
- D. Presented Board annual Audit Reports
- E. Went to Closed session to discuss any employee issues and reopened

3. Business Reports

- A. Presented and went over Monthly and Annual Reports

Adjourned: Motion was made and seconded to adjourn the meeting

Next Regular meeting: Dec 14th, 2022

APPROVED BY AND DATE



January 6, 2023

Mayor and Board of Aldermen
City of Southport
1029 N. Howe Street
Southport, NC 28461

Dear Mayor and Board of Aldermen:

The Up Your Arts Board of Directors is pleased to provide the following monthly progress report regarding our “Save the Hall, Y’all” campaign to transform the historic Brunswick County Courthouse and former city hall into a community-based center for creative and performing arts:

- Up Your Arts created a digital forum to allow members of the general public to register to attend one of six meetings scheduled at the Indian Trail Meeting Hall during January and February to review plans for the proposed art center. These charrettes will allow citizens and other stakeholders to gain knowledge, ask questions, and provide feedback on information many will be seeing for the first time. The dates and times are January 24 from 10am-noon and from 2pm-4pm, January 31 from 2pm-4pm and from 6pm-8pm, and February 2 from 10am-noon and from 6pm-8pm.
- We have notified eight area print and digital media organizations about these meetings and disseminated an invitation to attend via social media to approximately 5,000 subscribers in our digital data base area. We have also directly invited representatives of over 50 non-profit organizations with a base in Southport to participate, as well as, a similar-size group of business owners, city officials, and individual community leaders.

Please find attached an updated list of the benchmarks that are guiding our progress on the art center project. A draft copy was provided to Alderman Alt shortly after Up Your Arts’ presentation to the Mayor and Board of Aldermen in September, and I referred to it in a previous monthly update as being available upon request; but it has otherwise not been in public circulation.

We expect to have the board of trustees selection committee in place by the end of February, after the above-noted charrettes have convened. Meeting attendees will be asked to express their interest in being considered for a seat on the board of trustees in a follow-up survey; and others who have weighed in previously will be re-contacted, along with those people recommended by the Board of Aldermen (we have received no such recommendations to date).

The selection committee will interview those who respond positively and evaluate their candidacy, based on pre-determined selection criteria. A final list of recommended candidates will be submitted to the Board of Aldermen for consideration. Officers will be elected by and from the approved trustees.

Concurrent with these steps needed before the board of trustees can be established, Up Your Arts will finish researching the range of legally possible parameters for the trustees' relationship with the city and present our findings for deliberation by the Board of Aldermen. Our goal is to have this process completed by late spring, about the same time our recommended list of trustees is submitted.

The terms of whatever partnership agreement is reached will be negotiated and approved by the aldermen and the board of trustees, as the contracting legal parties. Up Your Arts will not be involved in art center operations going forward, beyond what is described here.

Thank you. I can be reached at 301.741.6698 or by email, bbray@upyourarts.org, if you have questions. We hope you will be able to attend one or more of the upcoming meetings.

Sincerely,

Bonnie L. Bray, Treasurer
Up Your Arts

Progressive and Concurrent Benchmarks-1.06.2023

Publication of renderings

- Website-add new section solely focused on the Arts Center
- Press releases-Pilot then others
- Public Charrettes (identify/plan/publicize dates and locations)
- Continual revisions to program ideas and renderings

Long term private/public partnership status

- Research similar and applicable PPP arrangements
- Pursue UNC School of Government input
- Report back to board and alderman for approval

Determine organizational structure of new Non-Profit

- Continue Research
- Continue consultations with Ryan Johnson
- Qeno and LGC
- Determine appropriate structure- Foundation? Corporation? Trustees? Directors
- Report back to City
- Incorporate as necessary
- UYA to apply for legal 501.c.3 status

Establish Selection Committee and begin recruitment

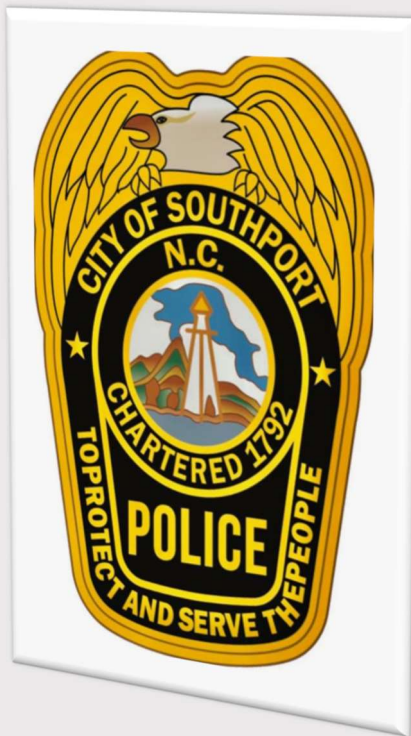
- Determine membership of the selection committee
- Establish this working group
- Identify people and groups from whom to recruit for trustee membership
- Continually revise outreach list
- Establish specific guidelines/expectations for trustee and volunteer membership
- Develop appropriate application, interview and selection process
- Recruitment outreach/interviews/selection
- Present membership to City for final review

Continue to research and Identify Funding Sources

- Federal and state grants concerned with historic preservation, the arts, and rural economic development, including National Endowment for the Arts' Our Town Creative Placemaking Grants (up to \$50k) and NC Department of Commerce Rural Transformation Grant Fund (up to \$950k)
- Federal community development block grants
- Foundation grants with philosophies and/or mandates to support community development grounded in the arts and humanities and historic preservation in specific geographic areas and/or types of buildings
- Historic rehabilitation tax credits that are leveraged to underwrite construction costs related to preservation of historic buildings
- NC General Assembly appropriations
- Corporate support
- Local capital campaigns
- Individual legacy giving plans
- Naming rights



POLICE



Monthly Summary

DECEMBER 2022

Chief Todd Coring
910-457-7913
tcoring@cityofsouthport.com
Facebook SouthportPoliceDepartmentNC

Southport Police Department

INCIDENT / OFFENSES

Total Calls for Service: 436

Below are some of the call types

General Calls

Alarms – 22
Meet Complainant – 30
Suspicious Persons/Activity – 34
Reports – 26
Shoplifter – 0
Disturbance & Domestic Calls – 15
911 Hang-Ups – 15

Traffic Calls

Traffic Stops – 95
Motor Vehicle Accidents – 15
Hit/Runs – 4
Drunk Driver/C&R/ATL -15
Assist Motorist – 8
Traffic Control - 0
Assist EMS – 88
Assist Fire – 2

ARREST / CITATION / CHARGES

Arrest – 16
Citations & Warnings – 72
Investigations – 86
ABC Applications – 0
City Permits (Noise/Events/FILM) – 5
Special Events/Checks/Patrols – 75



"We preform partnerships with communities to improve the quality of life for all citizens who visit or call Southport home."

Community, Professionalism & Integrity

DECEMBER 2022 MONTHLY SUMMARY



Divisions of the Fire Department

Fire Division Calls for Service

Totals

Structural: 25 Vehicle: 0 MV Crash: 13
 Woods/Brush: 0 Gas Spill/Leak: 3 Trash: 2
 Water Rescue: 1 Electric: 3 Good Intent: 5
 Mutual Aid: 2 Medical/CPR: 22 Other: 0

76

EMS Division Calls for Service

EMS Calls: 174 E-Transports: 54 NE-Transports: 15

189

Fire Prevention & Inspections

Permits: 12 Inspections: 46 Batteries: 16
 Plan Reviews: 8 Smoke Alarm Installs: 15
 Car Seats: 168 CPR Classes: 2 Tours: 26

293

Total Number of Fire Department Actions: 558

UPCOMING PROJECTS, GOALS, & EVENTS

The month of December was very busy with the Awards Banquet and the Light up the Night Christmas Parade. The department adopted 2 families with children and 3 senior citizens for the holidays. 2023 goals and training calendar has been set, as well as all of our annual events. The officers have met and set departmental goals and individual goals to achieve in the new year. The EMT class just finished and we have 6 new EMTs on staff. A Technical Rescue certification class for Vehicle Machinery Rescue will begin this month, and a Marine Shipboard Firefighting class will be held soon. The citizens fire academy will be launched soon to help educate our citizens about fire dept. operations.

Southport Parks and Recreation Department December 2022 Monthly Report

On-Going Activities

Toddler Time:
Before/Afterschool

Wednesday at 10 am at Jaycee Building
M-F 7:00am plus transportation to SES
Pick up from school and care till 5:15pm

Athletics

Youth basketball practices all month

Senior Activities

Senior Preventative Exercise

No impact stretching held at the Senior Building every
MWF at 9AM

Senior Crafts

Craft classes held every Monday at 10AM at the Senior
Building

Senior Bowling
Saturday Morning

Seniors travel to Wilmington to Bowl every Friday morning
Seniors meet every Saturday morning for coffee and light
breakfast at the building for fellowship.

Senior Luncheon

Potluck lunch held the 2nd Wednesday of every month.

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Fitness Classes

Aerobics Class
Core & Body Sculpting

Held at the Jaycee Building on M,T,Th, and Fri. at 8AM
Held at the Jaycee Building Tuesday at 8:30am and
Wednesdays at 5:30PM

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Buildings and Facilities Utilized and Rented out by Parks and Recreation

Franklin Square Park
City Pier
Kinglsey Park
Central Office
Waterfront Park
Riverwalk Gazebo
Atlantic Street Park

Caviness Park
Ft. Johnston Tennis Courts
City Gym
Jaycee Building
Ft. Johnston Playground
City Dock

Historic Riverwalk
Lowe/White Park
Garrison Lawn
Keziah Park
Senior Building
Bay Street Ovrk

- Before and Afterschool held Monday-Fridays. Christmas camp was held December 19th – December 30th.
- Taylor Field construction finished up. Final walkthrough scheduled for January.
- Proposed 2023-2028 Parks Recreation and Open Space Masterplan adopted by the Recreation Advisory committee and sent to the Board of Alderman for adoption in January 2023
- Youth basketball draft was held December 10th. We have 22 teams total. Practices were held during December at the Southport City gym. Games begin in January
- Winterfest activities included Supper with Santa, Afterschool in parade, Movie Polar Express on Garrison Lawn, Santa's Workshop...
- Regular rental of buildings and parks continued.

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Animal Protective Services Department

Kate Marshall

910-477-1486

kmarshall@cityofsouthport.com



DECEMBER 2022 MONTHLY REPORT

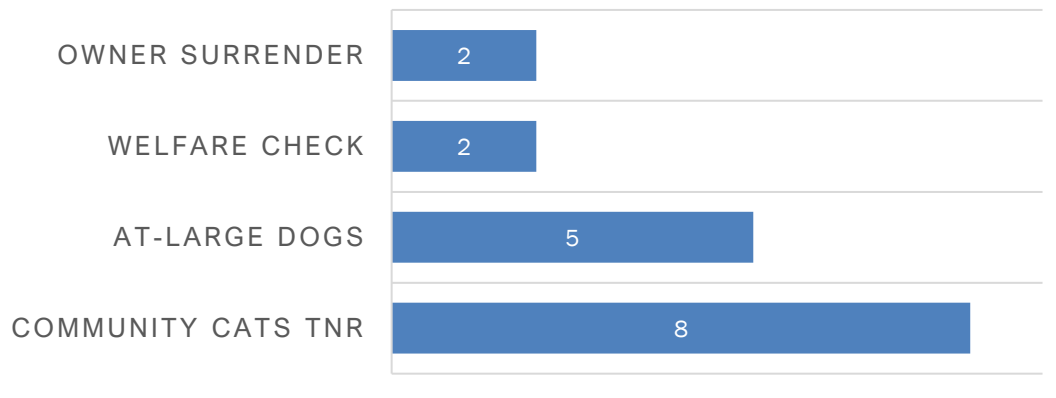
ANIMAL PROTECTIVE SERVICES

DOCUPET PET LICENSES: 10 YEAR TO DATE: 177

ANIMAL BITES: 0 YEAR TO DATE: 7

VIOLATIONS/CALLS FOR SERVICE

APS CALLS FOR SERVICE



PROJECTS

1. Coordinating with Parks & Rec Department on the Taylor Field Dog Park opening.
2. Spring vaccination clinic
3. DocuPet enrollment compliance

DEPARTMENT OF COMMUNITY RELATIONS
January Report 2023

December 2022:

Randy Jones,
Director of Community Relations

Number of Visitors	728
Visitors' Center Donations (FYTD)	\$ 2,626.00
Film Permit Revenue (FYTD)	\$ 11,100.00
Special Events Revenue (FYTD)	\$ 11,100.00
Community Building (FYTD)	\$ 85,550.51
Occupancy Tax (FYTD)	\$ 133,857.56
Fiscal Year Total	\$ 244,234.07

Tourism

- Winterfest 2022 was a success. We had 17 events that were all able to take place this year, which is back to our pre-covid numbers! We are already working on our 2023 schedule of events.
- The Winterfest Tea netted --- in proceeds, which will be split and go towards Southport Elementary School, a PA system at the Waterfront Park Gazebo, and Taylor Field Dog Park.
- Allayna attended the Tourism meeting at the Southport-Oak Island Chamber on December 7th to discuss how we can encourage residents to see Tourism/Tourists as a positive for the community.
- The Fort Johnston Museum & Visitors' Center is closed from December 22, 2022, until January 3, 2023, for the Holidays. See you in the new year!
- The "This is our Town" cleanup will be January 7th.
- Southport Historical Society presents "The Maritime Battle of Ft. Fisher" by John Moseley Mgr. Maritime Museum at Southport, January 10, 2023, at 1:00 pm, at the Indian Trail Meeting Hall <https://cityofsouthport.com/event/southport-historical-society-presents-the-maritime-battle-of-ft-fisher-by-john-moseley-mgr-maritime-museum-at-southport/>
- There will be a public Winterfest Flotilla Meeting at the Indian Tree Meeting Hall from 2 - 4 pm on January 11, 2023. We will conduct an after-action review of the 2022 Flotilla and begin discussion and preparations for the 2023 Flotilla.
- The Downtown Southport, Inc monthly meeting will be on January 13th at 9 am at the Indian Trail Meeting Hall.
- The NC Fourth of July Festival will hold its first full committee meeting on January 17th.
- The NatureFest Lecture Series continues January 24th with the Bald Head Island Conservancy.
- The first Wooden Boat Show meeting for the 2023 year will be held on January 27th at Indian Trail Meeting Hall.

Communications

- Projects
 - The Winterfest promotional videos were completed and can be found on the City YouTube page: <https://www.youtube.com/watch?v=GCsMC0FqT3U&list=PLtAOd6vIYIGPrxyoHm1UWfcFjLMGs3nel>
 - The social media policy has been moved to be workshopped and a date for that workshop will be decided at the January 12 board meeting.
 - ChyAnn, in addition to Bonnie Therrien, Kelly Tooley, Tom Stanley, and Travis Henley, met with Brush Bandit on December 29 to discuss our partnership and how we can enhance our

website to reflect their services and information better. This website project will be completed in the new year.

- Website
 - A new page to house all City road work and construction updates was created with an interactive map: <https://cityofsouthport.com/road-work/>, as well as an addition to the Public Services webpage to include interactive maps of road work in Brunswick County and NC: <https://cityofsouthport.com/public-services-department/#southport-roads>.
- Daily Tasks
 - Website revisions and updates
 - Social media content creation and scheduling
 - Filtering incoming Contact Form Submissions to the appropriate department(s) and responding to submitters in an appropriate time frame.
 - Monitoring online platforms
- Miscellaneous
 - We hosted December's in-person Lower Cape Fear Communicators Group session on December 20th in the Community Building. In attendance were Oak Island, Bald Head Island, Leland, Brunswick County, Doshier Hospital, and Duke Energy PIOs.
 - ChyAnn applied to attend the Advanced PIO training in Fayetteville in March 2023. She is awaiting a response from the National Emergency Training Center of acceptance.
- Important Notices
 - On December 19, the public was informed that the January BOA meeting will be held in Indian Trail Meeting Hall. This temporary relocation is due to the floors in the Community Building being redone.
 - On December 20, a public notice from the National Weather Service and NOAA was published regarding weather tower enhancement in Wilmington that will begin on January 3, 2023 and will last for approximately 2 weeks.
 - On December 29, a notice was sent out reminding residents that Taylor Field is still awaiting a few more list items to be completed before being opened.

Community Building

- The floor repair for the Community Building began on December 28th, 2022 and is expected to be done mid-January.

UPCOMING CITY MEETINGS

Historic Preservation Commission
1st Wednesday of each month
January 4, 4:00 pm - ITMH

Forestry Committee
2nd Tuesday of each month
January 10, 5 pm, ITMH

Park & Recreation Board
2nd Tuesday of each month
January 10, 6:30 pm, ITMH

ABC Board
2nd Wednesday of each month
January 11, 6:30 pm, ITMH

Board of Aldermen
2nd Thursday of each month
January 12, 6 pm, ITMH

Beautification Committee
3rd Monday of each month
January 16, 5 pm, ITMH

Planning & Zoning Board
3rd Thursday of each month
January 19, 6 pm, ITMH

Board of Adjustments
4th Tuesday of each month
January 24, 4:30 pm, ITMH

A look at 2023:

JANUARY

- 7 **"This is Our Town"** Beautification Committee volunteer cleanup, 9 am - noon, meets at the Old Jail Annex, Rhett Street.

FEBRUARY

- 4 **"This is Our Town"** Beautification Committee volunteer cleanup, 9 am - noon, meets at the Old Jail Annex, Rhett Street.
- 17-19 **Eleventh Annual Brunswick County Black History Symposium** in Community Building
- 17th 6 pm – The Mamie Mobley Story "A Mother's Cry for Justice," Starring Ms. Carolyn Evans as Mamie Mobley
- 18th Text
- 19th 3 pm – "The Gospel Fest" hosted by Gwen Wearen
- Donations are appreciated and will benefit -

MARCH

- 4 **"This is Our Town"** Beautification Committee volunteer cleanup, 9 am - noon, meets at the Old Jail Annex, Rhett Street.
- 11 **Safe Haven Ten-year Anniversary**

APRIL

- 1 **"This is Our Town"** Beautification Committee volunteer cleanup, 9 am - noon, meets at the Old Jail Annex, Rhett Street.
- 7 **Southport Women's Club Art Show**
- 7-8 **Spring Festival**, Franklin Square Park
- 28-29 **Southport Arbor Day & NatureFest** Franklin Square Park
- 29 **Cape Fear Cruisers Car Show**, 10 am - 4 pm, Downtown Southport

MAY

- 3 **Southport Summer Market**, 9 am - 2 pm, Franklin Square Park
- 6 **"This is Our Town"** Beautification Committee volunteer cleanup, 9 am - noon, meets at the Old Jail Annex, Rhett Street.
- 10 **Southport Summer Market**, 9 am - 2 pm, Franklin Square Park
- 18-20 **The 2023 Southport Plein Air Festival**, Registration, Check in and Reception, Kids' Plein Air, Keziah Memorial Park
- 15 **Hurricane Expo**, Community Relations Dept
- 17 **Southport Summer Market**, 9 am - 2 pm, Franklin Square Park
- 24 **Southport Summer Market**, 9 am - 2 pm, Franklin Square Park
- 29 **Southport Memorial Day Remembrance**, 4th of July Committee
- 31 **Southport Summer Market**, 9 am - 2 pm, Franklin Square Park

JUNE

- 3 **"This is Our Town"** Beautification Committee volunteer cleanup, 9-12 am, meets at the Old Jail Annex, Rhett Street.
- 7 **Southport Summer Market**, 9 am - 2 pm, Franklin Square Park

- 14 Southport Summer Market, 9 am - 2 pm, Franklin Square Park**
- 21 Southport Summer Market, 9 am - 2 pm, Franklin Square Park**
- 28 Southport Summer Market, 9 am - 2 pm, Franklin Square Park**
- 30 N.C. 4th of July Festival**

JULY

- 1-4 N.C. 4th of July Festival**, The N.C. 4th of July Festival is held annually in the City of Southport. The City of Southport first celebrated our nation's independence in 1792 as the "Festival of Free Men". Over the years, the name of the festival changed until 1972, when the festival incorporated as the N.C. 4th of July Festival. Today, the festival celebrates our freedom as it remembers the sacrifices with some fun thrown into the mix. This year will be no exception. Join the over 50,000 people who attend the N.C. 4th of July Festival each year.
- 5 Southport Summer Market, 9 am - 2 pm, Franklin Square Park**
- 12 Southport Summer Market, 9 am - 2 pm, Franklin Square Park**
- 19 Southport Summer Market, 9 am - 2 pm, Franklin Square Park**
- 26 Southport Summer Market, 9 am - 2 pm, Franklin Square Park**

AUGUST

- 2 Southport Summer Market, 9 am - 2 pm, Franklin Square Park**
- 5 Food Truck Rodeo, Community Relations**
- 9 Southport Summer Market, 9 am - 2 pm, Franklin Square Park**
- 16 Southport Summer Market, 9 am - 2 pm, Franklin Square Park**
- 23 Southport Summer Market, 9 am - 2 pm, Franklin Square Park**
- 30 Southport Summer Market, 9 am - 2 pm, Franklin Square Park**
- 31 Southport Concert Series - Thursdays in the Park, 6-8 pm, Franklin Square Park, NC – free**

SEPTEMBER

- 2 "This is Our Town"** Beautification Committee volunteer cleanup, 9 am - noon, meets at the Old Jail Annex, Rhett Street.
- 4 Crab Derby**, Parks and Rec, 8:30 am registration. 9:30 am race. Fort Johnston Garrison Lawn
- 7 Southport Concert Series - Thursdays in the Park, 6-8 pm, Franklin Square Park, NC – free**
- 14 Southport Concert Series - Thursdays in the Park, 6-8 pm, Franklin Square Park, NC – free**
- 21 Southport Concert Series - Thursdays in the Park, 6-8 pm, Franklin Square Park, NC – free**
- 28 Southport Concert Series - Thursdays in the Park, 6-8 pm, Franklin Square Park, NC – free**
- 28 King Mackerel Tournament, 10 am - 8 pm, Southport Marina, 606 West West Street -**
<http://www.usopenkmt.com/>
- 29 King Mackerel Tournament, 10 am - 8 pm, Southport Marina, 606 West West Street -**
<http://www.usopenkmt.com/>
- 30 King Mackerel Tournament, 10 am - 8 pm, Southport Marina, 606 West West Street -**
<http://www.usopenkmt.com/>

OCTOBER

- 7 "This is Our Town"** Beautification Committee volunteer cleanup, 9 am - noon, meets at the Old Jail Annex, Rhett Street.
- 7 Captain Charlie**, Parks and Rec, 9 am – noon, Southport City Pier
- 5 Southport Concert Series - Thursdays in the Park, 6-8 pm, Franklin Square Park, NC – free**
- 12 Southport Concert Series - Thursdays in the Park, 6-8 pm, Franklin Square Park, NC – free**
- 19 Southport Concert Series - Thursdays in the Park, 6-8 pm, Franklin Square Park, NC – free**

- 21 **Spook or Treat**, 6 pm, Parks and Rec
- 21 **Bowser Bash**, 10 am, Animal Protective Services
- 26 **Southport Concert Series - Thursdays in the Park**, 6-8 pm, Franklin Square Park, NC – *free*
- 28 **Classic Car Show**, 10 am - 4 pm, Downtown Southport
- 31 **Trunk or Treat**, Southport Fire Dept Headquarters

NOVEMBER

- 2 **Southport Concert Series - Thursdays in the Park**, 6-8 pm, Franklin Square Park, NC – *free*
- 4 **"This is Our Town"** Beautification Committee volunteer cleanup, 9 am - noon, meets at the Old Jail Annex, Rhett Street.
- 4 **14th Annual Southport Wooden Boat Show**, 10 am - 4 pm, Old Yacht Basin – *free*
- 9 **Southport Concert Series - Thursdays in the Park**, 6-8 pm, Franklin Square Park, NC – *free*
- 16 **Southport Concert Series - Thursdays in the Park**, 6-8 pm, Franklin Square Park, NC – *free*
- 25 **2023 Shop Small Saturday & Shop Small Holiday Open House Weekend @ Area Retailers**

DECEMBER

- 1 **Mayor's Tree Lighting Ceremony**, 6 pm, Waterfront Park - *free*
- 2-9 **WINTERFEST**
 - 2 **Holiday Tea**, Southport Community Building
 - 3 **Pet Pictures with Santa**, 3 p.m., Indian Trail meeting Hall, 113 W. Moore St. - *free*
 - 4 **Shop-with-a-Cop Concert**, 6 p.m. Franklin Square Park
 - 5 **Candy Cane Garden Party**, 6 p.m. Keziah Park
 - 6 **The State Port Pilot Annual Cookie Contest**, 3-5:30 pm, Southport Community Building - *free*
 - 6 **Supper with Santa's Elves**, 5-7 pm, 209 Atlantic Ave, beside the Southport Gym - \$5 *per child*
 - 7 **"Polar Express" Movie**, Dusk, Fort Johnston Garrison Lawn - *free*
 - 8 **Historic Holidays**, 1-3 pm, NC Maritime Museum at Southport - *free*
 - 8 **Light Up the Night Christmas Fire Engine Parade**, 5:30 board engines at Fire House, 6:30 Parade begins at Waterfront Park, - *free*
 - 9 **Winter Craft Festival**, 9 am - 4 pm, Franklin Square Park
 - 9 **Santa's Elves Workshop**, 10-11 am, 209 N. Atlantic Ave – *free*
 - 9 **Train and Toy Show**, 10-4, Southport Community Building
 - 9 **Winterfest Performing Arts**, 10 am - 3 pm
 - 9 **Children's Games**, 11 am – 4 pm Garrison Lawn
 - 9 **Winterfest Train and Toy Show**, 11 am 5 pm, Southport Community Building
 - 9 **Old Brunswick County Jail Tours**, 1-6 pm, Corner of Nash and Rhett Streets - *free*
 - 9 **Winterfest Tour of Homes**, 1-6 pm, tickets available at the Fort Johnston-Southport Museum and Visitors' Center – *fee*
 - 9 **Southport Christmas Flotilla**, 7 pm, on the Southport Waterfront, Judging by the

Randy Jones
 Director of Community Relations
 Southport, N.C. 28461
 Work: 910-457-7927
 Cell: 910-477-1484
 Email: rjones@cityofsouthport.com



No.	WOID	Request Date	Description	Assigned To	Actual Completion Date
1		19206 11/25/2022	LOCATE 310 PARK AVE EXT/HOLLY ST SW	Tyrus Davis	11/28/2022
2		19207 11/25/2022	LOCATE 314 PARK AVE EXT/HOLLY ST SW, DRAINAGE	Tyrus Davis	11/28/2022
3		19333 11/28/2022	509 E LEONARD HAS A BROKEN COUPLING AT THE CLEAN OUT.	Mike Spicer	11/28/2022
4		19335 11/28/2022	PLEASE PICK UP CONE OVER CLEAN OUT AT 115 THOMPSON.	Mike Spicer	11/29/2022
5		19336 11/29/2022	FIX THE WHEEL THAT IS DRAGGING ON A CHAIR CART.	Jeremy Kennedy	11/30/2022
6		19344 11/30/2022	PLEASE TAKE CHRISTMAS TOTES FROM THE JAIL TO 209 ATLANTIC.	David Kelly	12/1/2022
7		19346 12/8/2022	PLEASE CHECK SEWER GAS ODOR PROBLEM AT THE SMITHVILLE DIALYS'S AREA NEAR THE PUB. - MS could not find sewer gas odor.	Mike Spicer	12/8/2022
8		19348 12/9/2022	CROSSWALKK PAINTED AT KINGSLEY PARK	Mike Spicer	12/8/2022
9		19356 12/15/2022	LOCATE 2014 ROBERT RUARK DR SE/BARRISTERS CT	Tyrus Davis	11/18/2022
10		19365 12/16/2022	LOCATE ATLANTIC AVE/E 13TH ST, SITE WORK	Tyrus Davis	11/21/2022
11		19370 11/28/2022	LOCATE N ATLANTIC AVE/STUART AVE, REPORT OF DAMAGE	Tyrus Davis	11/28/2022
12		19373 11/25/2022	LOCATE 314 FIRE FLY LANE/TROUT LILY LANE, BURY PHONE DROP	Tyrus Davis	11/30/2022
13		19374 11/30/2022	LOCATE 613 PORT HAVEN WAY, INSTALLING ELECTRIC LINE	Tyrus Davis	11/30/2022
14		19375 11/30/2022	LOCATE 114 S HOWE ST/E BAY, INSTALL STAKES	Tyrus Davis	11/30/2022
15		19376 11/30/2022	LOCATE 141 PARK AVE, INSTALL ELECTRIC LINE	Tyrus Davis	11/30/2022
16		19377 11/30/2022	LOCATE 231 E BAY ST, INSTALLING ELECTRIC LINE	Tyrus Davis	11/30/2022
17		19378 11/28/2022	LOCATE 404 BURRINGTON, DRILLING WELL	Tyrus Davis	12/1/2022

18	19379 11/26/2022	LOCATE 1009 CAPTAIN ADKINS, BURY PHONE DROP	Tyrus Davis	12/1/2022
19	19380 11/28/2022	LOCATE 6040 & 6056 SPIKERRUSH, BURY MAIN CABLE.	Tyrus Davis	12/1/2022
20	19381 11/28/2022	LOCATE 255 BONNET WAY SE/FORREST OAKS DR, INSTALL UNDГ CABLE.	Tyrus Davis	12/1/2022
21	19383 11/28/2022	LOCATE 416 E BAY ST/KINGSLEY DR, SOIL TEST BORINGS	Tyrus Davis	12/1/2022
22	19384 11/30/2022	LOCATE 606 W WEST ST, INST ELECTRIC	Tyrus Davis	12/2/2022
23	19385 11/29/2022	LOCATE QUARTER MASTER DR, UTILITIES	Tyrus Davis	12/2/2022
24	19386 11/29/2022	LOCATE N HOWE/RIVER RD, INSTALLING TRAFFIC SIGNAL	Tyrus Davis	12/2/2022
25	19387 12/1/2022	VARIOUS LOCATIONS ON RIVER DR/CAPE FEAR DR, FOR ELECTRIC.	Tyrus Davis	12/5/2022
26	19388 11/30/2022	LOCATE 202 RIVER DR, FWATER/SEWER TAP	Tyrus Davis	12/5/2022
27	19389 11/30/2022	LOCATE 209 RIVER DR, LANDSCAPING	Tyrus Davis	12/5/2022
28	19390 12/1/2022	LOCATE BURRINGTON AVE, GRADING	Tyrus Davis	12/5/2022
29	19391 12/1/2022	LOCATE 606 W WEST, NEW CONSTRUCTION	Tyrus Davis	12/5/2022
30	19392 11/30/2022	LOCATE 1030 CAPTAIN ADKINS, INSTALLING POSTS	Tyrus Davis	12/5/2022
31	19393 11/30/2022	LOCATE 112 PARK AVE/E MOORE ST, BURY PROPANE	Tyrus Davis	12/5/2022
32	19394 11/30/2022	LOCATE 6222 PEBBLE SHORE LANE/NEW GAS SERVICE	Tyrus Davis	12/5/2022
33	19395 11/30/2022	LOCATE 6219 NAVIGATOR WAY, INSTALLING FENCE	Tyrus Davis	12/5/2022
34	19396 11/30/2022	LOCATE 700 MOORE ST, INSTALLING CONDUIT	Tyrus Davis	12/2/2022
35	19397 11/30/2022	LOCATE 826 CLARENDON AVE, INSTALLING ELECTRIC LINE	Tyrus Davis	12/5/2022
36	19398 12/1/2022	LOCATE CAPE FEAR DR, INSTALL CONDUIT	Tyrus Davis	12/5/2022

37	19399 12/1/2022	LOCATE SOFTWIND WAY, ELECTRICAL	Tyrus Davis	12/5/2022
38	19400 12/1/2022	LOCATE 112 AND 314 PARK AVE	Tyrus Davis	12/6/2022
39	19401 12/1/2022	LOCATE 213 RIVER DR, ELECTRICAL	Tyrus Davis	12/6/2022
40	19402 12/1/2022	LOCATE 624 MARSH GRASS CT, NEW CONSTRUCTION	Tyrus Davis	12/6/2022
41	19403 12/1/2022	LOCATE 1625 211/SANDY LANE	Tyrus Davis	12/6/2022
42	19404 12/1/2022	LOCATE 401 E BAY ST, INSTALLING WATER LINE	Tyrus Davis	12/6/2022
43	19405 12/5/2022	LOCATE 2014 ROBERT RUARK DR, INSTALLING UNDG POWER	Tyrus Davis	12/6/2022
44	19406 12/6/2022	LOCATE 5016 ROBERT RUARK DR, INSTALLING ELECTRIC LINE	Tyrus Davis	12/6/2022
45	19407 12/1/2022	LOCATE 1028 BONNER BUSSELLS DR, WATER/SEWER TAP	Tyrus Davis	12/6/2022
46	19408 12/12/2022	PAINT THE INSIDE OF THE JAYCEE BLDG.	Jeremy Kennedy	
47	19409 12/7/2022	LOCATE S HOWE ST/E BAY ST, ELECTRICAL CONDUIT	Tyrus Davis	12/12/2022
48	19410 12/7/2022	LOCATE 1541 N HOWE ST, CABLE.	Tyrus Davis	12/12/2022
49	19411 12/7/2022	LOCATE 1609 N HOWE ST, CABLE	Tyrus Davis	12/12/2022
50	19412 12/7/2022	LOCATE 1501 N HOWE ST, CABLE.	Tyrus Davis	12/12/2022
51	19413 12/13/2022	LOCATE 1501-1541 N HOWE ST, CABLE	Tyrus Davis	12/12/2022
52	19414 12/7/2022	LOCATE 1620-1616 N HOWE, CABLE	Tyrus Davis	12/12/2022
53	19415 12/7/2022	LOCATE 1424-1418 N HOWE, CABLE	Tyrus Davis	12/12/2022
54	19416 12/7/2022	LOCATE 1675-1669, CABLE	Tyrus Davis	12/12/2022
55	19417 12/7/2022	LOCATE 506 CLARENDON AVE/W ST GEORGE ST, INSTALL UNDG CABLE.	Tyrus Davis	12/12/2022

56	19418 12/7/2022	LOCATE 305 E 8TH ST/MEMORY LANE, INSTALL UNDG CABLE	Tyrus Davis	12/12/2022
57	19419 12/7/2022	LOCATE 311 N LORD ST/W BROWN ST, INSTALL UNDG CABLE.	Tyrus Davis	12/12/2022
58	19420 12/7/2022	LOCATE 606 N LORD ST/W LEONARD ST, INSTALL UNDG CABLE.	Tyrus Davis	12/9/2022
59	19421 12/7/2022	LOCATE 1670 N HOWE ST/WOODSIDE DR, SOIL & GROUND WATER TEST BORING	Tyrus Davis	12/9/2022
60	19422 12/7/2022	LOCATE 1163 N CASWELL AVE, INSTALLING WATER/SEWER TAP	Tyrus Davis	12/9/2022
61	19423 12/7/2022	LOCATE 112 PARK AVE/E MOORE ST, BURY PROPANE TANK AND LINE	Tyrus Davis	12/9/2022
62	19424 12/6/2022	LOCATE ATLANTIC AVE/E 13TH ST, SITE WORK	Tyrus Davis	12/9/2022
63	19425 12/6/2022	LOCATE HIGHLANDPARK AVE/STUART AVE, SITE WORK	Tyrus Davis	12/9/2022
64	19426 12/6/2022	LOCATE 6219 NAVIGATOR WAY, INSTALLING AND RELOCATING FENCE	Tyrus Davis	12/9/2022
65	19427 12/9/2022	LOCATE 409 HIGHLAND PARK AVE, UNDG CABLE	Tyrus Davis	12/13/2022
66	19428 12/8/2022	LOCAE 5189 EASON ST/J SWAIN BLVD, DRAINAGE	Tyrus Davis	12/13/2022
67	19429 12/8/2022	LOCATE 410 RAVEN GLEN DR/HIGHLAND PARK AVE,	Tyrus Davis	12/13/2022
68	19430 12/8/2022	LOPCATE 6064 SULLIVANS RIDGE RD, INSTALLING ELECTRIC LINE	Tyrus Davis	12/13/2022
69	19431 12/8/2022	LOCATE 1109 N CASWELL AVE, INSTALLING ELECTRIC	Tyrus Davis	12/13/2022
70	19432 12/8/2022	LOCATE 353, 355, 357 TREVALLY CT, INSTALL ELECTRIC LINE	Tyrus Davis	12/13/2022
71	19433 12/8/2022	LOCATE 512 N LORD ST/W LEONARD ST, BURY PHONE DROP	Tyrus Davis	12/13/2022
72	19434 12/8/2022	LOCATE 606 W WEST ST, INST ELECTRIC	Tyrus Davis	12/13/2022
73	19435 12/8/2022	LOCATE N HOWE ST/SANDY LANE, WATER/SEWER	Tyrus Davis	12/13/2022

74	19436 12/8/2022	LOCATE NAVIGATOR WAY/PEBLE SHORE LANE, SEWER TAP	Tyrus Davis	12/13/2022
75	19437 12/8/2022	LOCATE 213 RIVER DR/CAPE FEAR DR, INSTALLING ELECTRIC CONDUIT	Tyrus Davis	12/13/2022
76	19438 12/8/2022	LOCATGE 1002 E MOORE ST/CAPE FEAR DR, INSTALLING ELECTRICAL CONDUITS	Tyrus Davis	12/13/2022
77	19439 12/8/2022	LOCATE 125-135 CAPE FEAR/RIVER DR, ELECTRIC	Tyrus Davis	12/13/2022
78	19440 12/8/2022	LOCATE 105-117, 130, 106-112 CAPE FEAR DR/RIVER DR, ELECTRIC	Tyrus Davis	12/13/2022
79	19441 12/8/2022	LOCATE 1603,1606,1609,1616-1620,1621-1635,1658, N HOWE ST, CABLE	Tyrus Davis	12/13/2022
80	19442 12/8/2022	LOCATE 131 SAND LANE, CABLE	Tyrus Davis	12/13/2022
81	19443 12/14/2022	LOCATE N DAVIS / E MOORE ST, REPAIR WATER MAIN BREAK	Tyrus Davis	12/14/2022
82	19444 12/9/2022	LOCATE 2014 ROBERT RUARK DR SE, GRADING	Tyrus Davis	12/14/2022
83	19445 12/9/2022	LOCATE 804 E MOORE ST/S FODALE AVE, DRIVEWAY PROJECT	Tyrus Davis	12/14/2022
84	19446 12/9/2022	LOCATE 506 CLARENDON AVE, INSTALL FENCE POSTS	Tyrus Davis	12/14/2022
85	19447 12/9/2022	LOCATE 506 CLARENDON AVE, PARKING AREA	Tyrus Davis	12/14/2022
86	19448 12/16/2022	LOCATE 209 PARK AVE EXT, INSTALL UNDG CABLE	Tyrus Davis	12/15/2022
87	19449 12/11/2022	LOCATE 134 PARK AVE/E LEONARD ST, INSTALL UNDG CABLE.	Tyrus Davis	12/15/2022
88	19450 12/12/2022	LOCATE SOUTHPORT SUPPLY RD SE, INSTALL SEWER LINE	Tyrus Davis	12/15/2022
89	19451 12/12/2022	LOCATE SOUTHPORT SUPPLY RD/J SWAIN BLVD, INSTALL SEWER LINE	Tyrus Davis	12/15/2022
90	19452 12/12/2022	LOCATE 617 PORT HAVEN WAY, INSTALL ELECTRIC LINE	Tyrus Davis	12/15/2022
91	19453 12/9/2022	LOCATE 609 PORT HAVEN WAY, INSTALL ELECTRIC	Tyrus Davis	12/15/2022
92	19454 12/9/2022	LOCATE 610 PORT HAVEN WAY, INSTALL ELECTRIC LINE	Tyrus Davis	12/15/2022

93	19455 12/15/2022	LOCATE 804 E MOORE ST/S FODALE AVE, DRIVEWAY PROJECT	Tyrus Davis	12/16/2022
94	19456 12/16/2022	LOCATE 1028 BONNER BUSSELLS DR SE, INSTALLING WATER/SEWER TAP	Tyrus Davis	12/16/2022
95	19457 12/15/2022	LOCATE 6064 SULLIVANS RIDGE RD, INSTALLING ELECTRIC LINE	Tyrus Davis	12/16/2022
96	19458 12/13/2022	LOCATE 618 W ST GEORGE, NEW CONSTRUCTION	Tyrus Davis	12/16/2022
97	19459 12/12/2022	LOCATE N CASWELL AVE/W 12TH ST, INSTALLING POWER	Tyrus Davis	12/16/2022
98	19460 12/13/2022	LOCATE 515-815 W ST GEORGE/QUARTER MASTER, GRADING AND UTILITIES	Tyrus Davis	12/16/2022
99	19461 12/13/2022	LOCATE 112 PARK AVE/E MOORE ST, UNDGCABLE.	Tyrus Davis	12/19/2022
100	19334 11/28/2022	804 INDIGO VILLAGE 910-477-7952 HAS YELLOW WATER	Mark Caban	
101	19345 12/7/2022	CROSS WALK AT E. BAY AND S. DAVIS - SEE TOM!	Mike Spicer	
102	19347 12/8/2022	PUT UP STREET SIGN AT HIGHLAND PARK & RAVEN GLEN DR.	Mike Spicer	

Utility Billing

Service Requests Report by Service Date

Service Dates:

000004-12-2022	Closed	12/1/2022	Reconnect- paid
000005-12-2022	Closed	12/1/2022	Reconnect
000006-12-2022	Closed	12/2/2022	Turn meter off; has a leak and wants meter turned off asap.
000007-12-2022	Closed	12/2/2022	Leak Detected CUSTOMER HAD A PLUMBER COME OUT AND A LEAK WAS DETECTED ON THE CITY SIDE OF THE METER.
000010-12-2022	Closed	12/2/2022	Turn meter off; Customer found large leak in yard and needs water turned off until he can find a plumber
000011-12-2022	Closed	12/2/2022	Check Water Meter; Leak alert rec'd. Customer is concerned that the work being done close to this area is part of the issue. Please check.
000012-12-2022	Closed	12/2/2022	Miscellaneous PLEDGE 600
000013-12-2022	Closed	12/2/2022	Miscellaneous PLEDGE 600
000014-12-2022	Closed	12/2/2022	Miscellaneous PLEDGE 600
000015-12-2022	Closed	12/2/2022	Miscellaneous PLEDGE 600
000016-12-2022	Closed	12/2/2022	Leak Detected CUSTOMER HAS CONCERNS OF A LEAK. PLEASE CHECK THE METER AND UPDATE THE CUSTOMER WHO IS OUT OF TOWN.(SEE NUMBER BELOW) THEYVE REQUESTED THE WATER TO BE TURNED OFF UNTIL THE CUSTOMER IS BACK IN TOWN. VERONICA PENINGER : 615-785-0163

000080-09-2022	Closed	12/2/2022	Check IRRIGATION METER CUSTOMER CALLED WITH CONCERNS ABOUT HIS IRRIGATION METER. HE THINKS THERE MAY BE SOMETHING WRONG WITH THE METER, SAYS THE USAGE SEEMS TOO HIGH FOR THE SHORT PERIOD ITS BEING USED. WE ALSO WERE UNABLE TO FIND HIS SECOND METER IN MINET
000018-09-2022	Void	12/3/2022	Install Water Meter
000017-12-2022	Closed	12/5/2022	Turn meter off; LARGE LEAK ALERT RECEIVED AND METER SHOULD BE OFF ALREADY DUE TO NON-PAYMENT FROM 11/7/2022. PLEASE CHECK AND REMOVE METER IF
000018-12-2022	Closed	12/5/2022	Miscellaneous customers meter box was hit and damaged, please assist contact customer John Hart : 610-780-8775
000021-12-2022	Closed	12/5/2022	Check Water Meter CUSTOMER SAYS WATER METER HAS BEEN RAN OVER AND DAMAGED. PLEASE ASSIST
000022-12-2022	Closed	12/5/2022	Check Water Meter; Leak alert rec'd and meter is running 130+ gph. Customer thinks it is not their meter (wrong meter on the account). Can you please check this meter and see if it is running and if so, which unit it is hooked to?
000023-12-2022	Closed	12/5/2022	Check Water Meter; leak alert rec'd and customer has checked and cannot find any issues. Water is running 200+ gallons/hour since Friday evening. Please check meter asap.
000024-12-2022	Closed	12/5/2022	Sewer Line Blocked; plumber called at 4:33 and was at the residence and cannot locate the cleanout. Called after hours line to have tech on call to assist.
000107-11-2022	Closed	12/5/2022	Extension granted in the amount of 227.81 until 12/5/2022
000110-11-2022	Closed	12/5/2022	Extension GRANTED IN THE AMOUNT OF 92.97 UNTIL 12/5/2022
000116-11-2022	Closed	12/5/2022	Extension GRANTED IN THE AMOUNT OF 120.00 12/5/2022
000019-12-2022	Closed	12/6/2022	Leak Detected public works came out last week in regard to the same issue however, customer later discovered that the leak is in fact on city side. please contact customer craig miller: 336-575-8788

000020-12-2022	Closed	12/6/2022	Miscellaneous Elevator issues
000025-12-2022	Closed	12/6/2022	Reconnect
000035-12-2022	Closed	12/6/2022	Miscellaneous CUSTOMER FEELS THAT THE METER IS DAMAGED PLEASE ASSIST
000113-11-2022	Closed	12/6/2022	Extension granted until 12/5/2022 in the amount of 113.54
000008-12-2022	Closed	12/7/2022	Miscellaneous RESIDENT REPORTED A STREET LIGHT BEING OUT AT THE CORNER OF MOORE AND FRINK
000026-12-2022	Closed	12/7/2022	Miscellaneous PLUMBER IS DOING WORK AT THIS LOCATION AND NEEDS THE SHUT OFF VALVE LOCATED AND MARKED.
000039-12-2022	Closed	12/7/2022	Install Water Tap
000040-12-2022	Closed	12/7/2022	Install Water Meter
000044-12-2022	Closed	12/7/2022	Check Water Meter - The Nicor connector needs to be cleaned and it will start working again (Per Adam)
000045-12-2022	Closed	12/7/2022	TURN ON EXISTING; Melanie agreed to allow customer to make payment plan payment on 12/9/22 and each month thereafter. Please reconnect
000047-12-2022	Active	12/7/2022	Miscellaneous RECEIVED A PLEADGE 371.19
000048-12-2022	Closed	12/8/2022	Miscellaneous Water meter box/tap at 1147 N. Caswell is about 6-8" below grade, please cut and raise the outbox.
000049-12-2022	Closed	12/8/2022	Check Water Meter leak alert received. Please verify multiplier of 1. Leave door hanger of leak alert 15g a hour if not a city side issue
000026-11-2022	Closed	12/9/2022	Install Water Meter; FEES PAID
000050-12-2022	Closed	12/9/2022	Miscellaneous CUSTOMER SAYS LIMBS FROM A CITY TREE HAVE FELL INTO HER PROPERTY, WOULD LIKE SOMEONE TO COME AND COLLECT.

000051-12-2022	Closed	12/9/2022	Cut-Off water, customer has repairs that need to be made.
000053-12-2022	Closed	12/9/2022	Leak Detected PLEASE CHECK METER
000055-12-2022	Closed	12/12/2022	Miscellaneous - ANGIE NEEDS KEY BOARD HOLDER MOVED FROM ONE OFFICE DESK TO ANOTHER
000056-12-2022	Closed	12/12/2022	Check Water Meter CUSTOMER SAYS THE METER IS HAVING ISSUES
000057-12-2022	Closed	12/12/2022	Sewer Line Blocked
000060-12-2022	Closed	12/12/2022	Install Water Meter
000088-11-2022	Closed	12/12/2022	Install Irrigation Tap
000095-12-2022	Closed	12/12/2022	Meter Change Out - wo low water pressure
000099-12-2022	Closed	12/12/2022	Meter Change Out
000157-10-2022	Closed	12/12/2022	Install Water Tap
000042-09-2022	Closed	12/13/2022	Install Water Meter
000048-11-2022	Closed	12/13/2022	Install Water TAP
000049-11-2022	Closed	12/13/2022	Install Water Meter
000059-12-2022	Closed	12/13/2022	Check Water Meter customer belives there to be a leak, please check meter
000061-12-2022	Closed	12/13/2022	Check IRRIGATION Meter; customer said it is leaking at the tap and filling meter box; Also, lid to WATER meter is broken and needs to be replaced
000062-12-2022	Closed	12/13/2022	Turn meter off per customer request. Working on replacing old fittings. Will call when ready to have it turned back on, per Matt Bradford

000063-12-2022	Closed	12/13/2022	Leak Detected CUSTOMER SAYS THERE IS AN ISSUE WITH THE METER. CUSTOMER WOULD LIKE TO SPEAK WITH YOU WHEN YOU'RE PRESENT. CRAIG MILLER: 336-575-8788
000068-12-2022	Closed	12/13/2022	Check Water Meter - jack 910262-8529 irrigation meter in box is leaking bad & the lid to tap on house meter needs to be replaced
000069-12-2022	Closed	12/13/2022	Install Water Sewer Tap
000071-12-2022	Closed	12/14/2022	Leak Detected at the meter. Please assist
000064-12-2022	Closed	12/15/2022	Inspect RPZ/Install IRR Meter
000075-12-2022	Closed	12/15/2022	Miscellaneous PLEDGE 600.00
000076-12-2022	Closed	12/15/2022	Miscellaneous PLEDGE 600.00
000077-12-2022	Closed	12/15/2022	Miscellaneous PLEDGE 600
000078-12-2022	Closed	12/15/2022	Miscellaneous PLEDGE 381.12
000079-12-2022	Closed	12/15/2022	Miscellaneous PLEDGE 600.00
000080-12-2022	Closed	12/15/2022	Miscellaneous PLEDGE 600.00
000081-12-2022	Closed	12/15/2022	Miscellaneous PLEDGE 196.74
000082-12-2022	Closed	12/15/2022	Miscellaneous PLEDGE 165.12
000083-12-2022	Closed	12/15/2022	Miscellaneous PLEDGE 600
000084-12-2022	Closed	12/15/2022	Reconnect - CUST CAME IN COMPLAINING OF NO WATER, ADVISED WE DISCONNECTED DUE TO NON PAYMENT. ACCT PAID IN FULL NOW
000087-11-2022	Closed	12/15/2022	Install Irrigation Tap

000001-12-2022	Closed	12/16/2022	Install Water Tap
000002-12-2022	Closed	12/16/2022	Install Water Meter
000052-11-2022	Closed	12/16/2022	Install Water Meter
000072-12-2022	Closed	12/16/2022	Install Irrigation Tap
000087-12-2022	Closed	12/16/2022	Check Water Meter - LEAK ALERT. PLEASE TURN WATER OFF
000088-12-2022	Closed	12/16/2022	Leak Detected - CHECK METER CUST REQ TO MAKE SURE NO ISSUE ON CITY SIDE OR W/METER
000089-12-2022	Closed	12/16/2022	Check Water Meter CUSTOMER IS HAVING WATER ISSUES AND HAD A PLUMBER COME OUT. THE PLUMBER SAID THAT THERE MAY BE AN ISSUE WITH THE CITY METER. PLEASE ASSIST.
000090-12-2022	Closed	12/16/2022	Extension GRANTED UNTIL 1/5/2023
000098-12-2022	Closed	12/16/2022	Meter Change Out - PER MC FAILED RDM METER
000103-12-2022	Closed	12/16/2022	Meter Change Out - PER MARK CABAN the meter is a 1 inch & was changed out per the request of ownr & builder
000051-11-2022	Closed	12/19/2022	Install Water tap if not in place
000066-12-2022	Closed	12/19/2022	Install Water Tap
000067-12-2022	Closed	12/19/2022	Install Water Meter
000091-12-2022	Closed	12/19/2022	Remove Water Meter - customer has not paid in several months.
000092-12-2022	Closed	12/19/2022	Remove Water Meter - cust deceased. no payment on acct in several months

000093-12-2022	Closed	12/19/2022	Install Water Tap
000094-12-2022	Closed	12/19/2022	Install Water Meter
000096-12-2022	Closed	12/19/2022	Reconnect PAID
000109-11-2022	Closed	12/19/2022	Install Irrigation Tap
000104-12-2022	Closed	12/20/2022	Extension granted until 1/5/2022
000106-12-2022	Active	12/20/2022	Extension granted until 1/5/2022
000108-05-2022	Void	12/20/2022	Check Water Meter METER READING NEGATIVE IN MINET 4/20 READ: 25680 5/20 READ: 25660
000105-12-2022	Closed	12/21/2022	Leak Detected - check meter to see if city issue & leave door hanger if not to advise running 100g a hour meter is 10x in system
000109-12-2022	Closed	12/21/2022	Turn meter off - cust called requesting meter to be turned off due to extreme temps & no one living there.
000110-12-2022	Closed	12/21/2022	Miscellaneous received pledge
000054-12-2022	Closed	12/22/2022	Install Water Meter
000112-12-2022	Closed	12/22/2022	Check Water Meter cust states the water meter is leaking & tap is full of water
000115-12-2022	Closed	12/28/2022	Misc.;The water and sewer lines are where the driveway is going to be at this new construction. Lines may need to be moved. Please contact Bill at 607-483-4501 when arriving on site to go over potential solutions.

000085-12-2022	Closed	12/29/2022	Miscellaneous Michael Clemmons has vacant land located directly beside this property (parcel #237DF00506). There are 2 man holes on this vacant land and he is wanting to know what they were for. Call customer for update Micahel Clemmons: 910-232-5033
000118-12-2022	Closed	12/29/2022	Miscellaneous; A water filtration system is going to be added. Mr. Carter wants know where his customer shut off is at the house. House is 18 years old and he just wants some direction from someone that may know.
000119-12-2022	Closed	12/29/2022	Miscellaneous; Customer would like his water meter located before getting a hot water heater.



NCEMPA
1427 MEADOW WOOD BLVD.
RALEIGH, NC 27604

Power Billing Statement

North Carolina Eastern Municipal Power Agency

MEMBER	BILL DATE	DUE DATE	FOR SERVICE	TOTAL DUE
SOUTHPORT	12/10/22	12/20/22	11/01/22 - 11/30/22	\$333,224.22

Wholesale Power Service Schedule FR-7

DESCRIPTION	RATE	QTY	AMOUNT
Demand Charges:			
All Demand	\$21.84/kW	8,217	179,459.28
Energy Charges:			
Monthly Energy Charge	\$.02558/kWh	4,125,340	105,526.20

Additional Charges

DESCRIPTION	RATE	QTY	AMOUNT
Rider 1 FRPPA True-Up Charge/(Credit)			0.00
Rider 2 Delivery Surcharge	\$0.06/kW	8,217	493.02
Rider 3B Leased Facilities Surcharge	\$0.88/kW	10,381	9,135.28
Rider 6A NCEMPA Generation Credit			(1,392.44)
Rider 6B NCEMPA Generation Credit			(2,111.57)
Rider 7A Power Agency Service (PAS) Charge			8,397.75
Rider 7B Renewable Energy Portfolios Standards (REPS) Charge			2,357.10
Rider 8 Debt Defeasance Support Charge			31,359.60
Other Charges/(Credits)			0.00

Power Bill payment made by ACH Debit

TOTAL AMOUNT DUE

\$333,224.22

If you have any questions concerning this bill, call Gail Duke at 919-760-6212



Power Billing Statement

North Carolina Eastern Municipal Power Agency

MEMBER	BILL DATE	FOR SERVICE	MEMBER NCP	MEMBER CP
SOUTHPORT	12/10/22	11/01/22 - 11/30/22	11/19 @ 0800 / 10,381 kW	8,217 kW

DEP System Peak = 11/21/22 @ 0800 10,683 Megawatts

DEMAND DATA

(A)	(B)	(C)	(D)	(E)	(F=D-E)
DELIVERY POINT	NCP Date & Time	NCP kW	CP kW	SEPA kW	BILLED DEMAND
SOUTHPORT DP	11/19/22 @ 0800	10,381	8,217	0	8,217
TOTAL			8,217	0	8,217

ENERGY DATA

	(G)	(H)	(I=G-H)		
DELIVERY POINT	METERED kWh	SEPA kWh	BILLED kWh	METERED KVAR	EXCESS KVAR
SOUTHPORT DP	4,125,340	0	4,125,340	1,290,401	0
TOTAL	4,125,340	0	4,125,340	1,290,401	0



MEMBER	BILL DATE	FOR SERVICE
SOUTHPORT	12/10/22	11/01/22 - 11/30/22

Billing Summary

	CALENDAR YEAR (JAN22 - NOV22)	FISCAL YEAR (JUL22 - NOV22)
Total Bill	\$4,432,788.11	\$1,986,156.35
Metered Energy (Includes SEPA kWh)	56,392,526	27,003,714
SEPA Energy	0	0



MEMBER	BILL DATE	FOR SERVICE
SOUTHPORT	12/10/22	11/01/22 - 11/30/22

Summary of Billing Determinants at Metering Point

DEP ID	METERING POINT	NCP DATE TIME	NCP kW	CP kW	METERED kWh	MAX. LAGGING kVAR	EXCESS kVAR	MAX. LEADING kVAR
240	SOUTHPORT MP	11/19 @ 800	10,381	8,217	4,125,340	3,572	0	0
TOTAL				8,217	4,125,340			



Power Billing Statement
North Carolina Eastern Municipal Power Agency

MEMBER	BILL DATE	FOR SERVICE
SOUTHPORT	12/10/22	11/01/22 - 11/30/22

Summary of Distributed Generation Credits

	Rider 6A	Rider 6B
Total CP kW	13,784	17,533
Total Transmission kW	13,784	17,533
Total Energy (kWh)	153,127	183,158
Member % of Revenue	0.7826%	0.8961%
CP Demand (kW)	108	157
Transmission (kW)	108	157
Energy (kWh)	1,198	1,641
CP Demand Credit(\$)	(2,119.61)	(3,081.28)
Transmission Demand Credit(\$)	(212.97)	(309.61)
Energy Credit(\$)	(32.36)	(44.33)
Distributed Generation Credit(\$)	(2,364.94)	(3,435.22)
Power Agency Expense(\$)	972.50	1,323.65
TOTAL MONTH CREDIT(\$)	(1,392.44)	(2,111.57)



MEMBER	BILL DATE	FOR SERVICE
SOUTHPORT	12/10/22	11/01/22 - 11/30/22

Rider 7A - Power Agency Services (PAS) Charge

The Power Agency Service Charge on the wholesale power billing statement is based on costs and services approved by the North Carolina Eastern Municipal Power Agency Board of Commissioners and by the ElectriCities Board of Directors and is undertaken and operated by the Power Agency for the benefit of the Members. These costs include: NERC and SERC compliance activities; APPA dues; legislative, financial, and legal support, including territorial issues and other member services; Power Agency operations, billing activities, and rate support, economic development, communications, training and Power Agency administrative and general expenses.

The Power Agency Services charge 2022 projection is reflected in the January 2022 billing data.

The Power Agency Services charge 2021 True-Up adjustment of \$ (400.77) is applied to the April 2022 through March 2023 billing data.

Power Agency Service Charge(\$)	\$8,397.75
Power Agency Service %	0.80 %

Rider 7B - Renewable Energy Portfolio Standards (REPS) Charge

The Renewable Energy Portfolio Standards (REPS) Charge 2022 projection is reflected in the January 2022 billing data.

The Renewable Energy Portfolio Standards (REPS) Charge 2021 True-Up adjustment of \$ (1,099.87) is applied to the April 2022 through March 2023 billing data.

Renewable Energy Portfolio Standards Charge(\$)	\$2,357.10
Renewable Energy Portfolio Standards %	0.80 %

Rider 8 - Debt Defeasance Support Charge

The Defeasance Debt Service Support Charge line on the wholesale power billing statement is the Member's share of monthly support costs, as defined in the Debt Service Support Contract. This monthly debt charge will be assigned to and recovered from the Member in accordance with the terms and conditions of the Full Requirements Power Sales Agreement and the Debt Service Support Contract. The planned repayment term of the defeasance bond is ten years.

Debt Service Support Charge(\$)	\$31,359.60
Debt Service Support %	0.74 %



Development Services Highlights – January 2023

Planning Board: The Southport Planning Board met for their regularly scheduled meeting on December 15th, 2022. Items covered included:

- An update on various projects, including 101 E. Moore Street (Bullfrog Corner), 115 N. Howe Street (Carr Insurance Building), the Submission Standards Review Committee, the Sunny Point Property Review Committee, and Short Term Rental Ordinance Review Committee.
- The Planning Board heard a brief presentation regarding the abandonment of a portion of an alley located west of the 900 Block of N. Caswell Street following referral of the item to the Planning Board from the Board of Aldermen. The item was referred to a subcommittee for review and a recommendation on the matter following closer study.

The next meeting of the Planning Board is scheduled for January 19th, 2023.

Zoning Board of Adjustment: Due to a lack of cases, the Zoning Board of Adjustment did not convene in December, and given current case load, does not look likely to convene in January as well. When needed, a meeting will be scheduled and noticed in accordance with all applicable local requirements and state statutes.

Historic Preservation Commission: The Historic Preservation Commission met on December 7th, 2022, during which time a Chair and Vice-Chair were designated and rules of procedure were drafted. Staff presented the draft Rules of Procedure for the Board's consideration of adoption, which will then be forwarded to the Board of Aldermen for final approval.

The next meeting of the Historic Preservation Commission occurred on Wednesday, January 4th, during which time the overarching goals for the Commission were discussed, as well as the district boundaries. Traditionally meeting the first Wednesday of every month, the Commission established an additional meeting to be held Monday, January 23rd, 2023 in order to continue the discussion regarding the historic district boundaries.

Southport Crossing: Staff continues to work with the development team at Tractor Supply Company, working towards building permits. Staff has received a favorable recommendation from the Wooten Company regarding engineering review of proposed stormwater and erosion control measures for the site. A Final Plat application was presented to the Board of Aldermen for consideration on the December 8th, 2022 agenda for lots 10, 11, and 12 and was subsequently approved with a number of conditions.

Oakton Major Subdivision: This 42-lot application for a Major Subdivision Preliminary Plat was on the November 17th Planning Board agenda. The Sketch Plan was presented to the Planning Board at its September 2021 meeting. Staff have been working with the applicant to ensure all requirements of the UDO have been met and a review committee meeting, established at the November 17th Planning Board meeting, has been scheduled for Wednesday, January 11th at 4:30pm at the Nash Street Substation.

115 N Howe Street Mixed Use Project: A review committee meeting was held on December 14th, 2022 during which time additional questions were generated regarding the proposal. An additional review committee meeting will be scheduled in the near future.

101 E Moore (Bullfrog Corner) Major Site Plan: Comments, including missing UDO requirements, from the October review committee meeting have been addressed by the applicant. New parking configurations have been submitted and the site plan is being updated. As of this writing, we are scheduling a review committee meeting to consider the updates provided.

Technical Review Committee: A technical review committee meeting was held on Tuesday, December 20th, 2022 for discussion on the following projects:

Prices Creek Townhomes: A preliminary plat for 48 townhomes to the north of the existing Cottages at Prices Creek project, with access via Firefly Lane and via Rob Gandy Blvd. This project is located within the existing PUD approval for the site, which is also inclusive of the Cottages at Prices Creek and additional land reserved for future development further west on Rob Gandy Blvd.

5020 J. Swain Boulevard Major Site Plan: a three-story commercial project at the northeastern corner of J. Swain Boulevard and Eason Street in the Rivermist development. The property is zoned Highway Commercial.

Both projects will be presented to the Planning Board for their consideration in January. Technical Review Committees will continue to be held on the third Tuesday of each month as needed based on caseload.

Sunny Point Property: A review committee meeting was held on Thursday, January 5th, 2023 regarding the Planning Board's recommendation as to a course of action for the city-owned 440-acre property near Military Ocean Terminal Sunny Point. The proposal will be forwarded to the Planning Board upon the review committee reaching a recommendation, and the recommendation of the full Planning Board will then be forwarded to the Board of Aldermen for their consideration.

Other Notes: Staff continues to assist citizens with questions regarding signs, zoning, annexations, minor subdivisions, CAMA Minor Permits, tree permits, special flood hazard areas, and any other items that come to the Department.

PERMIT REPORT 2022

Month	New Construct SFR	New Construct Multi Family	Commercial Bldg Projects	Acc Struct	Total Building	Demo	Elect	Plumb	Mech	Permits Issued	Building Revenue Collected
Jan	9	0	6	5	22	0	33	13	37	179	\$ 30,138.00
Feb	16	0	2	6	16	0	36	20	37	124	\$ 24,505.00
Mar	14	5	6	10	34	2	43	19	47	199	\$ 20,435.00
Apr	7	0	4	1	18	1	40	34	38	249	\$ 65,067.50
May	9	0	4	4	19	1	32	21	43	195	\$ 13,148.00
Jun	8	1	6	6	22	1	33	23	52	236	\$ 37,139.00
Jul	4	0	1	2	12	0	26	16	41	174	\$ 23,405.50
Aug	9	0	2	5	16	0	32	26	57	162	\$ 18,196.00
Sep	3	0	7	5	17	0	42	17	44	259	\$ 35,457.50
Oct	6	0	2	4	18	0	24	20	33	201	\$ 11,006.50
Nov	6	0	3	6	14	1	28	18	32	132	\$ 27,385.00
Dec	7	0	4	4	19	1	27	10	38	198	\$ 34,328.00
Totals	98	6	47	58	227	7	396	237	499	2308	\$ 340,211.00

01DEC22

115 E. Owens **Min-Housing** Awaiting feedback from the listed owner.

210 E. Brown **J/A/N Autos** Awaiting feedback from the listed owner. Hospitalized.

416 E. Bay **R.O.W.** Awaiting authorization from the City Manager.

602 Clarendon **Overgrowth** Unable to establish contact with anyone.

608 Burrington **Min-Housing** Unable to establish contact with anyone.

616 Caswell **Min-Housing** Unable to establish contact with anyone.

711 Cottage Ln **Overgrowth** Awaiting feedback from the listed owner.

712 Lord **J/A/N Auto** Unable to establish contact with anyone.

718 Clarendon **J/A/N Auto** Awaiting feedback from listed owner. Hospitalized.

732 Lord **Min Housing** Unable to establish contact with anyone.

812 Caswell **J/A/N Auto** Hospitalized. No contact.

City of Southport **#2750** Drove the major routes within the city and observed no improper signage, despite the plethora of political/voting signs.

02DEC22

City of Southport **#2750** In an attempt to be proficient in my daily schedule, I began writing down all contacts with the public and or actions taken by me. Unfortunately, I lost the notes for Friday, December 7, 2022. I don't know what to do about not being able to access my printed files on an instant notice.

05DEC22**WEEK 49**

City of Southport **#2750** Searched through the list of cases that I still have open and that have been open for some time. Physically went to these addresses to verify compliance or resistance.

City of Southport **#2750** Drove the major routes within the city and observed no improper signage.

06DEC22

City of Southport **#2750** After brainstorming a bit last night, I decided to inquire with major Burke of SPD and tactically acquire a computer mount that wasn't being used by them and mount it into the city vehicle assigned to myself. Along with a mobile 'Hot-Spot' from the city cellphone, I could theatrically be able to complete any of my assignments and/or cases without leaving the vehicle, and thus only require one file cabinet to store my case files and other paperwork. Need to meet up with the I.T. tech when she returns from a week-long vacation.

SFD Annex R.O.W. Conducted a meeting with the entire Planning Staff and the City Manager concerning the Rights of Way issues that have suddenly plagued our city. The Director came up with a plan and it will be presented to the B.O.A. either by the City Manager or himself.

402 Lord Tree Permit Had to meet with the forestry Committee Chair, Scott Len, at the listed address to inspect a tree for removal. The tree in question was in fact dead and had sustained previous damage. Went to check on it later only to find that the tree had already been removed. Record time for the owner!

City of Southport #2750 Drove the major routes within the city and observed no improper signage.

07DEC22

9th Street Rubbish Was stopped by a citizen concerned over a house on the listed street where all the wood and garbage are piled in the front yard. Drove the length of 9th Street and some of the side streets off of it to no avail. House and property concerned was unable to be located.

822 Lord Certification While attempting to locate the above problem, I was once again flagged down by the owner/ manager of the listed property asking about the Lien Certificate that goes with the building there that they are currently refurbishing. Having no knowledge of such a thing, I re-directed the citizen to contact K.B. in the Planning and Inspections Department for such answers.

911 Lord Zoning Mr. Addams flagged me down while I was still searching for the 9th Street property. He wanted to know who in their right mind approved the construction of the home. He referred to it as a small hunk of fecal matter that should never have been allowed to be built. I thanked him for his insight and instructed him to please address his concerns to the Planning Board and or City Manager, as I was not in that decision making process.

1028 Caswell R.O.W. Owner of the listed property expressed concern over the lack of any maintenance and access of the city owned alleyway behind her property that runs roughly north and south through the backyard area between 11th and 10th streets and Lord and Caswell Avenues. I advised her that it is also a concern to us in City Hall and that we are looking into what can be done in the near future.

City of Southport #2750 Drove the major routes within the city and observed no improper signage.

08DEC22

City of Southport #2750 Drove the major routes within the city and observed no improper signage.

09DEC22

City of Southport #2750 Drove the major routes within the city and observed no improper signage.

6074 Sullivan's Rdg Tree Permit Inspected and approved.

201 River Road Permitting Complaint submitted concerning the paid activities possibly going on at that location. Was advised that the property is listed as a Shot-Term Rental, but it also advertises as throwing ticket only parties and a paid bar.

409 Clarendon Lighting While investigating possible improper lighting at 414 Burrington, observed a utility pole at the rear of the listed address and also observed that there was an LED streetlight attached to the top of the pole. After checking with the City Electric grid, it was found that there was no name or address associated with the electrical use of that pole and light.

12DEC22**WEEK 50**

118 Stuart Noise Was contacted by telephone about a pump running constantly through the weekend distracting the caller. Checked the area and found that the noise was coming from a pump in the retention pond of the Hammocks development. I then contacted a couple of workers for a company checking the storm sewers in that area and they stated that the pump keeps the water down in the pond thus making the check of the storm sewers VERY easy. If the pump is turned off, the retention pond fills back up and covers the storm sewer outlet, thus not allowing them to properly check the sewers. The caller was advised of this, but was not happy.

City of Southport #2750 Drove the major routes within the city and observed no improper signage.

13DEC22

River Drive Peddlers Was contacted by a patrol officer from SPD who stated that he had come across a couple of guys going door-to-door in the area, not selling but, sharing information about going solar, wherein you would be contacted later about an appointment and a sales pitch. At the time, I did not know the answer to the Officer's question about do they need a permit or not. After checking the Ordinances and D. Dutton, it was determined that they in fact are not allowed to go door-to-door. Then checked the area for the persons doing this and was unable to locate.

1029 Howe St. Records Was notified to find specific emails and other documents related to the ongoing dispute between a citizen and the City of Southport. After checking the laptop for the emails and the closed cases from the year before, could not find any additional documents that were not already turned over.

City of Southport #2750 Drove the major routes within the city and observed no improper signage.

ITMH **Forestry Meeting**

14DEC22

ITMH **Wellness** Participated in the City's Wellness Day.

City of Southport **#2750** Drove the major routes within the city and observed no improper signage.

409 Clarendon **Lighting** Stopped by the verify that the pole was in fact in the middle of the property, I observed the lady that called the complaint in as she was working in the backyard. I spoke with her and it was found that the neighbors yard, where the light pole is, and house, are unoccupied and have been for a while. This information was relayed to Pittenger at City Operations.

Yaupon Extension **Tree Removal** On a suggested hint from an unknown city official, I traveled down Yaupon Extension and found that there are three (3) lots back there that are removing trees at an alarming rate, despite the fact that no Tree Removal Permits have been submitted for any of the properties. Will look into this more tomorrow.

15DEC22

1218 Howe St. **Feather Flag** Observed a feather flag flying out in front of the business this morning. Typed up and had delivered that Courtesy Notice to the owners Mr. & Mrs. Smith. They were very understanding.

1118 Howe St. **Debris** Received a notice through the city website contact page that asked for any assistance in getting the trash emptied there and a parking complaint at 1181 Howe St. (Indochine). Replied to the notice through email advising the complainant that there is no parking complaint at the restaurant as it is R.O.W. and that the car wash property is currently in Probate Court.

City of Southport **#2750** Drove the major routes within the city and observed no improper signage.

16DEC22

409 Clarendon **Lighting** Returned to verify pole numbers and confirm that Pittenger had the needed information. Was advised by E. Pittenger that he and a representative from Brunswick electric would make a visit to the listed address and decide whether to remove the light or shut it off.

City of Southport **#2750** Drove the major routes within the city and observed no improper signage.

5952 Dutchman **Setback** Was notified via phone that the property owner wanted to repave his driveway and was concerned about the setback or possible lack of one in his development. I assured hi that there is one and that due to the configuration of his property, he'd have to put his driveway in only one place.

21DEC22

1029 Howe St. Records Fuel Log Update

**City of Southport #2750 Drove the major routes within the city and observed no
improper signage.**

22DEC22

1029 Howe St. Records Lost notes for the day, no office.



TO: Board of Aldermen
FROM:
DATE: January 12, 2023
SUBJECT: Finance Department

Request:

Background:

Staff Recommends:

Possible Motion:

Attachments:

None