

**REQUEST FOR BOARD ACTION**

**HENDERSON COUNTY**

**CANE CREEK WATER AND SEWER DISTRICT BOARD OF DIRECTORS**

**MEETING DATE:** April 2, 2012

**SUBJECT:** Engineering Agreement  
Fletcher Warehouse Interceptor Project

**PRESENTER:** Marcus A. Jones, P.E.

**ATTACHMENTS:** Yes  
1. Proposed Agreement with McGill & Associates

**SUMMARY OF REQUEST:**

With the selection of McGill & Associates as the most qualified responding Engineer for the Fletcher Warehouse Interceptor Project during the March 21, 2012 Board meeting, Engineering staff has negotiated the proposed agreement with McGill & Associates for \$159,910. The scope of services is to perform the engineering for the subject project.

**BOARD ACTION REQUESTED:** Authorize the County Engineer to execute the proposed agreement for the Fletcher Warehouse Interceptor Project with McGill & Associates for \$159,910.

**Suggested Motion:**

I move that the Board authorize the County Engineer to execute the proposed agreement for the Fletcher Warehouse Interceptor Project with McGill & Associates for \$159,910.

## **AGREEMENT FOR ENGINEERING SERVICES**

This AGREEMENT, made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_ 2012, by and between **Henderson County** (OWNER) and McGill Associates, P.A. (ENGINEER).

WHEREAS, the OWNER proposes to do certain work toward the accomplishment of the Project entitled **Fletcher Warehouse Sewer Interceptor Project**, and

WHEREAS, the ENGINEER desires to provide professional services in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, it is hereby mutually understood and agreed as follows:

### **SECTION 1 - GENERAL SERVICES**

#### **The ENGINEER shall:**

- 1.1 The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in all phases of the PROJECT; serve as OWNER's professional engineering representative for the Project; and shall give professional consultation and advice to OWNER during the performance of the services hereunder.
- 1.2 The ENGINEER shall provide all personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All services rendered hereunder shall be performed by the ENGINEER or under his supervision and all personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services. None of the services covered by this Agreement shall be subcontracted without the prior approval of the OWNER.
- 1.3 The ENGINEER shall assist the OWNER in pursuing approvals and permits from all governmental authorities having jurisdiction over the Project, unless otherwise agreed to herein.
- 1.4 The ENGINEER shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for Basic Services set

forth in Section 6 hereof, subject to OWNER's right to terminate as herein provided.

- 1.5 The ENGINEER shall comply with all existing federal, state and local laws and regulations regarding equal employment opportunity. The ENGINEER is further obligated to include all requirements hereunder in any subcontract written by him in association with this Agreement.

## **SECTION 2 - BASIC SERVICES**

**Project Description:** Based on the information made available by the OWNER in the Request for Qualifications (RFQ) dated February 20, 2012, the project is divided into three (3) sections, designated in the RFQ as Phases 1 through 3. Phase 1 includes approximately 7,400 linear feet of 12-inch gravity sewer line beginning at the existing Rockwell Lift Station, following the alignment of the existing Fletcher Warehouse wastewater treatment plant outfall line, and ending at the intersection of Jackson Road and Howard Gap Road. Phase 2 includes approximately 2,400 linear feet of 10-inch gravity sewer line connecting to the 12-inch gravity sewer in Phase 1, and extending to the existing Johnson Farm Lift Station to decommission this lift station. Phase 3 includes approximately 4,900 linear feet of 8-inch and 10-inch gravity sewer lines, connecting to the Phase 1 sewer line at Howard Gap Road, extending south along Old Asheville Highway, and extending to the existing Fletcher Elementary School Lift Station to decommission this lift station. A fourth phase to extend sewer to the Fox Glen Lift Station is not part of this current project and is not included in this proposal.

### **2.1 PRELIMINARY PHASE**

- 2.1.1 Consult with the OWNER to fully determine the OWNER's requirements for the project and to discuss the possible phasing, coordination, approvals and other preliminary matters.
- 2.1.2 Coordinate and conduct initial coordination meeting(s) with any other applicable parties as needed for the purpose of defining the project schedule, coordinate various plans and improvements and discuss pertinent matters related to the project and the location of the proposed project components.
- 2.1.3 Identify the preliminary sewer line alignments and prepare preliminary maps for review by the OWNER to confirm the proposed alignments prior to proceeding with final design. The fees in this proposal assume that the topographical survey work previously completed by the OWNER for the Phase 1 section of sewer line (approximately 7,400 linear feet) will be made available to the ENGINEER for the ENGINEER's use in the design of the project, and that the alignment of the Phase 1 section of sewer line will be within the limits of the previously completed survey. If it is necessary to modify the alignment of the Phase 1 section of sewer line to the extent that additional survey work is needed, additional compensation for additional services to the ENGINEER will be required.
- 2.1.4 Delineate existing streams and wetlands in the project area as necessary for determination of the sewer line alignments.
- 2.1.5 Discuss with the North Carolina Department of Transportation (NCDOT) the schedule for the planned road improvements to Howard Gap Road and NCDOT contract review requirements. Furnish copies of documents to

NCDOT has requested. Note that preparation of engineering reports, environmental information documents, environmental assessments, environmental impact statements, archaeological or biological surveys, floodplain studies, or any other environmental surveys or documents are not included in the ENGINEER's fees and additional services will be required if any of these services are requested.

- 2.1.6 Discuss with the North Carolina Division of Water Quality (NCDWQ) potential interim sewer service measures for the apartment complex adjacent to the Fletcher Elementary School entrance on Howard Gap Road. Temporary sewer service may be required for this property due to impacts to the existing onsite sewer system associated with the planned NCDOT Howard Gap Road improvements project.

## **2.2 DESIGN PHASE**

- 2.2.1 Prepare the complete bid documents, contract documents, technical specifications and construction drawings to detail the character and scope of the work including all design functions, surveying, and coordination for all construction sequencing of the project as determined in an initial scoping meeting. Interim sewer service to the existing apartment complex adjacent to Fletcher Elementary School will be coordinated with NCDWQ if necessary to accommodate the schedule for the NCDOT Howard Gap Road improvements project. NOTE: The ENGINEER's fees in this Agreement assume that no upgrades to the existing Fletcher Elementary School Lift Station or force main will be needed to temporarily accommodate future flows from the existing apartment complex and/or the Fox Glen development, and that the existing sewer force main for the Fletcher Elementary School Lift Station can remain in operation until the construction of the gravity sewer line is completed that will allow the Fletcher Elementary School Lift Station to be decommissioned.
- 2.2.2 Review all of the design documents as described above with the OWNER for comments and approval throughout the design process.
- 2.2.3 Assist the OWNER in securing approval of the final design documents from such governmental agencies as have jurisdiction over the project or any portion thereof.
- 2.2.4 Provide plans and specifications to assist the OWNER in obtaining encroachment agreements from public bodies necessary for satisfactory construction of the project. All encroachment and right-of-way fees are to be paid by the OWNER separately and are not included in the ENGINEER's fees provided in this Agreement.
- 2.2.5 Coordinate the provision of any subsurface or structural investigations or other types of testing and analysis needed for proper design within the initial scope of

the project. Actual costs of testing and analysis will be either billed separately by the ENGINEER as additional services, or paid directly by the OWNER.

- 2.2.6 Advise the OWNER of any adjustment of the project cost caused by changes in scope, design requirements or construction costs and furnish a revised cost estimate based on the final design documents.
- 2.2.7 Furnish copies of the final design documents as required to accomplish the design phase.

### **2.3 PRIVATE EASEMENT PLAT PREPARATION**

- 2.3.1 Prepare easement plats for the sections of the project which cross private properties, and furnish the plats to the OWNER for recording. Preparation of easement documents and other legal documents, negotiations with property owners, and any other easement acquisition services will be by the OWNER unless the OWNER requests and authorizes the ENGINEER to provide these services as additional services. Additional easement acquisition services provided by the ENGINEER will be on an hourly basis in accordance with the ENGINEER's Basic Fee Schedule, or alternatively can be negotiated as a fixed fee or a "per easement" fee.

### **2.4 BIDDING AND AWARDING PHASE**

- 2.4.1 Assist the OWNER in advertising, receiving, opening and evaluating bids. Actual publication costs shall be paid separately by the OWNER.
- 2.4.2 Consult with, and advise the OWNER as to the acceptability of contractors and subcontractors and make recommendations as to the lowest responsible bidder.
- 2.4.3 Assist the OWNER in the final preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.
- 2.4.4 Schedule a preconstruction conference with the OWNER, Contractor, ENGINEER and all other applicable parties to assure discussion of all matters related to the project.

### **2.5 CONSTRUCTION PHASE**

- 2.5.1 Provide periodic project observation to monitor the progress and quality of the executed work and to determine in general if the work is proceeding in

accordance with the Contract Documents, and during such visits and on the basis of on-site observations as an experienced and qualified design professional, keep the OWNER informed of the progress of the work, endeavor to guard the OWNER against defects and deficiencies in the work of the Contractor(s) and disapprove or reject any work failing to conform to the Contract Documents. The ENGINEER's fee is based on an assumed construction contract time of 26 weeks (6 months).

- 2.5.2 Prepare change orders as required and require special inspection or testing of the work if necessary.
- 2.5.3 Review and approve shop drawings, diagrams, illustrations, brochures, catalog data, schedules and samples, the results of tests and inspections and other data which any Contractor is required to submit, and receive and review schedules, guarantees, bonds and certificates of inspection which are to be assembled by the Contractor(s) in accordance with the Contract Documents.
- 2.5.4 Based on on-site observations as an experienced and qualified design professional and on review of the Contractor(s) applications for payment and supporting data, determine the amount owing to the Contractor(s) and approve to the OWNER payment to the Contractor(s) in such amounts; based on such observations and review, that the work has progressed to the point indicated and that to the best of his knowledge, information and belief the quality of the work is in accordance with the Contract Documents.
- 2.5.5 Conduct a final inspection with applicable parties to determine if the project has been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that the ENGINEER may approve to the OWNER final payment to each Contractor.

## **2.6 POST-CONSTRUCTION PHASE**

- 2.6.1 Prepare for the OWNER a set of reproducible record prints of drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished.
- 2.6.2 Provide or make available all project files and information to effect project closeout.
- 2.6.3 Assist the OWNER in assuring that the warranty period for the construction work is complied with.

### **SECTION 3 - ADDITIONAL SERVICES**

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

- 3.1 Additional services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction.
- 3.2 Preparation of engineering reports, environmental information documents, environmental assessments, environmental impact statements, archaeological or biological surveys, floodplain studies, or any other environmental surveys or documents.
- 3.3 Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of the ENGINEER.
- 3.4 Preparing documents for alternate bids requested by the OWNER for work which is not executed or documents for out-of-sequence work other than agreed upon in the Preliminary Phase.
- 3.5 Services in connection with change orders to reflect changes requested by the OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.
- 3.6 Additional or extended services during construction made necessary by prolongation of the construction contract or default by the Contractor under any prime construction contract if such construction contract is delayed beyond the original completion date.
- 3.7 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.8 Providing additional surveys and revisions to design drawings after the sewer line alignment is approved by the OWNER, including revisions as a result of easement negotiations with private property owners.
- 3.9 Additional services in connection with the Project, including services normally furnished by the OWNER and services not otherwise provided for in this Agreement.



## **SECTION 4 - OWNERS RESPONSIBILITIES**

### **The OWNER shall:**

- 4.1 Provide full information as to his requirements for the Project.
- 4.2 Assist the ENGINEER by placing at his disposal all available information pertinent to the Project including previous documents and any other data relative to evaluation, design and construction of the Project.
- 4.3 Furnish the ENGINEER any existing data and information for property boundary, easement, right-of-way, topographic and utility surveys; zoning and deed restriction; all of which the ENGINEER may rely upon in performing his services under this Agreement.
- 4.4 Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform his services under this Agreement.
- 4.5 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- 4.6 Pay for all costs incident to obtaining bids or proposals from Contractors.
- 4.7 Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor has used the monies paid to him under the construction contract.
- 4.8 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Agreement.
- 4.9 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.
- 4.10 Pay for all application fees and furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project, subject to the obligations of the ENGINEER outlined in Section 1.3 of this Agreement.

- 4.11 Pay for all public encroachment and right-of-way application fees (including railroad encroachment fees) and furnish approvals and permits from all public bodies as necessary for encroachments and rights-of-way required for the project.
- 4.12 Furnish, or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.13 Bare all costs incident to compliance with the requirements of this Section 4.

## **SECTION 5 - PERIOD OF SERVICES**

- 5.1 Unless this Agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period which may reasonably be required for the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined. Upon receiving a written authorization to proceed, the ENGINEER shall provide the OWNER with a written schedule of completion for the services so authorized.
- 5.2 If the design or construction of the Project is delayed significantly for reasons, including costs of construction, beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation. It is expressly understood by all parties to the Agreement that a delay of several months may occur between completion of design and commencement of construction. This shall not be considered significant.

## **SECTION 6 - PAYMENT TO THE ENGINEER**

### **6.1 PAYMENT FOR BASIC SERVICES**

6.1.1 The OWNER will pay the ENGINEER for Basic Services as outlined in Sections 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6 the following lump sum amounts:

**Preliminary and Design Phases:                   \$77,800**  
**(including Stream and Wetland Delineations, and Topographical Survey)**

**Bidding and Award Phase:                         \$5,800**  
**Easement Plats (16 estimated):                 \$990 per plat**

**Construction Administration and Observations:                 \$47,800**  
**(based on 3 construction observation visits per week (5 hours per visit),**  
**for an assumed construction period of 26 weeks)**

**Record Drawings, including Post-Construction Survey:                 \$12,670**

### **6.2 PAYMENT FOR ADDITIONAL SERVICES**

6.2.1 The OWNER will pay the ENGINEER for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by principals and employees of the ENGINEER assigned to the Project in accordance with the ENGINEER'S most recent Basic Fee Schedule, should any of these services be requested by the OWNER.

### **6.3 TIMES OF PAYMENT**

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

### **6.4 GENERAL**

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

6.4.2 If the Agreement is terminated at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the ENGINEER on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the

Basic Services, the ENGINEER shall be paid for services rendered on the basis of his reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the ENGINEER will be paid for all his reasonable expenses resulting from such termination, and for any unpaid reimbursable expenses.

- 6.4.3 If, prior to termination of this Agreement, any work designed or specified by the ENGINEER, under Section 2, is suspended in whole or in part for more than three months or is abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of his service.

## **SECTION 7 - GENERAL CONDITIONS**

### **7.1 TERMINATION**

- 7.1.1 In the event that the OWNER finds that it is inadvisable or impossible to continue the execution of the Project; or if the ENGINEER shall fail to fulfill in a timely and proper manner his obligations under this Agreement; or, if the ENGINEER shall violate any of the covenants, agreements, or stipulations of this Agreement; or if the services called for in this Agreement are not completed within the time period specified under Section 5, or if the ENGINEER becomes subject to a voluntary or involuntary adjudication of bankruptcy or makes a general assignment for the benefit of creditors; then the OWNER has the right to terminate at any time this Agreement or any task or phase of work being performed herein by providing ten (10) days written notice to the ENGINEER of such termination and specifying the effective date of such termination; provided, however, that during such period of ten (10) days the ENGINEER shall have the opportunity to remedy such failures or violations to avoid such termination.
- 7.1.2 In the event of termination, as provided herein, the ENGINEER shall be paid for all services performed and actual expenses incurred up to the date of termination pursuant to Section 6.4.2 herein.

### **7.2 OWNERSHIP OF DOCUMENTS**

- 7.2.1 All documents, including original drawings, estimates, specifications, field notes and data are and remain the property of the ENGINEER as instruments of service. The OWNER shall be provided a set of reproducible record prints of drawings, and copies of other documents, in consideration of which the OWNER will use them solely in connection with the Project, and not for the purpose of making subsequent extensions or enlargements hereto and not for resale. Re-use for extension of the Project, or for new projects shall require written permission of the ENGINEER and shall entitle him to further compensation at a rate to be agreed upon by OWNER and ENGINEER at the time of such re-use.

### **7.3 ARBITRATION**

- 7.3.1 Should any dispute arise between the parties hereto concerning this Agreement or the rights and duties of either in relation thereto, such dispute may be settled by arbitration upon agreement of the parties. Either party may request arbitration by giving written notice to the other party setting forth the dispute which the party seeks to arbitrate. Each party shall have ten (10) days from delivery of the notice to the other party within which to appoint an engineer, licensed in the State of North Carolina, to act as an arbitrator and to

notify the other party in writing of the name and address of the engineer so appointed, or to notify the other party in writing of his refusal to arbitrate. In the event a party fails to notify the other party in writing of his refusal to arbitrate or fails to appoint an arbitrator as provided herein, then the dispute shall be submitted and decided by the arbitrator who has been duly appointed. Once each party has duly appointed an arbitrator, then the arbitrator shall have thirty (30) days within which to investigate the dispute, agree on a resolution of the dispute, and provide each of the parties with a written decision signed by each of the arbitrators. The thirty (30) day period may be shortened or lengthened by agreement of the parties. In the event the arbitrators cannot agree on a resolution to the dispute within the time provided, then the arbitrators shall have an additional seven (7) days within which to appoint a third arbitrator, who shall also be an engineer duly licensed to practice in the State of North Carolina. Within twenty (20) days from the date of appointment of a third arbitrator, the arbitrators shall render a written decision to each of the parties setting forth a resolution of the dispute which has been agreed to by two of the three arbitrators. The written decision of the arbitrators shall be binding on the parties. The costs of arbitration shall be borne equally by the parties.

## **7.4 ESTIMATES**

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

7.4.2 If the lowest bona fide proposal or bid exceeds the established Project construction cost limit, the OWNER will (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the project within a reasonable time, or (3) the ENGINEER will, without additional charge, modify the drawings and specifications as necessary to bring the Project construction cost within the cost limit. The providing of such service shall be the limit of the ENGINEER's responsibility in this regard and having done so, the ENGINEER shall be entitled to payment for his services in accordance with this Agreement.

## **7.5 INSURANCE AND CLAIMS**

7.5.1 The ENGINEER will secure and maintain such insurance as will protect him from claims under workmen's compensation acts, claims for damages because of bodily injury including personal injury, sickness, or disease, or death of any of his employees or of any person other than his employees, and from claims for damages because of injury to or destruction of tangible property including

loss of use resulting therefrom. Said insurance policy or policies shall be written by a company or companies and in a form and substance approved by the OWNER prior to the policies being put into effect, and shall be in an amount not less than one million dollars (\$1,000,000).

## **7.6 SUCCESSORS AND ASSIGNS**

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



**7.7 ENTIRE AGREEMENT**

7.7.1 This Agreement constitutes the entire agreement between the OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented or modified by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

(SEAL)

**McGILL ASSOCIATES, P.A.**

ATTEST:

By:

*Mark D. Cathey*  
Mark Cathey  
Senior Project Manager

\_\_\_\_\_  
Secretary

(SEAL)

**HENDERSON COUNTY**

ATTEST:

By: \_\_\_\_\_

\_\_\_\_\_

Name:

Title: