

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: April 4, 2022

SUBJECT: **Agreement with WGLA Engineering
Clear Creek Sewer NPDES Permit Assistance**

PRESENTER: Marcus Jones, P. E.

ATTACHMENTS: Yes
1. Proposed Agreement with WGLA Engineering

SUMMARY OF REQUEST:

With the selection of WGLA Engineering (WGLA) as the most qualified responding Engineering firm for the subject project during the Board's March 17, 2022 meeting, staff has negotiated a proposed agreement with WGLA for \$275,600 attached. The scope of the agreement is to perform the engineering services to assist the County with the National Pollution Discharge Elimination System Permit (NPDES) which must be complete by December 31, 2023 per funding condition from the State allocation of \$12.7M.

Staff recommends a budget for the application process of \$320,000 which will provide a small contingency and fund the \$30,000 cultural resources work if needed. The proposed agreement with project schedule is attached. Due to the ARP funds allocated to the project, staff have worked closely with WGLA to develop an American Rescue Plan Act compliant agreement and other required documents.

BOARD ACTION REQUESTED: Authorize the County Engineer to execute the proposed agreement with WGLA Engineering for \$275,600.

Suggested Motion:

I move that the Board authorize the County Engineer to execute the proposed agreement with WGLA Engineering for \$275,600.

DRAFT

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of **April ____**, **2022** between **Henderson County**("OWNER")
and **WGLA ENGINEERING, PLLC**("ENGINEER").

OWNER intends to **apply for a new NPDES discharge permit for the proposed Clear Creek Wastewater Treatment Plant.**

OWNER and ENGINEER in consideration of their mutual covenants as set forth herein agree as follows:

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: ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

A. ENGINEER shall provide the Basic and Additional Services set forth herein and in Exhibit A.

B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A.

C. If authorized by OWNER, ENGINEER shall furnish Resident Project Representative(s) with duties, responsibilities and limitations of authority as set forth in Exhibit D.

ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.01 General

A. OWNER shall have the responsibilities set forth herein and in Exhibit B.

ARTICLE 3 - TIMES FOR RENDERING SERVICES

3.01 General

A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment.

If OWNER has requested changes in the scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

3.02 Suspension

A. If OWNER fails to give prompt written authorization to proceed with any phase of services after

completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.

B. If ENGINEER's services are delayed or suspended in whole or in part by OWNER, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 4 - PAYMENTS TO ENGINEER

4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

A. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Exhibit A, Part 1, as set forth in Exhibit C.

B. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Exhibit A, Part 2, as set forth in Exhibit C.

C. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01.A and 4.01.B, OWNER shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth in Exhibit C.

4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit C.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related

charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

D. *Payments Upon Termination.*

1. In the event of any termination under paragraph 6.06, ENGINEER will be entitled to invoice OWNER and will be paid in accordance with Exhibit C for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

2. In the event of termination by OWNER for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice OWNER and shall be paid 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.

E. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, copies of such records will be made available to OWNER at cost.

F. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on ENGINEER's services or other costs in connection with this Project or compensation therefor, such new taxes, fees, or costs shall be invoiced to and paid by OWNER as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.

ARTICLE 5 - OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent

ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's 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 wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in Exhibit B.

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, "Construction Cost Limit," to this Agreement.

5.03 Opinions of Total Project Costs

A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in OWNER-furnished information.

C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

D. ENGINEER and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.

E. OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

F. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ENGINEER.

G. Prior to the commencement of the Construction Phase, OWNER shall notify ENGINEER of any variations from the language indicated in Exhibit E, "Notice of Acceptability of Work," or of any other notice or certification that ENGINEER will be requested to provide to OWNER or third parties in connection with the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification, and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notices or certifications requested.

H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's 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's signing any such certification.

I. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

J. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

K. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of ENGINEER.

L. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, 1996 Edition) unless both parties mutually agree to use other General Conditions as specifically referenced in Exhibit J.

6.02 Authorized Project Representatives

A. Contemporaneous 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 individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

6.03 Design without Construction Phase Services

A. Should OWNER provide Construction Phase services with either OWNER's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in Exhibit A.

B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by OWNER, then OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.

6.04 Use of Documents

A. All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

B. Copies of OWNER-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER pursuant to Exhibit B. Files in electronic media format of text, data, graphics, or of other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification 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 ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages,

losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

H. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

6.05 Insurance

A. ENGINEER shall procure and maintain insurance as set forth in Exhibit G, "Insurance."

B. OWNER shall procure and maintain insurance as set forth in Exhibit G, "Insurance." OWNER shall cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by OWNER which are applicable to the Project.

C. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds with respect to such liability and other 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 shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

F. At any time, OWNER may request that ENGINEER, 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, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's 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 Termination

A. 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 ENGINEER believes that ENGINEER is being requested by OWNER to 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.

3) ENGINEER shall have no liability to OWNER on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its 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,*

a. By OWNER effective upon the receipt of notice by ENGINEER.

B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 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.

6.07 Controlling Law

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

6.08 Successors, Assigns, and Beneficiaries

A. OWNER and ENGINEER each is hereby bound and the partners, 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 partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise 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 Contractor, Contractor's subcontractor, supplier, other 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. The OWNER agrees that the substance of the provisions of this paragraph 6.08.C shall appear in the 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 exercising their rights under Exhibit H or other provisions of this Agreement, or under law. In the absence of such an agreement, the parties may exercise their rights under law.

B. If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this

Agreement, such dispute resolution method and procedure is set forth in Exhibit H, "Dispute Resolution."

6.10 Hazardous Environmental Condition

A. OWNER represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist.

B. OWNER has disclosed to the best of its knowledge to ENGINEER the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on 30 days notice.

6.11 Allocation of Risks

A. Indemnification

1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless

OWNER, OWNER's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.

2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and OWNER's consultants with respect to this Agreement or the Project.

3. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals.

4. In addition to the indemnity provided under paragraph 6.11.A.2 of this Agreement, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER's Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 6.11.A.4. 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.

5. The indemnification provision of paragraph 6.11.A.1 is subject to and limited by the provisions agreed to by OWNER and ENGINEER in Exhibit I, "Allocation of Risks," if any.

6.12 Notices

A. 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, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.13 Survival

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.14 Severability

A. 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, who 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.

6.15 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.16 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 7 - DEFINITIONS

7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.

2. *Additional Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 2 of this Agreement.

3. *Agreement*--This "Standard Form of Agreement between OWNER and ENGINEER for Professional Services," including those Exhibits listed in Article 8 hereof.

4. *Application for Payment*--The form acceptable to ENGINEER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

6. *Basic Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 1, of this Agreement.

7. *Bid*--The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

8. *Bidding Documents*--The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

9. *Change Order*--A document recommended by ENGINEER, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.

10. *Construction Agreement*--The written instrument which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the Work.

11. *Construction Contract*--The entire and integrated written agreement between the OWNER and Contractor concerning the Work.

12. *Construction Cost*--The cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

13. *Contract Documents*--Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *Contract Price*--The moneys payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

15. *Contract Times*--The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

16. *Contractor*--An individual or entity with whom OWNER enters into a Construction Agreement.

17. *Correction Period*--The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable

special guarantee or specific provision of the Contract Documents.

18. *Defective*--An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.

19. *Documents*--Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to OWNER pursuant to this Agreement.

20. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

21. *Effective Date of the Construction Agreement*--The date indicated in the Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

22. *Effective Date of the Agreement*--The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

23. *ENGINEER's Consultants*--Individuals or entities having a contract with ENGINEER to furnish services with respect to this Project as ENGINEER's independent professional associates, consultants, subcontractors, or vendors. The term ENGINEER includes ENGINEER's Consultants.

24. *Field Order*--A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

25. *General Conditions*--That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

26. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such

quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

27. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

28. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

29. PCB's--Polychlorinated biphenyls.

30. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

31. *Radioactive Materials*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

32. *Record Drawings*--The Drawings as issued for construction on which the ENGINEER, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.

33. *Reimbursable Expenses*--The expenses incurred directly by ENGINEER in connection with the performing or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit C.

34. *Resident Project Representative*--The authorized representative of ENGINEER, if any, assigned to assist ENGINEER at the Site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are as set forth in Exhibit D.

35. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

36. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to ENGINEER to illustrate some portion of the Work.

37. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for use of Contractor.

38. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

39. *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 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.

40. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements the General Conditions.

41. *Total Project Costs*--The sum of the Construction Cost, allowances for contingencies, the total costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement.

42. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and

incorporating all materials and all equipment into such construction, all as required by the Contract Documents.

43. *Work Change Directive*--A written directive to Contractor issued on or after the Effective Date of the Construction Agreement and signed by OWNER upon recommendation of the ENGINEER, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

44. *Written Amendment*--A written amendment of the Contract Documents signed by OWNER and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

A. Exhibit A, "ENGINEER's Services," consisting of 5 pages.

B. Exhibit B, "OWNER's Responsibilities," consisting of 2 pages.

C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 5 pages.

D. Exhibit G, "Insurance," consisting of 1 pages.

E. Exhibit H, "Dispute Resolution," consisting of 1 page.

F. Exhibit I, "Allocation of Risks" consisting of 1 page.

G. Exhibit J, "Henderson County Terms and Conditions and Standards for Contracts" consisting of 1 page.

8.02 Total Agreement

A. This Agreement (consisting of pages 1 to 12 inclusive, together with the Exhibits identified 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 duly executed written instrument.

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

OWNER:
Henderson County

ENGINEER:
WGLA ENGINEERING, PLLC.

By:

By:

Title:

Title: William R. Buie, P.E.; Member/Manager

Date Signed:

Date Signed April, 2022

Address for giving notices:

Address for giving notices:

724 5th Avenue West

Hendersonville, NC 28739

Designated Representative (paragraph 6.02.A):

Designated Representative (paragraph 6.02.A):

William R. Buie, P.E.

Title:

Title: Project Engineer

Phone Number:

Phone Number: 828-687-7177

Facsimile Number:

Facsimile Number:

E-Mail Address:

E-Mail Address: wbuie@wgl.com

This is **EXHIBIT A**, consisting of 5 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, _____.

Initial:

OWNER _____
ENGINEER _____

ENGINEER's Services

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. ENGINEER shall provide Basic and Additional Services as set forth below.

PART 1 -- BASIC SERVICES

This agreement shall be for development of engineering documents and supporting information for the NPDES permitting of the proposed Clear Creek Sewer Wastewater Treatment Plant Permitting. The services are based on the RFQ and the presentation for the Edneyville Sewer System as presented to the Henderson County Commissioners at their regular meeting on January 19, 2022. Following is the scope of work associated with the pre-construction services:

WGLA Engineering and the associated project team will assist Henderson County with the application for a new NPDES permit for the Clear Creek Wastewater Treatment Plant. The primary services associated with this effort will be:

- Preparation of an Engineering Alternatives Analysis to support the application
- Preparation of Environmental Assessment to support the application
- Coordination of responses to comments during the course of the application process

The project approach below provides more detail about the services provided.

Introduction

WGLA Engineering has worked with Henderson County on multiple projects in the Edneyville area. In 2020, Henderson County completed the new Edneyville Elementary School with WGLA as the civil engineer for the project. Part of that project involved the evaluation of extending public sewer to the school. Ultimately the existing septic system serving the school was upgraded to allow for continued use until public sewer became available.

More recently WGLA worked with Henderson County and Raftelis to complete an evaluation of likely users for a public sewer system and a rate study evaluating potential user fees for a sewer system.

WGLA Engineering, PLLC has teamed with CDM Smith to lead the development of an engineering alternatives analysis and with Clearwater Environmental to provide assistance with environmental permitting. This team of consultants provides complete expertise and experience to assist Henderson County in their goal of the development of a new sewer system in the Edneyville Community.

The following individual tasks will be used to provide a comprehensive project approach:

Coordination with DWR for Speculative Limits

WGLA and the County have already met with the NCDEQ Asheville Regional Office as part of prior planning efforts to discuss the pathway to NPDES Permit approval and how we can work together with NCDEQ to streamline this process. One of our first activities for the project will be to hold a kickoff meeting with NCDEQ to confirm several key items

- Obtain Speculative Limits for the preferred and alternate discharge locations to inform the Engineering Alternatives Analysis (EAA) – reviewing the existing NPDES Permits for the Justice Academy, Blacksmith Run, and Camp Judea WWTP’s, it is expected that a new NPDES discharge permit would include nominal effluent limits of 30 mg/L Total Suspended Solids (TSS), 30 mg/L Biochemical Oxygen Demand (BOD) and may include a nitrogen limit in the form of ammonia though there may be sufficient dilution in Clear Creek at low flow to avoid this.
- Outline the 7Q10 flows of the receiving streams and obtain NCDEQ consensus on approach for analysis

Review the overall permitting strategy and goals including water quality benefits of consolidating multiple existing NPDES discharges and existing septic systems.

Projections for Population and Flow for Service Area

This key activity, required to substantiate the design of the collection/conveyance systems and the near term and long-term capacity requirements for a new WWTP, has been looked at in detail as part of prior planning reports by WGLA and others. It is expected that this information is well documented and that our team can quickly reach consensus with the County on these criteria that will balance capital expenditures in the near term with sufficient expansion capabilities for expected growth in the Clear Creek sewershed.

Evaluation of Technologically Feasible Alternatives

CDM Smith will lead the effort to conduct the alternatives evaluation as part of the Engineering Alternatives Analysis (EAA) required by the NPDES Permit application process.

We have reviewed NCDEQ classifications for Clear Creek and confirmed that the potential discharge locations on Clear Creek do not have water quality restrictions that would preclude an NPDES discharge. The EAA process, as defined by NCDEQ, identifies a minimum set of alternatives which our team has reviewed and summarized in the table below.

Alternative	Viability	Observations
Connection to an existing wastewater treatment plant (WWTP)	Medium	With the close proximity to the City of Hendersonville’s collection system and access to the Mud Creek WWTP, this alternative is viable and will be given due consideration in the EAA. WGLA will coordinate with the City for technical and financial information required to evaluate this alternative.
Land Application such as spray or drip irrigation	Low	While there is significant agricultural property in the project corridor, this alternative has low viability due to the seasonal variability in irrigation needs and required infrastructure to store/manage treated flow before application. Golf courses are also another typical option for this use but these are not prevalent in the immediate area of the collection system.
Wastewater Reuse	Low	This alternative has low viability due to lack of large industrial users in close proximity to the proposed treatment systems that would allow for wholesale reuse applications.
Surface Water Discharge (NPDES)	High	This is the preferred alternative to allow the County to support and manage growth in the Clear Creek area as well as

Permit)	providing for an improved level of service to residents and environmental benefits of decommissioning other WWTPs and septic systems.
---------	---

These alternatives will be the focus of the EAA and can be evaluated quickly on their technical merits to develop conceptual designs that will inform the economic feasibility assessment.

Evaluate Economic Feasibility of Alternatives

Evaluation of each alternative will require an economic feasibility analysis in addition to review of technical merits. This analysis will build upon the prior work done by WGLA and Raftelis which established potential rate structures for the operational costs of the system, information from the City of Hendersonville on their expected rate to the County as well as capital improvements that may be required for the City’s collection and treatment systems.

A key component of this analysis will be the anticipated cost for the construction and operation of the new WWTP. CDM Smith has considerable experience across the Southeast with the design, construction and operation of wastewater treatment plants and will bring this experience to bear for the County. Specifically looking at the conceptual design of the treatment facility, with the anticipated speculative limits identified above, a conventional activated sludge style treatment facility is expected to be sufficient to meet the required limits – the conceptual design may consider enhancements including an influent flow equalization chamber to manage wet weather flows, tertiary disc filtration (now or in the future) to achieve TSS and/or nutrient limitations and considerations for effluent disinfection such as chlorination or ultraviolet (UV) light. These options can be evaluated with the County in a workshop format to consider reliability, operational constraints and capital cost considerations.

The technical and economic feasibility considerations will be combined into an EAA summary report suitable for submission to NCDEQ in support of the NPDES Permit application. As outlined in our schedule, the development of the overall EAA will be done in parallel with the Environmental Assessment (EA) tasks and will include close coordination with NCDEQ to verify that the EAA and other NPDES permit application documents are all acceptable so that as soon as the Finding of No Significant Impact (FONSI) is received as part of the EA process the public notification can be made and the permit approved.

Environmental Assessment of Selected Alternative

Clearwater is well prepared and experienced to manage the environmental responsibilities of this project. They have successfully completed the same requirements for similar wastewater infrastructure projects in Henderson County, the City of Hendersonville and western North Carolina. They also have a long history of working with WGLA Engineering and CDM Smith. Our strong working relationship will ensure this project is completed on schedule and within budget.

This project involves the expenditure of state and federal funding. Therefore, we anticipate it will follow either the NC Department of Environmental Quality State Environmental Policy Act (SEPA) or the US EPA National Environmental Policy Act (NEPA) process. In either case, it will require an Environmental Assessment (EA), which would be completed following guidelines set forth by the appropriate regulatory lead agency. Tasks would include an alternatives analysis, review of the existing environment, and

identification of environmental consequences and mitigative measures. Much of this work will be completed using existing literature and materials from the natural resource agencies. The evaluation of jurisdictional waters and threatened and endangered species will require field sampling by ClearWater scientists.

Based on our knowledge of the area, multiple stream and wetland crossings will likely be necessary along the proposed route. A survey of these features will be completed to evaluate the extent of impacts. The threatened and endangered species survey will consist of a literature search, on-site habitat assessment to determine the likelihood of the presence or absence of protected species, a visual search for protected species, and consultation with NC Natural Heritage Program and US Fish and Wildlife Service.

If, during the EA process, we determine a cultural resource survey is required, we will seek assistance from a firm specializing in that field. ClearWater has worked with several nearby firms and is confident each has the necessary experience to complete the job accurately, efficiently and on schedule.

All information gathered will be included in a Final EA report and Finding of No Significant Impact (FONSI) and provided to Henderson County and project partners. It will also be used to prepare permit requests from the US Army Corps of Engineers and NC Division of Water Quality for stream and wetland impacts during construction.

PART 2 -- ADDITIONAL SERVICES

A2.01 Additional Services Requiring OWNER's Authorization in Advance

A. If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.

1. Not Applicable
2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by ENGINEER or its 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 Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement 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 identified in paragraph A1.01.A.4.
5. Services required as a result of OWNER's providing incomplete or incorrect Project information with respect to Exhibit B.
6. Furnishing services of ENGINEER's Consultants for other than Basic Services.
7. 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 Bidding Documents as a result of such review processes.

8. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by OWNER for the Work or a portion thereof.
9. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
10. Providing Construction Phase services beyond the Contract Times set forth in Exhibit C.
11. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
12. Preparing and furnishing to OWNER Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.
13. Preparation of operation and maintenance manuals.
14. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the Project.
15. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under paragraph 6.01.G of the Agreement.
16. Preparation of an Environmental Assessment or other environmental documents that might be required by any grant funding sources for the approval of this project.
17. Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

A2.02 *Required Additional Services*

A. ENGINEER shall perform or furnish, without requesting or receiving specific advance authorization from OWNER, the Additional Services of the types listed below. ENGINEER shall advise OWNER in writing promptly after starting any such Additional Services.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER so as to make the compensation commensurate with the extent of the Additional Services rendered.
2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than “or-equal” items; and services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
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 during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by OWNER prior to Substantial Completion.
6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

SUGGESTED FORMAT
(for use with 1910-1, 1996 Edition)

This is **EXHIBIT B**, consisting of 2 pages, referred to in
and part of the **Agreement between OWNER and**
ENGINEER for Professional Services dated
_____, _____.

Initial:
OWNER _____
ENGINEER _____

OWNER's Responsibilities

Article 2 of the Agreement is amended and 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:

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; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications; and furnish copies of OWNER's standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.

B. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

C. Following ENGINEER's assessment of initially-available Project information and data and upon ENGINEER's request, furnish or otherwise make available 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. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points in a CAD format.
4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
5. N/A
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

E. Authorize ENGINEER to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. 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.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as OWNER deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

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. Provide, as required for the Project:

1. Legal services with regard to issues pertaining to the Project as OWNER requires, Contractor raises, or ENGINEER reasonably requests.

2. Such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the moneys paid.

J. 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.

K. Furnish to ENGINEER data as to OWNER's anticipated costs for services to be provided by others for OWNER so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.

L. 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.

M. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.

N. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of OWNER, prior to their incorporation into the Work with appropriate professional interpretation thereof.

O. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or entity to ENGINEER) as OWNER determines necessary to verify:

1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.

2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

P. Provide ENGINEER with the findings and reports generated by the entities providing services pursuant to paragraphs B2.01.O and P.

This is **EXHIBIT C**, consisting of 5 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, _____.

Initial:

OWNER _____
ENGINEER _____

Payments to ENGINEER for Services and Reimbursable Expenses

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

Contract Times to complete the Work be extended beyond this period, the total compensation to ENGINEER shall be appropriately adjusted.

ARTICLE 4 -- PAYMENTS TO THE ENGINEER

C4.01 *For Basic Services Having A Determined Scope --Lump Sum Method of Payment*

6. If more prime contracts are awarded for Work designed or specified by ENGINEER for this Project than identified in Exhibit A, the ENGINEER shall be compensated an additional amount to be negotiated for all Basic Services for each prime contract added.

A. OWNER shall pay ENGINEER for Basic Services set forth in Exhibit A, except for services of ENGINEER's Resident Project Representative and Post-Construction Phase services, if any, as follows:

1. A Lump Sum amount of \$275,600.00 based on the following assumed distribution of compensation:

See attached Appendix 1 to Exhibit C

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.

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, overhead, profit, and Reimbursable Expenses.

1. The portion of the Lump Sum amount billed for ENGINEER's services will be based upon ENGINEER's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

5. The Lump Sum is conditioned on Contract Times to complete the work in accordance with the schedule outlined in the attached Appendix 2 to Exhibit C. Should the

Henderson County

Clear Creek Wastewater Treatment Plant Discharge Permitting

PROPOSED FEE:

Following is a breakdown of the proposed fees for the scope of work described above for pre-construction activities related to the project:

-Wetlands/Stream Evaluation Including Agency Coordination	\$17,800.00
-Endangered Species Survey	\$6,800.00
-Environmental Assessment including:	\$78,000.00
Baseline Conditions	
NEPA Agency Coordination	
Purpose & Need for Proposed Action	
Description of Proposed Action & Alternatives	
Affected Environment	
Environmental Consequences	
Draft EA Preparation	
Draft EA Public Hearing	
Review of Public Hearing & Agency Comments & Final	
Final EA Preparation	
FONSI Preparation	
Response to Comments	
-Develop Final Population Projection & Estimated Flows	\$10,500.00
-Engineering Alternatives Analysis & NPDES Permit Coordination	\$112,000.00
-Project Coordination & Meetings	\$35,000.00
-Project Coordination for Funding Requirements	\$15,500.00

TOTAL **\$275,600.00**

Exclusions to scope of work:

-Cultural Resources Study (likely required)	Suggested budget - \$30,000.00
-Toxicity Testing	
-Detailed Design & Permitting of Improvements	
-Project Construction Administration	
-Bat Misting/Acoustic Studies (could be required)	
-In Stream Mussel Studies (could be required)	

Henderson County

Clear Creek Wastewater Treatment Plant Discharge Permitting

We offer the following project schedule, assuming a notice to proceed is issued by April 5, 2022. Depending on the County's needs, we can adjust the schedule accordingly.

Henderson County																					
Clear Creek Sewer Wastewater Treatment Plant Permitting																					
Project Schedule																					
	4/22	5/22	6/22	7/22	8/22	9/22	10/22	11/22	1/23	2/23	3/23	4/23	5/23	6/23	7/23	8/23	9/23	10/23	11/23	12/23	
Gather Information/Request Spec Limits	█	█																			
Prepare Preliminary EAA		█	█	█																	
Preferred Alternative Selected			█																		
Environmental Scoping Meeting		█																			
Begin Environmental Field Work	█	█	█																		
Environmental Assessment Preparation		█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█
EA Review/FONSI						█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█
Address EA Comments												█	█	█	█	█	█	█	█	█	█
NPDES Permit Submittal																				█	█
NPDES Permit Review																				█	█
Permit Issued																					█

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed are listed on the hourly rate schedules for each firm:

Standard Hourly Rates Schedule

Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services performed on the date of the Agreement are as attached:

BASIC FEE SCHEDULE

6/24/21

I. PROFESSIONAL FEES (Hourly Rate)

Principal Engineer / Project Manager	150.00
Senior Engineer / Project Manager	135.00
Project Manager	120.00
Project Engineer	105.00
Senior Engineering Technician	90.00
Engineering Technician	80.00
Computer-aided Design Technician	60.00
Construction Inspector	80.00
Field Technician	55.00
Clerical	35.00

II. EXPENSES

- A. Mileage - \$0.56 per mile
- B. Telephone, reproduction costs, postage, overnight lodging, meals, and other incidental expenses shall be a direct charge per receipts.

III. ASSOCIATED SERVICES

Associated services required by the project such as soil analysis, materials testing, etc., shall be identified and agreed upon prior to initiating work.



2022 HOURLY RATE & COMPENSATION SCHEDULE

Hourly Billing Rates - 2022

<u>Classification:</u>	<u>2022 Billing Rates</u>
Officer/Senior Technical Specialist	\$265
Senior Project Manager/Technical Specialist	\$235
Professional III	\$175
Professional II	\$150
Professional I	\$125
Senior Designer	\$140
Designer Drafter	\$110
Project Administration	\$100

- 1) The above rates include salary costs, overhead, and profit.
- 2) Hourly rates shall be reviewed in December of each year by ENGINEER, and adjusted, subject to OWNER's approval, to reflect the appropriate rates and charges for the next calendar year. In January of each year, ENGINEER will submit to OWNER for approval proposed hourly rates for the following year.
- 3) Reimbursable project expenses (such as printing, postage/shipping, etc.), incurred under Hourly or Per Diem will be billed to OWNER at cost. All vehicle mileage shall be billed at rates allowed by IRS.



2022 FEE SCHEDULE

As a small privately-owned business, ClearWater Environmental Consultants, an EnviroScience Company takes pride in providing quality services and expertise at affordable rates. Every project is given individual consideration so that the most accurate estimates may be provided. During the project, routine reviews are made to ensure that unnecessary tasks and costs are not incurred.

Senior Scientist II	\$145.00
Project Manager/Senior Scientist I	\$113.00
Field Biologist I	\$93.00
Administrative	\$51.00
Expert Witness/deposition	\$200.00
Mileage	Current GSA rate
Canoe	\$67.00 per day/ \$250.00 per month
Trimble GeoXT GPS	\$100.00 per day
Other Expenses (printing, meals, FedEx, etc.)	at cost +5%

*Hourly Rates are subject to change

SUGGESTED FORMAT
(for use with No. 1910-1, 1996 Edition)

This is **EXHIBIT G**, consisting of 1 pages, referred to in
and part of the **Agreement between OWNER and**
ENGINEER for Professional Services dated
_____, _____.

Initial:

OWNER _____

ENGINEER _____

Insurance

Paragraph 6.05 of the Agreement is amended and 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 noted on the Henderson County Terms and Conditions attached in Exhibit J.

B. *Additional Insureds*

1. The following persons or entities are to be listed on OWNER's policies of insurance as additional insureds as provided in paragraph 6.05.B:

- a. WGLA ENGINEERING, PLLC
ENGINEER

- b. CDM Smith
ENGINEER'S CONSULTANT

- c. ClearWater Environmental
ENGINEER'S CONSULTANT

SUGGESTED FORMAT
(for use with No. 1910-1, 1996 Edition)

This is **EXHIBIT H**, consisting of 1 pages, referred to in
and part of the **Agreement between OWNER and**
ENGINEER for Professional Services dated
_____, _____.

Initial:

OWNER _____

ENGINEER _____

Dispute Resolution

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

H6.09 Dispute Resolution

A. OWNER and ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in questions and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by Macon County Dispute Settlement Center.

Said mediation shall be non-binding and shall not be a pre-condition to the litigation of such claims, conterclaims, disputes and other matters in question.

(for use with No. 1910-1, 1996 Edition)

This is **EXHIBIT I**, consisting of 1 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, _____.

Initial:

OWNER _____
ENGINEER _____

Allocation of Risks

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

16.11.B Limitation of ENGINEER's Liability

1. *ENGINEER's Liability Limited to Amount of Insurance Proceeds.* ENGINEER shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, partners, employees, agents, and ENGINEER's Consultants, and any of them, 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 or breach of contract, or warranty express or implied, of ENGINEER or ENGINEER's officers, directors, partners, employees, agents, or ENGINEER's Consultants, or any of them (hereafter "OWNER's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to ENGINEER by ENGINEER's insurers in settlement or satisfaction of OWNER's Claims under the terms and conditions of ENGINEER's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to OWNER's Claims, then the total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, partners, employees, agents, and ENGINEER's Consultants, and any of them to OWNER and anyone claiming by, through, or under OWNER for any and all such uninsured OWNER's claims shall not exceed \$ 1,000,000.

2. *Agreement Not to Claim for Cost of Certain Change Orders.* OWNER recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by ENGINEER or in the other professional services performed or furnished by ENGINEER under this Agreement ("Covered Change Orders"). Accordingly, OWNER agrees not to sue and otherwise to make no claim directly or indirectly against ENGINEER on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed 25 % of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of ENGINEER for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that OWNER would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents and without any other error or omission of ENGINEER related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, ENGINEER is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term ENGINEER includes ENGINEER's officers, directors, partners, employees, agents, and ENGINEER's consultants.

This is **EXHIBIT J**, consisting of 1 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, _____.

Initial:

OWNER _____
ENGINEER _____

Henderson County Terms and Conditions and Standards for Contracts

1. Terms and Conditions - Henderson County standard terms and conditions shall apply to this contract and are attached to this document.

2. Everify - As a party wishing to contract or otherwise do business with Henderson County, You must understand that you have a duty (imposed by North Carolina Law in 2013), as a condition of payment for goods provided or services rendered, to Comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statures (E-Verify). Further, if you provide the goods and services to the County utilizing a subcontractor, you must require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. You are required to verify, by affidavit, compliance of these terms of this Section upon the County's request.

3. Coronavirus State and Local Fiscal Recovery Funds Addendum – Documents associated with the project funding for this project are attached and are considered a portion of this contract.