



City of Boiling Spring Lakes

9 East Boiling Spring Road
Southport, NC 28461
(910) 363-0025

BOARD OF COMMISSIONERS SPECIAL MEETING AGENDA

Wednesday, June 14, 2023

City Hall – 4:00 PM

Please turn off cell phones

1. Call to Order – Mayor Jeff Winecoff
2. Pledge of Allegiance
3. Approval of the Special Meeting Agenda
4. Discussion about the Comprehensive Transportation Plan with Presentation by Sam Boswell, Cape Fear Council of Governments
5. Discussion to Finalize the Sequoia Contract with respect to the Dam Reconstruction Project
6. Discussion to Finalize McGill Task Order #3 with respect to the Dam Reconstruction Project
7. Adjourn



City of Boiling Spring Lakes

9 East Boiling Spring Road
Southport, NC 28461

STAFF REPORT

Agenda Date:

June 14, 2023

Title:

Presentation: Brunswick County Comprehensive Transportation Plan (CTP)

Department:

City Manager and Planning & Zoning

Background Information:

The Brunswick County Comprehensive Transportation Plan is a 25-30 year long range multimodal transportation plan that assesses Brunswick County's existing and future transportation needs including roadways, bicycle, pedestrian, transit and rail facilities and services. The goals of a CTP are to assist with identifying transportation deficiencies, setting short and long-term transportation priorities, establishing relationships between local and regional expectations, and to reinforce and support planning and funding initiatives. After review and input by steering committee members, internal NCDOT Transportation Planning Division staff, and management, the submission of nearly 7,000 virtual and physical public surveys, and the completion of public involvement sessions, the CTP draft report is now available for public review. Presentations will be made by NCDOT/Cape Fear RPO later this summer/early fall prior to seeking adoption.

Financial Impact:

None

Staff Recommendation:

Review the draft CTP report and provide feedback by Friday, June 23, 2023.

Attachments:

None



City of Boiling Spring Lakes

9 East Boiling Spring Road
Southport, NC 28461

STAFF REPORT

Agenda Date: June 14, 2023

Title: Resolution to Award Bid for the Dams Construction/Reconstruction Project

Department: City Manager, Finance Department, City Clerk

Background Information: the City's dams were destroyed and its lakes emptied as a result of Hurricane Florence in September 2018. The Dams Construction/Reconstruction Project is a FEMA and grant-funded project to rebuild the dams and bring the lakes back. The project was bid in January, 2023 to eight prequalified contractors and the original bid opening was scheduled for March 3, 2023, but only two bids were physically received. Pursuant to North Carolina Statutes, those bids were not opened and the project was re-bid and advertised for a second bid opening on March 31, 2023. Then on March 31, 2023 two bids were received by McGill Engineering on behalf of the City and per statute were opened. After review of the submitted bids, McGill Engineering, on behalf of the City, recommended proceeding with Sequoia Services, LLC. City staff, McGill Engineering and Sequoia Services, LLC all participated in and reached a Value Engineering Agreement on May 17, 2023.

Financial Impact:

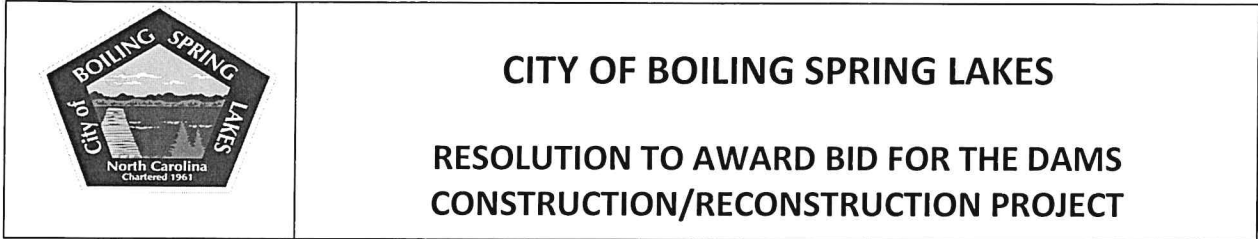
The contract price is estimated to be \$44,749,198.20, and the contract is contingent upon the City's receipt of, among other amounts, FEMA monies in the amount of \$17,894.770.00.

Staff Recommendation:

Staff recommends that the BOC award the Value Engineering Contract for the dams' construction/reconstruction project to Sequoia Services, LLC of Greensboro, North Carolina and authorize the City Manager execute the Notice of Award.

Attachments:

Resolution to Award Bid for the Dams Construction/Reconstruction Project
Notice of Award



WHEREAS, the Dams Construction/Reconstruction Project is a FEMA and grant-funded project to rebuild the dams destroyed as a result of damage done by Hurricane Florence in 2018; and

WHEREAS, the project had an original bid opening date of March 3, 2023. On said date, only two bids were physically received, so pursuant to North Carolina Statutes, those bids were not opened and the project was re-bid and advertised for a second bid opening on March 31, 2023; and

WHEREAS, on March 31, 2023 two bids were physically received by McGill Engineering on behalf of the City and per statute were opened; and

WHEREAS, after review of the submitted bids, McGill Engineering, on behalf of the City, recommends proceeding with Sequoia Services, LLC; and

WHEREAS, City staff, McGill Engineering and Sequoia Services, LLC all participated in and reached a Value Engineering Agreement on May 17, 2023;

NOW THEREFORE BE IT RESOLVED, after discussion and review of the Value Engineering Agreement, the Board of Commissioners of the City of Boiling Spring Lakes hereby awards the bid for the dams construction/reconstruction project to Sequoia Services, LLC of Greensboro North Carolina for the estimated contract price of \$44,749,198.20, contingent upon the City's receipt of FEMA monies promised to be received in the amount of \$17,894,770.00.

Approved this 14th day of June, 2023.

Jeff Winecoff, Mayor

ATTEST:

Nancy Sims, City Clerk

NOTICE OF AWARD

Date of Issuance:

Owner: City of Boiling Spring Lakes Owner's Project No.: 35
Engineer: McGill Associates PA Engineer's Project No.: 20.07036
Project: City of Boiling Spring Lakes Dams Construction/Reconstruction
Contract Name: City of Boiling Spring Lakes Dams Construction/Reconstruction
Bidder: Sequoia Services, LLC
Bidder's Address: 7815 National Service Road, Suite 606, Greensboro, NC 27409

You are notified that Owner has accepted your Bid dated March 31, 2023, for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Boiling Spring Lakes Dams Construction/Reconstruction

The Contract Price of the awarded Contract is \$44,749,198.20 (as amended per Value Engineering Agreement dated May 17, 2023). Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

Three (3) unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 10 days of the date of receipt of this Notice of Award:

- 1. Deliver to Owner three (3) counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: City of Boiling Spring Lakes

By (signature):

Name (printed):

Title:

Copy: Engineer



City of Boiling Spring Lakes

9 East Boiling Spring Road
Southport, NC 28461

STAFF REPORT

Agenda Date: June 14, 2023

Title: Resolution To Approve Task Order #3 With McGill Engineering For Construction And Post Construction Services Pertaining To The City's Dam Project

Department: City Manager, Finance Department, City Clerk

Background Information:

The City's dams were destroyed and its lakes emptied as a result of Hurricane Florence in September 2018. Pursuant to G.S. 143.64.31 the City entered into a Master Services Agreement with McGill Engineering on July 12, 2019. Thereafter, Task Order No. 1 was executed in July 2019 that involved the preliminary analysis report for the dam reconstruction. Task Order No. 2 which involved the design, permitting and bidding of the dams' reconstruction was executed in February 2020 with an amendment in July 2021. This Task Order No. 3 pertains to the administration and management of the construction and post construction phase of the project with contractor Sequoia Services, LLC.

City staff, McGill Engineering and Sequoia Services, LLC all participated in and reached a Value Engineering Agreement on May 17, 2023;

Financial Impact:


Financial impact is as listed in Section 3, "Compensation" of Task Order No. 3.

Staff Recommendation:

Staff recommends that the Board of Commissioners of the City of Boiling Spring Lakes hereby approve Task Order No. 3 presented by McGill Engineering and authorize the City Manager to execute the Task Order on behalf of the City.

Attachments:

Resolution To Approve Task Order #3 With McGill Engineering For Construction And Post Construction Services Pertaining To The City's Dam Project
McGill Task Order No. 3 for Construction and Preconstruction Services

 <p>The logo of the City of Boiling Spring Lakes, North Carolina, featuring a dam and water within a pentagonal border. The text 'CITY OF BOILING SPRING LAKES' is written around the border, and 'North Carolina Chartered 1961' is at the bottom.</p>	<p style="text-align: center;">CITY OF BOILING SPRING LAKES</p> <p style="text-align: center;">RESOLUTION TO APPROVE TASK ORDER #3 WITH MCGILL ENGINEERING FOR CONSTRUCTION AND POST CONSTRUCTION SERVICES PERTAINING TO THE CITY'S DAM PROJECT</p>
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WHEREAS, the City's dams were destroyed and its lakes emptied as a result of Hurricane Florence in September 2018; and

WHEREAS, pursuant to G.S. 143.64.31 the City entered into a Master Services Agreement with McGill Engineering on July 12, 2019; and

WHEREAS, thereafter, Task Order No. 1 was executed in July 2019 that involved the preliminary analysis report for the dam reconstruction; and

WHEREAS, Task Order No. 2 which involved the design, permitting and bidding of the Dams' reconstruction was executed in February 2020 with an amendment in July 2021; and

WHEREAS, this Task Order No. 3 pertains to the administration and management of the construction and post construction phase of the project with contractor Sequoia Services, LLC; and

WHEREAS, City staff, McGill Engineering and Sequoia Services, LLC all participated in and reached a Value Engineering Agreement on May 17, 2023;

NOW THEREFORE BE IT RESOLVED, the Board of Commissioners of the City of Boiling Spring Lakes hereby approves Task Order No. 3 presented by McGill Engineering and authorizes the City Manager to execute the Task Order on behalf of the City.

Approved this 14th day of June, 2023.

Jeff Winecoff, Mayor

ATTEST:

Nancy Sims, City Clerk

BSL Dams Construction / Reconstruction Project**TASK ORDER NO. 3****Phase 3 – Construction and Post-Construction Services**

This **TASK ORDER NO. 3** dated the ____ day of _____, 2023, hereinafter referred to as “Task Order”, is a supplement to the **MASTER SERVICES AGREEMENT**, hereinafter referred to as “Agreement”, between the City of Boiling Spring Lakes, North Carolina, dated July 12, 2019, hereinafter referred to as “City” or “Owner” and McGill Associates, P.A., hereinafter referred to as “Engineer”. The purpose of this Task Order is to authorize the Engineer to provide services for the “Project” entitled: **BSL Dams Construction / Reconstruction Project, Phase 3 – Construction and Post-Construction Services.**

SECTION 1 – PROJECT DESCRIPTION

During Hurricane Florence in September 2018, the City of Boiling Spring Lakes (BSL) suffered a sudden release and drawdown from the failure of the Sanford Dam that also severed Alton Lennon Drive, a City-owned road atop the dam. Subsequently, four other smaller dam failures followed within the BSL system including a privately-owned dam (Middle Dam) just upstream of NC 87, the Upper Dam and Dam Road, and the Pine Lake Dam and the North Lake Dam both including segments of East Boiling Spring Road (an NCDOT maintained road). All the dams were earthen embankments constructed in the late 1950's and early 1960's by a private developer before the City was incorporated with the dam(s) eventually deeded to the City by the private developer. They maintained varied water levels for aesthetics and recreational use throughout the City's lake system (see Figure 1).

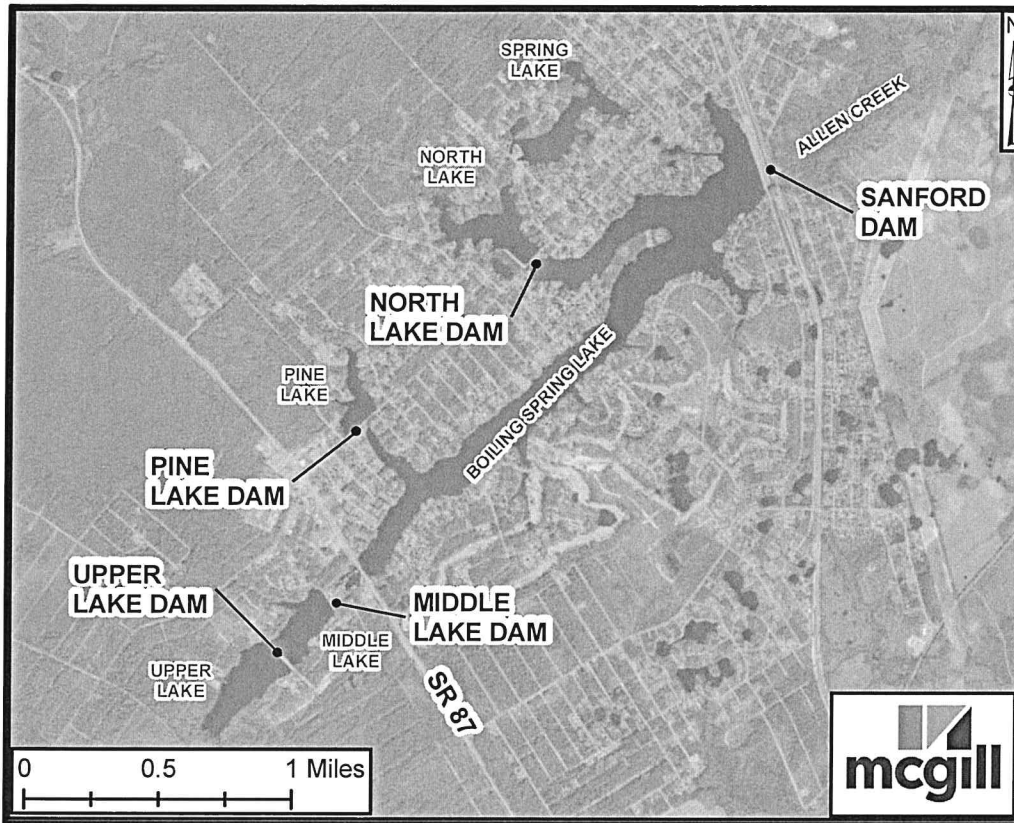


Figure 1: BSL Dam Sites

Engineer was selected by the City to assist with the BSL Dams Construction/ Reconstruction project. The goal of the project is to re-establish the impounded lakes upstream of the four city-owned dams breached by Hurricane Florence. This includes the design, permitting, bidding and construction services for Sanford Dam, Upper Dam, North Lake Dam and Pine Lake Dam, hereinafter referred to as the “Dams”. Codes and standards upgrades will be required for the Dams as part of permitting with the NC Dam Safety Program.

Phase 1 efforts included the preparation of Preliminary Analysis Report and a Geotechnical Data Report on January 15, 2020. Phase 2 efforts associated with Design, Permitting, and Bidding of the project were completed on May 30, 2023. Phase 3 will include the scope of services for completing the construction and post-construction phase of the project. Details regarding the Engineer’s services and the corresponding fees for the Project are presented below.

SECTION 2 – SUPPLEMENTARY CONDITIONS TO AGREEMENT

2.01 Terms and conditions stated in this Task Order which differ from or are additional to the content in the Agreement are superseding, as indicated in Agreement Part 1.1.2.

2.02 *Standards of Performance*

A. *Compliance with Laws and Regulations, and Policies and Procedures:*

1. Engineer and Owner shall comply with applicable Laws and Regulations.
2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in the Agreement, and to the extent compliance is not inconsistent with professional practice requirements.
3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures; and
 - c. changes after the Effective Date to Owner-provided written policies or procedures.

- B. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

- C. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- D. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- E. Engineer's services do not include providing legal advice or representation.
- F. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- G. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

2.03 *Use of Documents*

- A. All Documents are instruments of service. Upon completion of the Project and payment in full of all fees due Engineer, ownership of and property interests in the Documents, including all common law, statutory and other reserved rights, including copyrights, shall transfer to Owner, provided, however, that such Documents are not intended or represented to be suitable for reuse by others, and may not be used on other projects or for additions to this Project outside the scope of the Work. Owner agrees that any subsequent reuse or modification of Documents by Owner or any party obtaining them

through Owner will be at Owner's sole risk and without liability to Engineer. Owner agrees that Engineer may retain copies of all Documents for its files and Engineer shall retain joint ownership and property interest therein whether or not the Project is completed.

- B. Engineer is required to prepare or furnish Drawings and other construction records under this Agreement. Engineer shall deliver to Owner at least one original printed and one electronic record version of such documents, signed and sealed according to applicable Laws and Regulations.

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

SECTION 3 – DEFINITIONS

3.01 *Defined Terms*

- A. Wherever used in this Task Order, terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the following definitions:
 1. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with terms stated herein and in the Agreement.
 2. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 3. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Section 4 of this Task Order.

4. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
5. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
6. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
7. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
8. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.

9. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
10. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
11. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
12. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
13. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
14. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
15. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables,

whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

16. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
17. *Effective Date*—The date indicated in this Task Order on which it becomes effective, but if no such date is indicated, the date on which this Task Order is signed and delivered by the last of the parties to sign and deliver.
18. *Engineer*—The individual or entity named as such in this Task Order.
19. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
20. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
21. *Owner*—The individual or entity named as such in this Task Order and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
22. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.

24. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in EJCDC®E-500, Exhibit D - Resident Project Representative (2014 Edition):
25. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
27. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
29. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
30. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and

“substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

31. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
32. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
33. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
34. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
35. *Day*—The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

SECTION 4 – SCOPE OF SERVICES

The Engineer's scope of services, hereinafter referred to as "Services", and corresponding fees were developed in accordance with the duties, responsibilities, and authority of Engineer as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, as modified by City and executed in such modified form, hereinafter referred to as the "Construction Contract", on June ____, 2023 between City and Sequoia Services, LLC, hereinafter referred to as "Contractor", and under the assumption that the construction work, hereinafter referred to as the "Work", for which requirements are defined in the Construction Contract, will be performed by a single prime contractor and their subcontractor(s) for the Dams and their respective spillway structures.. Services proposed to be performed by the Engineer are described below.

4.01 ***Task 1 – Construction Observation/Construction Administration***

During the construction phase, Engineer shall:

- 1.1. General Administration of Construction Contract: Consult with Owner, act as Owner's representative, and fulfill the administrative responsibilities of the Engineer as assigned in the Construction Contract and to the extent and limitations defined therein. If Owner, or Owner and Contractor, modify the duties, responsibilities, and/or authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract which have a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to account for the modified terms. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed Professional Engineer in the State of North Carolina. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in the Construction Contract except as noted in this Task Order or otherwise provided in writing.
- 1.2. Resident Project Representative (RPR): Provide the onsite services of an RPR at the Site to represent the Engineer and to provide more extensive observation of Contractor's Work. Duties, responsibilities, and authority of the RPR are as set forth in EJCDC®E-500, Exhibit D - Resident Project Representative (2014 Edition), prepared by the Engineers Joint Contract Documents Committee. The furnishing of such RPR's services will not limit,

extend, or modify Engineer's responsibilities or authority except as expressly set forth in EJCDC®E-500, Exhibit D - Resident Project Representative (2014 Edition).

- 1.3. Pre-Construction Conference: Participate in a pre-construction conference prior to commencement of Work at the Site.
- 1.4. Electronic Transmittal Protocols: Follow transmittal protocols as defined in the Construction Contract Documents.
- 1.5. Original Documents: Maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
- 1.6. Schedules: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
- 1.7. Visits to Site and Observation of Construction: In connection with observations of Contractor's Work while it is in progress:
 - A. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the

Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

B. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

1.8. Defective Work: Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.

1.9. Compatibility with Design Concept: If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the

Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.

- 1.10. Clarifications and Interpretations: Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs) or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
- 1.11. Non-reviewable Matters: If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
- 1.12. Field Orders: Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
- 1.13. Change Orders and Work Change Directives: Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
- 1.14. Differing Site Conditions: Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
- 1.15. Shop Drawings, Samples, and Other Submittals: Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction

Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

1.16. Substitutes and "Or-equal": Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Additional Services noted below.

1.17. Inspections and Tests:

A. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.

B. Utilize personnel and equipment on-site to perform Quality Assurance testing on burrow, on-site soils, MIP and Cut-off Wall.

C. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.

D. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.

1.18. Change Proposals and Claims: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy

provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.

1.20. Applications for Payment: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

A. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

B. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment

including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

- 1.22. Contractor's Completion Documents: Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Additional Services below. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
- 1.23. Substantial Completion: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
- 1.24. Final Notice of Acceptability of the Work: Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final

payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Additional Services below) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.

- 1.25. Standards for Certain Construction-Phase Decisions: Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

Duration of Construction Phase: The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

Task 2 - Post-Construction Phase

Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:

- 2.1. Together with Owner, visit the Project to observe dams for warranty inspections, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such warranty Work. Inspections will occur weekly for 1 month, monthly for 6 months and once at the end of the one-year warranty period.
- 2.2. Perform or provide the following other Post-Construction Phase tasks or deliverables:

- a. Oversee and verify calibration of dam instrumentation.
- b. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
- c. Prepare NC Dam Safety Emergency Action Plan and Operations & Maintenance Manual
- d. Post-construction Dam inspections, monitoring and coordination with City
- e. Review As-Builts and prepare Record Drawings for submittal, with associated certifications, to NC Dam Safety.
- f. FEMA and NCFMP require the submittal of a Letter of Map Revision (LOMR) based on the final constructed dams. The hydraulic modeling submitted to obtain the Conditional Letter of Map Revision (CLOMR) will be updated based on the final as-built drawings to develop a final flood study. ENGINEER will provide the following in support of a LOMR submittal:
 - 1) duplicate effective, corrected effective, existing condition and proposed condition models.
 - 2) topographic work map showing the revised special flood hazard areas and floodway as a result of the hydraulic models above.
 - 3) annotated Flood Risk Insurance Rate Map, annotated Flood Insurance Study profile, and annotated Flood Insurance Study Tables that reflect the changes in water surface elevation.
- g. Submit Environmental Permit certifications to USACE and NCDEQ.
- h. Coordinating receipt of Permission to Impound from NC Dam Safety
- i. Assist the City with construction and grant close-out.

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

SECTION 3 – COMPENSATION

The CITY shall pay ENGINEER for services outlined in Task Order No. 3 the following Lump Sum amounts based on the anticipated construction and post-construction durations noted below:

Engineering Services for BSL Dams Construction / Reconstruction Project	
Phase 3 – Construction and Post-Construction Services	
Task 1 – Construction Services	\$5,066,500
Task 2 – Post-Construction Services	\$ 378,600
Total	\$5,445,100

SECTION 4 - SCHEDULE

The construction duration is anticipated to be 30 months. ENGINEER will coordinate the above tasks with the contractor's approved schedule. The duration of post-construction services is anticipated to be 12 months.

SECTION 5 – ADDITIONAL SERVICES

Additional Services Requiring Owner's Written Authorization

If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner based on the Standard Hourly Rates as set forth in Exhibit A.

- 1.1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

- 1.2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
- 1.3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
- 1.4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in the base agreement.
- 1.5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
- 1.6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
- 1.7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and

- f. audits or inventories required in connection with construction performed or furnished by Owner.
- 1.8. Furnishing services of Consultants for other than Basic Services.
- 1.9. Providing data or services of the types described below, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
 - a. Property descriptions.
 - b. Zoning, deed, and other land use restrictions.
 - c. Utility and topographic mapping and surveys.
 - d. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - e. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 - f. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 - g. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- 1.10. Providing the following services:
 - a. Services attributable to more than one prime construction contract.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
- 1.11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services.
- 1.12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating,

project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.

- 1.13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
- 1.14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
- 1.15. Providing Construction Phase services beyond the original anticipated duration for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
- 1.16. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
- 1.17. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
- 1.18. Preparation of operation, maintenance, and staffing manuals.
- 1.19. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
- 1.20. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.

- 1.21. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
- 1.22. Overtime work requiring higher than regular rates.
- 1.23. Providing construction surveys and staking to enable Contractor to perform its work; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
- 1.24. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
- 1.25. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
- 1.26. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

Additional Services Not Requiring Owner's Written Authorization

Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.

- 1.1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
- 1.2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and

determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.

- 1.3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
- 1.4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
- 1.5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
- 1.6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
- 1.7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
- 1.8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

SECTION 6 - MISCELLANEOUS

Except as otherwise provided herein, this Task Order supersedes all prior written or oral understanding of the parties and may only be changed by a written amendment executed by both parties.

SECTION 7 - AUTHORIZATION TO PROCEED

IN WITNESS WHEREOF, and as AUTHORIZATION TO PROCEED the parties execute below this Task Order No. 3 in duplicate originals:

EXECUTED this ____ day of _____, 2023.

McGill Associates, P.A.

Michael A.
Hanson PE, LEED AP
AP

Digitally signed by Michael
A. Hanson PE, LEED AP
Date: 2023.05.30 11:09:10
-04'00'

By: _____

Michael A. Hanson, PE, LEED AP
Principal / Vice President

City of Boiling Spring Lakes

By: _____

Gordon Hargrove
City Manager

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

By: _____

Suzanne Tungate
City Finance Manager