AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT, made and entered into this the _____ day of _____2024, by and between **CITY OF LINCOLNTON** (OWNER) and **McGill Associates, P.A.** (ENGINEER).

WHEREAS, the OWNER proposes to do certain work toward the accomplishment of the Project entitled **City Park Improvements** as generally described in Attachment "A" and

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

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

SECTION 1 - GENERAL SERVICES

The ENGINEER shall:

1.1. The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in the first phase of the Project; serve as OWNER's professional engineering representative for the Project; and provide professional consultation and advice to OWNER during the performance of the services hereunder.

1.2. The ENGINEER shall provide all personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All services rendered hereunder shall be performed by the ENGINEER or under his supervision and all personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services.

1.3. The ENGINEER shall obtain and furnish, or cause to be obtained and furnished, approvals and permits from all governmental authorities having jurisdiction over the Project, unless otherwise agreed to herein.

1.4. The ENGINEER shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for Basic Services set forth in Section 6 hereof, subject to OWNER's right to terminate as herein provided.

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

SECTION 2 - BASIC SERVICES

2.1 DESIGN PHASE

2.1.1 Meet with OWNER for the purpose of establishing communication lines, meet project team members, define project schedules, and gather initial data.

2.1.2 Complete an initial site investigation with the design team to review base survey information, existing site features, etc.

2.1.3 Provide photogrammetry of the project area to include above ground, visible planimetric features and a digital terrain model suitable for producing a one foot contour interval.

2.1.4 Establish geodetic survey control tied to NAD83(2011) for field mapping efforts. Perform field surveying to locate planimetric and topographic features, property boundary, and location of utilities.

2.1.5 Contact NC One Call and request utility locations for the project area along Aspen Street and locate the utilities as marked by representatives of the respective utilities. Please be aware, NC One Call utility representatives are likely to locate only those underground utilities within the right-of-way of the roadway. NC One Call utility representatives will not locate underground utilities on private property. If there is a need for underground utility mapping across portions of the site that are outside of the road right-of-way, a quote from a private utility locator can be provided.

2.1.6 Prepare **Schematic Design Documents** to include the following:

A. Driveway, parking, restroom/concession facility, prefabricated picnic shelter, landscaping, and supporting infrastructure. Water service will be provided by public waterline off Aspen Street and sewer service for restroom/concession facility will be provided by onsite utilities.
B. Park amenities include walking trails, one (1) multipurpose fields, bicycle pump track, and a playground.

2.1.7 Prepare an opinion of probable cost for the OWNER to review.

2.1.8 Review Schematic Design Documents with OWNER.

2.1.9 Address comments from OWNER and prepare Design Development Documents, including grading, drainage, erosion control, landscaping, architectural, and engineering drawings.

2.1.10 Prepare complete bid documents, contract documents, technical specifications and construction drawings to detail the character and scope of the work.

2.1.11 Review design documents with OWNER for comments and approval prior to bidding.

2.1.12 Submit design documents to the appropriate agencies for review and permitting. Address any comments received.

2.1.13 Perform an internal quality control and constructability review of the project.

2.1.14 Furnish up to two (2) hard copies of the final design documents to the OWNER.

2.2 BIDDING AND AWARD PHASE

2.2.1 Assist the OWNER in advertising, receiving, opening and evaluating bids.

2.2.2 Consult with and advise the OWNER as to the acceptability of contractors and subcontractors and make recommendations as to the lowest, responsive, responsible bidder.

2.2.3 Assist the OWNER in the final preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.

SECTION 3 - ADDITIONAL SERVICES

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

3.1 Additional services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction. The ENGINEER and OWNER agree that time is of the essence in order to meet funding application deadlines. As such, the OWNER may initiate minor changes in the project scope to be incorporated by the ENGINEER, subsequent to the permit submittals, as not to impede progress toward the funding application deadlines. No work on any such changes shall occur by the ENGINEER unless preapproved by the OWNER. Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of the ENGINEER.

3.2 Preparing documents for alternate bids requested by the OWNER for work, which is not executed, or documents for out-of-sequence work other than agreed upon in the Planning Phase.

3.3 Providing construction phase services. The OWNER and ENGINEER recognize that construction phase services will be necessary, however, scope of those services will be dependent upon funding and phasing. Therefore, construction phase services will be added to this agreement scope at a later time.

3.4 Providing geotechnical and subsurface investigations, archeological surveys and any other environmental site surveys necessary for the construction of the project.

3.5 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.

3.6 Additional services in connection with the Project, including services normally furnished by OWNER and services not otherwise included in this Agreement.

3.7 Additional services in connection with administering project funding.

3.8 Preparing easement maps or plats.

3.9 Soliciting bids for elements to be supplied by OWNER.

3.10 Preparing design of retaining walls or other vertical construction components and/or associated certification if required, other than any specifically provided in scope of services.

3.11 Preparing transportation studies, traffic improvements to Aspen Street and/or offsite roadway design.

3.12 Offsite engineering for water supply, utilities, and drainage.

3.13 Preparation of recombination plat.

3.14 Permitting that may become necessary due to wetland or jurisdictional stream impacts.

SECTION 4 - OWNERS RESPONSIBILITIES

The OWNER shall:

4.1 Provide full information as to the requirements for the Project.

4.2 Assist the ENGINEER by placing at his disposal in a timely manner all available information pertinent to the Project including previous documents and any other data relative to the evaluation, design, and construction of the Project.

4.3 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions pertinent to the services in this Agreement.

4.4 Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform the services under this Agreement, provided the same does not unreasonably interfere with the operation of the existing facilities.

4.5 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.

4.6 Obtain any right-of-way easements from public bodies, entities or persons necessary for satisfactory construction of the Project.

4.7 Obtain any subsurface geotechnical investigations or other types of testing and analysis needed for the Project.

4.8 Pay for permit fees, and all costs incidental to advertising for bids, and receiving bids or proposals from licensed Contractors.

4.9 Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor will or has used the monies paid to him under the construction contract.

4.10 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.

4.11 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project, subject to the obligations of the ENGINEER outlined in Section 1.3 of this Agreement.

4.12 Furnish, or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.

4.13 Bear all costs incident to compliance with the requirements of this Section 4, except where Contractor will assume responsibility for the same.

SECTION 5 - PERIOD OF SERVICES

5.1 Unless this Agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period, which may reasonably be required for the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined. Upon receiving a written authorization to proceed, the ENGINEER shall provide the OWNER with a written schedule of completion for the services so authorized.

5.2 If the Project is delayed significantly for reasons beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

SECTION 6 - PAYMENT TO THE ENGINEER

6.1 PAYMENT FOR BASIC SERVICES

6.1.1 The OWNER agrees to pay the ENGINEER for Basic Services as outlined in Section 2 of the following lump sum fees, inclusive of all reimbursable expenditures.

Design Phase Services	**$260,000.00**
Bidding and Award Phase Services (Per Bid Cycle)	**$12,000.00**

6.2 PAYMENT FOR ADDITIONAL SERVICES

6.2.1 The OWNER will pay the ENGINEER for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by principals and employees of the ENGINEER assigned to the Project in accordance with the attached ENGINEER's standard rate and fee schedule Attachment "B", which is subject to update on an annual basis.

6.3 TIMES OF PAYMENT

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

6.4 GENERAL

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

6.4.2 If the Agreement is terminated at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the ENGINEER on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Basic Services, the ENGINEER shall be paid for services rendered on the basis of a reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the ENGINEER will be paid for all his reasonable expenses resulting from such termination, and for unpaid reimbursable expenses.

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

SECTION 7 - GENERAL CONDITIONS

7.1 TERMINATION

7.1.1 In the event that the OWNER finds that it is inadvisable or impossible to continue the execution of the Project; or if the ENGINEER shall fail to fulfill in a timely and proper manner his obligations under this Agreement; or, if the ENGINEER shall violate any of the covenants, agreements, or stipulations of this Agreement; or if the services called for in this Agreement are not completed within the time period specified under Section 5, or if the ENGINEER becomes subject to a voluntary or involuntary adjudication of bankruptcy or makes a general assignment for the benefit of creditors; then the OWNER has the right to terminate at any time this Agreement or any task or phase of work being performed herein by providing fifteen (15) days written notice to the ENGINEER of such termination and specifying the effective date of such termination; provided, however, that during such period of fifteen (15) days the ENGINEER shall have the opportunity to remedy such failures or violations to avoid such termination.

7.1.1 In the event of termination, as provided herein, the ENGINEER shall be paid for all services performed and actual expenses incurred up to the date of termination pursuant to Section 6.4.2 herein.

7.2 OWNERSHIP OF DOCUMENTS

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

7.3 OPINIONS OF PROBABLE COSTS

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

7.3.2 If the lowest bona fide proposal or bid exceeds the established Project construction cost limit, the OWNER will (1) give written approval to increase such cost limit, or (2) authorize negotiating or rebidding the project within a reasonable time. The providing of such service shall be the limit of the ENGINEER's responsibility in this

regard and having done so, the ENGINEER shall be entitled to payment for his services in accordance with this Agreement.

7.1 INSURANCE AND CLAIMS

The ENGINEER will secure and maintain such insurance as will protect him from claims under workmen's compensation acts, claims for damages because of bodily injury including personal injury, sickness, or disease, or death of any of his employees or of any person other than his employees, and from claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom. Said insurance policy or policies shall be written by a company or companies and in a form and substance approved by the OWNER prior to the policies being put into effect and shall be in an amount not less than one million dollars ($1,000,000).

7.2 SUCCESSORS AND ASSIGNS

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

7.3 CHOICE OF LAW

This AGREEMENT shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina and any and all disputes arising out of, or in relation to this AGREEMENT, its negotiation, performance and termination shall be adjudicated in a court of competent jurisdiction located in Catawba County, North Carolina.

7.4 INDEMNIFICATION

OWNER agrees to indemnify, defend and hold ENGINEER, its owners, agents, employees, officers, directors and subcontractors harmless from any and all claims, and costs brought against ENGINEER which arise in whole or in part out of the failure by the OWNER to promptly and completely perform its obligations under this agreement, and as assigned in the Exhibit "Scope of Services" and any Additional Services or from the inaccuracy or incompleteness of information supplied by the OWNER and reasonably relied upon by ENGINEER in performing its duties or for unauthorized use of the deliverables generated by ENGINEER.

7.5 ENTIRE AGREEMENT

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

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

McGILL ASSOCIATES, P.A.

By: _____
Douglas G Chapman, PE
Vice President / Hickory Office Manager

(SEAL)

CITY OF LINCOLNTON

ATTEST: _____

By: _____
Richard Haynes
City Manager

PRE-AUDIT CERTIFICATION:

THIS INSTRUMENT has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act as amended.

By: _____
Pamela McBryde, Finance Director
City of Lincolnton

APPROVED AS TO LEGAL FORM:

By: _____

City Attorney

ATTACHMENT "A"

PROJECT UNDERSTANDING
CITY PARK

The City of Lincolnton desires to redevelop City Park located off North Aspen Street in Lincolnton, North Carolina. The site contains approximately 19 acres and is primarily a mixture of open meadow and wooded areas.

The project understanding is based upon the PARTF Application Exhibit prepared by McGill and dated March 10, 2023. This phase of the project is planned to include an asphalt paved multi-use trail, concrete sidewalks, playground structure, one (1) multi-purpose field, restroom building, bicycle pump course, six (6) pickleball courts, large shelter, parking area, entrance road, utilities, and appurtenances. It is anticipated that the project will be funded by a combination of NC Park and Recreation Trust Fund grant and local monies. It is assumed electrical, sewer, and water systems will be provided by local utility providers. This project will bid as one project (one Contractor) with all facilities, equipment and appurtenances included.

ATTACHMENT "B"

FEE SCHEDULE

McGill's Hourly Rates

Professional Fees	I	II	III	IV
Senior Principal	$270			
Principal - Regional Manager - Director	$230	$235	$250	$260
Practice Area Leader	$200	$ 215	$230	$240
Senior Project Manager	$ 210	$225	$230	$235
Project Manager	$180	$ 195	$200	$205
Project Engineer	$140	$150	$ 165	$ 175
Engineering Associate	$120	$ 125	$ 130	$ 135
Planner - Consultant - Designer	$ 125	$140	$160	$ 175
Engineering Technician - GIS Analyst	$ 115	$ 125	$ 135	$145
CAD Operator	$ 90	$100	$ 110	$ 115
Construction Services Manager	$150	$160	$ 175	$195
Construction Administrator	$ 110	$ 125	$ 135	$145
Financial Services Manager	$ 135	$145	$ 155	$165
Grant Administrator	$120	$ 135	$145	$155
Construction Field Representatives	$ 95	$ 110	$ 115	$125
Environmental Specialist	$ 95	$105	$ 110	$ 115
Administrative Assistant	$ 80	$ 85	$ 95	$ 110

Expenses

- Mileage – $0.70/mile
- Flow Monitoring Equipment:
  - Pressure Flow Meter- $400/week
  - Gravity Flow Meter - $1,000/deployment
- Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

Associated Services

Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus fifteen (15) percent.