McAdams
80 Charlotte Street
Suite 40
Asheville, NC 28801
919. 361. 5000

TOB25003.00

May 23, 2025

Jessica Trotman
Town of Black Mountain
160 Midland Avenue
Black Mountain, North Carolina 28711

RE: Black Mountain NC, Hilltop Rd Stabiliz
Black Mountain, North Carolina
TOB25003

Dear Ms. Trotman,

We are pleased to offer this proposal for engineering services for the emergency stabilization of Hilltop Road. Flooding from Hurricane Helene caused a landslide on Hilltop Road that has removed roughly half the roadway approximately 1600' from the intersection of Hilltop Road and Fairway Drive. The remaining half of the roadway is un-stable, and the road is currently closed to traffic with some temporary measures in place to try and divert surface water away from the slide area. An existing stormwater pipe was collecting surface water from beside Hilltop Road in the area of the slide and carrying it beneath Hilltop Road and down the slope. During the landslide that pipe was destroyed, and the outlet can no longer be located.

Project Understanding

Proposed Repairs

The proposed repairs for this site are to stabilize the slope and prevent further material loss on the hillside. This effort will include significant repairs/replacement to the drainage system in place. The re-grading and re-opening of Hilltop Road is not the objective of this stabilization project.

Assumptions

This proposal is based on the following assumptions:

- The Town of Black Mountain (Town) will be acquiring the adjacent parcel of property in the landslide location.
- Utility locates have been requested by the Town.
- Necessary permits for construction will be acquired by the Town.
- Survey Data Collection shall be completed via Unmanned Aircraft System (UAS). This is due to the steep slopes in the slide area that pose a safety concern to our crews.
- A single submittal will be prepared for the Town's review. This submittal will contain Construction Drawings, an Opinion of Probable Construction Costs (OPCC), and Project Manual. Comments from the review will be incorporated and returned to the Town for bidding and letting.

- All Plans shall be in accordance with latest editions of the following documents:
  - AASHTO *A Policy on Geometric Design of Highways and Streets;*
  - AASHTO *Roadside Design Guide;*
  - NCDOT *Subdivision Manual;*
  - NCDOT *Roadway Design Manual;*
  - NCDOT *Roadway Standard Drawings;*
  - FHWA *Manual on Uniform Traffic Control Devices;*
  - NCDOT *Guidelines for Drainage Studies and Hydraulic Design;*
  - NCDOT *Stormwater Best Management Practices Toolbox; and*
  - NCDOT *Erosion and Sediment Control Design and Construction Manual.*
- Specifications for this project shall be in accordance with the 2024 NCDOT Standard Specifications for Roads and Structures.

Proposed Services + Fees

We propose the following services (Alphanumeric task numbers are for internal coding purposes):

Surveying Services

B1.10 UAS FLIGHT AND DATA SERVICES:

> FEE: $11,300 + $1,500 Reimbursables ($12,800 Total)

McAdams UAS flight crews will perform all flights under Part 107 regulations and will acquire, if necessary, the FAA airspace authorizations to perform such tasks. Once any necessary authorization has been granted flight plans will be prepared to complete the project mission. LIDAR and Aerial Photography will be collected within the project limits. Ground Control points ((1) Azimuth pair, if needed) and forty plus (40+) Photo Identification points will be established for the project site, recording the northings, eastings, and elevations for each on NAD83 and NAVD88 datum. The data collected from the UAS will be validated with the collected points. Aerial data will be processed in accordance with ASPRS Accuracy Standards for Digital Geospatial Data, as well as any regulation required by the Board of Examiners for Engineers and Land Surveyors. Ground classification will be extracted from the LIDAR data and used to develop a digital terrain model to define the existing topography. A surface XML file will be exported and provided for incorporation into the survey base file. Current FAA regulations require that a constant line of sight be maintained between the pilot and the UAS. In certain situations that requires the use of a lift platform to meet that requirement. Should this equipment be required, the reimbursable expenses shall be invoiced as follows:

- Towable Boom Lift – $1,500 daily.

B12.30 SUBSURFACE UTILITY ENGINEERING (LEVEL B):

FEE: $6,800

Conductive utilities will be marked utilizing Geophysical prospecting techniques in conjunction with radio, audio, and electromagnetic equipment. Multiple utility sweeps will be performed to identify the water lines in conflict. All non-conductive utilities will be marked utilizing above ground features utility plats and/or as-built, and recollections. Utilities will be marked utilizing standard marking paint and/or flags and whiskers in accordance with ASEC standard guidelines to ensure accuracy in the collection of the information. No guarantee is made that the underground utilities shown comprise all such utilities in the area, either in service or abandoned, nor that the underground utilities shown are in the exact location indicated, although they will be located as accurately as possible from information available. The Client will ensure that there is access to all areas inside and outside of the building so a thorough locate and sweep can be performed. Client will ensure that there is access to the site. Physical location of the underground utilities can be determined by utilizing Vacuum Excavation (SUE – Level A) and can be quoted if requested.

Project Administration/Bid Support

A14.01 PROJECT ADMINISTRATION AND BID SUPPORT SERVICES:

FEE: $20,610 + $357 Reimbursables ($20,967 Total)

McAdams will provide project administration during the design development phase and bid support services to the Town of Black Mountain under this task.
This includes the following meetings:

- Kickoff Meeting (Principal in Charge, Project Manager, Discipline Leads, Lead Designers; Virtual Format; one (1) hour).
- Monthly Client Coordination Meetings (six (6); Principal in Charge, Project Manager; Virtual Format; one (1) hour).
- Bi-Weekly Internal Coordination Meetings (twelve (12); Principal in Charge, Project Manager, Discipline Leads, Lead Designers; Virtual Format; thirty (30) minutes).
- Pre-Bid Meeting (Principal In Charge, In-Person, one (1) hour + travel).

Project administration services include the creation and maintenance of agendas and minutes for the aforementioned meetings (when applicable) as well as coordination of submittals to the Town, maintenance of project records, and general project operation. Bid services include responding to up to six (6) Requests for Information (RFI) during the pre-bid process. Travel to and from the Pre-Bid Meeting includes $357 of reimbursable expenses for mileage to and from our Raleigh, North Carolina office to the Town's office.

Engineering Services

D14.01 ROADWAY DESIGN:

FEE: $31,560

McAdams will complete the design for temporary roadway grading on Hilltop Road to prevent further material loss at the landslide location. The limits of construction along Hilltop Road shall be of sufficient length to tie-in to existing conditions. McAdams will prepare and submit Construction Drawings, an OPCC, and Project Manual for the Town's review. McAdams will respond to comments and questions, and revise Plans and Specifications for one (1) review. Once approved, McAdams will sign and issue the Construction Drawings and Project Manual for the Town's use.

The Construction Drawings shall include the following:

- Title Sheet;
- Index of Sheets, General Notes, and List of Standards;
- Conventional Symbols (legend);
- Pavement Schedule and Typical Sections;
- Details (as needed);
- Plan and Profile Sheets including Proposed Drainage (drainage design prepared in a separate task);
- Erosion Control Notes, Standard Drawings, and Details (Erosion Control Design prepared in a separate task); and
- Roadway Cross-Sections (ten (10)-foot intervals).

Deliverables:

- Final Plan Set for Review;
- Final Plan Set issued for Construction;
- Opinion of Probable Construction Cost;
- Specifications for Construction; and
- Hydraulic Summary Sheet(s).

D14.02 HYDRAULIC DESIGN:

> FEE: $25,260

Temporary Hydraulic Design:
For the section of Hilltop Road, McAdams will design any new temporary roadway drainage, ditches, and other stormwater devices to convey proposed flows across Hilltop Road that meet the Town of Black Mountain and NCDOT standards. Temporary Design includes hydrologic and hydraulic analysis for identified design storms through development of approved hydraulic software. The resulting calculations will be used to determine the level of service for the temporary roadway drainage.

Deliverables include:
- Design Calculations and Supporting Documentation;
- Drainage Design Incorporated with Roadway Design; and
- Stormwater Management Plan (SMP).

Temporary Erosion Control:
For the section of Hilltop Road, McAdams will design Erosion and Sediment Control Plans (ES&C) plans for the Temporary phase of construction that meet the Town of Black Mountain and NCDOT standards. The Temporary design will include document review and surface water delineation for design requirements, including environmental commitments related to ES&C design, landscaping, and vegetation re-establishment.

Deliverables include:
- High Quality Water Worksheet;
- Erosion & Sediment Control Plans for Temporary Design;
- Erosion & Sediment Control Quantities; and
- Project Specific Erosion and Sediment Control Special Provisions.

D14.03 GEOTECHNICAL DESIGN:

> FEE: $30,000

Conduct a geotechnical exploration and provide soil properties to aid in slope repair design and roadway reconstruction.

Geotechnical Drilling:
FME will contact North Carolina 811 (NC811) to request utility marking. However, NC811 may not mark all utilities. FME is not responsible for damage to unmarked and / or incorrectly marked utility lines. The Town of Black Mountain is responsible for locating and marking Town and County owned utilities that are not marked by NC811.

FME proposes to advance two (2) Standard Penetration Test (SPT) borings at the slope failure. FME intends to conduct borings from the roadway on either side of the slope failure. Borings will be extended to forty (40) feet below the pavement surface. SPT blow counts will be recorded at two (2)-foot intervals over the course of the soil drilling. Rock coring will be conducted if refusal is encountered shallower than forty (40) feet.

- One (1) composite bulk sample will be obtained from the auger cuttings.
- Groundwater measurements will be obtained at the time of boring and the bore holes will be backfilled with a bentonite-cement grout after water measurements are made.

Laboratory Testing:
Recovered soil samples will be classified in the field per the Unified Soil Classification System (USCS) by the Visual-Manual Soil Classification method. Samples will be placed in plastic bags and sealed after classification. Samples will be transported to FME's laboratory where a select number of samples will be tested. The laboratory test program will include four (4) classification testing (grain size distributions, Atterberg limits, and moisture content determinations). The bulk sample will be testing for Standard Proctor, shear (either triaxial shear or direct shear at FME's discretion), and classification testing. Up to two (2) rock core samples will be tested for compressive strength if rock is cored.

Geotechnical Reporting:
FME will provide a geotechnical report that will include a summary of the field exploration, laboratory tests results, boring logs, groundwater measurements, boring location plan, and our interpretation of the subsurface conditions encountered in the test borings. The report will also include recommendations for the following items:

- Pavement section reconstruction to match or exceed the existing pavement section structural number;
- Soil strength properties and rock strength properties (if rock is encountered); and
- Fill placement.

D14.04 GEOTECHNICAL CONSULTATION:

> FEE: By hourly charges according to the attached Rate Schedule at $275 per hour, estimate $11,000.

Provide consultation and iterate with McAdams on concepts and pricing for permanent repair of the slope failure and reconstruction of the westbound travel lane.

D14.05 EROSION CONTROL PERMITTING:

> FEE: $3,900

Following an initial review by the Town, McAdams will submit erosion control plans and supporting documentation to the Regional Office of NCDEQ for review and approval. Upon approval of the erosion control plans, Design Team will apply for the NCG01 permit. This scope of services includes responding to one round of comments from NCDEQ. Based on NCDEQ current review standards, a land disturbance permit will not be issued until documentation of permit approvals and easement acquisition can be provided. The County will be responsible for signing and notarizing the NCDEQ Financial Responsibility Form and paying the required review fees for the project.

Project Schedule

The Firm's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the project. McAdams proposes the following schedule for the repair plans to be completed. The number of weeks shown is from the issuance of the Notice to Proceed (NTP). The following is the expected schedule for completion of work on this project:

- Geotechnical/Survey/SUE Field Work – Completed within six (6) weeks of NTP;
- Hydrology/Hydraulic Analysis – Completed within eight (8) weeks of NTP;
- Issuance of Geotechnical Report – Completed within twelve (12) weeks of NTP;
- Development of Preliminary Grading Plan and Easement Requirements – Completed within sixteen (16) weeks of NTP; and
- Development of Bid Documents – Completed within twenty (20) weeks of NTP.

The time limits and schedule set forth above have been agreed to by the Client and Firm, but the time limits and schedule shall be extended for (1) reasonable cause, or for (2) any delays associated with the Firm's work on the project that are not the sole responsibility of the Firm.

Client Responsibilities

Client shall be responsible for the following:

- Notification to proceed;
- Timely approval of sketches presented for Client approval;
- Timely providing of information from other professional services (architect, geotechnical engineer, etc.), as described hereinabove;
- Payment of all application and permit fees;
- Payment of invoices in accordance with Item 1 of Terms and Conditions;
- Notification to Firm of any problems, in accordance with Item 2 of Terms and Conditions.

Exclusions

The following services are not included in this Agreement:

- Pavement design;
- Utility coordination;
- Tenant coordination meetings or conference calls (can be quoted once scope is clarified);
- Wetlands delineation and permitting (will be quoted if required);
- Structural design of retaining walls, headwalls or stormwater facilities or structures;
- Traffic Impact Analysis;
- Preparation of plats for right-of-way acquisition;
- Right-of-way acquisition services;
- Bidding services;
- Construction engineering and inspection;
- Color graphics for meetings or marketing purposes (will be quoted if required);
- Permit application, plans review or re-review fees;
- Revised directives from Client after design has begun;
- Additional submittal of stormwater design for jurisdictional approval by State regulatory organizations such as NCDENR-DWQ, Dam Safety, or the like (can be quoted if determined to be required);
- Court appearances for litigation, or preparation for same;
- Legal advertisements for construction contracts;
- Environmental investigations, wetlands permitting, wetlands surveying;
- Any costs incurred by Client or Contractor due to changes required by the approving authority or their inspectors after construction drawings have been approved; and
- Stormwater Control Measures (SCM's) (will be quoted if required).

General Conditions

- The attached "Terms and Conditions" shall apply to this Agreement.
- This proposal is valid for 30 days from the above date.
- Reimbursable expenses will be billed as shown in this proposal and in accordance with the attached Rate Schedule.
- Client is responsible for all application and permit fees.

Conclusion

We appreciate this opportunity to propose our services. We are eager to pursue this project further and thank you for your consideration.

Sincerely,
McAdams

Colin Kinton, P.E. | Project Principal
ckinton@mcadamsco.com | 843. 252. 3417

Paul L. Jacob, P.E. | Project Manager
jacob@mcadamsco.com | 919.361.5000

CK/PJ/lm

Acceptance

By: _____ Date: _____

Name: _____

Title: _____

Accounting Information

Billing Contact: _____

Billing Contact Email Address: _____

Billing Contact Phone Number: _____

Billing Address: _____

_____

McAdams

Hourly Rate Schedule / 2025

1. SPECIFICATIONS FOR CONTRACT BY HOURLY CHARGE, THE FOLLOWING RATES APPLY

Role	Rate
Chairman / President / Vice President	$290 - 400 /hour
Advisor	$325 - 250 /hour
Director / Practice Lead	$165 - 310 /hour
Technical Manager	$140 - 250 /hour
Project Manager	$150 - 235 /hour
Assistant Project Manager	$120 - 185 /hour
Landscape Architect	$140 - 230 /hour
Planner	$110 - 205 /hour
Project Engineer	$145 - 240 /hour
Graphics + Visualization	$125 - 140 /hour
Designer / Analyst	$110 - 170 /hour
Intern	$55 - 100 /hour
Administrative Services	$80 - 120 /hour
Construction Administration	$115 - 205 /hour
Survey Technician	$95 - 125 /hour
2 Man Survey Crew	$165 - 185 /hour
3 Man Survey Crew	$200 - 225 /hour
UAS LiDAR Crew	$285 /hour
SUE Crew Member	$95 - 135 /hour

Hourly services are recorded and rounded to the nearest 1/4 hour.

2. THE FOLLOWING CHARGES APPLY ON ALL CONTRACTS, FOR COPIES OF PLANS AND SPECIFICATIONS SENT OUT OF THE ENGINEER'S OFFICE (TO CLIENT, CITY REGULATORY AGENCIES, BIDDERS, CONTRACTOR, OTHER CONSULTANTS, ETC.):

Item	Fee	Item	Fee
Oversize + Color Rep.	$3.60 /each	Oversize Mylar Sepia	$24.00 /each
Paper Reproductions	$2.40 /each	Mylar Sepia	$18.00 /each
Specifications	$0.12 /each	Paper Sepia	$6.00 /each

3. THE FOLLOWING RATES ARE CHARGED IN ADDITION TO THE ABOVE FEES:

Item	Fee
Fees Paid for Permits and Applications	Cost Plus 10%
Outside Photocopying, Travel, Overnight Delivery, Postage for Mass Mailings	Cost Plus 10%
Subcontractor Invoices	Cost Plus 12.5%

4. FEES ARE SUBJECT TO ADJUSTMENT AT THE BEGINNING OF EACH CALENDAR YEAR.

5. PROJECTS ARE BILLED ON A MONTHLY BASIS AND INVOICES ARE DUE UPON RECEIPT. INVOICES WHICH HAVE BEEN NOT BEEN PAID WITHIN 30 DAYS ARE PAST DUE AND SUBJECT TO FINANCE CHARGES OF 1.5% PER MONTH.

Client's Initials _____ Date _____

MCADAMS

Collection Schedule

- **Issuance** Client will be issued their invoice by McAdams within 30 days of the last day of the month in which the services were rendered.

- **Net 30 Days** Invoices are due in full within 30 days after issuance. Exceptions to this policy must be discussed with and agreed upon by a McAdams representative **prior** to the due date of any issued invoice. Exceptions must be made in writing and acknowledged by both parties.

- **Past 30 Days** Invoices that lapse 30 days without payment or notification are considered **past due**. McAdams will notify the client via email and confirm that invoices have been received, as well as advise that payment is due.

- **Past 45 Days** Invoices that lapse 45 days without payment or notification are considered **overtly past due**. McAdams will notify the client via email and as well as make contact via phone.

- **Past 60 Days** Invoices that lapse 60 days without payment or notification will have submittals for the project halted, and a formal letter issued to the client. This letter will:
  - Outline the services rendered and state the client's past due balance.
  - Notify a work hold for **all client projects** starting in 15-days (75 days from issuance).
  - State the procedures for payment to remove halts and ratify current account status.

- **Past 75 Days** Invoices that lapse 75 days without payment or notification will result in the respective project AND all other projects placed on work hold on a case-by-case basis.

- **Past 90 Days** Invoices that lapse 90 days from issuance without payment or notification will be pursued by McAdams on a case-by-case basis with the potential for a lien to be placed on the property.

Client

Initials: _____ Date: _____

MCADAMS

Terms + Conditions - NC

The proposal submitted by THE JOHN R. McADAMS COMPANY ("CONSULTANT") is subject to the following terms and conditions (collectively referred to as the "Agreement") and, by accepting the proposal or any part thereof, CLIENT agrees and accepts the terms and conditions outlined below:

1. Payment:

CLIENT will pay CONSULTANT for services and expenses in accordance with periodic invoices to CLIENT and a final invoice upon completion of the services. Each invoice is due and payable in full upon presentation to CLIENT. Invoices are past due if not paid in full after 30 days. Past due amounts are subject to interest at a rate of one and one-half percent per month (18% per annum) on the outstanding balance from the date of the invoice.

In an effort to ensure prompt resolution of questions and disputes regarding CONSULTANT's services and invoices, CLIENT agrees to notify CONSULTANT, in writing / email, of any questions or concerns CLIENT may have regarding the cost, quality or appropriateness of services provided related to an invoice within fifteen (15) days of the invoice date. If CLIENT fails to provide such notice to CONSULTANT, CLIENT waives its right to dispute the accuracy and appropriateness of any portion of such invoice for which notice was not provided.

If CLIENT fails to make payment to CONSULTANT within 30 days after the invoice date, CONSULTANT may, after giving seven (7) days written notice to CLIENT, suspend services under this Agreement until all amounts due are paid in full. If an invoice remains unpaid after sixty (60) days from invoice date, CONSULTANT may terminate the Agreement and/or initiate legal proceedings to collect the fees owed, plus other reasonable expenses of collection including attorney's fees.

2. Notification of Breach or Default:

CLIENT shall provide prompt written / email documentation to CONSULTANT if CLIENT becomes aware of any breach of contract, defect, fault, error, omission or inconsistency arising out of or related to CONSULTANT's services. The failure of CLIENT to provide such written notice within fifteen (15) days from the time CLIENT became aware of such breach of contract, defect, fault, error, omission or inconsistency, shall constitute a waiver by CLIENT of any claims against CONSULTANT arising out of such breach of contract, defect, fault, error, omission or inconsistency.

3. Ownership of Instruments of Service:

All reports, plans, specifications, instruments of service, field data, notes and other documents, including all documents on electronic media, prepared by CONSULTANT shall remain the property of CONSULTANT. CONSULTANT shall retain all common law, statutory and other rights, including intellectual property rights. In the event of termination of this Agreement and upon full payment of fees owed to CONSULTANT, CONSULTANT shall make available to CLIENT copies of all completed plans, specifications, and electronic files.

4. Change Orders:

CONSULTANT will treat as a change order request any documented or oral order (including directions, instructions, interpretations or determinations) from CLIENT which request changes in the Agreement or CONSULTANT's scope of work. If CONSULTANT is willing to proceed with such change, CONSULTANT will give CLIENT written notice within fifteen (15) days of a change order request of any resulting increase in CONSULTANT's fees and/or time of performance (a "Change Order"). Unless CLIENT objects in writing within ten (10) days, the Change Order becomes a part of this Agreement.

5. Site Operations:

CLIENT will arrange for right-of-entry to the property for the purpose of performing studies, tests and evaluations pursuant to the agreed services. CLIENT represents that it possesses necessary permits and licenses required for all ongoing activities at the site. If CONSULTANT is advised or given data in writing that shows the presence of underground or overground obstructions, such as utilities, CONSULTANT will give special instructions to our field personnel. However, CONSULTANT is not responsible for any damage or losses due to undisclosed or unknown surface or subsurface conditions, owned by CLIENT or third parties. CONSULTANT will take reasonable precautions to minimize damage to the property caused by our operations. CONSULTANT's fee does not include any cost of restoration due to any damage which may result and CONSULTANT is not responsible for any such repairs unless CONSULTANT fails to take reasonable precautions. If CLIENT desires CONSULTANT to repair such damage, CONSULTANT will comply and add the cost to our fee. Field tests or boring locations described in CLIENT's reports or shown on sketches prepared by CONSULTANT are based on specific information furnished by others or estimates made in the field by CONSULTANT's personnel. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated in CONSULTANT's proposal or report.

6. Project Site:

Should CLIENT not be owner of the project site, then CLIENT agrees to notify the owner(s) of the possibility of unavoidable alteration and damage to the site and to obtain permission from the owner(s) for such alteration and damage. CLIENT further agrees to indemnify, defend and hold CONSULTANT harmless against any claims by the owner(s) or persons having possession of the site through the Owner which are related to such alteration or damage.

7. Assignment and Third Parties:

Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than CLIENT and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CLIENT and CONSULTANT and not for the benefit of any other party. Neither CLIENT nor CONSULTANT shall assign, sublet, or transfer any rights under or interests in this Agreement without the written consent of the other which shall not be unreasonably withheld. However, nothing contained herein shall prevent or restrict CONSULTANT from employing independent subconsultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder.

8. Survival:

All of CLIENT's payment obligations and liabilities, including but not limited to, its indemnification obligations and limitations, and CONSULTANT's rights and remedies with respect thereto, as well as the terms of Sections 6, 11, 12, and 14, shall survive completion of and the expiration or termination of this Agreement.

9. Force Majeure:

Should completion of any portion of the services or any obligation under the Agreement be delayed for causes beyond the control of or without the fault or negligence of CONSULTANT, including force majeure, the reasonable time for performance of the service or the deadline under the Agreement shall be extended for a period at least equal to the delay. Force majeure includes but is not restricted to acts of God, acts or failures of governmental authorities, acts of CLIENT's contractors or agents, fire, floods, epidemics, riots, quarantine restrictions, strikes, civil insurrections, freight embargoes, and unusually severe weather.

10. Standard of Care:

CONSULTANT shall perform its services under the Agreement in a professional manner, using the degree of care and skill ordinarily exercised by and consistent with the standards of professionals providing the same services in the same or a similar locality as the project. **THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING OUT OF OR RELATING TO THE SERVICES PROVIDED BY CONSULTANT UNDER THIS AGREEMENT, AND CLIENT WAIVES ITS RIGHT TO ASSERT SUCH CLAIMS AGAINST CONSULTANT**.

11. Limitation of Liability:

CLIENT agrees that the total collective and aggregate liability of CONSULTANT and its employees, officers, and directors for any and all claims that may be asserted by CLIENT arising out of or related to this Agreement, except for claims for willful or intentional misconduct by CONSULTANT, is limited to $50,000 or to the fee paid to CONSULTANT under this Agreement, whichever is greater.

12. Waiver of Consequential Damages:

Both CLIENT and CONSULTANT hereby waive any right to pursue claims for consequential damages against one another, including any claims for lost profits.

13. Safety:

Except with respect to CONSULTANT's own employees, CONSULTANT is not responsible for site safety or compliance with the Occupational Safety and Health Act of 1970 ("OSHA"). Job site safety remains the sole exclusive responsibility of CLIENT or CLIENT's contractors. Likewise, CONSULTANT shall have no right to direct or stop the work of CLIENT's contractors, agents or employees.

14. Arbitration:

Any claim or other dispute arising out of or related to this Agreement shall be subject to Arbitration. Such claims and disputes shall first be subject to non- binding mediation, and if mediation is unsuccessful, shall be subject to Arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Any demand for Arbitration shall be filed in writing with the other party and with the American Arbitration Association. Nothing in this provision shall prevent CONSULTANT from acting to secure any lien rights it may have under applicable law.

15. Independent Contractor:

In carrying out its obligations, CONSULTANT shall be acting at all times as an independent contractor and not an employee, agent, partner or joint venturer of CLIENT. CONSULTANT's work does not include any supervision or

direction of the work of other contractors, their employees or agents, and CONSULTANT's presence shall in no way create any liability on behalf of CONSULTANT for failure of other contractors, their employees or agents to properly or correctly perform their work.

16. Termination:

Either party may terminate the Agreement with cause upon ten (10) days advance written notice, if the other party has not cured or taken reasonable steps to cure the breach giving rise to termination within the ten (10) day notice period. Either party may terminate the Agreement without cause upon thirty (30) days advance written notice to the other party. If CLIENT terminates without cause or if CONSULTANT terminates for cause, CLIENT will pay CONSULTANT for all services performed, costs incurred, non- cancelable commitments, and fees earned to the date of termination and through demobilization, including any cancellation charges of vendors and subcontractors, as well as reasonable demobilization costs.

17. Severability:

If any provision of this Agreement, or application thereof to any person or circumstance, is found to be invalid then such provision shall be modified if possible, to fulfill the intent of the parties as reflected in the original provision. The remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by the law.

18. No Waiver:

No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or different in character.

19. Merger, Amendment:

This Agreement constitutes the entire Agreement between CONSULTANT and CLIENT, and all negotiations, written and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both CONSULTANT and CLIENT.

20. Choice of Law:

The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the law of the State of North Carolina, excluding only its conflicts of laws principles.