AGREEMENT FOR
DESIGN CONSULTANT SERVICES

This Agreement for Design Consultant Services is made, and entered into this the 1 day of October 2026, by and between the **COUNTY OF BUNCOMBE**, a political subdivision of the State of North Carolina, (hereinafter "OWNER"), and Mattern & Craig, Inc., (hereinafter "DESIGNER" or "DESIGN CONSULTANT"), whose principal place of business is: 12 Broad Street, Asheville, NC 28801.

For Professional Services in connection with the Project known as:
Buncombe County Government
Gravel Roadway Repairs at Communication Tower Sites

The Owner and the Design Consultant hereby agree as set forth below:

1. ARTICLE 1
DEFINITIONS

The following words and phrases where appearing in initial capitalization, shall for the purposes of this Agreement have the following meanings:

1.1. Project. The Project shall be as described above.

1.2. Services. The Services to be performed by the Design Consultant under this Agreement shall consist of the Basic Services described in Article 3 and Article 7 and any other services in the Contractor Documents as part of the Basic Services, and include normal structural, mechanical and electrical architectural design services.

1.3. Construction Contract Documents. The Construction Contract Documents shall consist of the plans and specifications prepared by the Design Consultant, and any addenda and change orders thereto, and the Construction Contract between Owner and Contractor, all of which shall be compatible and consistent with this Agreement.

1.4. Construction Costs. The Construction Costs shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Design Consultant. The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Design Consultant, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction. Construction Costs do not include the compensation of the Design Consultant and its consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 6.

1.5. Contractor. The Contractor is the person or entity which enters into an agreement with the Owner to perform the construction of any or all of the Project, including, without limitation, the providing of labor, materials, and equipment incorporated or to be incorporated into the Project. The term "Contractor" means the Contractor or its authorized representative, but excludes the Owner's Representative and the Design Consultant.

1.6. Basic Services Compensation. Basic Services Compensation shall be the lump sum fee designated in Article 4 to be paid by the Owner to the Design Consultant in connection with the performance of the Basic Services by the Design Consultant.

2. ARTICLE 2
RELATIONSHIP OF THE PARTIES

2.1. Design Consultant Services. The Design Consultant shall provide professional engineering services for the Project in accordance with the terms and conditions of this Agreement and all applicable codes and laws. The Design Consultant's performance of services shall be as professional consultant to the Owner to carry out the activities of Project design and construction administration and to provide the technical documents and supervision to achieve the Owner's Project objectives.

2.2. Owner Representation. The Owner shall designate a Project Manager to serve as the Owner's Representative. The Owner's Representative has no design responsibilities of any nature. None of the activities of the Owner's Representative supplant or conflict with the design, budget or any other services and responsibilities customarily furnished by the Design Consultant or sub-consultants in accordance with generally accepted architectural/engineering practices except as otherwise modified by this Agreement. Instructions by the Owner to the Design Consultant relating to services performed by the Design Consultant will be issued or made by or through and in accordance with procedural, organizational, and documentation standards established by the Owner's Representative. Communications and submittals of the Design Consultant to the Owner and Contractor shall be in writing and issued or made in accord with similar procedural and documentation standards established by the Owner's Representative. The Owner's Representative shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Design Consultant and Contractor and to call periodic conferences to be attended by the Design Consultant, and his sub-consultants, throughout the term of this Agreement.

2.3. Other Consultants. The Owner may provide drawings, consultation, recommendations, suggestions, data and/or other information relating to the Project from other Consultants under separate contract with the Owner, including but not limited to: Surveyor, Utility Locating Service, Geo-technical Consultant, CMARs, and/or Materials Testing Consultant. The Design Consultant is responsible for the coordination of survey, existing utility location, geo-technical services, and/or material testing, including all coordination with surveyor, soils engineers, utility locating contractor, City and/or County officials, and CMARs, if any, required for Project.

2.4. Design Consultant Representation.

2.4.1. The Design Consultant shall provide a list of all consultants (and sub-consultants if applicable) which the Design Consultant intends to utilize on the Project prior to commencing work on the Project. The list shall include such information on the qualifications of the consultants as may be requested by the Owner. The Owner will review the consultants proposed. The Design Consultant shall not retain a consultant to which the Owner has a reasonable objection. The Design Consultant shall use individuals or firms that are licensed and regularly engaged in the fields of expertise required for this Project.

2.4.2. All agents and workers of the Design Consultant and its sub-consultants shall be prepared to provide identification at all times they are on the Owner's property including, at a minimum, the company name and telephone number and name. The County reserves the right to require identification badges that contain the information above.

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2.4.3. The Design Consultant shall receive, compile and report all M/WBE participation of all of its sub-consultants and vendors of this project in a format acceptable to Owner at the commencement of design, and on a monthly basis, should any change from the preliminary submission occur.

2.5. Division of Responsibilities/Services. The Design Consultant understands and agrees that should the Owner's Representative or other consultant provide the Design Consultant with any estimating assistance, cost or time control recommendations or other consultation, recommendations or suggestions, any or all such activities on the part of the Owner's Representative, consultant, or any other representative of the Owner shall in no way relieve the Design Consultant of the responsibility of fulfilling its obligations and responsibilities under this Agreement.

2.6. Compliance with Laws. Design Consultant represents that it is in compliance with all applicable Federal, State, and local laws, regulations or orders, as amended or supplemented, including Chapter 64 Article 2 of the North Carolina General Statutes regarding the verification of work authorization. The implementation of this Contract shall be carried out in strict compliance with applicable Federal, State, or local laws.

3. ARTICLE 3
BASIC SERVICES

3.1. **Scope of Services**.

3.1.1. The Basic Services to be provided by the Design Consultant shall be performed in the phases described hereinafter which have as their objective design and construction administration of the Project. The Basic Services shall be performed in accordance with the standard of care set forth in this Agreement. The final product shall be suitable for the Owner's purposes, satisfy the Owner's requirements, comply with all applicable codes and laws, and be completed on a timely basis and within the approved budget.

3.1.2. The Design Consultant's services shall be performed as expeditiously as necessary for the orderly progress of the Work. The Design Consultant shall submit for the Owner's approval a schedule for the performance of the Design Consultant's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Design Consultant.

3.1.3. Upon authorization from the Owner to proceed, and based on the approved Design Narrative, the Design Fee, and Preliminary Programming, the Design Consultant shall prepare **Schematic Design Documents** consisting of drawings and other documents illustrating the design concept, scale and relationship of the Project components, for approval by the Owner.

3.2. **Design Development Phase**.

3.2.1. Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Design Consultant shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the project as to, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

3.2.2. The Design Consultant shall advise the Owner of any adjustments to the preliminary estimate of Construction Costs

3.3. **Construction Document Phase**.

3.3.1. Upon written authorization from the Owner to proceed, the Design Consultant shall prepare from the approved Design Documents, working drawings and Specifications setting forth in detail the requirements for the construction of the entire Project. The Design Consultant shall assist the owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

3.3.2. The Design Consultant shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

3.3.3. The Design Consultant shall be responsible for, and shall hold the Owner harmless for, any and all claims or damages due to the negligence of the Design Consultant or his employees in the preparation of the Construction Documents.

3.4. **Permitting and Bidding/Negotiation**.

3.4.1. The Design Consultant, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Costs, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

3.4.2. The Design Consultant shall coordinate and document the reproduction, distribution and retrieval of the bidding documents. Further, the Design Consultant shall coordinate and document the collection and return of deposits or payments. In addition to the bidders, documents shall be issued to all required code authorities, contractors, plan room, services, and others, as the Owner designates.

3.4.3. *Intentionally left blank for numbering purposes.*

3.4.4. The Design Consultant shall request, expedite and submit all information necessary to obtain all necessary permits, licenses and approvals, required for the Project.

3.4.5. The Design Consultant shall prepare such clarifications and addenda to the bidding documents as may be required. The Design Consultant will provide these to the Owner for review prior to issuance to all holders of bid documents.

3.4.6. The Design Consultant will schedule and conduct a Pre-Bid Conference with prospective bidders to review the Project. The Design Consultant shall provide knowledgeable representatives, including representatives of its consultants, to participate in these conferences to explain and clarify Bidding Documents. Within two (2) days after the Pre-bid Conference the Design Consultant shall deliver to the Owner, if needed, a final Addendum.

3.4.7. The Design Consultant shall prepare a certified bid tabulation and recommendation to the Owner concerning the Contract Award.

3.4.8. If the estimated Construction Costs are exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall, i) give written approval of an increase in such fixed limit, ii) authorize rebidding or renegotiating of the project within a reasonable time, iii) abandon the Project and terminate in accordance with Article 12, OR iv) participate with the Design Consultant in such re-bidding, re-negotiation, and re-design, at no additional expense to the Owner, as may be necessary to obtain price(s) within the approved budget or price(s) acceptable to the Owner. All re-design must be approved by the Owner. The Design Consultant, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit, if established as a condition of this Agreement

3.4.9. Should the Design Consultant re-design or conduct re-bidding under its responsibilities set out in the preceding paragraph, its' Construction Phase and Post Construction Phase services shall be extended to take re-design/re-bid delays into account at no additional expense to the Owner.

3.4.10. The Design Consultant shall assist the Owner's Representative in the preparation of the Agreement(s) between Owner and Contractor(s) for the Owner's execution. The Owner's Representative will coordinate award(s) and Notice(s) to Proceed for the Owner.

3.5. **Construction Phase**.

3.5.1. The Construction Phase for each portion of the Project will commence with the award of the Construction Contract and will terminate when the Owner makes the Final Completion payment to the Contractor.

3.5.2. The Design Consultant shall consult with the Owner and participate in all decisions as to the acceptability of subcontractors and other persons and organizations proposed by the Contractor for various portions of the work.

3.5.3. The Design Consultant shall receive, compile, track and report all W/MBE participation of all contractors, sub-contractors and vendors of this project in a format acceptable to Owner. Reports will be made to the Owner on a monthly basis, utilizing a pay application cover sheet to be supplied and certified by the contractor (format to be provided by Owner).

3.5.4. The Design Consultant shall review and approve the Work performed by the Contractor(s) for conformance with Contract Documents.

3.5.5. The Design Consultant shall provide necessary Project drawings, in electronic format, to the electrical or data contractor for creation of data "as built" submittal and approval drawings, and to the general contractor for site layout/staking.

3.5.6. The Design Consultant shall conduct Pre-installation meetings to review the installation procedures prior to the placement of the work.

3.5.7. The Design Consultant shall, when requested by the Owner's Representative, prepare Change Order documentation.

3.5.8. The Design Consultant shall render to the Owner's Representative, within two (2) working days unless otherwise authorized by the Owner's Representative, interpretations of requirements of the Contract Documents. The Design Consultant shall make all interpretations consistent with the intent of and reasonably inferable from the Contract Documents.

3.5.9. Should errors, omissions or conflicts in the specifications or other Contract Documents by the Design Consultant be discovered, the Design Consultant will prepare and submit to the Owner's Representative, within two (2) working days unless otherwise authorized by the Owner's Representative, such amendments or supplementary documents and provide consultation as may be required, for which the Design Consultant shall make no additional charges to the Owner.

3.5.10. The Owner's Representative shall be the point of contact for the Owner, except when the Owner shall direct otherwise. All instructions to the Contractor(s) shall be issued by the Design Consultant except when is directed otherwise by the Owner's Representative.

3.5.11. The Design Consultant will have access to the Work at all times. All site visits, observations and other activities by the Design Consultant shall be coordinated with the Owner's Representative and written report of such visits made promptly to the Owner's Representative.

3.5.12. The Design Consultant shall make such periodic visits to the Project sites as may be necessary to familiarize themselves generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of such on-site observations, the Design Consultant and its consultants shall take the appropriate steps to guard the Owner against defects and deficiencies in the Work of the Contractor. If the Design Consultant observes any work that does not conform to the Contract Documents, the Design Consultant shall immediately make an oral and written report of all such observations to the Owner's Representative. The Design Consultant shall not be required to make exhaustive or full-time on-site observations to check the quality or quantity of the Work, but shall make as many observations as may be reasonably required to fulfil their obligations to the Owner. The Design Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work.

3.5.13. The Design Consultant shall immediately notify the contractor and Owner in writing if the Project falls more than fourteen (14) days (or the number of days set by the County in the preconstruction meeting, which number shall be recorded in the minutes of said meeting) behind schedule. The Design Consultant shall immediately request a recovery plan from the contractor and make appropriate written recommendation to the Owner.

3.5.14. Based upon observations at the site and upon the Contractor's applications for payment, the Design Consultant shall determine the amount owing to the Contractor(s), pursuant to the terms of the Owner/Contractor Agreement, and shall issue Certificates for Payment to the Owner in such amounts. The Design Consultant's signing of a Certificate of Payment shall constitute a representation by the Design Consultant to the Owner, based upon the Design Consultant's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated, that to the best of the Design Consultant's knowledge, information and belief, the quality of the Work appears to be in accordance with the Contract Documents (subject to: an evaluation of the Work for

conformance with the Contract Documents upon Substantial Completion; the results of any subsequent tests required by the Contract Documents; minor deviations from the Contract Documents correctable prior to completion; and to any specific qualifications stated in the Certificate for Payment), and that the Contractor is entitled to payment in the amount certified. By signing a Certificate for Payment to the Owner, the Design Consultant shall not be deemed to represent that it has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Construction Contract Sum.

3.5.15. If, in accordance with its duty, the Design Consultant advises the Owner's Representative of non-conforming work as stated in subparagraph 3.5.12, the Design Consultant shall confirm the non-conformance in writing to the Owner's Representative within two (2) days of observation.

3.5.16. The Design Consultant and the Owner's Representative jointly shall have authority to condemn or reject Work on behalf of the Owner when in the Owner's Representative's or the Design Consultant's opinion the Work does not conform to the Contract Documents. Whenever in the Owner's Representative's or the Design Consultant's reasonable opinion it is considered necessary or advisable to insure the proper implementation of the intent of the Contract Documents, the Owner's Representative shall have the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract Documents whether or not such Work is fabricated, installed or completed.

3.6. **Final Completion of Design Services**.

3.6.1. When the Contractor notifies the Design Consultant that the Work is substantially complete, the Design Consultant and its consultants shall inspect the Work and prepare and submit to the Owner's Representative lists of the Work of the Contractor(s) which is not in conformance with the Contract Documents. The Design Consultant shall transmit such lists to the Contractor(s). The Owner may request that the Design Consultant inspect and prepare a list on any portion of the Work.

3.6.2. The Design Consultant shall receive, compile, and report all W/MBE participation of all contractors, sub-contractors and vendors of this project, utilizing a pay application cover sheet to be supplied and certified by the contractor (format to be provided by Owner).

3.6.3. The Design Consultant and its consultants shall conduct up to two (2) comprehensive Final Completion inspections at the request of the Owner. If more than two (2) Final Completion inspections are required, through no fault of the Design Consultant, the additional inspections shall be deemed additional services.

3.6.4. The Design Consultant shall obtain from the Contractor(s) drawings, prints, and other data necessary for the accurate preparation of the record drawings.

3.6.5. The Design Consultant shall make a recommendation in writing to the Owner regarding liquidated damages for each contractor, as may be applicable.

3.6.6. Upon correction of the deficiency reports and acceptance of all other close-out submittals and certificates of the Contractor, the Owner's Representative and the Design Consultant shall review and approve the Application for Final Payment and forward it to the Owner

for execution. In addition, the Design Consultant shall certify in writing that the work conforms to the Contract Documents. The Design Consultant shall issue AIA Substantial Completion Certificates for each Contractor.

3.7. **Serving as Witness**.

3.7.1. The Design Consultant shall provide testimony in public hearings, arbitration proceedings, and legal proceedings, and such testimony shall be provided without additional fee or charge to the Owner unless said testimony is requested by the Owner and consists of expert testimony not related to this Project or Work.

3.8. **Construction Warranty**.

3.8.1. The Design Consultant and its consultants shall assist the Owner in resolution of warranty issues as may be required to determine responsibility for deficiencies. The Design Consultant and its consultants shall conduct an inspection of the project one (1) month prior to warranty expiration and provide to the Owner a written report specifying any warranty deficiencies which may exist.

4. ARTICLE 4
COMPENSATION

4.1. **Basic Services Compensation**.

The Owner shall compensate the Design Consultant in accordance with the terms and conditions of this Agreement, including the following:

4.1.1. For the Basic Services of the Design Consultant, Basic Services Compensation shall be in the amount of $199,800.00.

4.1.2. In the event the Owner requests changes to the Project or elects not to complete the work or any portion thereof, which would decrease the most recently approved CCAP, basic compensation due the Design Consultant, as to such deletion or decrease, shall be adjusted downwards for remaining services to be performed but not for services already performed to the date of receipt by the Design Consultant of the written requested change or notice of the intent not to complete part or all of the work, in accordance with the basic payment schedule set forth in Paragraph 4.2 hereof.

4.1.3. The Basic Services Compensation stated in Paragraph 4.1.1 includes all compensation and other payments due the Design Consultant (manpower, overhead, profit, direct costs, travel, copies, postage, telephone and facsimile service, etc.) in the performance of the Basic Services.

4.2. **Payments to the Design Consultant**.
Payments on account of the Design Consultant shall be made as follows:

4.2.1. Payments for Basic Services, including any design phase change orders, shall be made in proportion to services performed so that the compensation at the completion of each Phase shall equal the following percentages of the Basic Services Compensation.

Payment shall be made upon presentation of the Design Consultant's statement of services, fully supported by invoices, time cards, and certifications that all sub-consultants have been paid, and other documentation as requested by the Owner.

Schematic Design Phase	15%
Design Development Phase	20%
Construction Documents Phase	40%
Permitting and Bidding/Negotiation Phase	5%
Construction Administration (to include Close Out Documents)	20%
Final Completion of Design Services Phase	100%

4.2.2. No deductions shall be made from the Design Consultant's Basic Services Compensation on account of penalty, liquidated damages, retainage or other sums withheld from payments to Contractor.

4.2.3. Deductions may be made from the Design Consultant's Basic Services Compensation on account of errors and omissions in the drawings, specifications and other documents prepared by the Design Consultant or in the Design Consultant's performance of its obligations under this Agreement.

4.3. Additional Services Compensation.

4.3.1. With respect to any Additional Services, as described in Article 7 herein, performed by the Design Consultant hereunder, the Design Consultant and Owner shall negotiate an equitable adjustment to the Basic Services Compensation. However, if negotiations are not successful prior to the time the additional services are needed, the Owner may direct the Design Consultant to proceed with the Additional Services on a time spent basis with Additional Services Compensation to be computed as follows:

4.3.2. Principals' time at the fixed rate as stated in the proposal submitted by the designer and attached as Exhibit A.

4.3.3. Payments for Additional Services of the Design Consultant shall be made upon presentation of the Design Consultant's statement of services, fully supported by invoices, time cards, and other documentation as requested by the Owner.

4.4. Accounting Records.

4.4.1. Records of the Design Consultant with respect to Additional Services and payroll, and consultant and other expenses (including Reimbursable Expenses) pertaining to the Project, shall be kept according to generally accepted accounting principles and shall be available to the Owner or its authorized representative for inspection and copying at mutually convenient times.

5. ARTICLE 5
PERIOD OF SERVICE

5.1. Unless earlier terminated as provided in Article 12 hereof, this Agreement shall remain in force for a period which may reasonably be required for the Basic Services and Additional Services hereunder. However, the provisions of the Agreement relating to Professional Responsibility

Construction Warranty; Professional Liability coverage; Indemnification; and Ownership of Documents/Confidential Information shall remain in effect after termination of the other provisions of the Agreement.

5.2. Time is of the essence in this Agreement.

6. ARTICLE 6
OWNER'S RESPONSIBILITIES

6.1. The Owner shall provide full information regarding the requirements for the Project.

6.2. The Owner shall examine documents submitted by the Design Consultant and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Design Consultant's Services.

6.3. If required for this Project, the Owner shall furnish a certified land survey of the Project sites, giving as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines, both public and private, above and below grade, including inverts and depths. All associated work will be coordinated by Design Consultant as part of the Basic Services.

6.4. The Owner shall pay for the services of a soils engineer or other consultant, when such services are deemed necessary by the Design Consultant or Owner's Representative, to provide reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistively tests and other necessary operations for determining subsoil, air and water conditions, with appropriate professional interpretations thereof. All associated work will be coordinated by Design Consultant as part of the Basic Services.

6.5. All services, information, surveys and reports required of the Owner shall be furnished at the Owner's expense.

6.6. If the Owner so directs, the Owner shall pay for and the Design Consultant shall request, expedite, and obtain all necessary permits, licenses, approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

7. ARTICLE 7
ADDITIONAL SERVICES

7.1. If any of the following Additional Services are authorized in advance by the Owner in writing, the Design Consultant shall furnish or obtain from others the authorized Additional Services. If authorized in advance, in writing by the Owner, the Design Consultant shall be paid for these Additional Services by the Owner pursuant to Article 4.3, to the extent they exceed the Basic Services under this Agreement. Additional Services may include:

7.1.1. Providing fully detailed presentation models or presentation renderings, not included in Basic Services.

7.1.2. Providing financial feasibility or other special studies, not included in Basic Services.

7.1.3. Providing planning surveys or alternative site evaluations.

7.1.4. Providing services after payment by the Owner of the Final Payment to the Design Consultant other than services called for in the Basic Services.

7.1.5. Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practices consistent with the terms of this Agreement.

8. ARTICLE 8
NOTICES

8.1. Any notice required by this Agreement or other communications to either party by the other shall be in writing and deemed given when delivered personally or when deposited in the United States Post Office, first class, postage prepaid, addressed as follows, or to such other address as shall be duly given by notice meeting the requirement of this Article.

To Owner:
Buncombe County
Attn: General Services Department
2945 Riverside Drive
Buncombe, NC 28804

To Design Consultant:
Mattern & Craig, Inc.
12 Broad Street
Asheville, NC 28801

9. ARTICLE 9
INSURANCE

9.1. Insurance

9.1.1. Design Consultant agrees their insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the Owner's signing of this Agreement. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on Design Consultant's duty to carry adequate insurance. The insurance coverage and limits set forth below shall not act as, be construed, or deemed to be a limitation on the liability of Design Consultant, for losses or damages under this Agreement. The minimum insurance coverage which the Design Consultant shall procure and maintain at its sole cost and expense during the term of the Agreement is as follows:

Worker's Compensation. Coverage at the statutory limits in compliance with applicable State and Federal laws. Design Consultant shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

Employer's Liability. Coverage with minimum limits of $1,000,000 each employee accident and $1,000,000 each employee disease.

Commercial General Liability. Insurance covering all operations performed by the Design Consultant with a minimum limit of $1,000,000 per occurrence with a $2,000,000 aggregate.

Professional Liability. Insurance covering the Design Consultant for acts, errors, or omissions in performance of the Agreement with a minimum limit of $1,000,000 per claim for projects under $15,000,000 and a minimum limit of $2,000,000 per claim for projects over $15,000,000.

Business Automobile Liability. Insurance covering all owned, non-owned, and hired vehicles used in performance of this Agreement. The minimum combined single limit per occurrence shall be $1,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21.

Umbrella/Excess Liability. If the underlying liability policy limits are less than those required, Design Consultant may provide an excess or umbrella policy to meet the required limits of insurance. The excess or umbrella policy shall extend coverage over the underlying professional liability policy. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

Additional Insurance Provisions.

If the Design Consultant maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the Design Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

The Design Consultant shall provide the County with certificates of insurance evidencing the above amounts. Buncombe County and General Services Department shall be named as additional insureds under the commercial general liability and business automobile liability policy(s). Before commencing work and for any subsequent renewals, the Design Consultant shall furnish the County with certificates of insurance on an approved form.

Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the County, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina and in a form acceptable to the County.

Design Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Design Consultant shall ensure that Buncombe County and General Services Department are additional insureds on insurance required from subcontractors.

The Design Consultant shall maintain in force during the performance of this contract and for six (6) years after final completion of the Project, the Professional Liability insurance coverage referenced above.

Waiver of Subrogation: Design Consultant hereby grants to County a waiver of any right to subrogation which any insurer of said Design Consultant may acquire against the County by virtue of payment of any loss under such insurance. Design Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

The limits of coverage under each insurance policy maintained by the Design Consultant shall not be interpreted as limiting the Design Consultant's liability and obligations under this Agreement.

9.2. Notwithstanding the foregoing, nothing contained in this Article 9, nor this Contract, shall be deemed to constitute a waiver of the sovereign immunity of the Owner, which immunity is hereby reserved by the Owner.

10. ARTICLE 10
INDEMNIFICATION

10.1. Notwithstanding anything to the contrary contained herein, the Design Consultant shall indemnify and hold harmless the Owner and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from (1) the Design Consultant's negligent performance or failure to perform its obligations under this Agreement and (2) any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of personal and/or real property including the loss of use resulting wherefrom and caused by any negligent act or omission of the Design Consultant, anyone directly or indirectly employed by the Design Consultant or anyone for whose acts the Design Consultant may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

10.2. Except as otherwise set forth in this Agreement, the Design Consultant and the Owner shall not be liable to each other for any delays in the performance of their respective obligations and responsibilities under this Agreement which arise from causes beyond their control and without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, atmospheric condition of unusual severity, war, and strikes. Owner shall not be liable to the Design Consultant for acts or failures to act by the Contractor.

11. ARTICLE 11
DISPUTE RESOLUTION PROCEDURE

11.1. To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between the Owner and the Design Consultant, that any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the President of the Buncombe County Bar Association shall name a mediator to hear the matter. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. The costs of the process shall be divided equally between the parties to the dispute.

11.1.1. The mediation session shall be private and shall be held in Buncombe County, North Carolina or in another North Carolina County agreed upon by both parties. Mediation under this Article 11 shall not be the cause for a delay of the Project which is the focus of the dispute.

11.2. If, as a result of mediation, a voluntary settlement is reached and the parties to the dispute agree that such settlement shall be reduced to writing, the Mediator shall be deemed appointed and constituted an arbitrator for the sole purpose of signing the mediated settlement agreement. Such agreement shall be, and shall have the same force and effect as an arbitration award, and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction.

11.3. If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Buncombe and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this Article, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

12. **ARTICLE 12**
TERMINATION, SUSPENSION OR ABANDONMENT

12.1. If either party shall substantially fail to perform in accordance with the terms of this Agreement through no fault of the other party, the non-breaching party may terminate this Agreement by delivering seven (7) days' written notice of termination.

12.2. If the project is suspended by the Owner for more than thirty (30) consecutive days, the Design Consultant shall be compensated for services performed prior to notice of such suspension.

12.3. This Agreement may be terminated by the Owner upon not less than seven (7) days' written notice to the Design Consultant in the event that the project is permanently abandoned. If the Project is abandoned by the Owner for more than ninety (90) consecutive days, the Design Consultant may terminate this Agreement by giving written notice.

12.4. If the Owner fails to make payment when due the Design Consultant for services and expenses, the Design Consultant may, upon seven (7) days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Design Consultant within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Design Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

12.5. In the event of termination not the fault of the Design Consultant, the Design Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due. This shall be the exclusive remedy for termination.

12.6. Owner shall have no liability to the Design Consultant for any delay or damage caused the Design Consultant due to suspension of the work, or due to any other delay, interruption, hindrance, or interference.

12.7. Should the Owner terminate this agreement for any reason under this Article, the Owner will acquire such drawings, including the ownership and use of all drawings, specifications, documents and materials relating to the Project prepared by or in the possession of the Design Consultant. The Design Consultant will turn over to the Owner in a timely manner and in good unaltered condition all original drawings, specifications, documents, materials, and computer files related to the project.

13. **ARTICLE 13**
SUCCESSORS/ASSIGNMENT

13.1. This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns, trustees and personal representatives of the Owner, as well as the permitted assigns and trustees of the Design Consultant.

13.2. The Design Consultant shall not assign, sublet or transfer its interest in this Agreement without the written consent of the Owner, except that the Design Consultant may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval of the Owner.

14. **ARTICLE 14**
OWNERSHIP OF DOCUMENTS/CONFIDENTIAL INFORMATION

14.1. The Drawings, Specifications and other documents prepared by the Design Consultant for this Project are for use solely with respect to this Project, the Owner shall be the owner of these documents and shall have all common law, statutory and other reserved rights, including the copyright. The Design Consultant's Drawings, Specifications or other documents shall not be used by the Owner or others on other projects, except by agreement in writing by the Design Consultant.

14.2. Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the project is not to be construed as publication in derogation of the Owner's reserved rights.

15. **ARTICLE 15**
ADDITIONAL PROVISIONS

15.1. Unless otherwise provided in this Agreement, the Design Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

15.2. The Design Consultant shall not discriminate against any employee or applicant for employment because of age, gender, race, creed, national origin, or disability. The Design Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event the Design Consultant is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be canceled, terminated or suspended in whole or in part by Owner, and the Design Consultant may be declared ineligible for further Owner contracts.

15.3. The Design Consultant shall follow all applicable federal, state, and local laws.

15.4. The Owner and Design Consultant agree to endeavor to provide written notification and to negotiate in good faith prior to litigation concerning claims, disputes, and other matters in question arising out of or relating to this Agreement or the breach thereof.

15.5. The payment of any sums by the Owner shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Design Consultant.

15.6. This Agreement and its Exhibits and Attachments represent the entire and integrated agreement between the Owner and the Design Consultant and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Design Consultant.

15.7. This Agreement shall be governed by the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the County of Buncombe and the State of North Carolina.

15.8. If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15.9. Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.

15.10. The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.

15.11. For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.

15.12. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, which shall be sufficient evidence by any one thereof.

15.13. **E-VERIFY**. As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR provides the services to the County utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the COUNTY.

In witness whereof, each individual executing this agreement acknowledges that he/she/it is authorized to execute this agreement and further acknowledges the execution of this agreement the day and year first written above.

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

See contract cover form for preaudit signature.

DESIGN CONSULTANT:
MATTERN & CRAIG, INC.

DocuSigned by:
By: James Voso
140FD60379E041F...
Title: Vice President
Date: 10/9/2026

OWNER:
COUNTY OF BUNCOMBE

By:_____
Title:_____
Date:_____

ATTACHMENT A

Randy W. Beckner
Bradley C. Craig
Wm. Thomas Austin
James B. Voso
Chad M. Thomas
Jason A. Carder
Brian R. Newman
D. Jason Snapp
Ryan P. Kincer

Mattern & Craig
ENGINEERS • SURVEYORS

Edwin K. Mattern, Jr. (1949-1982)
J. Wayne Craig (1940-2024)
Gene R. Cress (1936-2014)
Sam H. McGhee, III (1940-2018)
Stewart W. Hubbell (Retired)
Michael S. Agee (Retired)
Steven A. Campbell (Retired)
Randy L. Dodson (Retired)

September 9, 2026

VIA EMAIL: Ronald.Lunsford@buncombenc.gov

Ronald Lunsford
Project Manager, General Services Department
Buncombe County
2945 Riverside Drive
Asheville, NC 28804

RE: GRAVEL ROADWAY REPAIRS AT COMMUNICATION TOWER SITES
BUNCOMBE COUNTY, NORTH CAROLINA

Dear Ronnie,

Mattern & Craig is pleased to provide the following proposal for gravel roadway repairs at communication tower sites in Buncombe County.

INTRODUCTION

Buncombe County has requested civil engineering services for roadway repairs at eight (8) gravel roadway locations that provide access to communication tower sites around the County. These roadways suffered damage during Tropical Storm Helene. The sites have been evaluated by the Federal Management Agency (FEMA) to develop a scope of work and cost estimate. The sites are listed below:

- #1508558 – Broad River
- #1508559 – High Top
- #1508560 – Swannanoa
- #1508561 – Barnardsville
- #1508562 – Elk Mountain
- #1508563 – Sevens Glen
- #1508564 – Avery's Creek
- #1508565 – Upper Hominy

The County has requested assistance from Mattern & Craig for the design of the repairs to the roadways and associated storm drainage, bid administration, contract project management, construction administration, and conformity to local, state, and federal regulations including federal uniform guidance for the project. Mattern & Craig proposes to provide the requested assistance and services as described below:

SCOPE OF SERVICES

1.0 INITIAL ASSESSMENT

Under County directive, Mattern & Craig will perform an initial assessment of the eight (8) identified sites to ascertain/document existing conditions (to be used in the engineering design) and to determine if securing and retaining supplemental funding under available State, Federal and private disaster relief programs is necessary or warranted in order to provide adequate repair, restoration, mitigation, and/or resiliency by:

- Reviewing Damage Description and Dimensions (DDD) and Scope of Work Reports from the post-storm inspection performed by FEMA and the County
- Site Visits to compare the findings in the reports to the existing field conditions
- Flagging for damage locations as outlined in the final Site Inspection Reports (SIRs)
- Locating existing drainage structures, locating previously identified damage locations and types, determining if additional damage exists and locating as applicable, and determining if strategies exist to mitigate future events and provide resiliency
- Based on findings from initial site assessment, providing supporting documentation for any project extension requests and amendments, as necessary, and any other engineering reports or documents including anticipated cost estimates to ensure compliance with State and Federal requirements
- Assisting County staff to address project information requests from Federal or State funding program administrators, as appropriate, in support of program extension requests and/or amendments and/or issue resolutions, as necessary

2.0 ENGINEERING DESIGN ASSISTANCE

Using the information obtained in 1.0 INITIAL ASSESSMENT as described above, Mattern & Craig will provide engineering designs to the County to define/detail the needed scope of construction work and help prepare the construction bid documents. The scope of this phase includes:

- Engineering analysis to update quantities and dimensions necessary for updating cost estimates and preparing the construction bid forms
- Identifying project limits of road repair packages by aerial and GIS mapping
- Developing drawings and exhibits for the proposed roadway repairs
- Evaluating and determining culvert pipe location, sizing, and material where culvert replacement is necessary
- Developing plan sets for the eight (8) identified sites and organizing into three (3) bid packages that contain the necessary information and applicable specifications suitable for construction of the various restoration efforts.
- Developing special provisions for all identified repairs (as needed)
- Providing approximate 90% plans to County for review and comment.
- Addressing any client-provided comments and finalizing plans as needed

3.0 BID ADMINISTRATION

Mattern & Craig will provide bid administration services to the County. The project will be split into three (3) bid packages based on geography as requested by the County. The bid packages will be the following:

- Bid Package 1: High Top, Avery's Creek, and Upper Hominy
- Bid Package 2: Barnardsville, Elk Mountain, and Sevens Glen
- Bid Package 3: Swannanoa and Broad River

The scope of work in this phase includes:

- Developing contract documents for advertising and receiving bids for construction of roadway repairs
- Developing bid forms for inclusion in contract documents
- Integrating County-provided up-front documents into contract documents
- Assisting County with advertising of the projects
- Responding/answering bidder's questions during the advertisement period
- Reviewing bids received and providing County with recommendation(s) of award

4.0 CONSTRUCTION ADMINISTRATION

Mattern & Craig will assist the County with the oversight of construction on the project. The scope of work for this phase will include:

- Conducting Pre-Construction Meeting and tour of project areas with Contractor(s)
- Responding to Requests for Information (RFIs) from the Contractor(s)
- Providing on-site Construction Observation (assumes 12 weeks at 50 hrs./week)
- Attending monthly Progress Meetings
- Weekly coordination with the County for progress reporting for repair and/or construction of damaged facilities and infrastructure in accordance with County requirements and/or imposed funding regulations as directed
- Providing contract oversight of repair/construction efforts to ensure compliance with applicable initial and supplemental (if necessary) funding program requirements and guidelines
- Providing oversight of contractor's billing to ensure all costs are reasonable and in compliance with contract documents
- Performing internal review and reconciliation of actual project spending to ensure project costs are accurately captured
- Reviewing monthly application for payment and any change order requests
- Verifying payment application quantities & issuing payment recommendations
- Making recommendations for final payment and contract close-out
- Conducting substantial completion walk through on sites
- Establishing punch list for substantial completion and Engineer's Review Report
- Performing final walk through upon final completion with County & Contractor(s)
- Assisting the County in construction document control and file retention with contract project management processes to ensure and/or compile project and construction records that are complete and ready for audit

EXCLUSIONS

The following services are not included in this Agreement at this time:

- Surveying services
- ROW/Construction easement services
- Environmental services (NEPA/SEPA)
- Landscape architectural/landscaping services
- Structural engineering services
- Erosion control design
- Traffic control/Maintenance-of-traffic engineering or design
- Regulatory application fees/filing fees or permitting
- Geotechnical services
- Materials testing services
- Public utility identification, location, coordination, or relocation services
- Private utility coordination, location and/or design (electric, cable TV, gas, phone, fiber, etc.)
- Any permitting fees or advertising fees

COMPENSATION

Mattern & Craig will provide the above Scope of Services for Roads Assessment for the following Lump Sum fees:

1.0	**INITIAL ASSESSMENT**	$29,850.00
2.0	**ENGINEERING DESIGN ASSISTANCE**	$26,600.00
3.0	**BID ADMINISTRATION**	$19,750.00
4.0	**CONSTRUCTION ADMINISTRATION**	$123,600.00
	TOTAL LUMP SUM FEES	**$199,800.00**

Billing will be monthly based on percent complete of the various tasks. Additional services can be provided at the Client's request at established hourly rates or through a supplemental negotiated lump sum fee. If actual construction duration is longer than 12 weeks, a supplemental agreement or additional services may be necessary to provide continued Construction Administration services.

SCHEDULE

Mattern & Craig will submit the 90% engineering plans for County review within three (3) months from Notice to Proceed from the County (this timeframe is exclusive of any FEMA coordination to obtain additional funding as needed). The plans will be finalized and bid packages assembled within 2 weeks (14 days) of receipt of any Client comments. The construction timeline will be subject to the successful awarding of the contracts and the actual scope of work required to repair the existing roadways.

In addition to the matters set forth herein, our agreement shall include, and shall be subject to the Standard Provisions, which are attached hereto and incorporated herein. If you concur and wish us to proceed with the services described above, please have this Agreement executed by a properly authorized individual in the space provided below. Retain a copy and return a copy. Times stated in this agreement are valid for thirty (30) days from the date executed by the Engineer.

We appreciate the opportunity to provide these professional services to you. Please feel free to contact us should you have any questions or need additional information.

Sincerely,

F. Logan Reed, P.E.
Engineer/Project Manager

James. B. Voso, P.E.
Engineer/Principal & Vice President

Acceptance for Buncombe County:

I hereby authorize Mattern & Craig, Inc. to proceed with the work as described above.

Signature:_____

Name: _____

Title: _____

Date: _____

MATTERN & CRAIG, INC.
STANDARD PROVISIONS

(1) **Engineer's Scope of Services:** The undertaking of the Engineer to perform professional services extends only to those services specifically described in this Agreement. However, if requested by the Client and agreed to by the Engineer, the Engineer will perform additional services ("Additional Services") hereunder and shall be compensated as set forth below.

(2) **Client's Responsibilities:** In addition to other responsibilities described herein or imposed by law, the Client shall:
- (a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide to the Engineer all previous studies, plans, or other documents pertaining to the project; Client's requirements and criteria; standards to be followed; and all new information reasonably necessary; upon all of which the Engineer may rely.
- (c) Arrange for access to the site and other property and obtain approvals and permits required for the Engineer to provide its services.
- (d) Review all documents or verbal reports presented by the Engineer and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Engineer.
- (e) Provide such overall feasibility services such as independent accounting, legal, insurance, and cost estimating as the client may require or the Engineer may reasonably request.
- (f) Give prompt written notice to the Engineer wherever the Client becomes aware of any development that affects the scope and timing of the Engineer's services or any defect or noncompliance in any aspect of the project.
- (g) Bear all costs incident to the responsibilities of the Client.

(3) **Period of Services:** This Agreement has been entered into in anticipation of conditions permitting continuous and orderly progress through the completion of the Engineer's services. Times for performance shall be extended to the extent necessary for delays due to circumstances the Engineer does not control. If such delay or suspension extends for more than six months (cumulatively), the rates of compensation provided for in the Agreement shall be renegotiated.

(4) **Compensation for Additional Services:** Unless otherwise agreed to in writing, the Client shall pay the Engineer for the performance of any Additional Services an amount based upon the Engineer's current hourly rates plus an amount to cover certain direct expenses including in-house duplicating, local mileage, telephone calls, postage, and word processing. Other direct expenses will be billed at 1.15 times cost.

(5) **Method of Payment:** Compensation shall be paid to the Engineer in accordance with the following provisions:
- (a) Invoices will be submitted by the Engineer to the Client for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due the Engineer for services and expenses within 30 days after the Engineer's transmittal of its invoice, the Engineer may suspend services until all amounts are paid in full.
- (b) If the Client objects to any invoice, it must advise the Engineer in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections shall be waived, and the invoice shall conclusively be deemed due and owing.
- (c) If the Engineer initiates legal proceedings to collect payment for services, it may recover in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Engineer's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (d) The Client acknowledges and agrees that the payment for services rendered and expenses incurred by the Engineer pursuant to this Agreement is not subject to any contingency or conditions unless expressly set forth in this Agreement.

(6) **Use of Documents:** All documents, including but not limited to drawings, specifications and data or programs stored electronically, prepared by the Engineer are related exclusively to the services described herein. They are not intended or represented to be suitable for partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client or any partial use or reuse without written

authorization or adaptation by the Engineer will be at the Client's sole risk and without liability or legal exposure to the Engineer, and the Client shall indemnify, defend and hold the Engineer harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Any authorization or adaptation will entitle the Engineer to further compensation at rates to be agreed upon by the Client and the Engineer.

(7) **Opinions of Cost:** Because the Engineer does not control the cost of labor, materials, equipment, services furnished by others, methods of determining prices, competitive bidding or market conditions, any opinion rendered as to costs shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, but the Engineer cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator.

(8) **Termination:** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, the Engineer will be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Engineer as a result of such termination.

(9) **Insurance:** The Engineer is protected by Workers' Compensation insurance, professional liability insurance, and general liability insurance for bodily injury and property damage and will exchange certificates of insurance upon request.

(10) **Liability:** In performing its professional services, the Engineer will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession practicing in the same or similar locality at the time the services are provided. No warranty, express or implied, is made or intended by the Engineer's undertaking herein or its performance of services hereunder, and it is agreed that the Engineer is not a fiduciary with respect to the Client. To the fullest extent of the law, and notwithstanding any other provisions of this Agreement, the total liability, in the aggregate of the Engineer and the Engineer's officers, directors, employees, agents and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Engineer or the Engineer's officers, directors, employees, agents, or subconsultants shall not exceed twice the total compensation received by the Engineer under this Agreement or $50,000 whichever is greater. Under no circumstances shall the Engineer be liable for lost profits, consequential damages or for extra costs or other consequences due to changed conditions or for costs related to the failure of the contractor to perform work in accordance with the plans and specifications.

(11) **Expenses of Litigation:** If the Client or its contractors initiate legal proceedings against the Engineer, its contractors, or its subcontractors related to the Engineer's services, and such proceedings conclude with the entry of a final judgment favorable to the Engineer, the Client shall reimburse the Engineer for all of its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Engineer's normal hourly billing rates, of the time devoted to the proceedings by the Engineer's employees.

(12) **Dispute Resolution:** All claims by the Client arising out of this Agreement or its breach shall be submitted to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association prior to the filing of a civil action. Any mediation or civil action by the Client must be commenced within one year of the accrual of the cause of action, but in no event later than allowed by applicable statutes.

(13) **Hazardous Substances:** It is understood and agreed that in seeking the professional services of the Engineer, the Client does not request the Engineer to undertake to perform any services, studies, or tests, or to make any determinations involving hazardous substances or conditions, as defined by federal or state law. Therefore, the Engineer undertakes no such obligation, and the Client agrees to hold harmless, indemnify, and defend the Engineer from and against any and all claims, losses, damages, liability, and costs arising out of or in any way connected with the presence, discharge, release, or escape of hazardous substances or conditions of any kind, or environmental

liability of any nature, in any manner related to services performed by the Engineer. If any hazardous substance or condition is observed or reasonably suspected by the Engineer, it shall have the right to cease all services until the hazardous substance or condition has been eliminated. The Engineer shall notify the Client of any such substance or condition of which the Engineer becomes aware, and the Client shall be solely responsible for its elimination.

(14) **Assignment:** Nothing in this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Engineer, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Engineer and not for the benefit of any other party. Neither the Client nor the Engineer shall assign, sublet, or transfer any rights under or interest in this Agreement without the written consent of the other, except that the Engineer may retain subconsultants as it deems appropriate.

(15) **Confidentiality:** The Client consents to the use and dissemination by the Engineer of photographs of the Project and to the use by the Engineer of facts, data and information obtained by the Engineer in the performance of its services. If, however, any facts, data or information is specifically identified in writing by the Client as confidential, the Engineer shall use reasonable care to maintain the confidentiality of that material.

(16) **Miscellaneous Provisions:** This Agreement is to be governed by the law of the State of North Carolina. This Agreement shall bind, and the benefits thereof shall insure to the respective parties hereto, their legal representatives, executors, administrators, successors and assigns. This Agreement contains the entire and fully integrated agreement between the parties hereto and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. This Agreement can be supplemented or amended only by a written document executed by both the Engineer and the Client. Provided, however, that conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Engineer. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affective the validity or enforceability of such provision in any other jurisdiction. Also, the non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.