MINUTES
City Council Parks, Trails & Recreation Committee

Wednesday, December 17th, 2025, at 3:30 PM
City Hall Council Chambers

Members Present:	Aaron Baker, Chair, Council Member Lauren Wise, Vice Chair, Council Member Howie Granat, Citizen Member Daniel Jessee, Citizen Member JD Powers, Citizen Member Reba Osborne, Citizen Member Maureen Copelof, Mayor, Ex-Officio
Absent:	Jackson Tate, Citizen Member
Staff Present:	Wilson Hooper, City Manager David Todd, Assistant City Manager Wesley Shook, Public Works Director Paul Ray, Planning Director Emily Brewer, Interim Committee Clerk

A. Welcome and Call to Order

Committee Chair Aaron Baker welcomed everyone and called the meeting to order at 3:32 PM.

B. Certification of Quorum

Quorum was certified by Interim Committee Clerk Emily Brewer.

C. Approval of Agenda

L. Wise motioned to approve the agenda as presented. H. Granat seconded, and the motion carried unanimously.

D. Approval of Minutes – November 19, 2025

H. Granat requested that the minutes be amended to recognize the efforts of other organizations. A. Baker noted that Pisgah Area SORBA was the final contribution to achieve the funding goal. The requested changes are to add a statement to Item G to clarify that Pisgah Area SORBA for the final contribution to achieve the funding goal after receiving support from many other local organizations and community members.

J. Powers motioned to approve the minutes with the amendment, seconded by D. Jessee. The motion passed unanimously.

E. Updates – Estatoe Trail and Estatoe Boardwalk

W. Hooper discussed the temporary markings on Pender Lane and shared the anticipated completion date in February, weather permitting. The Committee and staff discussed other trail crossing improvements that are scheduled to be completed by the Public Works Department.

P. Ray shared the status of the Great Trails State Program grant. The City submitted a request for funding to complete design plans for the remainder of the Estatoe Trail (from Main Street and Mary C. Jenkins Community and Cultural Center and from Rosman Highway to Brevard High School). The City was successful in receiving funds, and the contract is pending final signature from North Carolina State Parks.

W. Hooper also shared that the Ecusta Trail is added to the State Transportation Improvement Program (STIP), so any cost overages could potentially be funded through the STIP.

P. Ray also shared with the Committee that Pisgah Conservancy prepared a design for the pathway from US-276 to the Davidson River Pedestrian Bridge. The quote was $50,000 with the City of Brevard and the Transylvania County Tourism Development Authority sharing the cost for construction. Staff are working closely with Pisgah Conservancy, along with the US Forest Service and NCDOT, to move that project forward. The trail is anticipated to be open by Memorial Day of this year.

A. Baker asked Staff to share an update on the Tannery North smokestack removal. W. Hooper stated that this Committee initially recommended removal of the top of the smokestack and kept the base in place, but the City's insurer would not cover the liability making it infeasible. Plans to remove the smokestack are being designed and engineered. In the meantime, the City will proceed with construction of the trail but will not open it for users until the smokestack is removed. Committee members discussed installation of art, plaques or historical markers to commemorate the historic smokestack and honor the city residents that worked at the tannery. W. Hooper anticipates bringing this the smokestack removal, along with a funding strategy, to City Council in the new year.

Lastly, D. Todd mentioned that to apply for grants a detour for the boardwalk needs to be established. There will be additional considerations for accessibility during the construction period. Portions of a potential re-route that are not funded by the grant (e.g., property acquisition) would be presented to Council as a request during the next budget cycle.

F. McAdams Proposal re Redesign of Sports Complex Parking Area & Bathrooms

W. Hooper stated that the redesign of the Sports Complex parking area and bathrooms would be considered as a new money request during the next budget cycle. The proposal, initially received in May 2025, was requested because of the increased activity at the Soccer Field and parking demand from the future Ecusta Trail. The proposal is included as Attachment A. The Committee discussed potential funding strategies and potential partners for this effort. Members also considered how this project may interact with the adjacent County's sports facilities.

The Committee was in consensus that the redesign of the sports complex parking area and bathrooms should be included as a new money request during the next budget cycle.

G. Public Comment

J. Powers asked about the status of the Bracken Preserve expansion. D. Todd said the contract has been executed by the City and is pending contractor countersigning. The project is on schedule.

D. Jessee asked about moving the stop sign at Probart and Railroad Avenue to improve trail safety at the interchange. D. Todd confirmed the design is completed and staff will be ordering the appropriate signage.

H. Set Date for Next Meeting – January 21, 2026, at 3:30 PM

Committee members set the date for the next meeting on January 21, 2026, at 3:30 PM.

I. Adjourn

There being no further business, H. Granat motioned to adjourn, R. Osborne seconded, the motion passed unanimously, and the meeting was adjourned at 4:35 PM.

Approved: January 21, 2026

Aaron Baker, Chair

Shawnee Cummings
Assistant to the City Manager

McAdams
486 North Patterson Avenue
Suite 201
Winston-Salem, NC 27101
919. 361. 5000

CYB25003.00

May 20, 2025

Paul Ray
City of Brevard
95 W Main Street
Brevard, North Carolina 28712

RE: City of Brevard Sports Complex Parking Lot
Brevard, North Carolina
CYB25003 – V2

Dear Paul,

We are pleased to offer this proposal for survey, conceptual design services, and construction documents for the proposed sports complex parking lot in Brevard, North Carolina.

Project Understanding

Site

The site of the proposed parking lot is addressed at 324 Ecusta Road, located at the southwest corner of the intersection of Ecusta Road and Morris Road. The parcel is identified in Transylvania County GIs with PIN #8597-30-8043-000 and comprises approximately 20.1 acres that are zoned IC (Institutional – Campus) under City of Brevard jurisdiction. The project site is currently developed with multiple sports fields and gravel parking. See Exhibit A for limits of work.

Proposed Development

The proposed project includes the development of an expanded paved parking lot area and pedestrian connection trails and walkways. We understand the City is seeking to create a paved parking lot area that will expanded parking capacity and create ADA connections from the parking to existing site amenities and new restroom location.

Assumptions

This proposal is based on the following assumptions:

- It is assumed no NCDOT driveway permit applications will be required;
- It is assumed no NCDOT encroachment agreements will be required;
- It is assumed no stormwater treatment will be required for this site, and it will be in an impervious reduction;
- No lighting plans are provided as part of these fees. If parking lot lighting is required it will be provided to McAdams for submission;
- No irrigation design is included as part of this project;
- Design of the skatepark expansion is by others;
- Architectural, mechanical engineering, electrical engineering, plumbing engineering or structural design services are not included in this scope of services;
- No stream or wetland impacts are anticipated as part of this project. If those are required, they will be provided to McAdams for permitting submission;

- No flood studies or buffer permitting is required as part of this project;
- No offsite utility extensions are expected for this project. If they are required, fees can be provided once scope is determined;
- It is assumed that water and sewer utilities are adjacent to the subject property and contain adequate capacity for the intended development;
- It is assumed that plan review fees will be paid by McAdams and submitted to the Client as a reimbursable expense;
- Site data and adjacent site data such as roads, property ownership, and land uses will be provided by the design team and sourced from Transylvania County GIS;
- The City of Brevard will provide access to existing facilities and grounds associated with the investigation of the proposed project location;
- Project design will be completed +/- 4 months from notice to proceed.

Proposed Services + Fees

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

Survey Services

B2.40 TOPOGRAPHIC / LOCATION SURVEY:

> FEE: $4,000

Conduct a field survey of the site (PIN #8597-30-8043-000) totaling approximately three acres (total parcel area is 20.49 acres) of developed public park facility on the west side of Ecusta Road. Survey area is encompassed by Ecusta Road on the east, an existing soccer field on the north, the top of bank of a creek on the west, and ball fields on the south generally being an existing park lot. Prepare a Topographic Survey Map in accordance with North Carolina Minimum Standards for Surveying. Contours will be mapped at 1-foot intervals. Locations of underground utilities will be based on visible above ground structures and utility markings, if provided. For storm drainage and sanitary sewer systems, rims, pipe inverts, pipe material and sizes will be located. Location of individual trees is not included.

B12.30 SUBSURFACE UTILITY (SUE) MARKINGS – LEVEL B:

> FEE: $2,500

Field mark underground utilities using electromagnetic equipment and mark them with spray paint. Structures that cannot be directly accessed are to be shown to the extent of available information, including utility maps. 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. Physical location the underground utilities utilizing Subsurface Utility Vacuum Extraction can be quoted if requested.

Design Services

A6.70 CIVIL COORDINATION MEETINGS:

FEE: By hourly rates in accordance with the attached Rate Schedule, not to exceed $1,500

Attend up to **three** virtual coordination meetings with the Client and or other subconsultants through construction document permitting.

D11.16 PRELIMINARY CONCEPT DRAWINGS:

FEE: $7,750

Prepare **two** concept drawings drawn in CAD and rendered in LandFX, for parking lot layout, pedestrian connections and landscaping. This task includes **one** review of the concept drawings with Client stakeholder group (via teams), **one** review with Parks and Recreation Department Advisory Board (via teams), and **one** in person presentation with City Council. Once comments are received they will be incorporated into **one** revised concept drawing. If the Client requests additional revisions, they will be provided under a separate proposal for an additional fee. Upon arrival at a Client-approved concept plan, that plan will be utilized to inform and to develop Construction Drawings (**Task D6.10**).

Deliverables include:

- Two (2) concept drawings rendered in LandFX; and
- One (1) final concept drawing rendered in LandFX.

D6.10 CONSTRUCTION DOCUMENT SUBMITTAL:

FEE: $15,000

Prepare and submit construction documents and required calculation packages based off the Client-approved concept plan, for permitting with the City of Brevard. Fee includes the creation of the below plan deliverables:

- Cover Sheet;
- Existing Conditions Plan;
- Demolition Plan;
- Site Plan;
- Grading and Storm Drainage Plan; and
- Site and Drainage Plan Details.

D11.55 CODE PLANTING PLAN:

FEE: $7,000

Prepare a code landscape plan with landscape details to meet the minimum requirement of City of Brevard zoning, tree requirements, and ordinances. Code plantings may include required street trees, buffers, and

screening plantings. McAdams will revise and resubmit documents as appropriate for up to three (3) rounds of comments and submittals to achieve approval and permitting for infrastructure site construction. If additional rounds of comment review are required, additional scope will be provided under a separate change order proposal. Application fees are by Client. Coordination of streetlight fixture locations with Client's site lighting designer is included.

Deliverables include:

- Tree Planting Compliance Plan;
- Tree Protection Plan; and
- Landscape Notes and Details.

D11.65 ENHANCED PLANTING PLAN:

> FEE: $4,200

Based on existing code planting plan and review of as built data and previous knowledge of the existing site, prepare a plan and specifications for enhanced landscape planting improvements including the following:

- After the initial client review, provide planting plan submittal at 90% and 100% complete for review by client;
- Final 100% complete plans and specifications will include a planting plan, planting details, written specifications in note form and plant schedule for pricing;
- Provide general written directives for initial landscape maintenance for owner and staff; and
- All drawings will be submitted as a single phase.

Does not include irrigation plan preparation or lighting design. These services can be provided as an additional service for an additional fee under a separate proposal.

D11.21 OPINION OF PROBABLE COST:

> FEE: $3,500

The design team will prepare a detailed, master-plan level opinion of probable cost for planning purposes. The opinion of probable cost will include unit prices, any project assumptions, soft costs (i.e., consulting costs for preparation of construction drawings), contingencies and escalation (projecting construction costs for June 2025 and June 2026). The estimate can be phased based on the City's preferred implementation strategy providing amenities and programs desired opening day.

Permitting Services

E6.10 CONSTRUCTION DOCUMENT PERMITTING:

FEE: By hourly rates in accordance with the attached Rate Schedule, not to exceed $5,000

Prepare and submit revisions to the construction document plan submittal to address City of Brevard plan review comments. Fee assumes comment responses will be required for one (1) additional round of review upon which plan approval will then be granted:

- Cover Sheet;
- Existing Conditions Survey;
- Demolition Plan;
- Site Plan;
- Grading and Storm Drainage Plan; and
- Site Details Plan.

E6.20 EROSION CONTROL PERMITTING:

FEE: By hourly rates in accordance with the attached Rate Schedule, not to exceed $8,000

Prepare and submit erosion control documents and any required calculation packages to NCDEQ for their review and approval. Complete new NCDEQ online application and assist with the NCG01 Application effort to gain full permit approval. Task assumes comment responses will be required for one (1) additional round of review upon which plan approval will then be granted. Fee includes the creation of the below plan deliverables to accompany the plans created for the City of Brevard permitting submittal:

- Cover Sheet;
- Erosion Control Notes and Sequencing;
- Erosion Control Plan Phase I;
- Erosion Control Plan Phase II (if required);
- NCG01 Details;
- Erosion Control Details; and
- Operations and Maintenance Package.

Extra Services

J. ADDITIONAL SERVICES:

When requested by the Client and confirmed by the Client and / or Firm in writing, the Firm shall perform services in addition to those described above in this Agreement and the Client shall compensate the Firm by hourly charges in accordance with the attached Rate Schedule.

K. REIMBURSABLE EXPENSES:

FEE:	$1,250

To be billed in accordance with the attached Rate Schedule.

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. The following is the expected schedule for completion of work on this project: schedule to be mutually agreed upon between Client and Firm.

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; and
- 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:

- Offsite utility extensions or roadway improvements (may be quoted if required);
- Offsite stormwater management facilities, revisions to the existing stormwater infrastructure, or analysis of downstream stormwater system (will be quoted if required);
- Additional coordination meetings or conference calls (can be quoted once scope is clarified);
- Structural design of retaining walls, headwalls, or stormwater facilities or structures;
- Grant writing assistance and preparation;
- Traffic studies or traffic engineering services are not included in this scope of work;
- Geotechnical services;
- Permit application, plans review, or re-review fees;
- Detailed landscape, hardscape, irrigation, or lighting design (can be quoted separately);
- Revised directives from Client after design has begun;
- Acquisition of easements; preparation of offsite easements;
- 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;

- Soils investigations, borings, or compaction tests;
- Environmental investigations, wetlands permitting; and
- Any costs incurred by Client or Contractor due to changes required by the approving authority or their inspectors after construction drawings have been approved.

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 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

Nick Lowe, RLA | Senior Project Manager
nlowe@mcadamsco.com | 919. 361. 5000

NL/kt

Acceptance

By: _____ Date: _____

Name: _____

Title: _____

Accounting Information

Billing Contact: _____

Billing Contact Email Address: _____

Billing Contact Phone Number: _____

Billing Address: _____

_____

EXHIBIT A


Sports Complex
Skate Park
City of Brevard
Sports Complex
Transylvania County
Little League Fields
520
494
476
462
824
832
324
1512
843

MCADAMS

Fee Schedule

City of Brevard Sports Complex Parking Lot Design / Brevard, North Carolina

Date May 16, 2025

Project #	CYB25003.00	Number of Lots				
Phases		Acres				

Task ID	Description	Fee	Fee Basis	CO 1 *Enter Date of CO*	CO 2 *Enter Date of CO*	Notes
SURVEY SERVICES						
B2.40	Topographic / Location Survey	$4,000	Fixed Fee			
B12.30	Subsurface Utility (SUE) Markings - Level B	$2,500	Fixed Fee			
	Survey Services TOTAL	**$6,500**				
DESIGN SERVICES						
A6.70	Civil Coordination Meetings	$1,500	Hourly Charges			
D11.16	Preliminary Concept Drawings	$7,750	Fixed Fee			
D6.10	Construction Drawing Submittal	$15,000	Fixed Fee			
D11.55	Code Planting Plan	$7,000	Fixed Fee			
D11.65	Enhanced Planting Plan	$4,200	Fixed Fee			
D11.21	Opinion of Probable Cost	$3,500	Fixed Fee			
	Design Services TOTAL	**$38,950**				
PERMITTING SERVICES						
E6.10	Construction Document Permitting	$5,000	Hourly Charges			
E6.20	Erosion Control Permitting	$8,000	Hourly Charges			
	Permitting Services TOTAL	**$13,000**				
EXTRA SERVICES						
K.	Reimbursable Expenses	$1,250	Hourly Charges			*If / as needed and applicable*
	Extra Services TOTAL	**$1,250**				
	Current Contract Total	**$59,700**		**$0**	**$0**	
	Running Contract Total	**$59,700**		**$59,700**	**$59,700**	

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	$250 - 325 /hour
Director / Group Manager / Practice Lead	$165 - 320 /hour
Technical Manager	$140 - 250 /hour
Project Manager	$150 - 250 /hour
Assistant Project Manager	$120 - 200 /hour
Landscape Architect	$140 - 230 /hour
Planner	$110 - 205 /hour
Project Engineer	$145 - 240 /hour
Graphics + Visualization	$125 - 140 /hour
Designer / Analyst / Design Tech	$110 - 180 /hour
Intern	$55 - 100 /hour
Administrative Services	$80 - 120 /hour
Construction Administrator / Observer	$115 - 225 /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 0%
Outside Photocopying, Travel, Overnight Delivery, Postage for Mass Mailings	Cost Plus 0%
Subcontractor Invoices	Cost Plus 0%

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.