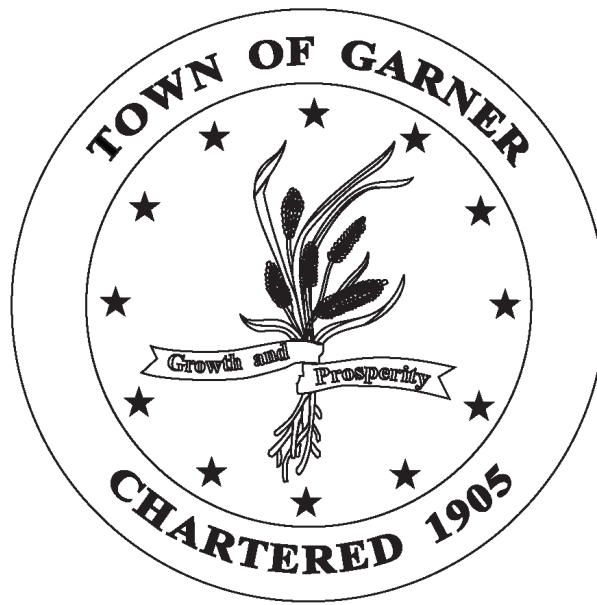


TOWN OF GARNER



TOWN COUNCIL WORK SESSION

July 30, 2019
6:00 P.M.

Garner Town Hall
900 7th Avenue
Garner, NC 27529

**Town of Garner
Work Session Agenda
July 30, 2019**

Dinner will be served for town officials in the Conference Room at 5:15 p.m.

The Council will meet in a Work Session at 6:00 p.m. in the Council Chambers located at 900 7th Avenue.

A. CALL MEETING TO ORDER/ROLL CALL

B. ADOPTION OF AGENDA

C. REPORTS/DISCUSSION

1. Standard Contract Services Templates - Engineering Department Page 2
Presenter: Chris Johnson, PE - Town Engineer

Discuss new draft Town of Garner contract templates for use on future Engineering projects, as well as a draft scope of services template for use on typical street and sidewalk projects.

2. White Oak, Hebron Church, Ackerman Roundabout Page 49
Presenter: Chris Johnson, PE - Town Engineer

Provide Town Council with draft LAPP agreement from NCDOT for right of way and construction cost sharing.

3. Relocation of Historic Depot Page 75
Presenter: Rodney Dickerson, Town Manager

Continue discussion of site, cost, contract (MOU), and logistics of relocating the Historic Depot to the corner of Pearl St. and Main St.

4. Town Attorney Services Page 76
Presenter: William E. Anderson, Attorney

Discuss proposed Town Attorney retainer agreement provide for ongoing legal services to the Town.

D. MANAGER REPORTS

E. COUNCIL REPORTS

F. ADJOURNMENT

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: July 30, 2019		
Subject: Standard Contract Services Templates - Engineering Department		
Location on Agenda: Discussion		
Department: Engineering		
Contact: Chris Johnson		
Presenter: Chris Johnson, PE - Town Engineer		
Brief Summary: To discuss new draft Town of Garner contract templates for use on future Engineering projects, as well as a draft scope of services template for use on typical street and sidewalk projects.		
Recommended Motion and/or Requested Action: Receive as information and advise of any desired modifications before templates are utilized on future projects.		
Detailed Notes: At Council's request, staff has provided several standardized templates to assist with professional services contracts in the engineering field. The templates consist of 1) standard contract template, 2) contract amendment template, 3) master agreement template (on-call projects only), 4) statement of work template (on-call projects only), and 5) scope of services template. Staff is prepared to answer questions with respect to these five templates and provide feedback related to any thoughts for additions/modifications of the templates prior to use on future projects.		
Funding Source: N/A		
Cost: N/A	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations: 		
Attachments Yes: <input type="radio"/> No: <input checked="" type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	CJ	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		



Town of Garner
900 7th Avenue, Garner, NC 27529
Phone 919-772-4688 * Fax 919-662-8874
www.GarnerNC.gov

TO: Rodney Dickerson, Town Manager
FROM: Chris Johnson, PE - Town Engineer
DATE: July 22, 2019
SUBJECT: **Standardization of Professional Service Contracts – Engineering Department**

The Town Council has previously expressed a desire to standardize the professional services contracts drafted between engineering consultants and the Town of Garner to improve consistency and efficiency of contract execution, as well as to eliminate each contract from following a different style template based on the consultant awarded each project. This past issue has been the result of allowing consultants to draft a contract using their own standard format and typically also following their terms and conditions rather than the Town drafting its own standard templates. Engineering staff has attached new standard contract templates that have been reviewed by Engineering, Purchasing, and the Town Attorney's Office for review and approval. The On-call Master Agreement that was recently utilized for the on-call contract recently awarded to Arcadis, and the Statement of Work Template was also used with Arcadis in conjunction with the Lake Drive Widening project. There were only a few minor comments by the engineering firm prior to final execution using the new template. These templates are also derived from similar templates used at the City of Raleigh, which have been commonly used over the past decade along with periodic updates/revisions as required to address rollout of new legal requirements at the State and Federal levels, such as E-Verify, Iran Divestment Act, etc.

Staff has also drafted a standard template to be used for scope of services on street and sidewalk projects. This template will serve to address similar consistency issues related to how the Town wishes for consultants to scope and price engineering projects for the Town of Garner. The intent of a standard scope of services template is to also reduce scoping inconsistencies from project to project, and to reduce the number of supplemental agreement(s) required on professional service contracts due to omission of basic services and/or improper project scoping at the time of the initial professional services agreement execution. This scope has not been used to date, but also mirrors a similar scope of services used by the City of Raleigh for several years on street & sidewalk projects. Therefore, this template has been used with long term success on similar style projects.

RECOMMENDATION:

Receive as information and advise if there are any items that Council wishes to add/delete/modify before these templates are utilized on additional future projects.

Attachments:

1. Professional Services Contract Template
2. Contract Amendment Template
3. On-call Master Agreement Template (on-call projects only)
4. Statement of Work Template (on-call projects only)
5. Scope of Services Template (street and sidewalk projects)

NORTH CAROLINA
WAKE COUNTY

CONTRACT FOR ENGINEERING SERVICES

THIS CONTRACT is entered into this _____ day of _____ 20____, by and between _____ hereinafter referred to as the “Engineer” and the Town of Garner, a North Carolina municipal corporation. hereinafter referred to as the “Town”.

WITNESSETH

WHEREAS, the Town desires to procure an Engineer to perform services, and

WHEREAS, the Town has completed necessary steps for retention of professional and other services under applicable Town policies, and

WHEREAS, the Town has agreed to engage the Engineer and the Engineer has agreed to contract with the Town for performance of services as described, and according to the further terms and conditions, set forth herein.

NOW THEREFORE, in consideration of sums to be paid to the Engineer, and other good and valuable consideration the Engineer and Town do contract and agree as follows:

1. Scope of Services/Description of Project

[Add Project Description]

The Engineer will serve as the Town's professional engineering representative in those tasks of the project to which this Contract applies and will give consultation and advice to the Town during the performance of their services.

The Engineer will provide services as described in the following Exhibits, which are attached to and made part of this Contract Scope of Services and Schedule of Fees.

The Engineer now has or will secure at their expense, including subconsultants, all personnel and facilities required to perform the services to be rendered under this Contract. Such personnel are not employees of, nor have they any direct contractual relationship with the Town.

The Engineer is authorized to engage subconsultants, including surveyors, geotechnical and materials testing firms, to assist in the work included under this Contract to the extent such services are included herein. No subcontract work is authorized for which the Town will incur any costs beyond those agreed upon and set forth in Section 4.

2. Services Provided by the Town

It is understood that certain services as required may be performed and/or furnished by the Town. These services may include the following:

Assist the Engineer by placing at their disposal all available information pertinent to the project, including previous reports and other relative data;

Assist in gaining access to and making all provisions for the Engineer to enter upon public and private property as required for performance of their services described herein;

Examine all studies, reports, sketches, drawings, specifications, proposals and other documents prepared by the Engineer, obtaining advice of legal counsel and/or such other consultants as the Town deems appropriate for such examination and rendering in writing decisions pertaining thereto within a reasonable time so as not to delay the service of the Engineer;

Giving prompt written notice to the Engineer whenever the Town observes or otherwise becomes aware of any problems or changed circumstances in the project;

Furnishing the Engineer in a timely manner with copies of pertinent correspondence relating to this project, which would not have otherwise been delivered to the Engineer;

Designate in writing a person to act as the Town's representative with respect to the work to be performed under this Contract, such person(s) shall have complete authority to transmit instructions, receive information, interpret and define Town's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Contract;

The Town shall provide to the Engineer such information as is available to the Town for rendering of services hereunder. The Engineer may rely on the sufficiency of such information;

Insofar as any of the above services are necessary for the Engineer's performance of their obligations under this Contract the Town shall be responsible for providing such services in a satisfactory and timely manner so as not to delay the Engineer in their performance thereof.

3. Schedule/Time of Performance

The work to be performed and the services rendered under this Contract shall commence as

directed by the Town. In performing the services described in this Contract, it is mutually agreed that time is of the essence. The Engineer shall commence work upon receipt of written notice to proceed from the Town.

- The Engineer shall provide Preliminary Plans to the Town within _____ calendar days following receipt of written notice to proceed from the Town.
- The Engineer shall provide 65% construction plans within _____ calendar days following notification of approval of the Preliminary Plans from the Town.
- Engineer shall provide all finalized right-of-way plats to the Town within _____ calendar days following notification of approval of the 65% plans.
- Preliminary plats may be produced prior to approval of the 65% plans for use in appraisal work by the Town. The Engineer shall provide plans completed to approximately 65% state and the finalized right-of-way plats for approval by Town Council at a Project Public Hearing.
- The Engineer shall provide final completed construction plans and documents to the Town within _____ calendar days following Town Council authorization of the final design and right-of-way acquisition.

The Engineer shall not be held responsible for any delays in time of completion resulting from:

- The Town's failure to carry out and of the responsibilities listed under Section 2 in a timely manner;
- Failure of approving agencies to provide timely approval of permit and encroachment applications;
- Additional Services;
- Any other Circumstances beyond the reasonable control of the Engineer including but not limited to natural disasters, adverse weather, or acts of the Town, third parties, or other governmental agencies.

4. Compensation/Time of Payment

For services to be performed hereunder the Town shall pay the Engineer a lump sum not to exceed \$_____.

- For all services rendered under Article I of the Scope of Services, excluding subsurface utility engineering and expenses, the Engineer shall be paid a lump sum amount of \$_____.
- For all subsurface utility engineering services rendered under Article I of the Scope of Services, the Engineer shall be compensated at unit costs established in Article I not to exceed \$_____.
- For all expenses rendered under Article I of the Scope of Services the Engineer shall be compensated at unit costs established in Article I not to exceed \$_____.
- For all Alternate Design services rendered under Article III of the Scope of Services, the Engineer shall be paid a lump sum amount for each specific service performed for a total lump sum not to exceed amount of \$_____.

Requests for payment(s) shall be made as follows:

- Fees will be invoiced monthly based upon the percentage of services performed as of the invoice date.
- The standard Town of Garner payment term is NET 30 days from the date of receipt and approval of the invoice by the Town.

5. Standard of Care

Engineer shall perform for or furnish to Town professional engineering and related services in all phases of the project to which this Contract applies as hereinafter provided. Engineer shall serve as Town's prime design professional and engineering representative for the project providing professional engineering consultation and advice with respect thereto. Engineer may employ such Engineer's Consultants as Engineer deems necessary to assist in the performance or furnishing of professional engineering and related services hereunder. Engineer shall not be required to employ any Engineer's Consultant unacceptable to Engineer.

The standard of care for all professional engineering and related services performed or furnished by Engineer under this Contract will be the care and skill ordinarily used by members of Engineer's profession practicing under similar conditions at the same time and in the same locality.

6. Opinions of Probable Construction Cost

Engineer's Opinions of Probable Construction Cost provided for herein are to be made based on Engineer's experience and qualifications and represent Engineer's best judgement as an experienced and qualified Professional Engineer generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by the Engineer. If the Town wishes greater assurance as to probable Construction Cost, Town may employ an independent cost estimator.

7. Notices

All notices, requests for payment, or other communications arising hereunder shall be sent to the following:

Town of Garner
Attn: Chris Johnson, PE
Telephone: 919-773-4420
900 7th Avenue
Garner, NC 27529

[Company Name]
Attn:
Telephone:
Address:

8. Non-discrimination

In consideration of the signing of this Contract, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Contract, no matter how remote.

9. Minority or Women Owned Businesses

The Town of Garner prohibits discrimination in any manner based on race, color, creed national origin, sex, age or handicap or sexual orientation and will pursue an affirmative policy of fostering, promoting and conducting business with women and minority owned business enterprises. The Town of Garner has adopted a goal of 10% for participation by minority or women-owned businesses to reach the above stated goal.

The percentage of MWBE business participation engaged in this contract based on total contract amount is proposed to be 10%. Any variation from this amount is to be immediately conveyed to the Town by written notice.

10. Assignment

Neither the Town nor the Engineer will assign, sublet, or transfer their interest duties, or obligations hereunder without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it create any rights or benefits to parties other than the Town and the Engineer, except such other rights as may be specifically called for herein.

11. Applicable Law

All matters relating to this Contract shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Contract shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

12. Insurance

Engineer agrees to maintain, on a primary basis and at their sole expense, at all times during the life of this Contract the following coverages and limits. The requirements contained herein, as well as Town's review or acceptance of insurance maintained by Engineer is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Engineer under this Contract.

Commercial General Liability - Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

Automobile Liability - Limits of no less than \$1,000,000 Combined Single Limit Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Engineer agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a Town of Garner site.

Worker's Compensation & Employers Liability - Engineer agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and Employers Liability insurance with limits of no less than \$1,000,000 each accident, each employee and policy limit. Waivers of Indemnity are not recognized by the North Carolina Department of Insurance and will not be accepted by the Town of Garner.

Additional Insured - Engineer agrees to endorse the Town as an Additional Insured on the Commercial General Liability and any insurance coverage obtained in addition to those set forth herein. The Additional Insured shall read "Town of Garner as its interest may appear."

Certificate of Insurance - Engineer agrees to provide the Town a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Engineer's insurer. If Engineer receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Engineer agrees to notify the Town within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

Town of Garner
Town Manager
900 7th Avenue
Garner, NC 27529

Umbrella or Excess Liability - Engineer may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. Engineer agrees to endorse Town of Garner as an 'Additional Insured' on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.

Professional Liability - Limits of no less than \$1,000,000 each claim.

All insurance companies must be admitted to do business in North Carolina and be acceptable to the Town of Garner. If the insurance company(s) is a permitted surplus lines insurer, the insurance company name, and NAIC number must be submitted to the Town for approval before commencing work. Engineer shall be required to provide the Town no less than thirty (30) days' notice of cancellation, or any material change, to any insurance coverage required by this Contract.

A Certificate of Insurance (COI) must be issued by an authorized representative of the insurance carrier(s). Certificates of Insurance must have the Insurance Company name and NAIC number clearly identified. The acceptance of or the review of Certificates of Insurance by the Town of Garner does not relieve Engineer of any requirements in the contract to provide specific insurance coverage required by the contract, nor does the acceptance of or review of Certificates of Insurance covenant all insurance requirements have been met.

13. Indemnity

To the fullest extent permitted by law, the Engineer shall indemnify, defend and hold harmless the Town and each of the Town's officers, officials, employees, agents and independent contractors (excluding the Engineer) from and against any and all losses, damages, costs, expenses (including attorneys' fees), obligations, duties, fines penalties, royalties, interest charges and other liabilities (including settlement amounts) paid or incurred by any of them as a result of any claims, demands, lawsuits, actions, or proceedings (i) arising from the Engineer's failure to perform its obligations under this Contract, (ii) arising from any act of negligence or willful misconduct by the Engineer or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible, (iii) arising from the Engineer's violation of any law (including, without limitation, immigration laws), (iv) seeking payment for labor or materials purchased or supplied by the Engineer or its subcontractors in connection with this Contract, (v) any claim that the Engineer or an employee or subcontractor of the Engineer is an employee of the Town, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like, or (vi) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Work or any products or deliverables provided to the Town pursuant to this Contract ("Infringement Claims"). If an Infringement Claim occurs, the Engineer shall either (i) procure for the Town the right to continue using the affected product or service, or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the Town shall not be adversely affected by such replacement or modification. If the Engineer is unable to comply with the preceding sentence within thirty (30) days after the Town is directed to cease use of a product or service, the Engineer shall promptly refund to the Town all amounts paid under this Contract.

14. Intellectual Property

Any information data, instruments, documents, studies, reports or deliverables given to exposed to, or prepared or assembled by the Engineer under this Contract shall be kept as confidential proprietary information of the Town and not divulged or made available to any individual or organization without the prior written approval of the Town. Such information, data, instruments, documents, studies, reports or deliverables will be the sole property of the Town and not the Engineer.

The Engineer shall maintain the right of reuse to any drawings or specifications provided or furnished by the Engineer. The Town acknowledges that such drawings or specifications are not intended or represented to be suitable for reuse by the Town or others on extensions of the project or on any other project.

All intellectual property, including, but not limited to, patentable inventions, patentable plans, copyrightable works, mask works, trademarks, service marks, and trade secrets invented, developed, created, or discovered in performance of this Contract shall be the property of the Town.

Copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographic designs, text, software, or documentation created as part of the Engineer's performance of this project shall vest in the Town. Work of authorship and contributions to works of authorship created by the Engineer's performance of this project are hereby agreed to be 'works made for hire' within the meaning of 17 USC 201.

15. Force Majeure

Except as otherwise provided in any environmental laws, rules, regulations or ordinances applicable to the parties and the services performed under this Contract, neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Either party to the Contract must take reasonable measures and implement reasonable protections when a weather event otherwise defined as a force majeure event is forecast to be eligible to be excused from the performance otherwise required under this Contract by this provision.

16. Advertising

The Engineer shall not use the existence of this Contract, or the name of the Town of Garner, as part of any advertising.

17. Cancellation

The Town may terminate this Contract at any time by providing thirty (30) days written notice to the Engineer. In addition, if Engineer shall fail to fulfill in timely and proper manner the obligations under this Contract for any reason, including the voluntary or involuntary declaration of bankruptcy, the Town shall have the right to terminate this Contract by giving written notice to the Engineer and termination will be effective upon receipt. Engineer shall cease performance immediately upon receipt of such notice.

In the event of early termination, Engineer shall be entitled to receive just and equitable compensation for costs incurred prior to receipt of notice of termination and for the satisfactory work completed as of the date of termination and delivered to the Town. Notwithstanding the foregoing, in no event will the total amount due to Engineer under this section exceed the total amount due Engineer under this Contract. The Engineer shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of this Contract, and the Town may withhold any payment due to the Engineer for the purpose of setoff until such time as the Town can determine the exact amount of damages due the Town because of the breach.

Payment of compensation specified in this Contract its continuation or any renewal thereof is dependent upon and subject to the allocation or appropriation of funds to the Town for the purpose set forth in this Contract.

18. Laws/Safety Standards

The Engineer shall comply with all laws ordinances codes, rules, regulations, safety standards and licensing requirements that are applicable to the conduct of its business including those of Federal, State and local agencies having Jurisdiction and/or authority.

Engineer must comply with North Carolina Occupational Safety and Health Standards for General Industry, 29 CFR 1910. In addition, Engineer shall comply with all applicable occupational health and safety and environmental rules and regulations. Engineer shall effectively manage their safety and health responsibilities including:

A. Accident Prevention

Prevent injuries and illnesses to their employees and others on or near their job site Contractor managers and supervisors shall ensure personnel safety by strict adherence to established safety rules and procedures.

B. Environmental Protection

Protect the environment on, near, and around their work site by compliance with all applicable environmental regulations.

C. Employee Education and Training

Provide education and training to all contractors' employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.

19. Applicability of North Carolina Public Records Law

Notwithstanding any other provisions of this Contract, this Contract and all materials submitted to the Town by the Engineer are subject to the public records laws of the State of North Carolina and it is the responsibility of the Engineer to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to the Town. Engineer understands and agrees that the Town may take any and all actions necessary to comply with federal, state, and local laws and/or Judicial orders and such actions will not constitute a breach of the terms of this Contract. To the extent that any other provisions of this Contract conflict with this paragraph, the provisions of this section shall control.

20. Miscellaneous

The Engineer shall be responsible for the proper custody and care of any property furnished or purchased by the Town for use in connection with the performance of this Contract and will reimburse the Town for the replacement value of its loss or damage.

The Engineer shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. Engineer represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such employees shall not be employees of or have any individual contractual relationship with the Town.

This Contract may be amended only by written agreement of the parties executed by their authorized representatives.

The Town of Garner may conduct an audit of Engineer's financial performance and compliance records maintained in connection with the operations and services performed under this Contract. In the event of such an audit, Engineer agrees to provide the Town with reasonable access to Engineer's employees and make all such financial performance and compliance records available to the Town. The Town agrees to provide the Engineer with an opportunity to discuss and respond to any findings before a final audit report is issued. Records shall be made available for three (3) years after the final payment.

21. Right of Audit and Examination of Records

- a. The Town may conduct an audit of any services performed and fees paid subject to this

Contract. The Town, or its designee, may perform such an audit throughout the contract period and for three (3) years after termination thereof or longer if otherwise required by law.

- b. The Contractor and its agents shall maintain all books, documents, papers, accounting records, contract records and such other evidence as may be appropriate to substantiate costs incurred under this Contract. The Town, or its designee, shall have the right to, including but not limited to: review and copy records; interview current and former employees; conduct such other investigation to verify compliance with contract terms; and conduct such other investigation to substantiate costs incurred by this Contract.
- c. "Records" shall be defined as data of every kind and character, including but not limited to books, documents, papers, accounting records, contract documents, information, and materials that, in the Town's sole discretion, relate to matters, rights, duties or obligations of this Contract.
- d. Records and employees shall be available during normal business hours upon advanced written notice. Electronic mail shall constitute written notice for purposes of this section.
- e. Contractor shall provide the Town or its designee reasonable access to facilities and adequate and appropriate workspace for the conduct of audits.
- f. The rights established under this section shall survive the termination of the Contract, and shall not be deleted, circumvented, limited, confined, or restricted by contract or any other section, clause, addendum, attachment, or the subsequent amendment of this Contract.
- g. The Contractor shall reimburse the Town for any overcharges identified by the audit within ninety (90) days of written notice of the Town's findings.

22. E – Verify

Contractor shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of Contractor's knowledge, any subcontractor employed by Contractor as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.

23. Iran Divestment Act Certification

Contractor certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 147-86.55, et seq. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147-86.59, Contractor shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

24. Companies Boycotting Israel Divestment Act Certification

Contractor certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81.

25. Incorporation of Documents/Complete Agreement

This Contract, and any documents incorporated below, represent the entire Contract between the parties and suspend all prior oral or written statements, agreements or Contracts.

Specifically incorporated into this Contract are the following attachments, or if not physically attached, are incorporated fully herein by reference:

- Scope of Services
- Schedule of Fees
- Certificate of Insurance

In cases of conflict between this Contract and any of the above incorporated attachments or references, the terms of this Contract shall prevail.

IN WITNESS WHEREOF, the Contractor has executed the foregoing with the signature(s) of its duly authorized officer(s). under seal, and the Town has executed with the signature of its Town Manager, attested by its (Assistant/Deputy) Clerk, with the official seal affixed, the day and year first above written.

CONTRACTOR

TOWN OF GARNER

By:

By:

Name
Title

Rodney Dickerson
Town Manager

(If corporate)
ATTEST:

ATTEST:

By:

By:

Name
Title

Stella Gibson
Town Clerk

THIS INSTRUMENT APPROVED
AS TO FORM

Town Attorney

(Affix Corporate Seal)

(Affix Town Seal)

CONTRACT AMENDMENT No.

This Contract Amendment (the "Amendment") dated the _____ day of _____, 20____ by and between _____ (the "Company"), and the Town of Garner (the "Owner"), collectively the "Parties".

WHEREAS, the Parties entered into a contract dated [Previous contract date]; and

WHEREAS, the Parties wish to amend the original contract;

Now, therefore, it is agreed by and between the parties for this Contract Amendment No. to be implemented as set forth below and attached exhibits.

1. SCOPE OF WORK

[Details of changes to original scope of work]

2. TIME OF PERFORMANCE

[Details of changes to original time of performance.]

3. COST OF WORK

[Details of changes to original time of performance.]

All terms and conditions of the original contract remain in full force except for those changes specifically outlined in this contract amendment.

In Witness hereof, the Parties have executed this Agreement as of the date set forth above.

COMPANY

TOWN OF GARNER

Signed:

Signed:

Name: _____

Rodney Dickerson

Title: _____

Town Manager

Witness:

Witness:

Name: _____

Stella Gibson

Title: _____

Town Clerk

NORTH CAROLINA
WAKE COUNTY

CONTRACT FOR ENGINEERING SERVICES

CONTRACT FOR ENGINEERING SERVICES

THIS CONTRACT is entered into by and between _____ hereinafter referred to as the "Engineer" and the Town of Garner, a North Carolina municipal corporation. hereinafter referred to as the "Town".

WITNESSETH

WHEREAS, the Town desires to procure an Engineer to perform services, and

WHEREAS, the Town has completed necessary steps for retention of professional and other services under applicable Town policies, and

WHEREAS, the Town has agreed to engage the Engineer and the Engineer has agreed to contract with the Town for performance of services as described, and according to the further terms and conditions, set forth herein.

NOW THEREFORE, in consideration of sums to be paid to the Engineer, and other good and valuable consideration the Engineer and Town do contract and agree as follows:

1. Scope of Services/Description of Project

The Town desires to retain **on-call professional engineering services** for, related to, and in support of the Town of Garner's Engineering Department. Services may include but are not limited to; study, concept, planning, design and construction for street and sidewalk projects.

The Engineer will serve as the Town's professional engineering representative in those tasks of the project to which this Contract applies and will give consultation and advice to the Town during the performance of their services.

The Engineer will provide services as described in the following Exhibits, which are attached to and made part of this Contract: Scope of Services and Schedule of Fees.

The Engineer now has or will secure at their expense, including subconsultants, all personnel and facilities required to perform the services to be rendered under this Contract. Such personnel are not employees of, nor have they any direct contractual relationship with the Town.

The Engineer is authorized to engage subconsultants, including surveyors, geotechnical and materials testing firms, to assist in the work included under this Contract to the extent such services are included herein. No subcontract work is authorized for which the Town will incur any costs beyond those agreed upon and set forth in Section 4.

Specific resources and responsibilities will be listed and described in separate **Statements(s) of Work (SOW)** which shall incorporate the terms and conditions of this Contract through reference.

2. Services Provided by the Town

It is understood that certain services as required may be performed and/or furnished by the Town. These services may include the following:

Assist the Engineer by placing at their disposal all available information pertinent to the project, including previous reports and other relative data;

Assist in gaining access to and making all provisions for the Engineer to enter upon public and private property as required for performance of their services described herein;

Examine all studies, reports, sketches, drawings, specifications, proposals and other documents prepared by the Engineer, obtaining advice of legal counsel and/or such other consultants as the Town deems appropriate for such examination and rendering in writing decisions pertaining thereto within a reasonable time so as not to delay the service of the Engineer;

Giving prompt written notice to the Engineer whenever the Town observes or otherwise becomes aware of any problems or changed circumstances in the project;

Furnishing the Engineer in a timely manner with copies of pertinent correspondence relating to this project, which would not have otherwise been delivered to the Engineer;

Designate in writing a person to act as the Town's representative with respect to the work to be performed under this Contract, such person(s) shall have complete authority to transmit instructions, receive information, interpret and define Town's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Contract;

The Town shall provide to the Engineer such information as is available to the Town for rendering of services hereunder. The Engineer may rely on the sufficiency of such information;

Insofar as any of the above services are necessary for the Engineer's performance of their obligations under this Contract the Town shall be responsible for providing such services in a satisfactory and timely manner so as not to delay the Engineer in their performance thereof.

3. Schedule/Time of Performance

The work to be performed and the services rendered under this Contract shall commence as directed by the Town. In performing the services described in this Contract and/or the **Statement(s) of Work (SOW)**, it is mutually agreed that time is of the essence. Work under the contract will be for a period of three years with the option of extending the contract up to two additional one-year terms.

4. Compensation/Time of Payment

- a. Compensation and payment will be authorized under subsequent **Statement(s) of Work (SOW)**, including lump sum fees for some services (if applicable), hourly fees, and

subconsultant services, unless changed by a duly authorized amendment. The standard Town of Garner payment term is NET 30 days from the date of invoice.

- b. Compensation for each service provided by the Engineer to the Town shall be set forth in each applicable Statement of Work. Compensation shall be on an hourly basis, lump sum basis, or a combination depending on the nature of the task and specificity of the task scope which will be negotiated for each task and in each Statement of Work.
 - i. Lump sum fees when applicable, shall be negotiated upon development of a detailed scope for the perspective task(s) or portions thereof
 - ii. For work performed on an hourly basis, the Town will be billed in accordance with the hourly rate schedule in Exhibit A. The Engineer shall be entitled to submit an updated hourly rate schedule after twelve (12) months of the date of contract execution.

5. Standard of Care

Engineer shall perform for or furnish to Town professional engineering and related services in all phases of the project to which this Contract applies as hereinafter provided. Engineer shall serve as Town's prime design professional and engineering representative for the project providing professional engineering consultation and advice with respect thereto. Engineer may employ such Engineer's Consultants as Engineer deems necessary to assist in the performance or furnishing of professional engineering and related services hereunder. Engineer shall not be required to employ any Engineer's Consultant unacceptable to Engineer.

The standard of care for all professional engineering and related services performed or furnished by Engineer under this Contract will be the care and skill ordinarily used by members of Engineer's profession practicing under similar conditions at the same time and in the same locality.

6. Opinions of Probable Construction Cost

Engineer's Opinions of Probable Construction Cost provided for herein are to be made based on Engineer's experience and qualifications and represent Engineer's best judgement as an experienced and qualified Professional Engineer generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by the Engineer. If the Town wishes greater assurance as to probable Construction Cost, Town may employ an independent cost estimator.

7. Notices

All notices, requests for payment, or other communications arising hereunder shall be sent to the following:

Town of Garner
 Attn: Chris Johnson, PE
 Telephone: 919-773-4420
 900 7th Avenue
 Garner, NC 27529

[Company Name]
 Attn:
 Telephone:
 Address:

8. Non-discrimination

In consideration of the signing of this Contract, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Contract, no matter how remote.

9. Minority or Women Owned Businesses

The Town of Garner prohibits discrimination in any manner based on race, color, creed national origin, sex, age or handicap or sexual orientation and will pursue an affirmative policy of fostering, promoting and conducting business with women and minority owned business enterprises. The Town of Garner has adopted a goal of 10% for participation by minority or women-owned businesses to reach the above stated goal.

The percentage of MWBE business participation engaged in this contract based on total contract amount is proposed to be 10%. Any variation from this amount is to be immediately conveyed to the Town by written notice.

10. Assignment

Neither the Town nor the Engineer will assign, sublet, or transfer their interest duties, or obligations hereunder without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it create any rights or benefits to parties other than the Town and the Engineer, except such other rights as may be specifically called for herein.

11. Applicable Law

All matters relating to this Contract shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Contract shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

12. Insurance

Engineer agrees to maintain, on a primary basis and at their sole expense, at all times during the life of this Contract the following coverages and limits. The requirements contained herein, as well as Town's review or acceptance of insurance maintained by Engineer is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Engineer under this Contract.

Commercial General Liability - Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

Automobile Liability - Limits of no less than \$1,000,000 Combined Single Limit Coverage shall include liability for Owned, Non-Owned and Hired automobiles In the event Contractor does not own automobiles, Engineer agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy

Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a Town of Garner site.

Worker's Compensation & Employers Liability - Engineer agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and Employers Liability insurance with limits of no less than \$1,000,000 each accident, each employee and policy limit. Waivers of Indemnity are not recognized by the North Carolina Department of Insurance and will not be accepted by the Town of Garner.

Additional Insured - Engineer agrees to endorse the Town as an Additional Insured on the Commercial General Liability and any insurance coverage obtained in addition to those set forth herein. The Additional Insured shall read "Town of Garner as its interest may appear."

Certificate of Insurance - Engineer agrees to provide the Town a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Engineer's insurer. If Engineer receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Engineer agrees to notify the Town within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

**Town of Garner
Town Manager
900 7th Avenue
Garner, NC 27529**

Umbrella or Excess Liability - Engineer may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. Engineer agrees to endorse Town of Garner as an 'Additional Insured' on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.

Professional Liability - Limits of no less than \$1,000,000 each claim.

All insurance companies must be admitted to do business in North Carolina and be acceptable to the Town of Garner. If the insurance company(s) is a permitted surplus lines insurer, the insurance company name, and NAIC number must be submitted to the Town for approval before commencing work. Engineer shall be required to provide the Town no less than thirty (30) days' notice of cancellation, or any material change, to any insurance coverage required by this Contract.

A Certificate of Insurance (COI) must be issued by an authorized representative of the insurance carrier(s). Certificates of Insurance must have the Insurance Company name and NAIC number clearly identified. The acceptance of or the review of Certificates of Insurance by the Town of Garner does not relieve Engineer of any requirements in the contract to provide specific insurance coverage required by the contract, nor does the acceptance of or review of Certificates of Insurance covenant all insurance requirements have been met.

13. Indemnity

To the fullest extent permitted by law, the Engineer shall indemnify, defend and hold harmless the Town and each of the Town's officers, officials, employees, agents and independent contractors (excluding the Engineer) from and against any and all losses, damages, costs, expenses (including attorneys' fees), obligations, duties, fines penalties, royalties, interest charges and other liabilities (including settlement amounts) paid or incurred by any of them as a result of any claims, demands, lawsuits, actions, or proceedings (i) arising from the Engineer's failure to perform its obligations under this Contract, (ii) arising from any act of negligence or willful misconduct by the Engineer or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible, (iii) arising from the Engineer's violation of any law (including, without limitation, immigration laws), (iv) seeking payment for labor or materials purchased or supplied by the Engineer or its subcontractors in connection with this Contract, (v) any claim that the Engineer or an employee or subcontractor of the Engineer is an employee of the Town, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like, or (vi) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Work or any products or deliverables provided to the Town pursuant to this Contract ("Infringement Claims"). If an Infringement Claim occurs, the Engineer shall either (i) procure for the Town the right to continue using the affected product or service, or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the Town shall not be adversely affected by such replacement or modification. If the Engineer is unable to comply with the preceding sentence within thirty (30) days after the Town is directed to cease use of a product or service, the Engineer shall promptly refund to the Town all amounts paid under this Contract.

14. Intellectual Property

Any information data, instruments, documents, studies, reports or deliverables given to exposed to, or prepared or assembled by the Engineer under this Contract shall be kept as confidential proprietary information of the Town and not divulged or made available to any individual or organization without the prior written approval of the Town. Such information, data, instruments, documents, studies, reports or deliverables will be the sole property of the Town and not the Engineer.

The Engineer shall maintain the right of reuse to any drawings or specifications provided or furnished by the Engineer. The Town acknowledges that such drawings or specifications are not intended or represented to be suitable for reuse by the Town or others on extensions of the project or on any other project.

All intellectual property, including, but not limited to, patentable inventions, patentable plans, copyrightable works, mask works, trademarks, service marks, and trade secrets invented, developed, created, or discovered in performance of this Contract shall be the property of the Town.

Copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographic designs, text, software, or documentation created as part of the Engineer's performance of this project shall vest in the Town. Work of authorship and contributions to works of authorship created by the Engineer's performance of this project are hereby agreed to be 'works made for hire' within the meaning of 17 USC 201.

15. Force Majeure

Except as otherwise provided in any environmental laws, rules, regulations or ordinances applicable to the parties and the services performed under this Contract, neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Either party to the Contract must take reasonable measures and implement reasonable protections when a weather event otherwise defined as a force majeure event is forecast to be eligible to be excused from the performance otherwise required under this Contract by this provision.

16. Advertising

The Engineer shall not use the existence of this Contract, or the name of the Town of Garner, as part of any advertising.

17. Cancellation

The Town may terminate this Contract at any time by providing thirty (30) days written notice to the Engineer. In addition, if Engineer shall fail to fulfill in timely and proper manner the obligations under this Contract for any reason, including the voluntary or involuntary declaration of bankruptcy, the Town shall have the right to terminate this Contract by giving written notice to the Engineer and termination will be effective upon receipt. Engineer shall cease performance immediately upon receipt of such notice.

In the event of early termination, Engineer shall be entitled to receive just and equitable compensation for costs incurred prior to receipt of notice of termination and for the satisfactory work completed as of the date of termination and delivered to the Town. Notwithstanding the foregoing, in no event will the total amount due to Engineer under this section exceed the total amount due Engineer under this Contract. The Engineer shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of this Contract, and the Town may withhold any payment due to the Engineer for the purpose of setoff until such time as the Town can determine the exact amount of damages due the Town because of the breach.

Payment of compensation specified in this Contract its continuation or any renewal thereof is dependent upon and subject to the allocation or appropriation of funds to the Town for the purpose set forth in this Contract.

18. Laws/Safety Standards

The Engineer shall comply with all laws ordinances codes, rules, regulations, safety standards and licensing requirements that are applicable to the conduct of its business including those of Federal, State and local agencies having Jurisdiction and/or authority.

Engineer must comply with North Carolina Occupational Safety and Health Standards for General Industry, 29 CFR 1910. In addition, Engineer shall comply with all applicable occupational health and safety and environmental rules and regulations. Engineer shall effectively manage their safety and health responsibilities including:

A. Accident Prevention

Prevent injuries and illnesses to their employees and others on or near their job site Contractor managers and supervisors shall ensure personnel safety by strict adherence to established safety rules

and procedures.

B. Environmental Protection

Protect the environment on, near, and around their work site by compliance with all applicable environmental regulations.

C. Employee Education and Training

Provide education and training to all contractors' employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.

19. Applicability of North Carolina Public Records Law

Notwithstanding any other provisions of this Contract, this Contract and all materials submitted to the Town by the Engineer are subject to the public records laws of the State of North Carolina and it is the responsibility of the Engineer to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to the Town. Engineer understands and agrees that the Town may take any and all actions necessary to comply with federal, state, and local laws and/or Judicial orders and such actions will not constitute a breach of the terms of this Contract. To the extent that any other provisions of this Contract conflict with this paragraph, the provisions of this section shall control.

20. Miscellaneous

The Engineer shall be responsible for the proper custody and care of any property furnished or purchased by the Town for use in connection with the performance of this Contract and will reimburse the Town for the replacement value of its loss or damage.

The Engineer shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. Engineer represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such employees shall not be employees of or have any individual contractual relationship with the Town.

This Contract may be amended only by written agreement of the parties executed by their authorized representatives.

The Town of Garner may conduct an audit of Engineer's financial performance and compliance records maintained in connection with the operations and services performed under this Contract. In the event of such an audit, Engineer agrees to provide the Town with reasonable access to Engineer's employees and make all such financial performance and compliance records available to the Town. The Town agrees to provide the Engineer with an opportunity to discuss and respond to any findings before a final audit report is issued. Records shall be made available for three (3) years after the final payment.

21. Right of Audit and Examination of Records

- a. The Town may conduct an audit of any services performed and fees paid subject to this Contract. The Town, or its designee, may perform such an audit throughout the contract period and for three (3) years after termination thereof or longer if otherwise required by law.

- b. The Contractor and its agents shall maintain all books, documents, papers, accounting records, contract records and such other evidence as may be appropriate to substantiate costs incurred under this Contract. The Town, or its designee, shall have the right to, including but not limited to: review and copy records; interview current and former employees; conduct such other investigation to verify compliance with contract terms; and conduct such other investigation to substantiate costs incurred by this Contract.
- c. "Records" shall be defined as data of every kind and character, including but not limited to books, documents, papers, accounting records, contract documents, information, and materials that, in the Town's sole discretion, relate to matters, rights, duties or obligations of this Contract.
- d. Records and employees shall be available during normal business hours upon advanced written notice. Electronic mail shall constitute written notice for purposes of this section.
- e. Contractor shall provide the Town or its designee reasonable access to facilities and adequate and appropriate workspace for the conduct of audits.
- f. The rights established under this section shall survive the termination of the Contract, and shall not be deleted, circumvented, limited, confined, or restricted by contract or any other section, clause, addendum, attachment, or the subsequent amendment of this Contract.
- g. The Contractor shall reimburse the Town for any overcharges identified by the audit within ninety (90) days of written notice of the Town's findings.

22. E – Verify

Contractor shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of Contractor's knowledge, any subcontractor employed by Contractor as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.

23. Iran Divestment Act Certification

Contractor certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 147-86.55, et seq. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147-86.59, Contractor shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

24. Companies Boycotting Israel Divestment Act Certification

Contractor certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81.

25. Incorporation of Documents/Complete Agreement

This Contract, and any documents incorporated below, represent the entire Contract between the parties and suspend all prior oral or written statements, agreements or Contracts.

Specifically incorporated into this Contract are the following attachments, or if not physically attached, are

incorporated fully herein by reference:

- Hourly Rates
- Certificate of Insurance

In cases of conflict between this Contract and any of the above incorporated attachments or references, the terms of this Contract shall prevail.

THIS CONTRACT is entered into this _____ day of _____, 20_____.

IN WITNESS WHEREOF, the Contractor has executed the foregoing with the signature(s) of its duly authorized officer(s). under seal, and the Town has executed with the signature of its Town Manager, attested by its (Assistant/Deputy) Clerk, with the official seal affixed, the day and year first above written.

CONTRACTOR

TOWN OF GARNER

By:

By:

Name
Title

Rodney Dickerson
Town Manager

(If corporate)
ATTEST:

ATTEST:

By:

By:

Name
Title

Stella Gibson
Town Clerk

THIS INSTRUMENT APPROVED
AS TO FORM

Town Attorney

(Affix Corporate Seal)

(Affix Town Seal)

NORTH CAROLINA
WAKE COUNTY

STATEMENT OF WORK #1

This Statement of Work is entered into among _____ (the “Engineer”) and the Town of Garner (the “Town”) under the terms and conditions of the Contract for the _____ project between the Engineer and the Town dated _____ which is hereby incorporated by reference. This SOW is part of the Contract and shall be governed by the terms and conditions stated herein and by the terms of the Contract. In the event of conflict between the terms of the SOW and the contract, the provisions of the Contract shall control.

1. Scope of Services

[Add Scope of Services or refer to attached exhibit, if applicable]

2. Compensation, Time of Payment

Compensation to the Engineer for the work described above shall not exceed _____.

Payment shall be made to the Engineer for performance in association with this SOW. Standard Town of Garner payment term is NET 30 days from the date of the invoice.

3. Time of Performance

Engineer shall complete performance of the services described above by no later than _____ from the date of the notice to proceed.

(Notwithstanding the above, if the date provided in this section is beyond the time of performance or terms specified in the Contract, the term specified in the Contract shall control and all work under this SOW must be completed by that date.)

THIS CONTRACT AMENDMENT is entered into this _____ day of _____, 20____.

IN WITNESS WHEREOF, the Contractor has executed the foregoing with the signature(s) of its duly authorized officer(s), and the Town has executed with the signature of its Town Manager, attested by its (Assistant/Deputy) Clerk-Treasurer, with the official seal affixed, the day and year first above written.

CONTRACTOR:

By:

Printed Name/Title

(If corporate)

ATTEST:

By:_____

Printed Name/Title

(Affix Seal)

TOWN OF GARNER

By:

Town Manager

ATTEST:

By:_____

(Deputy) Clerk

(Affix Seal)

THIS INSTRUMENT APPROVED AS TO
FORM:

Town Attorney

ARTICLE I – Scope of Services**I.1 Description of the Project**

The Town desires to engage an Engineer to provide professional services required to produce plans and contract documents for improvements to [REDACTED] from [REDACTED] to [REDACTED] in Garner, NC. The purpose of this [REDACTED] ± mile project is to enhance mobility and connectivity for pedestrian, bicycle, and vehicular traffic while improving safety throughout this important corridor. The project includes location surveys, subsurface utility engineering, geotechnical services, roadway design, water resources design (including storm water), erosion control, SCM investigations/design, traffic analyses, traffic management, signing and delineation, utility design, utility coordination, landscape/planting design, right of way/easement exhibits, public involvement, signal design, and bidding/contract documentation services.

I.2 Description of Services

The Engineer shall provide the engineering services required to design and prepare construction plans, specifications and bid documents for the proposed improvements in accordance with the following:

I.2.1 Survey

All survey services for this project shall be performed in accordance with, and shall conform to, accepted Surveying and Engineering general practices and procedures with the detailed scope of work as set forth and described below.

We will provide base mapping data to these limits along with the footprint of structures within 100' of these limits.

(-L-) Line Alignment

- [REDACTED] from [REDACTED] to [REDACTED] - [REDACTED]' x [REDACTED]' corridor ([REDACTED]' each side of the existing road).

(-Y-) Line Alignments

- -Y- [REDACTED] from [REDACTED] to [REDACTED] - [REDACTED]' x [REDACTED]' corridor ([REDACTED]' each side of the existing road).

I.2.1.a Property Research/Document Retrieval

The Engineer shall obtain current deeds, maps, plats, and easement documents of record according to the current information of the online Town of Garner Tax Records in the IMAPS GIS database, for all parcels adjacent to the project and for which right of way acquisition shall be required. Thorough investigations should be made of private developments along the corridor, through the Town Planning Department and other means, to properly represent existing, dedicated easements in the project

plans. The Engineer shall obtain NCDOT record plans, and other right of way information to assist in the establishment of existing right of way for the roads within the project limits. Engineer shall provide a copy of all property information compiled during this task to the Town. There are approximately [REDACTED] parcels in the project limits. A complete title opinion is not included in this scope of services. Property owners are to be notified by the Town of Garner and obtain a Right of Entry to all properties 30 days before commencement of surveys.

I.2.1.b Establish Horizontal and Vertical Control Network

The Engineer shall provide a horizontal and vertical traverse throughout the entire Project. Horizontal Control shall be referenced to North Carolina Geodetic Survey datum, NAD83 2011 adjustment. Control shall consist of a “random baseline traverse” monumented by 18” lengths of #5 rebar with stamped aluminum caps set flush with the ground, or MAG pavement nails where appropriate. Each control point shall have x, y, and z coordinate values.

Vertical Control shall be based upon United States Geodetic Survey NAVD 88 datum. The Engineer shall set benchmarks at 500 to 800-foot intervals throughout the Project. Railroad spikes or Bench Ties to be placed in the base of trees shall be utilized where possible and shall be placed outside of the proposed construction limits. The benchmark locations and descriptions shall be shown on the final plans.

I.2.1.c Photogrammetry

The Engineer will perform aerial photogrammetry to provide the base DTM and Planimetric Mapping for the project.

1. Photo Control - Establish survey control on the site and set and obtain coordinates on aerial targets (1-foot-wide by 2-foot-long chevrons-or similar), and/or photo-identifiable points.
2. Aerial Image Acquisition – The use a fixed-wing aircraft equipped with an UltraCam Falcon Prime (UCFp) sensor, or similar, to collect imagery at a ground sample distance (GSD) of 5cm. The imagery will be controlled using the above mentioned survey points along with the Airborne Global Positioning System Applanix POS-AV© with IMU.
3. Processing - Aerial Triangulation (AT): will be performed on all acquired imagery with a preliminary simultaneous bundle adjustment carried out using a minimal amount of control points along the block perimeter. Additional control points will be treated as check points during this initial run and the solution will be checked to make sure there are no blunders or gross errors in the photo or ground control measurements. The final adjustment will be a simultaneous bundle

adjustment of the entire project data including all ground control points with no points held out as check points.

4. Topographic Mapping - Stereocompilation will include any visible features at a 1"=40' scale including driveways, parking lots, buildings, utilities, vegetation (items that were not extracted from the mobile LiDAR dataset). Breaklines and masspoints will also be collected in the soft topo areas to support a Digital Terrain Model (DTM) suitable for 1foot contours.
5. Obscured and Obstructed Features - Based on the provided Area of Interest there is the possibility that some areas will be obscured and/or obstructed resulting in limited terrain and planimetric feature collection. These areas will be outlined with an "obscured area" polygon, and additional ground survey may be required to supplement the data.
6. Orthophotography - Collected imagery will be rectified to the new surface model, and the individual 3-inch GSD ortho image files will be processed to ensure a seamless appearance, and will be tonally balanced to produce a uniform contrast and tone across the entire project area. The orthophotography will be delivered in tiled TIF/TFW and ECW/EWW formats.

I.2.1.d Pavement Digital Terrain Model

The Engineer will use Mobile Scanning technology to collect the hard surface DTM's and Planimetrics. This data will be processed based on the Survey Control and merged into the photogrammetric mapping for delivery. Accuracies for the mobile data will be $\pm 0.05'$.

I.2.1.e Planimetric Mapping

The Engineer shall map the majority of basic planimetric mapping from the photogrammetry services. The Engineer will perform a walk thru/classification of features to aid with labeling features as well as preform supplemental ground surveys to locate obscured or missing items. Said information shall include, but is not limited to the following:

1. Drives - location, type, and width
2. Buildings - location, type, size, and front corners if within 100 feet of existing right of way.
3. Parking Lots - location and layout
4. Landscape areas, woods lines, and all trees in landscaped areas greater than 6" dia, and all ornamental trees shall be located by species and size.
5. Signs - location, type, and size
6. Fences - location, type, and size
7. Utilities*

- a. Storm drainage - location, size, type, top and invert elevations, inlet and outlet location both inside and one structure outside planimetric limits.
- b. Gravity sanitary sewer - location, size, type, top and invert elevations.
- c. Water - location, valves (including top of nut elevations where accessible), meters, hydrants, wells (as surveyed and/or identified by Wake County records), and associated appurtenances.
- d. Gas - location, valves, meters, vents and associated appurtenances.
- e. Telephone – above ground appurtenances such as poles, pedestals, manholes and vaults (to include subsurface footprint).
- f. Overhead utilities - location, poles, guys, markers, pedestals, pole number, equipment, vertical clearance at grade crossings, and type to include power, telephone, cable TV, traffic signal and other telecommunications and communication lines.
- g. Underground utilities - location, pedestals, markers, and type to include power, telephone, cable TV, traffic signal and other telecommunications and communication lines.
- h. Owner names, addresses, phone numbers and contact persons shall be provided for all utilities when available.

* Locations of non-gravity underground utilities will be based on above ground structures and “Quality Level B” horizontal subsurface utility location. Gravity utility (drainage and sanitary sewer) location will be based on above ground appurtenances and visual inspection and depth measurements to determine invert elevations that may be accomplished from the surface. The Engineer will not enter the manhole to determine inverts. Confined space investigation shall be considered Additional Services (Article II).

All final DTM and survey control shall be provided to the Engineer in MicroStation V8i and GEOPAK.

I.2.1.f Centerline Staking

Upon approval of final alignment by the Town of Garner, just prior to the bid phase of the Project, three points of the approved design centerline alignment will be staked with semi-permanent stakes, one point near the beginning of the project, one near the mid-point of the project, and one near the end of the project.

I.2.1.g Boundary Ties and Existing Boundary Mapping

Locate the existing right of way and recorded easements as available by reference in the online Wake County Tax Records and/or IMAPS GIS database for all roadways within the project limits. NCDOT record plans will be used to establish right of way for the NCDOT roads within the project and Town of Garner roadway plans or existing plats will be used to establish right of way on Town owned or maintained roads. A complete title opinion or obtaining a Right of Way Abstract from NCDOT or the Town of Garner is not included in this scope of services.

Recon and locate a sufficient number of property corners on approximately [REDACTED] properties to accurately show the affected property boundary limits in accordance with the recorded deeds and plats.

Complete boundary surveys required on any parcel shall be considered Additional Services (Article II).

I.2.1.h Right-of-Way and Easement Monumentation

During land acquisition by the Town, the Engineer shall stake the proposed right-of-way and easements as required by the Standards of Practice for Land Surveying in North Carolina, set forth and published by NCBELS. The right-of-way shall be temporarily staked using semi permanent materials to allow Town Real Estate staff to adequately meet with each property owner. Following completion of acquisition of the proposed rights-of-way, including any changes required due to the land acquisition process, the right-of-way shall be permanently monumented by placing 18-inch lengths of #5 rebar at all breaks in the right-of-way and at intersections of the proposed right-of-way with existing property lines. Permanent Drainage Easements shall also be monumented with #5 rebar. All other easements shall be monumented with semi-permanent materials, such as wooden stakes or flags. Revisions to the right of way and easements staking are included in this item. Refer to Item 4 in Article III, Alternate Services, for re-staking points on a unit basis.

I.2.1.i Subsurface Utility Designation and Location Services

The Engineer shall provide “Quality Level B” horizontal subsurface utility location data for a not-to-exceed linear footage of underground utilities. This includes Utility Research, Utility designating, Surveying and Mapping of the existing utilities within the project limits. Quality Level “B” subsurface utility location data requested beyond the Level “B” linear footage as stated below for Level “B” footage will be considered Additional Services and will require a supplemental agreement. Mobilization (travel time) and mileage will be considered additional cost. This service shall be

provided based on the unit cost of \$XX per linear foot for Level “B” underground. Utility records research and site visit revealed estimated lengths as follows:

Length (Feet)	Description
	Telephone
	Telephone fiber optic
	Electric (U/G)
	Natural gas
	Water
	Cable TV
	Communications Fiber Optic
	Unknown
	Total (Level “B” Total U/G Utilities)

I.2.1.j Subsurface Utility Location (Vacuum Excavation)

The Engineer shall provide “Quality Level A” vacuum excavation services for up a maximum 6 feet deep at the unit cost of \$ per test pit. The Engineer shall determine test hole locations once drainage and utility designs are complete and potential conflicts are noted. Precise horizontal and vertical information of the specified utility shall be provided to the Town as Certified Vacuum Excavation Reports for the specified test hole locations. An estimate of test holes are included for this project.

It is understood that particular test hole locations may require a depth of vacuum excavation greater than the maximum noted above. Any vacuum excavation deeper than the maximum listed above and will be paid at the unit price of \$ per linear foot of vacuum excavation beyond the maximum. An estimate of two (2) additional feet are included in this estimate.

- III.4.1 Test hole locations may require traffic control for lane closures in order to provide a safe work zone for the work to be performed. The Engineer shall provide traffic control services for lanes closures at the unit cost of \$ per day. It is estimated that () days of traffic control may be needed.

I.2.1.k Survey Delivery Items

The Engineer shall compile and plot all planimetric, subsurface utility information, and property line information at a scale of 1 inch equals 40 feet. This mapping shall be delivered in MicroStation file format for use in the development of final design plans. Drawing element symbology and text sizes shall follow North Carolina Department of Transportation standards.

The Engineer shall provide Digital Terrain Model in a 3-D digital radial break-line survey format with x, y, and z digital coordinate information for each survey point, break-line, and triangular irregular network (TIN) line.

The Engineer shall provide field data collector files, copies of field notes, x, y, z ASCII point files, deeds, and plat information in a survey notebook format.

The Engineer shall provide the Town with one electronic copy of all deeds and plats obtained during the courthouse research.

Any re-establishment and/or staking of more than three points of the initial control traverses and alignments lost due to project delays, periods of inactivity, vandalism or construction associated with this project, so long as these causes are outside the control of the Engineer, shall be considered additional services and compensated in accordance with Article II of this contract.

I.2.2 Traffic Data Collection and Traffic Signal Warrant Analysis Report

During this phase the Town will provide any existing traffic data for the Lake Wheeler Road/Carolina Pines Avenue intersection and the Engineer will prepare traffic projections for future traffic by applying an annual growth rate to existing traffic volumes, with input from the Town. The Engineer will prepare capacity analyses on both existing and future traffic, and prepare a Traffic Signal Warrant Analysis Report.

I.2.2.a. Traffic Data Collection

The Engineer will provide turning movement counts (TMCs) as follows:

- [REDACTED] at [REDACTED] - 13-hour TMCs (6:00 AM – 7:00 PM), including pedestrian counts.

I.2.2.b. Capacity Analysis and Traffic Signal Warrant Analysis Report

The Engineer will perform a detailed traffic study and report. This report will include current turning movement counts (as provided by the Engineer), traffic conditions, design year traffic projections, and analyses of intersections listed in I.2.2.a using the design year traffic. Each of the

major tasks involved in the development of this report are described below.

Field Visits and Meetings: The Engineer will visit the site and collect all the relevant data (lanes, signal phases, grades, turn lane storages etc.) for capacity analyses. Two meetings will be held, one with the Town and one with the NCDOT Division 5 Traffic Engineer and NCDOT District Engineer.

Coordination: The Engineer will coordinate with the Town and the NCDOT to gather relevant available information/plans/data.

Signal Warrants: The Engineer will perform a signal warrants analysis for the Lake Wheeler Road / Carolina Pines Avenue intersection.

Existing Conditions Analysis – The Engineer will analyze current traffic conditions for both the no-build and build conditions. The analysis will be based on the traffic count data and will utilize the latest version of Synchro and Simtraffic software.

Design Year Analysis – The Engineer will analyze design year (as specified by the Town) traffic conditions for both the no-build and build conditions. The Engineer will evaluate the need for additional turn lanes, recommend associated storage lengths, and optimize signal timing and phasing if a traffic signal is warranted at the Lake Wheeler Road / Carolina Pines Avenue intersection. The Engineer will analyze the potential construction of roundabouts at the Carolina Pines Avenue/Lake Wheeler Road and Carolina Pines Avenue/Granite Street intersections.

Traffic Signal Warrant Analysis Report – The Engineer will prepare a Traffic Signal Warrant Analysis Report that will describe the study area, methodology, existing and design year traffic analyses, and recommendations. The report's technical appendix will include traffic count data, travel model output, traffic forecast calculations, and Synchro/Simtraffic output. The Engineer will utilize the latest NCDOT congestion management guidelines and the Town of Garner's Transportation Corridor Planning Report Guidelines for the capacity analyses and for preparing the Traffic Signal Warrant Analysis Report for this project. Two (2) draft reports and two (2) final reports will be submitted to the Town.

Crash Analysis – As part of the traffic analysis report, the Engineer will analyze crash data in the Carolina Pines Avenue Corridor. Crash data will be collected for the most recent 5-year period from Garner Police

Department. Accident data will be summarized by accident type, location, severity, day/night, and wet/dry. The Accident Rate, Severity Rate, and Fatality Rate will be calculated and compared to Town-wide rates and other similar Town streets if information is available. An accident location diagram/exhibit will be created. Any trends or problem areas will be identified.

I.2.3 Natural Resource Investigation

The Engineer will conduct a site/natural resources investigation to identify existence of streams, wetland areas or buffer zones. A preliminary jurisdictional determination request will be made on behalf of the Town to the US Army Corps of Engineers (USACE) and Division of Water Resources (DWR). The Engineer will coordinate with representatives from both agencies to verify the extent and locations of jurisdictional resources. A letter report will be prepared to document the findings of the investigations.

I.2.4 Pre-Design (10% Plans)/Preliminary Design (25% Plans)

During this phase the Engineer will prepare pre-design and preliminary design plans. Other tasks include natural resource investigation and report (see Task I.2.3).

Prior to developing 25% plans, the Engineer will prepare a preliminary design based on aerial photography and GIS data. The purpose of the pre-design (10% Plans) is to get early input from the Town while waiting on final surveys. This preliminary design submittal will be based on the Engineer's recommended alignment and design concept and shall include proposed design criteria, a horizontal and vertical alignment, edges of pavement, intersection locations, and typical section(s). Preliminary right of way and easements will be set to aid in the review process. Cross-sections will not be prepared at this stage of design.

The Engineer will prepare preliminary layout designs for up to alternatives to be presented at a Pre-design public meeting, including:

1. A PowerPoint Presentation discussing the purpose and limits of the project.
2. Background information and general scope of the project.
3. Preliminary Project Schedule.
4. Estimated Preliminary Project Costs

The Engineer will obtain hydraulic survey data sufficient to determine requirements for all hydraulic related structures. This includes, but is not limited to, mapping of existing drainage patterns; outfall locations, dimensions, condition, and slopes.

Once all supplemental hydraulic field reconnaissance is complete, the Engineer will develop preliminary roadway drainage design plans for the Preferred Alternate. This design will be based on the 25% roadway design plans and includes the

approximate locations and spacing of curb and gutter inlets, hydrologic and hydraulic analysis and recommendations for all cross pipes within project; pre/post runoff calculations for outfalls; nitrogen loading analysis and calculations; and a feasibility study/matrix presenting options to include Low Impact Development (LID) into the project utilizing Stormwater Control Measures (SCM's) such as dry/wet ponds, bioretention areas, etc.,

All design shall be in conformance with AASHTO design criteria and standards except as may be modified by the Town. Preliminary design plans shall consist of preliminary roadway plans and preliminary cross sections. The design shall include preliminary line, grade, cross sections, and intersection layout. Preliminary design plans shall be developed to the stage at which approximately 25% of the roadway design for the Project is complete. The Engineer shall submit two (2) hard copy sets of plans and one (1) electronic set in PDF format to the Town, six (6) hard copy sets to NCDOT for review, and one (1) hard copy each to all private utilities involved in the project.

The Engineer shall prepare preliminary roadway plans on plan and profile sheets at a scale of 1"= 40' horizontal and 1" = 10' vertical. The Engineer shall prepare preliminary half-size cross sections at a scale of 1" = 10'.

The Engineer shall update design assumptions and typical roadway sections for a mile per hour design speed. The Engineer shall also develop an Opinion of Probable Construction Cost to be submitted to the Town along with the preliminary design plans.

I.2.5 Storm Drainage, Hydraulic Design, Erosion Control Plans and Permits

Upon approval of 25% plans, the Engineer shall perform final drainage studies, designs and field reconnaissance in accordance with the requirements of the Town.

The Engineer will conduct a site investigation to identify existence of streams, wetland areas or buffer zones. The Engineer will obtain hydraulic survey data sufficient to determine requirements for all hydraulic related structures.

Since streams, wetlands and buffers are present on the project, the Engineer will prepare the environmental permit drawings and permit applications (Preconstruction Notification or PCN) for the project as listed below.

1. Section 404 (US Army Corp of Engineers)
2. Section 401 (NC Dept. of Environmental Quality)
3. Neuse Buffer Certification (NC Dept. of Environmental Quality)

All review fees and/or permitting fees required by will be paid by the Town or reimbursed to the Engineer at cost.

The Engineer will develop final roadway drainage design plans. This design includes the final locations and spacing of curb and gutter inlets to minimize risk of hydroplaning; hydrologic and hydraulic analysis and final recommendations for all cross pipes within project; stability analysis of all ditches and outfalls; pre/post runoff calculations for outfalls; and development of SCM final design details. In addition, a drainage summary sheet will be developed to provide quantities for all drainage related structures.

It is estimated that [REDACTED] ([REDACTED]) stormwater SCM devices will be included in the final design of the project.

I.2.6 Geotechnical Subsurface Investigations

The Engineer shall provide geotechnical engineering services conforming to accepted engineering general practices and procedures and be performed in accordance with the following:

The Engineer shall perform geotechnical subsurface investigations necessary for completion of the final construction documents. These investigations shall include a total of [REDACTED] ([REDACTED]) soil test borings along the proposed widening areas. Soil borings shall be laid out approximately every 250-300 feet and shall primarily be advanced to 10 to 15 feet or to auger refusal (assumed average of 12.5 feet, or a total of up to 315 linear feet). Should auger refusal occur above the proposed elevations, auger probes shall be performed every 50 linear feet as necessitated to delineate hard rock.

A total of [REDACTED] ([REDACTED]) pavement core samples shall be obtained along the existing pavement section to determine pavement section thickness and composition. Pavement core samples shall be obtained at approximate 400 to 500-foot intervals. Based on pavement condition assessment as discussed in the scoping meeting, the pavement along [REDACTED] is relatively poor. Therefore, rehabilitation of existing pavements may be included in the project for some or all the corridor length and pavement core boring data shall be collected with this in mind.

The Engineer shall mark boring and coring locations in the field in accordance with the preliminary design plans.

Subsurface conditions will be evaluated utilizing a truck and/or an all-terrain vehicle (ATV) drill rig equipped with hollow stem augers. The same drill rig and/or portable core rig and a diamond impregnated core barrel will be used for pavement core borings. Standard penetration testing shall be performed at regular intervals in accordance with the American Association of State Highway Transportation Officials (AASHTO T-206-87).

Representative split spoon and bulk samples will be obtained to verify visual field classification and determine soil index properties. (b) (5) split spoon samples will be analyzed in the Engineer's laboratory for natural moisture, Atterberg limits, and grain size. In addition, (b) (5) bulk samples will be obtained and analyzed in the Engineer's laboratory for natural moisture, Atterberg limits, grain size, standard proctor compaction, and soaked California Bearing Ratio Analysis (CBR). All laboratory testing shall be performed in accordance with the latest AASHTO procedures.

After completion of the field investigation, the Engineer will prepare an engineering report which will include:

1. A brief review of test procedures and results of all testing conducted.
2. General description of the site and subsurface conditions, including groundwater conditions.
3. Results of laboratory and CBR testing.
4. Based on traffic data provided by the Engineer, final pavement design recommendations for roadway sections based on Superpave design methods. Designs for both 25-year and 40-year service life will be prepared, along with anticipated maintenance and overlay needs expected of both options. Designs utilizing full depth reclamation or other recommended rehabilitation methods shall be included. However, specific mix designs are considered beyond this scope of work.

The Engineer will submit one (1) electronic version of the completed report in .PDF format for Town review. The Engineer will respond to one (1) set of comments from the Town, after which the Engineer shall submit one (1) hard copy of the report and one (1) electronic version in .PDF format to the Town upon completion. The Engineer will conduct a meeting to present the findings and recommendations of the geotechnical investigations to Town staff.

I.2.7 Utility Coordination

I.2.7.a Coordination of Utilities

Following initial base map preparation and prior to development and submittal of 25% plans, the Engineer shall coordinate with private utility companies whose facilities (both existing and proposed) may be affected by the design of the Project to determine locations of major facilities that could adversely affect horizontal alignment development. Such information shall be shared with the Town for determination of costs and benefits of shifting the alignment versus relocating the private utility facilities based upon analysis and recommendation of the Engineer.

Following the completion of the Preliminary (25%) Design Phase of the Project, the Engineer shall conduct a “kick-off” meeting with all private utilities to review the proposed design. The Engineer shall furnish information pertaining to proposed construction to all involved utility companies and agencies.

To facilitate timely preparation of private utility relocation plans, the Engineer shall submit draft drainage design plans to all private utilities at approximately 50% completion of final construction plans. This shall occur such that development of private utility relocation plans may be developed sufficient enough to show any necessary easements on the 65% plans submittal.

The Engineer shall coordinate the resolution of utility conflicts with the respective owners and shall inform the Town’s Project Manager of all correspondence regarding same. The design and adjustment of privately owned utilities shall be the responsibility of the respective owners, with coordination provided by the Engineer. The Engineer shall prepare utilities by others plans illustrating existing and proposed private utility locations.

The Engineer shall conduct a minimum of () coordination meetings with private utility owners. The Town’s Project Manager shall be informed of/invited to these coordination meetings. Items to address at these meetings shall include, but not be limited to, phasing coordination with proposed roadway traffic control plans, joint pole usage, potential conflict with signal lines, and accommodation of signals attachments on private utility poles.

I.2.7.b Street Lighting

The Engineer shall coordinate development of street lighting plans with Duke Energy Progress. This coordination shall include use of Duke Energy Progress standard roadway lighting equipment and verification of proposed pole locations with representatives from Duke Energy Progress. Plan sheets shall include identification of pole locations; location, size and type of underground conduit necessary to accommodate future installation; and necessary details and special provisions as provided by Duke Energy Progress. Proposed street lighting design by Duke Energy Progress will be shown on the final Utility by Others Plans.

I.2.7.c Utility Design

The Engineer shall show the location of all existing and proposed utilities on the final design plans and shall indicate proposed underground utilities to be constructed as part of the Project. The Engineer shall design incidental adjustments and major relocations listed below for existing Town-owned

underground utilities (water and sewer) as required to construct the Project. Water and sewer relocation plan and profile drawings shall be produced depicting proposed vertical and horizontal locations of relocated City of Raleigh-owned utilities. Permitting for water line and sewer line designs will be processed through the City of Raleigh Public Utilities Department. Any required permitting fees will be paid by the owner.

1.2.8 Final Design Phase

The Engineer shall develop final plans and project special provisions in sufficient form and detail for the Town to let construction contracts. All final designs for the Project shall conform to the appropriate current AASHTO specifications, the current practices of NCDOT, and the requirements of the Town.

Plans shall be developed using MicroStation V8i and GEOPAK software. Final design plans shall include roadway and sidewalk design and details, storm drainage details, construction traffic control plans, pavement marking plans, erosion control notes and details, utilities by others plans, utility construction plans (if required), signal designs (if required), signing plans, landscape/planting plans, and material quantities; and shall identify existing right-of-way, proposed right-of-way, permanent and temporary drainage easements, slope easements, utility easements, and temporary construction easements sufficient to encompass all improvements.

I.2.8.a 65% Plans

After the first Public Meeting (as described in section (I.4.2) and receipt of all applicable comments, the final roadway plans shall be developed from the approved preliminary (25%) design plans to a stage where they are approximately 65% complete. All existing roadways, structures, utilities, and other items affected by the project shall be shown in addition to the proposed construction. The plans shall include horizontal geometrics, pavements, drainage layout and calculations, right-of-way easements, property lines, typical sections, traffic control plans, preliminary signing and pavement marking plans, preliminary signal design plans, erosion control notes and details, utility relocation plans, and special details.

The Engineer shall show any proposed traffic signal poles, controller cabinet bases, easements and pertinent equipment as specified by the Town on the final plans (if needed). All drainage and erosion control calculations shall be submitted with the 65% design plans by the Engineer for Town approval.

The Engineer shall furnish two (2) hard copy sets of 65% plans and one (1) electronic set in PDF format to the Town. Sufficient copies of the plans and other design data shall be submitted to the Town to allow detailed review.

Upon incorporation of comments and completion of the 65% plans and approval by the Town, the Engineer shall furnish one (1) electronic set of construction drawings in PDF format and one (1) hard copy set, (1) public meeting map, an updated Opinion of Probable Construction Cost (including estimated right-of-way acquisition costs based upon cost data provided by the Town), bid quantities, and project special provisions.

I.2.8.b Traffic Signal Design Plans

Traffic Signal Upgrade Designs - Based on proposed roadway plans, the Engineer will design the traffic signal upgrade design for the [REDACTED] ve and [REDACTED] intersection in conformance to NCDOT and Town standards. Signal plans will be prepared in English units and will include the preparation of the following items:

Intersection Layout Plan - This plan will include the overall layout of the [REDACTED] and [REDACTED] intersection showing the items proposed for construction. Items on the plans will include intersection striping and marking location (not to be considered a pavement marking plan); identification of conduit runs; vehicular and pedestrian signal head placement; pole and push button location; location of controller cabinet and pull boxes; phasing diagram; a timing chart; a table of operation; a stop bar location diagram; and signal head and sign legends. It is assumed that the signal upgrades are limited to the bike lanes and sidewalks on the west leg and, if needed, FYAs for the side street left-turn movements. No signal pole relocation is expected/included.

Intersection Timing and Phasing Plans - The proposed isolated signal timing will be shown on the signal plan.

Electrical Details Plan - This plan will include details for the signal monitor programming detail, load resistor installation detail, back-up protection notes and details, and equipment information notes. The Engineer will also provide a field connection hook-up chart and electrical detail notes.

Plan Submittal and Review - The Engineer will coordinate with the Town and NCDOT to present initial design concepts and recommendations and seek input and initial approval. The Engineer will make adjustments and revisions to design parameters as requested in the initial conference.

Following completion of the 65% roadway design plans, the Engineer will prepare and submit 90% signal upgrade plan and electrical/programing details as applicable to the Project. Upon receipt of 90% review comments, the Engineer will revise the plans if needed. The Engineer will sign, seal,

and submit the 100% signal and electrical plans for incorporation into the final construction plans and contract documents.

The following services are not anticipated in this Agreement, but may be provided as Additional Services in ARTICLE II of this Agreement.

- *Cable Routing Plans and Fiber Optic Slice Details*
- *Utility Make Ready Plans*
- *Temporary Signal Design Plans*
- *Coordination Signal Timing Services*
- *Emergency Vehicle Preemption Design*
- *Audible Pedestrian Signal Design*

I.2.8.c Construction Traffic Control, Pavement Marking, and Signing Plans

The Engineer shall prepare construction traffic and pedestrian control plans, which shall indicate how vehicular and pedestrian traffic is to be maintained during construction of the Project. NCDOT Roadway Standard Drawings shall be referenced in the traffic control plans, but shall not be detailed as a part of the traffic control plans. The **Public Rights-Of-Way Accessibility Guidelines (PROWAG)** will be referenced when developing the pedestrian traffic control plan. Development of these plans shall consider required phasing of the private utility companies' relocation designs, if any, during construction. These plans shall be prepared concurrently with the final design plans so as not to delay submission of all final construction documents.

The Engineer shall develop pedestrian safety plans, permanent pavement marking plans, and permanent signing plans. The Engineer is responsible for warning regulatory signs and the Town is responsible for street name markings. No special sign designs, other than standard warning, regulatory, and construction signs shown in the current version of the M.U.T.C.D., are required for this project.

I.2.8.d Erosion Control Plans

The Engineer shall show erosion control measures and special details not shown in the Erosion Control Manual on a separate set of reproducibles in the roadway plans. Following an initial review by the Town, the Engineer shall submit erosion control plans to the Regional Engineer for NCDENR for review and approval of the erosion control plans prior to approval of the final roadway plans by the Town. The Town will be responsible for signing and notarizing the NCDENR Financial Responsibility Form and reimbursing the Engineer for the actual review fees required for the project.

I.2.8.e Landscape Plans

The Engineer's Landscape Architect (LA) subconsultant will prepare plans for implementing landscape treatments as appropriate along the project corridor. The LA will receive and incorporate DWG files of existing conditions from the Engineer including existing trees, planting areas, fences, ROW, easements, property lines, utilities, guy wires, building outlines, etc. The LA will receive and incorporate 25% DWG files of the road improvement project including title block, new pavements, proposed easements, temporary and permanent drainage facilities, utilities, stations, and elevations. One meeting will be held with the Engineer to review 25% plans and discuss planting strategy, locations, slope and easement limitations, and budget. The LA will meet with Town staff to discuss planting locations, species, and maintenance and operations concerns. The LA will prepare 25% planting plan and detail sheets showing schematic locations of canopy and understory trees, shrubs, groundcover, lawn and mulch areas, including SCM's.

The LA will prepare rendered plan drawings for inclusion in the first public meeting PowerPoint presentation and associated meeting materials as well as up to two rendered sections at selected stations along the corridor to show screening and planting character. The LA will submit 25% planting and detail sheets and cost estimate to the Engineer (PDFs).

Based on feedback from the Town and 1st public meeting, the LA will prepare a 65% planting plan and detail sheets showing revised location of canopy and understory trees, shrubs, groundcover, lawn and mulch areas, including proposed SCM's. The LA will prepare an updated preliminary cost estimate and draft specifications.

Based on feedback from the Town and 2nd public meeting, the LA will prepare 100% planting plan and detail sheets to address plan revisions and review comments as well as a final cost estimate and specifications. The LA will submit 100% planting and detail sheets, cost estimate and specifications (PDFs) and a DWG of planting layers to the Engineer.

I.2.8.f Final Construction Plans and Contract Documents

The Engineer shall complete the final construction plans, incorporating and resolving all remaining comments from the Town staff review in such detail as to allow the Town to let the proposed work to contract. The plans shall include roadway and sidewalk design details, traffic control plans, signing and pavement marking plans, signal plans, erosion control notes and details, utility relocation plans (if needed), utilities by others plans, landscape plans, quantity summaries, and special detail drawings required together with general notes. The Engineer shall furnish one (1) hard copy sets of 100%

final construction plans and one (1) electronic set in PDF format to the Town for approval/signatures.

After plans are executed by Town staff, the Engineer shall furnish to the Town one (1) CD with electronic plans (in PDF format) and one (1) set of sealed project plans and contract documents which shall include, but not be limited to, contract proposal bid forms, quantities, specifications, special provisions, bond forms, and other necessary documents including a quantity takeoff notebook. The Project Schedule of Prices shall be prepared in Microsoft Excel format for distribution to potential bidders.

The Engineer shall prepare and furnish to the Town a final Opinion of Probable Construction Cost based on the final bid items in the contract proposal. This task shall include any required addendum(s) to address project questions and clarifications throughout the bidding process, including plan sheet and contract revisions. Any revisions resulting from the addendum(s) shall require an updated Opinion of Probable Construction Cost.

The Engineer will participate in a pre-construction meeting to be conducted by the Town. The Engineer will take minutes of the meeting and provide to the participants.

I.3 Plan Scale

The Engineer shall furnish all roadway plan sheets drawn to a 1" = 40' horizontal scale and 1"=10' vertical scale. Cross-sections will be prepared at a scale of 1"=10' on half-size plan sheets.

I.4 Meetings, Coordination, and Project Management

I.4.1 Coordination with NCDOT

The Engineer shall coordinate all services rendered with NCDOT with respect to present and known future highway improvements which may conflict with the Project. The Engineer shall prepare an Encroachment Agreement and submit to NCDOT for approval.

I.4.2 Meetings and Coordination

The Engineer shall make available, at reasonable times, responsible staff members to meet with Town staff to review the content and progress of the Project. The Engineer shall also make available responsible staff members to attend up to 24 monthly progress meetings, (1) Project Kickoff Meeting, (4) Town staff design review meetings, (2) Public Meetings, (2) property owner meetings, (1) Town Council Presentation, Council Committee meetings (if applicable), (1) Pre-Bid Meeting to be conducted by the Town, and (1) Pre-Construction Meeting to be

conducted by the Town. The Engineer shall also make available responsible staff members to attend meetings to review the plans with NCDOT and other permitting agencies as required (See I.4). The Engineer shall compile notes of the above meetings as requested by the Town and provide to all invited attendees.

The Engineer shall provide (1) electronic Microsoft Power Point presentation, (1) PDF color project map, and (1) landscape rendering plan for use at each of the following meetings: (2) Public Meetings and the (1) Town Council presentation. The Engineer shall provide responsible staff members to present project information at each of these meetings.

The Engineer shall provide routine project management and administration activities, including monthly progress reports, project letters/correspondence, and subconsultant coordination through the anticipated project duration. The Engineer shall also make available any information to assist Town staff in keeping the Town's project web site updated throughout the project.

I.5 MicroStation/GEOPAK

The Engineer shall prepare all plan sheets through a computer aided drafting and design system. At the time of delivery of project plans for bidding, the Engineer shall furnish to the Town the final MicroStation/GEOPAK (Version 8i) design files, as represented by the final construction plans, excluding any extraneous working files.

For purposes of this subsection, the Town shall indemnify and hold harmless the Engineer, its related entities, subconsultants, successors and assigns, and for the foregoing, its directors, officers and employees from all liability, costs and legal fees arising out of the use of any documents or electronic data produced by Engineer and subconsultants that are not final and complete, or the use of documents or electronic data for any use other than the original intended purpose.

ARTICLE II - Additional Services

II.1 It is not anticipated between the Town and Engineer that the Engineer shall perform any services under the Agreement except as set forth in Articles I and III. If requested in writing by the Town and accepted by the Engineer, the Engineer shall furnish or obtain from others Additional Services, which are not included under Article I. The Additional Services shall be paid for by the Town at rates to be agreed upon by the Town and the Engineer in writing. Equitable adjustments shall be made to the time of completion for the Additional Services.

ARTICLE III - Alternate Services**III.1 Visualization**

The Engineer will develop visualizations to a level of detail suitable to communicate design intent for the preferred alternative. The visualizations will be of a quality and detail necessary for static rendering from a driver's perspective.

The visualizations will only include the following:

- Mainline roads and cross-section elements, i.e. pavement, curb and gutter, median, bike lanes, sidewalks, side slopes
- -Y- line intersections
- Retaining walls and decorative walls
- High mast lighting
- Realistic materials assignments for all road elements
- Realistic pavement markings
- Trees and foliage

The Engineer will apply realistic atmospheric and lighting conditions, and generate high resolution static renderings suitable for presentations and web media. This subtask includes up to 9 renders total (includes drafts, and final renders) at a unit cost of \$XX per rendering.

Deliverables:

Draft and final versions of visualizations in PDF or PPT format.

III.2 Re-staking

The Engineer will re-stake right-of-way and easement points at the direction of the Town. This service will be provided at a unit cost rate of \$ [REDACTED] per parcel.

III.3 Right of Way Exhibits Preparation

The Engineer shall prepare recordable exhibits of affected individual properties (note: the exhibits will not meet the requirements of NC GS 4730) for use in the conveyance of easements and rights-of-way necessary for the construction of the Project.

It is estimated that [REDACTED] individual property exhibits shall be required to fully map the property impacts throughout the project. Exhibits shall be prepared at a suitable scale to clearly represent the proposed right of way, permanent and temporary drainage, utility and construction easements required for the project. The exhibits shall be provided on legal size (8-1/2" x 14") paper and Adobe Acrobat (PDF) format. This scope includes two (2) preliminary submittals (bond plots for review)

and one (1) final submittal on legal size (8-1/2" x 14") paper. Exhibits shall be prepared at a maximum scale of 1"= 20' preferred, 1" = 30' if required.

The first submittal of right of way exhibits shall be included with the 65% design submittal. The second preliminary submittal shall occur after completion of the initial round of negotiations with property owners. Final submission of right of way exhibits shall be completed in conjunction with property settlements by Town Attorney's Office. Upon the completion of recording each property exhibit, one copy is to be retained by the Wake County Register of Deeds, one copy by the Town of Garner, and one copy by the Engineer bearing Wake County's recordation information and the Register of Deeds signature. Property owner information, to include but not be limited to, owner's name, parcel number, tax identification number and property acquisition areas shall be provided at such times as requested by the Town. The aforementioned property owner information shall be provided to the Town in electronic format.

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: July 30, 2019		
Subject: White Oak, Hebron Church, Ackerman Roundabout		
Location on Agenda: Discussion		
Department: Engineering		
Contact: Chris Johnson, PE - Town Engineer		
Presenter: Chris Johnson, PE - Town Engineer		
Brief Summary: To provide Town Council with draft LAPP agreement from NCDOT for right of way and construction cost sharing.		
Recommended Motion and/or Requested Action: Authorize the Town Manager to execute the LAPP agreement and submit back to NCDOT for execution.		
Detailed Notes: Town Council previously approved for an intersection improvement project at the intersection of White Oak Road, Hebron Church Road and Ackerman Road (see Figure 1 below). Several alternatives were analyzed and reviewed in 2018, including public input on the alternatives, which resulted in selection of a roundabout as the selected alternative. Staff also coordinated with CAMPO and NCDOT to obtain a LAPP grant for the future right of way and construction costs associated with the project. The agreement has been finalized by NCDOT and staff is seeking Council's approval on the agreement so the project can move forward into right of way acquisition.		
Funding Source: LAPP grant at a 75%/25% cost share		
Cost: 538,904	One Time: <input checked="" type="radio"/>	Annual: <input type="radio"/> No Cost: <input type="radio"/>
Manager's Comments and Recommendations: 		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	CJ	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

TO: Rodney Dickerson, Town Manager

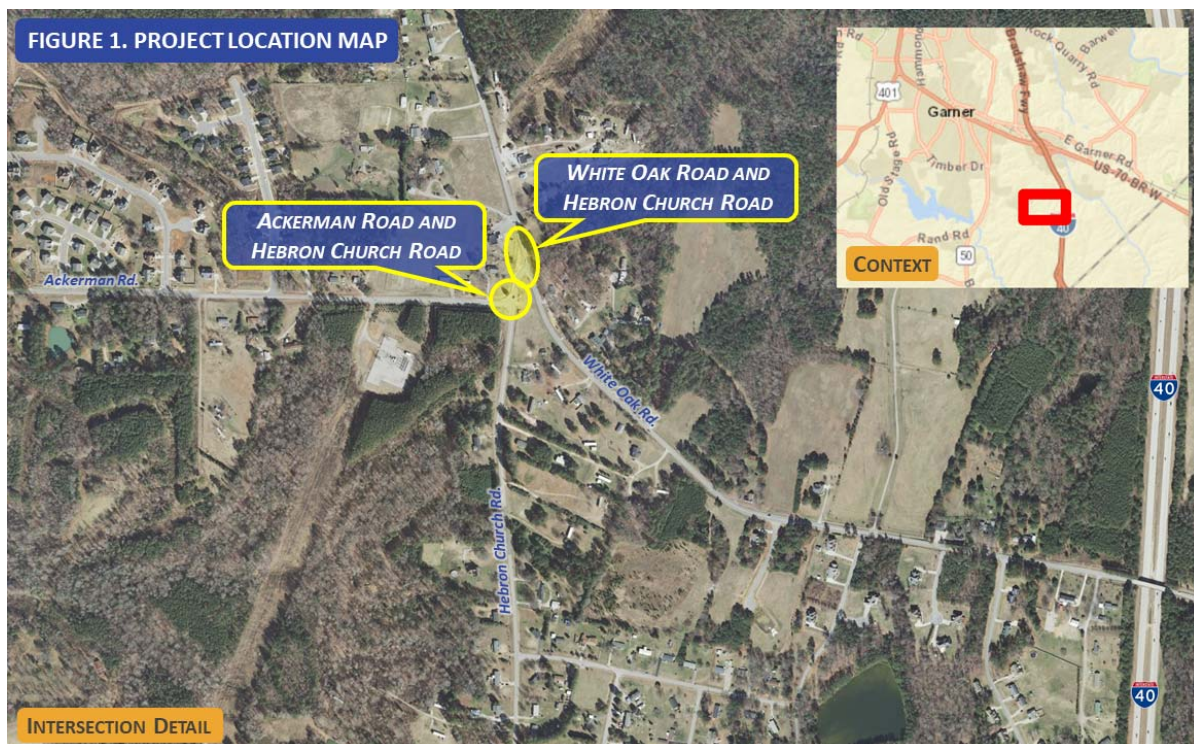
FROM: Chris Johnson, PE – Town Engineer

SUBJECT: *White Oak, Ackerman, Hebron Church Intersection Improvements Project*

DATE: July 25, 2019

BACKGROUND

Town Council previously approved for an intersection improvement project at the intersection of White Oak Road, Hebron Church Road and Ackerman Road (see Figure 1 below). Several alternatives were analyzed and reviewed in 2018, including public input on the alternatives, which resulted in selection of a roundabout as the selected alternative. Following a Request for Qualifications, Arcadis was procured as the design consultant and design plans are currently at 65% completion. Staff also coordinated with CAMPO to obtain a LAPP grant for the future right of way and construction costs associated with the project.



LAPP AGREEMENT

Staff submitted for a LAPP agreement in 2018 with plans for a 75% federal/25% local funding cost share. In June 2019, the LAPP request was made to begin drafting the LAPP agreement. Staff received the draft agreement from NCDOT in July 2019 with the final cost estimates as follows:

LAPP Request (ROW and Construction)	
ROW	\$ 75,000
Construction	\$ 1,585,493
Contingency	\$ 415,123
Construction Management	\$ 80,000
Total	\$ 2,155,616

Total Federal LAPP Request	\$ 1,616,712	75% cost share
Total Local Match	\$ 538,904	25% cost share

The previous design funding was funded by the Town of Garner at \$330,740, which brings the total local funding estimated for this project to a combined total of \$869,644.

RECOMMENDATION AND NEXT STEPS (SUBJECT TO CHANGE BASED ON NCDOT REVIEW)

We are seeking Council's agreement and authorization for the Town Manager to execute the LAPP agreement with NCDOT and move forward with right of way acquisition once funding is secured. The remaining schedule is shown below for reference.

LAPP agreement execution	August 2019
Hold 2 nd Public Meeting	September 2019
R/W Authorization	October 2019
R/W Acquisition	October 2019 – January 2020
R/W Certification	February 2020
Final Design/Permitting	Spring 2020
Construction Authorization	Spring 2020
Advertise for Construction	Summer 2020
Complete Construction	Spring 2021

ATTACHMENTS

LAPP AGREEMENT

Executive Summary

The Executive Summary is a summation of this agreement and is not intended to be used as the agreement between the Department (North Carolina Department of Transportation) and the Party (Entity).

Entity: Town of Garner

County: Wake

TIP: U-6225

Project: White Oak Hebron Church Ackerman Roundabout

Scope: the construction of a roundabout at the intersection of White Oak Road, Hebron Church Road and Ackerman Road in Garner.

Eligible Activities:

PE		Design
		Environmental
ROW	48813.2.1	ROW Acquisition
		Utility Relocation
CON	48813.3.1	Construction
FEDERAL-AID	2700003	

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
BGDA	\$1,616,712	75 %	\$538,904	25 %
Total Estimated Cost		\$2,155,616		

Responsibility: The Town of Garner shall be responsible for all aspects of the project.

NORTH CAROLINA

**LOCALLY ADMINISTERED PROJECT -
FEDERAL**

WAKE COUNTY

DATE: 7/10/2019

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: U-6225

AND

WBS Elements: PE _____

ROW 48813.2.1

TOWN OF GARNER

CON 48813.3.1

FEDERAL-AID 2700003

CFDA #: 20.205

Total Funds [NCDOT Participation] \$1,616,712

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the Town of Garner, hereinafter referred to as the "Municipality".

W I T N E S S E T H:

WHEREAS, Fixing America's Surface Transportation (FAST) Act allows for the allocation of federal funds to be available for certain specified transportation activities; and,

WHEREAS, the Municipality has requested federal funding for White Oak Hebron Church Ackerman Roundabout, hereinafter referred to as the Project, in Wake County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of \$1,616,712 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved Transportation Improvement Program for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General

Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintain knowledge of day to day project operations and safety issues;

- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of the construction of a roundabout at the intersection of White Oak Road, Hebron Church Road and Ackerman Road in Garner.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- ROW Acquisition

- Utility Relocation
- Construction

as further set forth in this Agreement.

3. FUNDING

PROGRAMMING AND AUTHORIZATION OF FEDERAL FUNDS

The funding currently programmed for the project in the State Transportation Improvement Program (STIP) is BGDA. The funding source may be modified with the coordination and approval of the respective Metropolitan Planning Organization (MPO) and/or the Department prior to authorization of funds. The Department will authorize and reimburse federal funding based on the type of federal funding that is programmed in the STIP at the time of the authorization request. The Department will notify the Municipality of the type of federal funds authorized by issuing a Technical Amendment – Funds Authorization letter. A modification in the source of funds will have no effect on project responsibilities outlined in this agreement.

REIMBURSEMENT FOR ELIGIBLE ACTIVITIES

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall reimburse 75% of eligible expenses incurred by the Municipality up to a maximum amount of One Million Six Hundred Sixteen Thousand Seven Hundred Twelve Dollars (\$1,616,712), as detailed below. The Municipality shall provide the 25% non-federal match, as detailed in the FUNDING TABLE below, and all costs that exceed the total estimated cost.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
BGDA	\$1,616,712	75 %	\$538,904	25 %
Total Estimated Cost		\$2,155,616		

WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the Municipality under this Agreement. The Department will set aside ten percent (10%) of the total estimated cost, or \$215,561, to use towards the costs related to review

and oversight of this Project, including, but not limited to review and approval of plans, environmental documents, contract proposals, engineering estimates, construction engineering and inspection oversight, and other items as needed to ensure the Municipality's appropriate compliance with state and federal regulations.

In the event that the Department does not utilize all the set-aside funding, then those remaining funds will be available for reimbursement to the Municipality at the above reimbursement rate. For all costs of work performed on the Project, whether incurred by the Municipality or by the Department, the Municipality shall provide the non-federal match. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

4. PERIOD OF PERFORMANCE

The Municipality has five (5) years to complete all work outlined in the Agreement from the date of authorization of Federal funds for the initial phase of work. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

5. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

6. PROFESSIONAL AND ENGINEERING SERVICES

The Municipality shall comply with the policies and procedures of this provision if the Municipality is requesting reimbursement for the Preliminary Engineering contract or the Construction Contract Administration / Construction Engineering and Inspection contract.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legsregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.
- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

WORK BY ENTITY

If the Design, Planning, Contract Administration and/or Construction Engineering and Inspection required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

7. PLANNING / ENVIRONMENTAL DOCUMENTATION

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.
- The Municipality shall advertise and conduct any required public hearings.
- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.
- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

8. DESIGN

CONTENT OF PLAN PACKAGE

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

9. RIGHT OF WAY / UTILITY AUTHORIZATION

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

10. PROJECT LIMITS AND RIGHT OF WAY (ROW)

The Municipality shall comply with the policies and procedures of this provision regardless of whether the Municipality is requesting reimbursement for the Right of Way phase of the Project.

SPONSOR PROVIDES ROW

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

ROW GUIDANCE

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp; and the North Carolina Department of Transportation Right of Way Manual.

APPRAISAL

The Municipality shall submit the appraisal to the Department for review and approval in accordance with Departmental policies and procedures.

CLEARANCE OF PROJECT LIMITS / ROW

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain

or are) to be installed within the Department's ROW, or follow other applicable approval process, for utilities within the Municipality's ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

RELOCATION ASSISTANCE

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

11. UTILITIES

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

12. RIGHT OF WAY / UTILITY / RAILROAD CERTIFICATION

The Municipality, upon acquisition of all right of way/property necessary for the Project, relocation of utilities, and coordination with the railroad shall provide the Department all required documentation (deeds/leases/easement/plans/agreements) to secure certification. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document; utilities in conflict with the project are relocated, or a plan for their relocation during construction has been approved; and coordination with the railroad (if applicable) has occurred and been documented.

13. CONTRACT PROPOSAL AND ENGINEER'S ESTIMATE

CONTRACT PROPOSAL

The Municipality shall develop a contract proposal that will be advertised for bids. The proposal shall comply with NCDOT Specifications and Standard Drawings as applicable to the Project. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, but not be limited to: FHWA 1273, Buy America, Davis-Bacon Wage Rates, Non-discrimination, DBE Assurances, Contractor Certification regarding suspension and debarment, and other provisions as required by the Department.

ENGINEER'S ESTIMATE

The Municipality shall develop an itemized engineer's estimate to show items referenced to the NCDOT Standard Specifications, if applicable, along with units and unit price. The engineer's estimate will be used as the basis for comparing bids received.

14. CONSTRUCTION AUTHORIZATION

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.
- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

15. CONTRACTOR PROCUREMENT

ADVERTISE FOR BIDS

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 2 of the Code of Federal Regulations, Part 200 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at

www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp.

CONSTRUCTION CONTRACTOR REQUIREMENTS

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference

<https://connect.ncdot.gov/projects/Contracts/Pages/LGA-Projects.aspx>.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

AWARDING CONTRACT

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

DELAY IN PROCUREMENT

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for

documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

FORCE ACCOUNT

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm. North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at www.ncleg.net/gascripts/Statutes/Statutes.asp.

16. CONSTRUCTION

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

CONSTRUCTION CONTRACT ADMINISTRATION

The Municipality shall comply with the NCDOT Construction Manual as referenced at <http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/>, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

RETAINAGE

The Municipality shall not retain any portion of a payment due the contractor.

SIGNAGE

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

SITE LAYOUT

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design (www.usdoj.gov/crt/ada/stdspdf.htm).

RIGHT TO INSPECT

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

CONTRACTOR COMPLIANCE

The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

CHANGE ORDERS

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

SHOP DRAWINGS

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

17. CLOSE-OUT

Upon completion of the Project, the Municipality shall be responsible for the following:

FINAL INSPECTION

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

FINAL PROJECT CERTIFICATION

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

18. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the White Oak Hebron Church Ackerman Roundabout, or as required by an executed encroachment agreement.

19. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- ROW Acquisition
- Utility Relocation
- Construction

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 (www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm. Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

▪ WORK PERFORMED BEFORE NOTIFICATION

Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

▪ NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING

At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

▪ UNSUBSTANTIATED COSTS

The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

▪ WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of \$1,616,712 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

- **CONSTRUCTION ADMINISTRATION**

Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project. These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the agreed upon just compensation for the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

BILLING THE DEPARTMENT

- **PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at <https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx>.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

20. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

PROJECT RECORDS

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial

Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

21. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for the funds and obligations as approved by the Department under the terms of this Agreement.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Municipality.

TERMINATION OF PROJECT

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," Subpart F – Audit Requirements, and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

REIMBURSEMENT BY MUNICIPALITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late

payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

USE OF POWELL BILL FUNDS

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

FACSIMILE SIGNATURES

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military

and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

22. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST:

TOWN OF GARNER

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Approved by the Town of Garner as attested to by the signature of _____
on _____(Date)

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

(SEAL)

(FINANCE OFFICER)

Federal Tax Identification Number

Town of Garner

Remittance Address:

DEPARTMENT OF TRANSPORTATION

BY: _____
(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____(Date)

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: July 30, 2019		
Subject: Relocation of Historic Depot		
Location on Agenda: Discussion		
Department: Administration		
Contact: Rodney Dickerson, Town Manager		
Presenter: Rodney Dickerson, Town Manager		
Brief Summary: Continue discussion of site, cost, contract (MOU), and logistics of relocating the Historic Depot to the corner of Pearl St. and Main St.		
Recommended Motion and/or Requested Action: Continue discussion and clarification		
Detailed Notes: Revised site plans will likely not be available until the August 5th Council meeting		
Funding Source: Fund Balance		
Cost:	One Time: <input checked="" type="radio"/>	Annual: <input type="radio"/> No Cost: <input type="radio"/>
Manager's Comments and Recommendations: 		
Attachments Yes: <input type="radio"/> No: <input checked="" type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:		
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: July 30, 2019		
Subject: Town Attorney Services		
Location on Agenda: Discussion		
Department: Legal		
Contact: William E. Anderson		
Presenter: William E. Anderson, Town Attorney		
Brief Summary: The attached memorandum and proposed Town Attorney retainer agreement provide for ongoing legal services to the Town.		
Recommended Motion and/or Requested Action: Consider placing on August 5, 2019 consent agenda.		
Detailed Notes:		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input checked="" type="radio"/> No Cost: <input type="radio"/>
Manager's Comments and Recommendations:		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	PW	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

MEMORANDUM

To: Mayor and Town Council

From: Town Attorney William E. Anderson

Date: July 22, 2019

Re: Town Attorney Services

With all the Town projects going on now, many of which involve roadway and sidewalk easements which require a lot of detailed real estate work, a lot of property owner contact, and a number of eminent domain lawsuits, the Town's recent legal services needs have increased substantially.

The average monthly hours spent on legal services for the Town remained relatively constant at around 50-55 hours per month for a number of years. That was increased to 55-65 hours in the 2012 retainer Agreement. By comparison, the average hours for July 2018 through June 2019 was 95 hours per month.

The current monthly retainer amount of \$10,000 a month was set in early 2019 after recognition of the increase in work, but not fully covering the increased hours. The present agreement was based on roughly 70 hours a month. It was based on anticipating that the Town's legal services needs had spiked and would possibly go down during the next six months. That did not prove to be an accurate estimate. With the Timber Drive easement project ongoing for this month, with a deadline to be completed by the end of the month, July's total will likely end up over 100 hours.

We are therefore proposing a Town Attorney Retainer Agreement which recognizes the increased workload during the last year or so, anticipates that it will remain at that level, but gives the Town a credit if the workload should be reduced during the next six months.

A proposed renewal of the Town Attorney retainer agreement is attached. The proposed agreement is essentially similar to the agreement which has been renewed over many years, but differs from last years' agreement in two particulars:

(1) it contains a clause allowing an early "opt out" for reasons of health, disability, retirement or otherwise, with 90 days notice;

(3) we propose a monthly retainer of \$14,000, based on an average of approximately 93.333 hours at \$150.00 per hour, with a credit to the Town in the event the time requirements drop off below that during the next six months;

(4) the credit would be accomplished by deferring payment for the present 160 "overage" hours and applying any reduction in time spent during the next six months, if that should occur, against the "overage" hours;

(5) if for example, the hourly timekeeping shows a decrease during the next six months, such that it comes out to average, say, 85 hours instead of 93.35, the present total 160 overage hours for which compensation would otherwise be paid, would be reduced by a credit for 50 hours.

We did some research in January 2019 into what some other local towns were paying for legal services. The other area towns and cities are on average paying considerably more per year than Garner for legal services, even after this proposed increase.

NORTH CAROLINA
WAKE COUNTY

EXTENSION OF TOWN ATTORNEY AGREEMENT-FY 2019-20

The parties to this Agreement, being the Town of Garner, a municipal corporation, hereinafter "Town," and the law firm McDANIEL & ANDERSON, L.L.P., hereinafter "Attorneys," hereby agree to the appointment of William E. Anderson as Town Attorney for Fiscal Year 2019-20, to provide various legal services on behalf of the Town, including consultation, research, advice, executive memoranda to Staff and Council, drafting of documents, proposed legislation, proposed ordinances, attendance at Board meetings, providing legal services in connection with Town contracts, real estate acquisition, easement and right-of-way acquisition, land use regulation, including enforcing zoning and nuisance inspections, personnel issues, liability risk management, and representation of the Town in various items of litigation, including prosecution of Town claims by civil action, including enforcement actions, land condemnation, utility assessments, nuisance liens and defending the Town in various civil actions, such work to be rendered based on a retainer of \$14,000 per month, with a credit for unused hours if the work decreases, and other specific arrangements to be made from time to time by mutual consent. This contract is terminable on 90 days' notice for reason of health, disability, retirement or other conditions as may arise.

This the ____ day of August, 2019.

(Town Seal)

Ronnie S. Williams, Mayor

ATTEST:

William E. Anderson, Attorney

Stella Gibson, Town Clerk

This Agreement has been pre-audited in accordance with the applicable government finance laws of the State of North Carolina.

This the ____ day of August, 2019.

Finance Director