



# COUNTY OF LINCOLN, NORTH CAROLINA

115 WEST MAIN STREET, 2<sup>ND</sup> FLOOR CITIZENS CENTER, LINCOLNTON, NORTH CAROLINA 28092

DEPARTMENT OF PUBLIC WORKS

PHONE (704) 736-8497

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## MEMORANDUM

TO: Lincoln County Board of Commissioners

FROM: Burns Whittaker, Director of Public Works

DATE: Feb 7, 2011

SUBJECT: Proposed Engineering contract, Airport Sewer

1. Please find attached the engineering contract for the Airport Sewer project. This contract has been reviewed by all parties including the EDA and is satisfactory. We recommend approval.

**AGREEMENT FOR ENGINEERING SERVICES  
GMC PROJECT NO. Y10023**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_, by and between **LINCOLN COUNTY, NC AND LINCOLNTON, NC**, hereinafter jointly referred to as the OWNER, and **GOODWYN, MILLS & CAWOOD, INC.**, hereinafter referred to as the ENGINEER.

WHEREAS, the OWNER desires to have professional Engineering services and consultation performed relative to the preparation of plans and specifications for construction of the Lincolnton/Lincoln County Airport Park Sewer, hereinafter referred to as the Project (EDA Investment #04-46-06451)

WHEREAS, not having engaged any other ENGINEERs for the Project, OWNER desires to retain the ENGINEER as its sole and exclusive Engineering and consulting firm for the Project;

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the OWNER and ENGINEER do agree, each with the other, as follows:

**ARTICLE 1. Basic Services.**

**Preliminary Design Phase**

- 1.1 The ENGINEER will consult with the OWNER to determine the OWNER's requirements for the project.
- 1.2 The ENGINEER will conduct preliminary studies and investigations of the proposed work, prepare preliminary cost estimates, and make recommendations as to the general type and quantities of work that appear to be required.
- 1.3 Furnish the preliminary design documents to the OWNER.

**Final Design Phase**

- 1.4 On the basis of the accepted preliminary design documents and the opinion of probable Project Cost, prepare for incorporation in the Contract Documents final drawings that show the character and extent of the Project (hereinafter called "Drawings") and Specifications.
- 1.5 Provide technical criteria, written descriptions, and design data for OWNER's use in filing applications for permits and approvals typically required by law for similar projects.
- 1.6 Preparation of the following regulatory permit applications will be considered as part of Basic Services compensation: NCDENR Water Supply Permit; NCDOT Right-of-Way Permit; FAA Permit; County Engineering Right-of-Way Permit; Railroad Company Right-of-Way Permit. ENGINEER will assist OWNER in applying for such permits and approvals. Once the permits are submitted to the regulatory agency, the ENGINEER will monitor the permitting process and all such time for tracking and monitoring shall be considered as Additional Services as stated in Article 2.
- 1.7 Preparation of and application of all other permitting, including environmental permitting as defined in Article 2, County Health Department Permitting, NCDENR Stormwater permitting, and other permitting shall be considered Additional Services.
- 1.8 Advise OWNER of any adjustments to the latest opinion of probable Project Cost caused by changes in extent or design requirements of the Project or Construction Costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications. ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Project Cost prepared by ENGINEER.



- 1.9 Prepare for review and approval by OWNER, its legal counsel and other advisors, contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.
- 1.10 Furnish copies of the above documents and present and review this in person with OWNER.

### **Bidding Phase**

- 1.11 After the OWNER's acceptance of the plans and specifications as well as ENGINEER's most recent estimate of probable Project cost, and upon OWNER's authorization to proceed, ENGINEER shall proceed with performance of the services called for in the Bidding Phase. This phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase.
- 1.12 The ENGINEER will assist the OWNER in preparing the Contract Documents, the bid and any pre-qualification packages, and any necessary advertisements, in receiving bids and any pre-qualification applications for the Project, in conducting any pre-bid conferences and bid openings, and in making recommendations for qualifying contractors and awarding contracts for construction. For projects subject to the competitive bid law, the OWNER is responsible for the final determination of the lowest responsible and responsive bidder to whom a construction contract is awarded, shall obtain such legal counsel as necessary to make that determination, and shall hold ENGINEER harmless therefrom.
- 1.13 Issue addenda as appropriate to clarify, correct or change the bidding documents.
- 1.14 Consult with and advise OWNER as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the bidding documents.
- 1.15 Consult with and advise OWNER as the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.
- 1.16 Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and assembling and awarding contracts for construction, materials, equipment and services.

### **Construction Phase**

- 1.17 The ENGINEER will participate in a Pre-Construction Conference prior to commencement of Construction of the Project.
- 1.18 The ENGINEER will make recommendations to the OWNER as to the relative merits of materials and equipment.
- 1.19 The ENGINEER will check and approve any necessary shop and working drawings furnished by contractors.
- 1.20 The ENGINEER will interpret the plans and specifications to protect the original intent of the design as approved by the OWNER, and advise the contractor(s) accordingly. The ENGINEER will not, however, guarantee the performance of any contractor.
- 1.21 The ENGINEER will provide part-time Engineering observation of the work of the Contractor as construction progresses, including site visits at intervals appropriate to the various stages of construction as are necessary in order to observe as an experienced and qualified design



professional the progress and quality of the various aspects of contractor's work and to determine, in general, if such work is proceeding in accordance with the Contract Documents. The ENGINEER does not guarantee the performance of the Contractor by the ENGINEER's performance of such construction observation. The ENGINEER's undertaking hereunder shall not relieve the Contractor of his obligation to perform the work in conformity with the Contract Documents, including plans and specifications, and in a workmanlike manner; shall not make the ENGINEER an insurer of the contractor's performance; and shall not impose upon the ENGINEER any obligation to see that the work is performed in a safe manner.

- 1.22 The ENGINEER shall have no responsibility for any Contractors' means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs or safety practices, nor shall ENGINEER have any authority or responsibility to stop or direct the work of any Contractor. However, ENGINEER shall have the authority to reject work which does not conform to the Contract Documents.
- 1.23 The ENGINEER will review and approve estimates for progress and final payments. Such recommendations of payments will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in its recommendation), and that payment of the amount recommended is due Contractor(s), but by recommending any payment, ENGINEER will not thereby be deemed to have represented that continuous or exhaustive examinations have been made by ENGINEER to check the quality or quantity of the work or to review the means, methods, sequences, techniques or procedures of construction or safety precautions or programs incident thereto or that ENGINEER has made an examination to ascertain how or for what purposes any Contractor has used the monies paid on account of the Contract Price, or that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that Contractor(s) have completed their work exactly in accordance with the Contract Documents.
- 1.24 The ENGINEER will make a final review of the completed improvements to assess compliance with the Contract Documents, including plans and specifications, and will make necessary recommendations to the OWNER.
- 1.25 The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER for final payment to Contractor(s). If the Project involves more than one prime contract, Construction Phase services may be rendered at different times with respect to the separate contracts. Time extensions or time overruns on the construction contract will require an extension of the Engineering services for this phase along with an equitable adjustment to compensate ENGINEER for such additional services.
- 1.26 ENGINEER shall not be responsible for the acts or omissions of any Contractor or subcontractor, or any of the Contractor(s)' or subcontractors' agents or employees, or any other persons (except ENGINEER's own employees and agents) at the site or otherwise performing any of the Contractor(s)' work. ENGINEER shall not be responsible for the adequacy of the Contractor's safety program, safety supervision, or any safety measure which the Contractor takes or fails to take in, on, or near the project site.
- 1.27 Prepare and furnish to OWNER Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

## **ARTICLE 2. Additional Services**

The following scope of services shall be considered additional work from the Basic Services outlined in Article 1.



Unless the Additional Services are authorized in Article 4, Compensation, in this Agreement, then the OWNER and ENGINEER shall agree through a written amendment hereto, for the ENGINEER to furnish, or obtain from others, additional services of the types listed below. These services will be paid for by the OWNER as indicated in the Agreement.

- 2.1 Geotechnical Investigations and Report including but not limited to soil borings and physical testing of materials and equipment to be incorporated in the work and other such analysis or testing when necessary or deemed advisable by the ENGINEER for the design of the Project.
- 2.2 Geotechnical Materials testing services during construction, including but not limited to collection and testing of concrete cylinders, density testing of compacted soils, asphalt testing, laboratory tests of soils and materials.
- 2.3 Once the regulatory permits, including those outlined in Article 1, are submitted to the regulatory agencies, the ENGINEER will monitor the permitting process and all such time for tracking and monitoring and for re-submittal to an Agency who had lost the application, shall be considered as an Additional Service. Tracking and monitoring will consist of telephone calls, meeting with Agency personnel, and courier services.
- 2.4 Performing Stormwater Permitting Services including preparation of NCDENR permits and BMP Plans and performing Stormwater Inspection Services during Construction.
- 2.5 Performing survey work for preparation of easements and deeds, courthouse research, easement preparation and acquisition, research of legal documents, boundary surveys, and post construction services.
- 2.6 Preparation, submittal and tracking of permits required from the following agencies or any other regulatory agency, other than those specific permits listed in Article 1, Final Design Phase: US Fish & Wildlife Service, North Carolina Historical Commission, Soil Conservation Service, EPA, Corps of ENGINEERS, NCDENR, County Health Department. Performing environmental permitting and investigation work including but not limited to wetlands delineation, wetlands mitigation, and field and office work associated with assisting the OWNER in obtaining agency approvals.
- 2.7 Preparation of applications and supporting documents (in addition to those furnished under Article 1, if applicable) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project. See Attachment 5 to this contract for Scope of Services, Schedule and Cost to perform these services.
- 2.8 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
- 2.9 Services resulting from significant changes in the scope, extent, or character of the portions of the Services designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.
- 2.10 Providing renderings or models not defined as part of construction plans for OWNER's use.
- 2.11 Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for a Project; evaluating



processes available for licensing, and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.

- 2.12 Services during out-of-town travel required of ENGINEER other than for visits to the Site or OWNER's office.
- 2.13 Additional survey, drafting and field work to prepare Record Drawings showing appropriate record information should the annotated record documents received from Contractor be insufficient for the preparation of the Record Drawings.
- 2.14 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the Project.
- 2.15 Assisting OWNER in consultations and discussions with Contractor concerning issues of warranty work required of the Contractor during the specified warranty period.
- 2.16 Preparation of Operations and maintenance manuals.
- 2.17 Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) the presence at the Site of any Constituent of Concern, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
- 2.18 Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

### **ARTICLE 3. Responsibilities of the OWNER**

OWNER agrees to provide ENGINEER with complete information concerning the requirements of the project and to perform the following services:

- 3.1 The OWNER shall provide all criteria and complete information as to the OWNER's requirements for the Project and shall furnish all design and construction standards which the OWNER will require to be included in the Engineering plans, specifications, and operational narrative.
- 3.2 The OWNER will assist the ENGINEER by placing at the ENGINEER's disposal all available information pertinent to the Project.
- 3.3 Hold promptly all required meetings, serve all required notices, fulfill all requirements necessary in the development of the project, and pay all costs incidental thereto.
- 3.4 The OWNER shall arrange for access to and make all provisions for the ENGINEER to enter upon public and private property to perform surveying, testing and other data collection as required for ENGINEER to perform services under this Agreement. OWNER shall appoint and designate in writing a person to act as OWNER's site access representative for such purpose, and shall include contact information for the individual so designated. OWNER agrees to hold the ENGINEER harmless from any and all claims, actions, damages and costs, including but not limited to attorneys fees, arising from OWNER's arrangements and provisions for access to property.
- 3.5 Furnish ENGINEER with a copy of any design and construction standards he shall require ENGINEER to follow for the project.
- 3.6 Furnish ENGINEER with copies of all deeds, plats, property maps and other information necessary to the description and location of all easements and deeds needed for the project.



- 3.7 The OWNER designates the Lincoln County Director of Public Works to act as OWNER's Representative with respect to the work to be performed under this agreement. The person designated as Representative shall have complete authority to transmit instructions and to receive information with respect to the work covered by this agreement.
- 3.8 The OWNER shall provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project. The OWNER shall also provide such legal services as the OWNER may require or the ENGINEER may reasonably request with regard to legal issues pertaining to the Project that must be resolved in order for the ENGINEER to carry out its obligations under this Agreement. It is expressly understood and agreed that the ENGINEER itself shall not furnish or render any legal opinions or legal interpretations as to matters of law or application of law.
- 3.9 The OWNER agrees to pay ENGINEER the Additional Services as may be required for the Project, as outlined in this agreement, but only to the extent that additional services are approved in writing by the OWNER.
- 3.10 Be the Applicant for all permits and environmental clearances necessary to construct the Project and pay for any and all regulatory permitting and application fees.
- 3.11 Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings and Substantial Completion and final payment inspections. Routinely perform site visits to observe the progress and quality of the various aspects of contractor's work and to determine, in general, if such work is proceeding in accordance with the OWNER's requirements of the Project.

#### **ARTICLE 4. Compensation**

- 4.1 The OWNER agrees to pay to the ENGINEER the following fees which shall be paid in monthly installments as work progresses:
- 4.2 For the Preliminary Design Phase and the Final Design and the Bidding Phase, the OWNER will pay ENGINEER a lump sum fee of **\$ 113,000**.
- 4.3 For the Construction Phase, the OWNER will pay ENGINEER a lump sum fee of **\$53,000**.
- 4.4 For Geotechnical Borings and Report during the Design Phase, the OWNER will pay ENGINEER a lump sum fee, which will be negotiated once the final scope of work is determined; however, a not to exceed allowance is included in the Opinion of Probable Costs. A written amendment to this agreement will be made. The fees shall be paid in monthly installments as work progresses.
- 4.5 For Geotechnical Engineering and Materials Testing Services during the Construction Phase, the OWNER will pay ENGINEER a fee based upon the attached Geotechnical Rate & Fee Schedule (Attachment #3). A cash allowance may be established in the Construction Contract at the discretion of the OWNER. The fees shall be paid in monthly installments as work progresses.
- 4.6 For Stormwater Permitting costs, which include permit and BMP preparation, permit transfer, permit termination and monthly inspections, the OWNER will pay ENGINEER a fee based upon the attached GM&C Standard Rate & Fee Schedule and the fee may be included as a cash allowance in the construction contract.
- 4.7 For easement and deed surveys and preparation, if needed, the OWNER will pay ENGINEER a fee based upon the attached GM&C Standard Rate & Fee Schedule. The fees shall be paid in monthly installments as work progresses.



- 4.8 For environmental and regulatory permitting in accordance with Article 2, the OWNER will pay ENGINEER a fee based upon the attached GM&C Standard Rate & Fee Schedule. The fees shall be paid in monthly installments as work progresses.
- 4.9 For tracking and monitoring regulatory permit applications in accordance with Article 2, the OWNER will pay ENGINEER a fee based upon the attached GM&C Standard Rate & Fee Schedule. The fees shall be paid in monthly installments as work progresses.
- 4.10 The OWNER may, from time to time, request changes in the scope of the services of the ENGINEER to be performed hereunder. Such changes, including any increase or decrease in the amount of ENGINEER's compensation, that are mutually agreed upon by the OWNER and the ENGINEER, shall be incorporated in written amendments to this Agreement.
- 4.11 If the period of service for construction observation or for Engineering services during construction is extended due to time extensions or time overruns to the construction contract, compensation for these additional construction observation and Engineering services during the extended Period of Service shall be at the rates shown in the GM&C Standard Rate & Fee Schedule. The OWNER and ENGINEER will mutually agree upon the level of additional construction observation at the time of such occurrence.
- 4.12 OWNER shall reimburse ENGINEER for all costs incurred for the OWNER's direct instruction to rebid the project at the rates shown in the GM&C Standard Rate & Fee Schedule.
- 4.13 Compensation for services performed by ENGINEER's employees as witnesses giving testimony in any litigation, arbitration or administrative proceeding shall be paid by OWNER at a rate of two times the ENGINEER's standard hourly rates. Whenever ENGINEER's bill to OWNER includes charges for ENGINEER's consultants for such services, those charges shall be the amounts billed by ENGINEER's consultant to ENGINEER times a factor of two.
- 4.14 Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefore, the amounts due ENGINEER will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

#### **ARTICLE 5. Relationship of the Parties**

- 5.1 The parties intend that this Agreement create an independent contractor relationship between them. The ENGINEER is a professional corporation and is not an agent or employee of OWNER for any purpose. The ENGINEER cannot and will not represent that he has the authority to bind OWNER in any contractual manner. Nevertheless, with regard to the bidding and construction phases, it is understood that ENGINEER may serve as the OWNER's representative with full authority to participate therein as designated in Article 1, above. Moreover, OWNER agrees to defend and hold ENGINEER, its employees, directors, officers and agents, harmless from any and all claims, suits, damages and expenses, including but not limited to attorneys fees, resulting from or based upon ENGINEER's actions as OWNER's representative.
- 5.2 Neither party is to represent to others that the relationship between them is other than as stated above.
- 5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the OWNER and the ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the OWNER and the ENGINEER and not for the benefit of any other party.





- 5.4 The OWNER and the ENGINEER each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns (to the extent permitted by Paragraph 6.5 below) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrations, legal representatives and said assigns of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- 5.5 Neither the OWNER nor the ENGINEER shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated or restricted by law . Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the ENGINEER from employing such independent professional associates, consultants, subcontractors, and vendors as the ENGINEER may deem appropriate to assist in the performance of services hereunder.
- 5.6 ENGINEER may employ such independent professional associates, consultants, subcontractors, and vendors as the ENGINEER may deem appropriate to assist in the performance or furnishing of services under this Agreement. ENGINEER shall not be required to employ any consultant unacceptable to ENGINEER.

#### **ARTICLE 6. Ownership and Use of Project Documents**

- 6.1 All documents are instruments of service in respect to the Services, and ENGINEER shall retain an ownership and proprietary property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Services are completed.
- 6.2 Copies of documents that may be relied on by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- 6.3 OWNER may make and retain copies of documents for information and reference in connection with the services by OWNER. Such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the services or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's consultants from all claims, damages, and expenses including attorneys' fees arising out of or resulting therefrom.
- 6.4 In the event of a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 6.5 Any verification or adaptation of the documents for extensions of the services or for any other services will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

#### **ARTICLE 7. Liability and Indemnity**

- 7.1 The ENGINEER will not be responsible for delays, disruptions or obstacles attributable to acts of God, acts of third parties, weather, intervention of public authorities, work stoppages, changes in the applicable laws or regulations after the date of commencement of performance hereunder and any other acts or omissions or events which are beyond the control of the ENGINEER.



- 7.2 OWNER may not utilize ENGINEER's construction cost estimate after thirty calendar days from the date of delivery to OWNER without ENGINEER's written consent. Estimates of cost are made on the basis of the ENGINEER's experience, qualifications, and professional judgment, but since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee or warrant that proposals, bids or actual construction costs will not vary from estimates of probable costs prepared by ENGINEER. Approvals, recommendations, estimates and decisions by the ENGINEER are made on the basis of the ENGINEER's experience, qualifications, and professional judgment and are not to be construed as warranties or guarantees.
- 7.3 Notwithstanding any other provision of this Agreement, the ENGINEER's total liability to the OWNER for any loss or damages from claims arising out of or in connection with this Agreement from any cause including the ENGINEER's strict liability, breach of contract, or professional negligence, errors and omissions (whether claimed in tort, contract, strict liability, nuisance, by statute or otherwise) shall not exceed the lesser of the total contract price of this Agreement or the proceeds paid under ENGINEER's liability insurance in effect at the time such claims are made. The OWNER hereby releases the ENGINEER from any liability exceeding such amount. In no event shall either party to this Agreement be liable to the other for special, indirect, incidental or consequential damages, whether or not such damages were foreseeable at the time of the commencement of the work under this Agreement.
- 7.4 Any and all liability resulting from conditions not created or caused to be created by the ENGINEER shall be the liability of the OWNER. Any and all liability that may arise from the construction, ownership and/or operation of the improvements is solely the responsibility of the OWNER, and the OWNER hereby agrees to indemnify and hold the ENGINEER harmless from such liability, claims, actions, loss or damage, including but not limited to attorney's fees, arising therefrom.

#### **ARTICLE 8. Termination**

- 8.1 This Agreement shall be subject to termination by either party hereto, with or without cause, upon twenty (20) days advance notice in writing. Payment due ENGINEER at such time shall be computed upon applicable terms of Article 4, the amount of work completed or in progress as of the termination date and ENGINEER's reasonable cost of winding down its services after termination.

#### **ARTICLE 9. Binding Arbitration**

- 9.1 Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration by a sole arbitrator. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of the arbitration shall be in Lincolnton, North Carolina or other North Carolina location as mutually agreed upon by both parties.

#### **ARTICLE 10. Miscellaneous**

- 10.1 This Agreement represents the entire and integrated Agreement between the OWNER and ENGINEER and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may only be amended, supplemented or modified by written instrument executed by both the OWNER and the ENGINEER.
- 10.2 It is understood and agreed by the parties hereto, that if any part, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portion or portions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.



- 10.3 It is expressly understood and agreed that the indemnity and insurance obligations of this Agreement, as well as the ENGINEER's proprietary interest in its Engineering plans and specifications, shall survive the termination of this Agreement under Article 8 above as well as the completion of services under this Agreement.
- 10.4 This Agreement is to be governed by the laws of the State of North Carolina.
- 10.5 The OWNER, Economic Development Administration (EDA), the Comptroller General of the United States, the Inspector General of the Department of Commerce, or any of their duly authorized representatives, shall have access to any documents, books, papers, and records of the ENGINEER (which are directly pertinent to a specific grant program) for the purpose of making an audit, examination, excerpts, and transcriptions. The OWNER shall require the ENGINEER to maintain all required records for at least three years after the OWNER makes final payment and all pending matters are closed.

WHEREFORE, the undersigned, by their signatures, certify that they have carefully read this Agreement, understand the terms and conditions contained herein, have proper authority to execute this Agreement, and do so as their own free act:

**OWNER:**

**LINCOLN COUNTY** \_\_\_\_\_

By: \_\_\_\_\_  
(name)

Title: \_\_\_\_\_

Attest:  
  
\_\_\_\_\_  
(name and title)

**ENGINEER:**

**GOODWYN, MILLS & CAWOOD, INC.** \_\_\_\_\_

By: \_\_\_\_\_  
Kevin R. Laird

Title: Department Head

Attest:  
  
\_\_\_\_\_  
(name, Project Manager)

**OWNER:**

**CITY OF LINCOLN** \_\_\_\_\_

By: \_\_\_\_\_  
(name)

Title: \_\_\_\_\_

Attest:  
  
\_\_\_\_\_  
(name and title)



**GOODWYN, MILLS AND CAWOOD, INC.****PRELIMINARY OPINION OF PROBABLE COSTS  
AIRPORT SEWER PROJECT**FOR LINCOLN COUNTY, NORTH CAROLINA  
EDA PROJECT NO. 04-46-06451

NO.	QTY.	UNITS	DESCRIPTION	UNIT COST	TOTAL COST
1	5000	LF	DI Gravity Sewer Main	\$40.00	200,000.00
2	17	EA	Manhole	\$3,500.00	59,500.00
3	1	LS	Complete Lift Station w/ Generator	\$500,000.00	500,000.00
4	17000	LF	PVC Force Main	\$25.00	425,000.00
5	3	EA	Combination AR/V valves	\$3,000.00	9,000.00
6	1	LS	Pavement Replacement	\$15,000.00	15,000.00
7	400	LF	Road Bores	\$105.00	42,000.00
8	1000	CY	Rock Excavation	\$50.00	50,000.00
9	1	LS	Cleanup, Grassing, & Seeding	\$25,000.00	25,000.00
10	1	LS	Erosion Control Allowance	\$10,000.00	10,000.00
11	1	LS	Traffic Control	\$40,000.00	40,000.00
12	1	LS	Stormwater Inspection Allowance	\$10,000.00	10,000.00
13	1	LS	Construction Stakeout Allowance	\$25,000.00	25,000.00
				SUBTOTAL	\$ 1,410,500.00
				CONTINGENCY	\$ 100,000.00
				<b>SUBTOTAL CONSTRUCTION</b>	<b>\$ 1,510,500.00</b>
				ENGINEERING (DESIGN AND CM/I)	\$ 166,000.00
				GEOTECHNICAL ALLOWANCE	\$ 6,000.00
				EASEMENTS	\$ 100,000.00
				ENVIRONMENTAL PERMITTING	\$ 20,000.00
				MATERIALS TESTING ALLOWANCE	\$ 16,000.00
				GRANT ADMINISTRATION	\$ 20,000.00
				<b>TOTAL PROJECT</b>	<b>\$ 1,838,500.00</b>

## Note:

- 1) Estimate does not include any costs associated with property acquisition or relocation of any utilities (water, sewer, gas, etc).
- 2) Easement Preparation Fee estimated at \$2,500 per parcel. Owner to provide deeds, title searches, tax maps and contact with property owner. GM&C can help with these items based on standard rate & fee schedule.
- 3) Additional costs may occur for mitigation if sewer alignment impacts delineated wetlands.

## Attachment #2

### Goodwyn, Mills and Cawood, Inc. Rate and Fee Schedule

#### A. Hourly Rates

<u>Classification</u>	<u>Rate/ hour</u>
Principal	\$ 220.00
Senior Engineer	\$ 165.00
Project Manager	\$ 125.00
Engineer	\$ 125.00
Senior Designer	\$ 105.00
Structural Engineer	\$ 105.00
EIT	\$ 90.00
Environmental Engineer	\$ 90.00
Registered Surveyor	\$ 90.00
Survey Crew (two-man survey crew)	\$ 115.00
Survey Crew (three-man survey crew)	\$ 135.00
Senior Inspector	\$ 90.00
Senior CAD Operator	\$ 90.00
CADD Technician I	\$ 75.00
Draftsman	\$ 75.00
CAD Operator	\$ 65.00
Clerk	\$ 65.00

#### B. Reimbursable Expenses

Blueprints and Xeroxes (outside)	Cost
Blueprints and Xeroxes (in-house)	\$0.22 per sf
Other Reprographics	Cost
Film and Development	Cost
Digital Photography	\$0.50 per image
Fax incoming and outgoing	Cost
Overnight mail, regular mail & shipping	Cost
Telephone (toll charges)	Cost
CAD translations	\$27.50 per file
CAD plots (outside)	Cost
CAD plots (in-house)	
A-Size (8.5x11)	\$1.80
B-Size (11x17)	\$4.50
C-Size (17x22)	\$9.36
D-Size (22x34 or 24x36)	\$21.60
E-Size (30x42)	\$33.00
Color Laser Prints (in-house)	
A-Size (8.5x11)	\$4.00
B-Size 11x17)	\$6.00
GPS equipment	\$275 per day

Any sub-contractors retained by the ENGINEER with approval by the OWNER, shall be billed at a fixed rate agreed to by the parties or where not feasible to set a fixed cost, shall be billed at the sub-contractor's hourly rate plus 20%.

Cost of overnight travel performed by the ENGINEER upon the request and approval of the OWNER shall be reimbursed to the ENGINEER at cost.



*Development and Construction Project Services*

**2011 PROFESSIONAL FEE SCHEDULE**

**Labor/ Professional Services**

Staff Technician, per hour-----	\$ 32.00
Project Technician, per hour-----	\$ 39.00
Senior Technician, per hour-----	\$ 42.00
Special Inspector, per hour-----	\$ 65.00
Staff Engineer, Geologist, Professional, per hour-----	\$ 75.00
Registered Engineer or Geologist, per hour-----	\$ 85.00
Senior Registered Engineer, per hour-----	\$ 95.00
Chief Engineer, per hour-----	\$ 95.00
Principal Engineer, per hour-----	\$ 125.00
Clerical Assistant, per hour-----	\$ 35.00
Project Administrator, per hour-----	\$ 35.00
Senior Administrator, per hour-----	\$ 55.00
GIS Technician, per hour-----	\$ 45.00
GIS Manager, per hour-----	\$ 65.00

**Laboratory Testing Services**

Natural Moisture content, (ASTM D-2216), each-----	\$ 10.00
Atterberg Limits, (ASTM D-4318), each-----	\$ 95.00
Grain Size (Wash 200 Sieve), (ASTM D-1140), each-----	\$ 45.00
Hydrometer Analysis (Clay/ Silt Fractions), each-----	\$ 85.00
Grain Size (Standard Sieves), (ASTM D-422), each-----	\$ 55.00
Standard Test Methods for Moisture, Ash, and Organic Content (ASTM D-2974), each-----	\$ 40.00
Standard Proctor Compaction, (ASTM D-698), each-----	\$ 100.00
Modified Proctor Compaction, (ASTM D-1557), each-----	\$ 125.00
California Bearing Ratio Tests (3 soaked points), (ASTM D-1883), each-----	\$ 600.00
Triaxial Compression Tests, Consolidated-undrained with pore pressure measurements-----	\$ 950.00
Unconfined Compressive Strength of Concrete-Cast, (ASTM C-39), each-----	\$ 12.00
Unconfined Compressive Strength of Concrete-Cores, (ASTM C-42), each-----	\$ 70.00
Unconfined Compressive Strength of Mortar Cube/Cylinder (ASTM C-780), each-----	\$ 18.00
Unconfined Compressive Strength of Grout Prism (ASTM C-1019), each-----	\$ 18.00
Specific Gravity Asphalt Cores, (ASTM D 2726), each-----	\$ 20.00
Consolidation Test, (ASTM 2435)-----	CALL FOR QUOTE

**Field Testing Services**

Mobilization of Drill Crew and Equipment, local, each-----	\$ 315.00
Soil Test Borings, (ASTM D-1586), standard sampling intervals, per linear foot-----	\$ 10.00
Additional depth charge for drilling greater than 50 feet, per linear foot-----	\$ 1.50
Additional Split-Spoon samples, each-----	\$ 20.00
Additional Shelby Tube samples, each-----	\$ 80.00
Auger Boring (no samples obtained), per linear foot-----	\$ 8.00
Drill Crew difficult moving, clearing access, standby, water hauling, layout of borings, per hour---	\$ 180.00
Dozer/Backhoe rental for clearing access to boring locations, moving drill rig, test pits, etc.-----	CALL FOR QUOTE
Rock Coring: a. set-up, per boring-----	\$ 175.00
b. casing, per linear foot-----	\$ 7.50
c. coring, per linear foot-----	\$ 50.00
d. water tank, per day-----	\$ 75.00
Grouting of Borings, per linear foot-----	\$ 8.00
Piezometer Installation, backfilled w/ cuttings, non-grouted, per linear foot-----	CALL FOR QUOTE
Mileage, per mile-----	\$ 0.75
<b>Travel, Subcontract, Specialty Services and Other Miscellaneous Expenses-----</b>	<b>CALL FOR QUOTE</b>

Notes:

- Hourly labor rates are portal to portal and include labor expenses, benefits, payroll taxes, overhead, and profit. Scheduling of fieldwork should be made 24 hours in advance.
- Work performed outside of normal business hours (8 am to 5 pm), holidays, or weekends, to meet project requirements, will be invoiced at 1.5 times the listed rate(s).

ATTACHMENT #4

PROJECT SCHEDULE FOR  
LINCOLN/TON/LINCOLN COUNTY, NORTH CAROLINA AIRPORT SEWER  
EDA GRANT: 04-46-06451

31 January 2011	Begin Survey
31 February 2011	Begin Design
2 June 2011	Submit Site Certificate & Title Opinion
31 August 2011	Complete Design
2 September 2011	Begin Acquiring Permits
28 November 2011	Begin Advertising for Bids
26 December 2011	Open Bids
9 January 2012	Award Construction Contract
25 January 2012	Pre-Construction Conference
23 January 2012	Notice to Proceed
25 January 2012	Begin Construction
25 January 2014	Complete Construction
13 March 2014	Final Inspection and Closeout

**ATTACHMENT #5**  
**CONTRACT**  
**PROFESSIONAL MANAGEMENT**  
**PART I – AGREEMENT**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between LINCOLN COUNTY, NC AND LINCOLNTON, NC, hereinafter jointly called the "OWNER", and GOODWYN, MILLS AND CAWOOD, INC., hereinafter called "FIRM".

WITNESSETH THAT:

WHEREAS, the OWNER desires to implement EDA Project Number 04-46-06451 under the general direction of the FIRM; and whereas the OWNER desires to engage the FIRM to render certain services in connection with its Lincolnton/Lincoln County Airport Park Sewer project.

NOW THEREFORE, the parties do mutually agree as follows:

1. Scope of Services

Part II, Scope of Services, is hereby incorporated by reference into this Agreement.

2. Time of Performance - The services of the FIRM shall commence on 01/31/11. In any event, all of the services required and performed hereunder shall be completed no later than 03/13/14.

3. Access to Information - It is agreed that all information, data, reports and records and maps as are existing, available and necessary for the carrying out of the work outlined above shall be furnished to the FIRM by the OWNER and its agencies. No charge will be made to the FIRM for such information and the OWNER and its agencies will cooperate with the FIRM in every way possible to facilitate the performance of the work described in the contract.

4. Compensation and Method of Payment - The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed \$20,000. Payment to (person/firm) shall be based on satisfactory completion of identified milestones in Part III - Payment Schedule of this Contract.

5. Indemnification – The FIRM shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the OWNER and its agency members from and against them, and shall assume full responsibility for payments of Federal, State and local taxes-on contributions imposed or required under the Social Security, workers compensation and income tax laws.

6. Miscellaneous Provisions

a.. This Agreement shall be construed under and accord with the laws of the State of North Carolina, and all obligations of the parties created hereunder are performable in Lincoln County, North Carolina.

b. This Agreement shall be binding upon and insure to the benefit of the parties hereto and heir respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

c. In any case one or more of the provisions contained in this Agreement shall for any reason



be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability, shall not affect any other provision thereof and this Agreement shall not be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

d. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

e. This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to an incorporated into this Agreement.

7. Terms and Conditions - This Agreement is subject to the provisions titled, "Part IV Terms and Conditions" and attached hereto and incorporated by reference herein.

IN WITNESSETH HEREOF, the parties have hereunto set their hands and seals.

**OWNER:**

**LINCOLN COUNTY**

By: \_\_\_\_\_  
(name)

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
(name and title)

**ENGINEER:**

**GOODWYN, MILLS & CAWOOD, INC.**

By: \_\_\_\_\_  
Kevin R. Laird

Title: Department Head

Attest:

\_\_\_\_\_  
(name, Project Manager)

**OWNER:**

**CITY OF LINCOLNTON**

By: \_\_\_\_\_  
(name)

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
(name and title)

PART II  
PROFESSIONAL MANAGEMENT SCOPE OF SERVICES

The FIRM shall provide the following scope of services:

A. Project Management

1. Develop a recordkeeping and filing system consistent with program guidelines;
2. Maintenance of filing system;
3. Provide general advice and technical assistance to Locality personnel on implementation of project and regulatory matters;
4. Furnish Locality with necessary forms and procedures required for implementation of project
5. Assist the Locality in meeting alai special condition requirements that may be stipulated in the contract between the Locality and Department/Agency;
6. Prepare and submit to Department documentation necessary for amending the any contract;
7. Conduct re-assessment of environmental clearance for any program amendments;
8. Prepare and submit quarterly reports (progress and minority hiring);
9. Prepare Recipient Disclosure Report form for Locality signature and submittal;
10. Establish procedures to document expenditures associated with local project administration;
11. Provide guidance and assistance to Locality regarding acquisition of property:
  - Submit required reports concerning acquisition activities to Department
  - Establish a separate acquisition file for each parcel of real property acquired
  - Determine necessary method(s) for acquiring real property
  - Prepare correspondence to the property owners for the Locality's signature to acquire the property or to secure an easement
  - Assist the Locality in negotiation with property owner(s)
  - Maintain property management register for property/equipment purchased/leased.
  - Serve as liaison for the Locality during any monitoring visit by Agency staff

B. Financial Management

1. Assist the Locality in proving its ability to manage the grant funds to the state's audit division.
2. Assist the Locality in establishing and maintaining a bank account (Direct Deposit account) and/or separate local bank account, journals and ledgers.
3. Assist the Locality in submitting the required Accounting System Certification letter, Direct Deposit Authorization Form (if applicable), and/or Depository/Authorized Signatory form to Department.
4. Prepare all fund drawdowns on behalf of the Locality in order to ensure orderly, timely payments to all contracting parties within the allotted time period.
5. Review invoices received for payment and file back-up documentation
6. Provide general advice and technical assistance to Locality personnel on implementation of project and regulatory matters
7. Assist the Locality in establishing procedures to handle the use of any DEPARTMENT/AGENCY program income.

### C. Environmental Review

1. Prepare environmental assessment.
2. Coordinate environmental clearance procedures with other federal or state agencies and interested parties responsible for implementing applicable laws.
3. Document consideration of any public comments.
4. Prepare any required re-assessment of environmental assessment.
5. Ensure compliance with EO 11988 for projects in the flood plains.
6. Prepare Request for Release of Funds and certifications to be sent to Department.

### D. Acquisition

1. Prepare required acquisition reports(s).
2. Obtain documentation of ownership for Locality-owned property and/or ROWs.
3. Maintain a separate file for each parcel of real property acquired.
4. Determine necessary method(s) for acquiring real property.
5. Prepare correspondence with property owners.
6. Assist Locality in negotiations with property owner(s).
7. Prepare required acquisition reports and submit to Department.

### E. Construction Management

1. Establish procedures to document expenditures associated with local construction of the project (if force account is applicable);
  - Assist Locality in determining whether and/or what DEPARTMENT/AGENCY contract activities will be carried out in whole or in part via force account labor.
  - Assist Locality in determining whether or not it will be necessary to hire temporary employees to specifically carry out DEPARTMENT/AGENCY contract activities.
  - Assist Locality in maintaining adequate documentation of personnel, equipment and materials expended/used and their costs.
2. Assist Locality in documenting compliance with all federal and state requirements related to equal employment opportunity.
3. Assist Locality in documenting compliance with all federal and state requirements related to minimum wage and overtime pay requirements.
4. Provide assistance to or act as local labor standards officer.
5. Notify Department in writing of name, address, and phone number of appointed labor standards compliance officer.
6. Request wage rates from Department.
7. Provide all applicable equal opportunity provisions and certifications for inclusion in bid packet.
8. Provide sample DEPARTMENT/AGENCY contract documents to engineer.
9. Advertise for bids.
10. Make ten-day call to Department.
11. Verify construction contractor eligibility with Department.
12. Review construction contract.
13. Conduct pre-construction conference and prepare minutes.
14. Submit any reports of additional classification and rates to Department.
15. Issue Notice of Start of Construction to Department.
16. Review weekly payrolls, including compliance follow-ups.

17. Conduct employee interviews.
18. Process and submit change orders to Department prior to execution.
19. Obtain Certificate of Construction Completion/Final Wage Compliance Report and submit to Department.
20. Provide general advice and technical assistance to Locality personnel on implementation of project and regulatory matters.

F. Audit / Closeout Procedures

1. Prepare the Final Acceptance Report for appropriate signatures to submit to the Agency.
2. Assist Locality in resolving any monitoring and audit findings.
3. Assist Locality in resolving any third party claims.
4. Provide auditor with DEPARTMENT/AGENCY audit guidelines.

PART III  
PAYMENT SCHEDULE  
PROFESSIONAL MANAGEMENT SERVICES

Locality shall reimburse the FIRM for management services provided for completion of the following project milestones per the following percentages of the maximum contract amount:

<b>Milestone</b>	<b>% of Contract Fee</b>
<ul style="list-style-type: none"> <li>• Establishment of recordkeeping system</li> <li>• Completion of environmental/other Special Conditions</li> <li>• Completion of all acquisition activities</li> <li>• Completion of the bid/contract award process</li> <li>• Financial and progress reporting requirements</li> <li>• Labor Standards compliance/construction completion</li> <li>• Filing of all required closeout information</li> </ul>	10% 10% 10% 20% 10% 30% 10%
Total	100%