

## **AGREEMENT FOR ENGINEERING SERVICES**

This AGREEMENT, made and entered into this the 18th day of December 2017, by and between the **COUNTY OF BRUNSWICK (OWNER)** and **MCGILL ASSOCIATES, P.A. (ENGINEER)**.

WHEREAS, the OWNER proposes to do certain work toward the accomplishment of the Project entitled **HOLDEN BEACH PARK IMPROVEMENTS**, and

WHEREAS, the ENGINEER desires to provide professional services in accordance with this Agreement as outlined in Attachment "B", which can generally be described as:

The design and construction administration assistance for the Holden Beach Park Improvements, consisting of picnic areas, playground, pavilion/restrooms, walking trail, parking areas, canoe/kayak launch, utilities and various other associated park amenities.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, it is hereby mutually understood and agreed as follows:

### **SECTION 1 - GENERAL SERVICES**

#### **The ENGINEER shall:**

- 1.1 The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in all phases of the PROJECT; serve as OWNER's professional engineering representative for the Project; and shall give professional consultation and advice to OWNER during the performance of the services hereunder.
- 1.2 The ENGINEER shall provide all personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All services rendered hereunder shall be performed by the ENGINEER or under his supervision and all personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services. None of the services covered by this Agreement shall be subcontracted without the prior approval of the OWNER.
- 1.3 The ENGINEER shall obtain and furnish, or cause to be obtained and furnished, approvals and permits from all governmental authorities having jurisdiction over the Project, unless otherwise agreed to herein.
- 1.4 The ENGINEER shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other

services which would not be included in the fee for Basic Services set forth in Section 6 hereof, subject to OWNER's right to terminate as herein provided.

- 1.5 The ENGINEER shall comply with all existing federal, state and local laws and regulations regarding equal employment opportunity. The ENGINEER is further obligated to include all requirements hereunder in any subcontract written by him in association with this Agreement.

## **SECTION 2 - BASIC SERVICES**

### **2.1 SCHEMATIC DESIGN PHASE**

- 2.1.1 Consult with the OWNER to fully determine the OWNER's requirements for the project and to discuss the possible phasing, coordination, approvals and other preliminary matters.
- 2.1.2 Coordinate and conduct initial Project Kick-Off Meeting with Owner to initiate communications, define schedules, discuss the permitting process, gather initial data and information, and obtain agreement for the technical requirements for the project.
- 2.1.3 Complete delineation of Section 404 Wetlands, Coastal Wetlands, and Normal High Water (NHW) Line, along with proper designation of the 30' and 75' setbacks for Areas of Environmental Concern (AEC).
- 2.1.4 Prepare an existing conditions site survey to include topography, boundary, flagged environmental areas, and other site features.
- 2.1.5 Prepare schematic site plan layout of the horizontal control, dimensions, zoning, setbacks, structures, landscaping, lighting, amenities, roadways, parking, and development data in accordance with requirements of the Brunswick County Unified Development Ordinance (UDO) and consultation with OWNER.
- 2.1.6 Complete preliminary site grading, storm drainage methods, storm water control measures, spot-grade elevations and plans. Prepare the initial design parameters and supporting calculations sufficient for anticipating the size and locations of any permanent stormwater control measures.
- 2.1.7 Complete preliminary plans, calculations, and details for all proposed water and on-site septic utilities.
- 2.1.8 Provide preliminary floor plans and elevation views of proposed structures, inclusive of mechanical, electrical, and plumbing schematics.

- 2.1.9 Complete preliminary design evaluation of erosion control for temporary and permanent measures for all proposed disturbed areas on the project, and the initiation of applicable notes/details.
- 2.1.10 Prepare conceptual layouts for the plans required to satisfy driveway and utility encroachment agreements.
- 2.1.11 Provide schematics of all other site features, signage, and furnishings.
- 2.1.12 Prepare an estimate of probable cost for the proposed project features and amenities.
- 2.1.13 Meet with Owner to review and obtain approval for proceeding with design phase.

## **2.2 DESIGN DEVELOPMENT & CONSTRUCTION DOCUMENT PHASES**

- 2.2.1 Incorporate Schematic Design comments from OWNER review into Design Plans, evaluating alternatives to determine final design approach relative to any areas of concern.
- 2.2.2 Transition all preliminary plans from Schematic Design Phase into construction design plans, incorporating final versions of specifications and details.

### **Description of Key Items**

- a. Layout, grading and utilities for all amenities listed on attachment "B"
  - b. Potable Water, Septic, and Stormwater infrastructure
  - c. Driveways, parking lots and walking trails
  - d. Recreational Amenities for attachment "B" items
  - e. Prefabricated Pavilion (& Eco Station as desired) Schematic Plans
  - f. Structural plans for the elevated boardwalk, pier, and dock facilities
- 2.2.3 Review all final Design and Construction Documents with OWNER and provide any further updates to previous estimates of probable cost.

## **2.3 PERMITTING PHASE**

- 2.3.1 Assist the OWNER in securing approval of the final design documents from such governmental agencies that have jurisdiction over the project or any portion thereof. Fees associated with permit applications shall be paid by ENGINEER and reimbursed by Owner. We anticipate preparing and submitting applications to the following agencies for permitting:
  - a. NCDEQ – Stormwater, Sedimentation & Erosion Control, Water Main Extension
  - b. NCDEQ/USACE – Wetlands and Waterfront Activities

- c. Brunswick County– Site, Stormwater, Water, Septic
- d. NCDOT – Driveway Permitting

### **SECTION 3 - ADDITIONAL SERVICES**

If authorized by the OWNER, the ENGINEER will furnish or obtain from others additional services of the following types, which are not considered Basic Services under this Agreement. Additional services shall be paid for in accordance with Section 6.2. Additional services shall include, but not be limited to:

- 3.1 Additional services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction.
- 3.2 Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of the ENGINEER.
- 3.3 Preparing documents for alternate bids requested by the OWNER for work which is not executed or documents for out-of-sequence work other than agreed upon in the Schematic Design Phase.
- 3.4 Services related to change orders to reflect modifications requested by the OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.
- 3.5 Additional or extended services during construction made necessary by prolongation of the construction contract or default by the Contractor under any construction contract if such construction contract is delayed beyond the original completion date.
- 3.6 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.7 Additional services associated with the Project, including services normally furnished by the OWNER and services not otherwise provided for in this Agreement.
- 3.8 Additional assistance with grant administration.

### **SECTION 4 - OWNERS RESPONSIBILITIES**

**The OWNER shall:**

- 4.1 Provide full information as to his requirements for the Project.

- 4.2 Assist the ENGINEER by placing at his disposal in a timely manner all available information pertinent to the Project, including previous documents and any other data relative to the evaluation, design, and construction of the Project.
- 4.3 Provide geotechnical services for the provision of engineering design data.
- 4.4 Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform his services under this Agreement.
- 4.5 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- 4.6 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions pertinent to the services covered by this Agreement.
- 4.7 Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor has used the monies paid to him under the construction contract.
- 4.8 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.
- 4.9 Furnish, or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.10 Bear all costs incidental to compliance with the requirements of Section 4.

#### **SECTION 5 - PERIOD OF SERVICES**

- 5.1 Unless this Agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period which may reasonably be required for the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined.
- 5.2 If the Project is delayed significantly for reasons beyond the ENGINEER's control, or more than one (1) year beyond initial site permitting, the various

rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

## **SECTION 6 - PAYMENT TO THE ENGINEER**

### **6.1 PAYMENT FOR BASIC SERVICES**

6.1.1 The OWNER agrees to pay the ENGINEER for Basic Services as outlined in **Section 2.1, 2.2, and 2.3**, the following lump sum fees.

**Schematic Design, Design Development, Construction Documents, and Permitting: \$95,000.00**

The OWNER further agrees to reimburse ENGINEER for all permit and application fees.

### **6.2 PAYMENT FOR ADDITIONAL SERVICES**

6.2.1 The OWNER will pay the ENGINEER for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by employees of the ENGINEER assigned to the Project in accordance with Attachment A - Basic Fee Schedule, should any of these services be requested by the OWNER.

### **6.3 PAYMENT SCHEDULE**

6.3.1 The OWNER will make prompt monthly payments in response to the ENGINEER's monthly detailed statements for all services rendered under this Agreement.

### **6.4 GENERAL**

6.4.1 If the OWNER fails to make any payment due the ENGINEER on account of services and expenses within sixty days after receipt of the ENGINEER's bill therefor, the ENGINEER may, after giving seven days written notice to the OWNER, suspend services under this Agreement until he has been paid in full all amounts due him on account of his services and expenses.

6.4.2 If the Agreement is terminated at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the ENGINEER on account of services shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Basic Services, the ENGINEER shall be paid for services rendered based on his reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the ENGINEER will be paid for all

his reasonable expenses resulting from such termination, and for any unpaid reimbursable expenses.

- 6.4.3 If, prior to termination of this Agreement, any work designed or specified by the ENGINEER, under Section 2, is suspended in whole or in part for more than three months or is abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of his service.

## **SECTION 7 - GENERAL CONDITIONS**

### **7.1 TERMINATION**

- 7.1.1 The OWNER has the right to terminate this agreement for any reason, and without cause, by providing ten (10) days written notice to the ENGINEER of such termination and specifying the effective date of such termination; provided, however, that during such period of ten (10) days the ENGINEER shall have the opportunity to remedy such failures or violations to avoid such termination.
- 7.1.2 In the event of termination, as provided herein, the ENGINEER shall be paid for all services performed and actual expenses incurred up to the date of termination pursuant to Section 6.4.2 herein.

### **7.2 OWNERSHIP OF DOCUMENTS**

- 7.2.1 All documents, including original drawings, estimates, specifications, field notes and data are and remain the property of the ENGINEER as instruments of service. The OWNER shall be provided a set of reproducible record prints of drawings, and copies of other documents, in consideration of which the OWNER will use them solely relating to the Project, and not for making subsequent extensions or enlargements hereto and not for resale. Re-use for extension of the Project, or for new projects shall require written permission of the ENGINEER and shall entitle him to further compensation at a rate to be agreed upon by OWNER and ENGINEER at the time of such re-use.

### **7.3 MEDIATION:**

- 7.3.1 OWNER and ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree

to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction. The costs of mediation shall be borne equally by the parties.

#### **7.4 ESTIMATES**

7.4.1 Since the ENGINEER has no control over the cost of labor, materials, or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his estimates for cost for the Project provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids or the Project construction cost will not vary from cost estimates prepared by him.

#### **7.5 INSURANCE AND CLAIMS**

7.5.1 The ENGINEER shall provide and maintain, at its own expense, during the term of this Agreement the following insurance covering its operations. Evidence of such insurance in the form of an industry-standard ACORD Certificate of Insurance satisfactory to the OWNER shall be delivered to the OWNER on or before the effective date of this Agreement. Such evidence shall require that the OWNER be named as additional insured and be given written notice at least thirty (30) days in advance of any modification or termination of any insurance coverage.

7.5.2 AUTOMOBILE LIABILITY – Bodily injury and property damage liability insurance shall be carried covering all owned, non-owned, and hired automobiles for a limit of not less than \$1,000,000 Combined Single Limit for bodily injury and property damage in any one occurrence.

7.5.3 COMMERCIAL GENERAL LIABILITY – Bodily injury and property damage liability shall be carried to protect the ENGINEER performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this agreement. The amounts of such insurance shall not be less than \$1,000,000 Combined Single Limit for bodily injury and property damage in any one occurrence. This insurance shall include coverage for product / completed operations liability, personal and advertising injury liability, and contractual liability.

7.5.4 PROFESSIONAL LIABILITY – Insuring against professional negligence / errors and omissions on a claims-made basis with policy limits of \$1,000,000 per claim.

7.5.5 WORKERS' COMPENSATION – Workers' Compensation Insurance coverage shall be carried meeting the statutory requirements of the State of North Carolina, even if the ENGINEER is not required by law to maintain such

insurance. Said Workers' Compensation Insurance coverage shall have at least the following limits of Employer's Liability coverage - \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.

## **7.6 SUCCESSORS AND ASSIGNS**

The OWNER and the ENGINEER each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the ENGINEER will assign, sublet or transfer his interest in this Agreement without the 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 party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

## **7.7 ENTIRE AGREEMENT**

7.7.1 This Agreement constitutes the entire agreement between the OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented or modified by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

**McGILL ASSOCIATES, P.A.**

By: Michael Norton  
Michael Norton, P.E.  
Firm Principal

(SEAL)

**BRUNSWICK COUNTY**

ATTEST: \_\_\_\_\_  
Andrea G. White  
County Clerk to the Board

By: \_\_\_\_\_  
Frank Williams  
County Commissioner, Chairman

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

By: \_\_\_\_\_  
Finance Officer



**ATTACHMENT "A"**

**BASIC FEE SCHEDULE**

September 2017

<b><u>PROFESSIONAL FEES</u></b>	<b><u>Hourly Rate</u></b>
Firm Principal	\$190.00
Program Services Manager I	\$150.00
Program Services Manager II	\$160.00
Senior Project Manager I	\$160.00
Senior Project Manager II	\$170.00
Senior Project Manager III	\$175.00
Project Manager I	\$140.00
Project Manager II	\$150.00
Project Engineer I	\$105.00
Project Engineer II	\$115.00
Project Engineer III	\$125.00
Engineering Associate I	\$ 85.00
Engineering Associate II	\$ 90.00
Engineering Technician I	\$ 80.00
Engineering Technician II	\$ 90.00
Engineering Technician III	\$100.00
Environmental Specialist I	\$ 80.00
Environmental Specialist II	\$ 90.00
Electrical Engineer I	\$105.00
Electrical Engineer II	\$115.00
Electrical Engineer III	\$125.00
Electrical Engineering Associate I	\$ 85.00
Electrical Engineering Associate II	\$ 90.00
Electrical Engineering Technician I	\$ 80.00
Electrical Engineering Technician II	\$ 90.00
Electrical Engineering Technician III	\$100.00
Mechanical Engineer I	\$105.00
Mechanical Engineer II	\$115.00
Mechanical Engineer III	\$125.00
Mechanical Engineering Associate I	\$ 85.00
Mechanical Engineering Associate II	\$ 90.00
Mechanical Engineering Technician I	\$ 80.00

Mechanical Engineering Technician II	\$ 90.00
Mechanical Engineering Technician III	\$100.00
CADD Operator I	\$ 75.00
CADD Operator II	\$ 80.00
CADD Operator III	\$ 85.00
Construction Services Manager I	\$120.00
Construction Services Manager II	\$135.00
Construction Administrator I	\$ 90.00
Construction Administrator II	\$100.00
Construction Administrator III	\$110.00
Construction Field Representative I	\$ 75.00
Construction Field Representative II	\$ 80.00
Construction Field Representative III	\$ 85.00
Construction Project Coordinator	\$ 75.00
Planner I	\$ 95.00
Planner II	\$110.00
Planner III	\$125.00
Planner IV	\$135.00
Surveyor I	\$ 80.00
Surveyor II	\$ 90.00
Surveying Associate I	\$ 70.00
Surveying Associate II	\$ 75.00
Survey Technician I	\$ 70.00
Survey Technician II	\$ 75.00
Survey Field Technician I	\$ 55.00
Survey Field Technician II	\$ 60.00
Survey Field Technician III	\$ 65.00
Administrative Assistant (I-II)	\$ 70.00
Administrative Assistant III	\$ 75.00
Accounting Assistant (I-II)	\$ 80.00

1. **EXPENSES**

- a. Mileage - \$0.65/mile
- b. Robotics/GPS Equipment - \$25/hr.
- c. Survey Drone - \$100/hr.
- d. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

2. **ASSOCIATED SERVICES -**

- a. Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus ten (10) percent.

## **ATTACHMENT "B"**

### **PROJECT UNDERSTANDING** **HOLDEN BEACH PARK IMPROVEMENTS,** **BRUNSWICK COUNTY, NORTH CAROLINA**

Brunswick County – Holden Beach Park Improvements will be developed at the existing Holden Beach Park located off US Hwy. 130 and 0.1 miles west of the intersection with Holden Beach Road. The park will have various amenities and improvements, including:

- Prefabricated Restroom/Shelter Pavilion
- Prefabricated Picnic Shelters
- Access Driveway
- Parking Facilities
- Paved Walking Trails
- Nature Trails
- Horseshoe Pits
- Playground Area
- Canoe/Kayak Launch
- Boardwalk/Observation Areas

Site amenities will be placed in such a manner as to minimize the site grading, and paved surface area. The parking areas will be located to offer shared parking and to maximize recreational use of the site.