DAVIS • MARTIN • POWELL
ENGINEERS & SURVEYORS

March 15, 2021

Re: Town of Oak Ridge
Haw River Road Walkway
Haw River Road and Pepper Road
Proposal for Professional Services
Amendment for CA and RPR Services

Mr. Bill Bruce, AICP
Town Manager
Town of Oak Ridge
8315 Linville Road
Oak Ridge, NC 27310

Dear Mr. Bruce:

Davis • Martin • Powell (DMP) is pleased to offer our contract amendment for Professional Services to provide the Town with Bidding/Procurement, Construction Administration and Resident Project Representation services for the Proposed Mountain to Sea Trail Extension Project.

Understanding the Project

This amendment defines the scope and compensation for Bidding, Construction Administration and RPR Services during construction. DMP will provide these services for both the 2,600± LF Mountain to Sea Trail Extension along Haw River Road and Pepper Road designed by DMP as well as the new parking area designed by Summey Engineering. Summey Engineering will provide signed and sealed construction drawings, technical specifications and quantity take-off for use during bidding and construction.

It is anticipated the project will be advertised and bid in Spring 2021. A Notice-to-Proceed is anticipated in Summer 2021 with a 60 day contract period.

Scope of Services

Task 0003. Bidding/Procurement Phase

DMP will assist the Town in soliciting competitive construction bids by performing the following tasks:

- Coordinate the issuance of Contract Documents to prospective bidders,
- Attend the Bid Opening, review the bids for conformance, prepare a Certified Bid Tabulation, research the low Bidder's qualifications,
- Make a recommendation of award to the Town to award the contract to the lowest, responsible, responsive bidders.

Task 0004. Construction Administration Services

- Conduct the Pre-Construction Meeting and prepare meeting minutes.
- Review shop drawings and submittals from the Contractor.
- Review and respond to Requests for Information (RFI's) from the Contractor.
- Conduct monthly progress meetings and prepare meeting minutes as needed.
- Review change order requests.
- Review Contractor's monthly pay requests and forward to the Town for approval.
- Contract Closeout, to include attendance at the final field inspection, review of final contract documents, and Engineer's Certification of project completion to the appropriate agencies as needed.

Task 0005. Construction Field Services

- The scope includes a Resident Project Representative (RPR) during the construction period to review and observe work of the construction contractors.
- The RPR shall be the Engineers' site representative and will serve as field liaison between the Contractor and the Town, attend job site meetings, etc.
- The RPR will review and observe field work, confirm payment quantities, determine acceptability of work items, etc., for compliance with approved contract documents.
- The RPR will keep a daily field report describing the activities and construction progress of the Contractor(s), for each site visit.
- The RPR will report directly to the Engineer and the Engineer will report the Town Representative.
- The RPR will assist the Contractor in maintaining records of deviations from construction drawings.
- The RPR shall have no authority regarding the following:
  - Authorization of any deviation from the contract documents or approval of any substitute materials or equipment.
  - Performance of any of the responsibilities of Contractor(s), subcontractor(s), or Contractor's superintendent.
  - Expediting work for the Contractor(s).
  - Jobsite Safety
  - Advice or directions relative to any aspect of the means, methods, techniques, sequences, or procedures of construction unless such is specifically called for in the contract documents.

Task 0006. Construction Staking Services

- Work on behalf of the Town to provide the Contractor with Construction Staking Services during installation.
- Provide alignment stakes/nails with 5' offsets along route of pathway

Task 0007. Easement Acquisition Assistance

- Assist Town with reviewing design and providing design options based on property owner requests.
- Perform site visits to review field conditions for property owner requests
- Provide revised drawings based on re-aligned pathway to meet property owner requests
- Coordinate with utility companies based on property owner requests

Additional Services

DMP has the capability to provide the following additional services. At this time, we have not included these services as part of our scope. If any of these services are desired, or become a requirement of the project, additional fees will be negotiated.

- Material Testing
- Geotechnical Analysis

Additional (extra) services are defined as any work item not included in the above scope of services that are requested by the client or review agencies. Additional services will be billable at DMP Standard Billing Rates that are current at the time the extra work is identified. Any meetings not included in the scope of services will be considered extra. Extra work, including any adjustments to the Final Development Plan after approval will be identified either in writing or by verbal communication, but must be approved in writing by client before proceeding to perform such additional services.

Compensation

DMP proposes to provide the services described above at an hourly rate with the following anticipated fees, which is based on our experience with similar projects:

Phase	*Description*	*Estimated Fee*	*Fee Type*
0003	Bidding/Procurement Services	$5,180	Lump Sum
0004	Construction Administration Services	$6,880	Lump Sum
0005	Construction Field Services (RPR)	$11,600	Hourly
0006	Construction Staking Services (RPR)	$3,970	Hourly
0007	Easement Acquisition Assistance	$4,180	Hourly

The fees stated above are based on the anticipated requirements and steps we will need to complete the scope outlined in this contract amendment. The fees stated above are based on the anticipated requirements and steps we will need to complete the scope outlined in this contract amendment. The RPR work is based on six (6) weeks of actual construction at twenty (20) hours per week. Additional work due to site changes requested by the owner or requirements imposed by permitting agencies may require adjustments to this fee. Any changes to this fee will be reviewed and approved before additional cost is incurred.

The *Terms and Conditions* from the October 8, 2019 agreement remain in effect for this additional scope of work. An updated *Rate Schedule,* to replace the previous *Rate Schedule,* is enclosed.

Summary

Davis • Martin • Powell (DMP) appreciates the opportunity to submit this proposal for professional services related to this project. If acceptable, please return one (1) executed copy of this proposal to our office, and we will proceed accordingly. If you have any questions, please let me know.

Sincerely,

DAVIS • MARTIN • POWELL & ASSOCIATES, INC

Michael Goliber, PE
Partner, Senior Project Manager
(336) 819-5280, mgoliber@dmp-inc.com

MPG/dd
c: File

Accepted: **Town of Oak Ridge**

By: _____ Date _____

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

_____
Sam Anders, CPA,MSA, Finance Officer

Attachment "A"
Davis-Martin-Powell & Associates, Inc.
Standard Terms and Conditions

These Standard Terms and Conditions are incorporated by reference in the accompanying Proposal or Agreement (Agreement) between Davis-Martin-Powell & Associates, Inc. (Consultant) and its Client for the performance of Engineering, Surveying, Planning, or other services (Services) as indicated.

1. **Period of Offer:** This Agreement is valid for a period of 60 days from the date unless otherwise extended in writing by Consultant. Consultant may withdraw an Agreement at any time prior to its expiration date.
2. **Performance of Services:** Consultant shall perform the Services as outlined in this Agreement in consideration of the stated fee and payment methods.
3. **Access to Site:** Unless otherwise stated, Client shall provide Consultant right-of-access to the project site(s) for activities necessary for the performance of the services. Consultant will take reasonable precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage and will not be responsible for such costs.
4. **Additional Services**: In the event Client requests Consultant to provide services not specifically described in the Agreement, or in the event Consultant, or anyone employed by Consultant, is called upon to be deposed or to testify in a matter to which Consultant is not a named party as a result of Services performed hereunder, Client agrees to compensate Consultant in accordance with the Billing Rate Schedule set forth in this Agreement unless both parties agree in writing to a compensation basis.
5. **Rate Schedule:** If no Rate Schedule is set forth, compensation shall be at the Consultants' then effective Rate Schedule. Consultant may adjust the Rate Schedule annually to reflect equitable changes in the various categories.
6. **Period of Service**: This Agreement and the compensation set forth herein are established in anticipation of the continuous progress of the services. In the event of suspension of Services by Client, Consultant may at its option terminate this Agreement or request adjustment in amount of compensation.
7. **Payment Terms:** Client agrees to pay Consultant for all services performed and all costs incurred. Invoices for the Consultant's services shall be submitted, at Consultant's option, either upon completion of such services or on a monthly basis. Invoices shall be due and payable upon receipt. If Client reasonably objects to any portion of an invoice, Client shall notify Consultant in writing within 10 days from the date of receipt of invoice, give reasons for the objection, and pay that portion not in dispute. Failure to provide such written notice shall be deemed a waiver of all objections to that invoice.

   Accounts unpaid 30 days after the invoice date may be subject to a monthly finance charge of 1.5% on the unpaid balance. If any invoice is not paid within 60 days, Consultant may, without waiving any claim or right against Client, and without liability whatsoever to Client, suspend or terminate the performance of services. In the event any portion of an account remains unpaid 90 days after the billing, Consultant may institute collection action. Client shall pay all costs of collection, including reasonable attorney's fees.
8. **Limitation of Liability:** ***Consultant's liability to Client for any claim, loss or damage asserted by Client, its agents or employees, or any third party claiming through Client, arising out of an alleged breach of this Agreement or any other act, error or omission of Consultant, shall not exceed the greater of $50,000.00 or the fees actually paid Consultant. If Client desires a higher limit of liability, the parties may agree to an increased fee to offset the increased limit of liability*****.**
9. **Disclaimer of Consequential Damages:** In no event shall Consultant be liable to Client for any special, indirect, incidental or consequential loss or damages, including but not limited to lost profits and loss of use arising from or relating to the Services.
10. **Information for the Sole Use and Benefit of the Client:** All opinions and conclusions of Consultant, whether written or oral, and any plans, specifications or other documents and services provided by Consultant are for the sole use and benefit of Client on the named project and are not to be provided to any other person or entity without the prior written consent of Consultant, save and except for documents subject to the NC Public Records stature, NCGS 132-1 et seq. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either Consultant or Client. There are no intended third-party beneficiaries of this Agreement.
11. **Ownership of Documents:** All documents produced by Consultant under this Agreement are instruments of Consultant's professional service and shall remain the property of Consultant and may not be used by Client for any other purpose without the prior written consent of Consultant.
12. **Assignment**: This Agreement may not be assigned by either party without prior written approval by the other party.
13. **Certifications, Guarantees and Warranties**: Consultant will perform Services using the degree of skill and care ordinarily exercised under similar conditions by members of the Consultants profession practicing in the same or similar locality at the time of this Agreement. Consultant shall not be required to execute any document that would result in Consultant certifying, guaranteeing or warranting the existence of any conditions. This Agreement considers only those regulations in effect 60 days prior to Agreement date. No portion of this Agreement or other representations

by Consultant, its agents or employees shall be construed or interpreted as a guarantee of approval by any board or agency.

14. **Dispute Resolution:** Any claims or disputes between Client and Consultant arising out of the services to be provided by Consultant or out of this Agreement shall be submitted to non-binding mediation. Client and Consultant agree to include a similar mediation agreement with all contractors, sub-consultants, sub-contractors, suppliers and fabricators, providing for mediation as the primary method for dispute resolution among all parties.
15. **Accrual of Actions:** As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant Date of Town acceptance, and as to any acts or failures to act occurring after the relevant Date of Town acceptance , not later than the date of Consultant's final invoice for the Services.
16. **Termination of Services:** This Agreement may be terminated at any time by either party should the other party fail to perform its obligations hereunder. In the event of termination for reasons not caused by or outside the control of the Consultant, Client shall pay Consultant for all services rendered to the date of termination, and all reimbursable expenses incurred prior to termination and reasonable termination expenses incurred as the result of termination.
17. **Site Responsibility**: The presence of Consultant's representatives will not relieve any contractor, subcontractor, or consultant not employed by Consultant, of their responsibility to perform their work in accordance with applicable laws and regulations. Client agrees that each contractor, subcontractor, or consultant not employed by Consultant shall solely be responsible for working conditions; security and safety of persons and property; compliance with OSHA regulations; and providing all safety equipment and training necessary for the protection of its personnel.

    Consultant's monitoring of others performance is not intended to include supervision of the others; review of safety procedures; nor is Consultant responsible for the safety or security at the site, other than its own employees <u>or its sub-consultants</u>. Consultant is not responsible for the contractor's failure to perform the work in accordance with the Contract Documents. Consultant does not have the right or duty to halt the work of others.
18. **Cost Estimates**: Consultant may provide opinions of construction and other project related costs as part of these Services. Consultant assumes no responsibility for such cost estimates as Consultant has no control over the costs of labor, materials, or services furnished by others, or the competitive bidding and market conditions.
19. **Insurance**: Consultant will maintain the following insurance coverage: Workers Compensation; Commercial General Liability; Automobile Liability; and Professional Errors and Omissions. . Client acknowledges that it cannot be an additional named insured under any policy of insurance providing coverage for Professional Errors and Omissions.
20. **Deliverables.** Consultant shall select the methods, software, and format of any deliverables utilized or created during performance of the work, unless otherwise stated in the Agreement or requested by the Client prior to commencement of work. Electronic deliverables shall be compatible with current industry standards and conversion to other formats shall be the responsibility of the recipient.
21. **Severability**: If any part of this Agreement is held to be illegal or unenforceable, the validity and enforceability of the remaining parts shall not be affected, and the rights of Consultant and Client shall be enforced as if the Agreement did not contain the illegal or unenforceable part.

These Standard Terms and Conditions and any other documents expressly referenced in the Agreement constitute the entire Agreement between the parties.

ATTACHMENT "B"
RATE SCHEDULE

Principal	$190.00
Associate	$170.00
Project Manager	$160.00
Senior Engineer / Surveyor	$130.00
Project Engineer / Surveyor	$115.00
Senior Designer/Technician	$110.00
Engineering/Surveying Technician I	$90.00
Engineering/Surveying Technician II	$72.00
Senior Resident Project Representative	$100.00
Resident Project Representative	$85.00
3-Man Surveying Crew	$185.00
2-Man Surveying Crew	$145.00
1-Man Surveying Crew	$120.00
Remote Sensing Crew (Min. 4 hour charge)	$175.00
Senior Administrative Assistant	$76.00
Travel Mileage	$0.60
Meals and Lodging	At Cost
Reimbursable Expenses	At Cost+15%
SUE Level A: Half day, includes survey location (minimum charge)	$1,200.00
SUE Level A: Full day, includes survey location	$2,000.00
SUE Level B: Delineation, GPR, hourly (minimum 4 hour charge)	$135.00
SUE Traffic Control Assistance	At Cost
SUE Select Backfill / Surface Restoration (stone, asphalt, concrete)	At Cost

Effective January 1, 2021