

**SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ ("Effective Date") between

Town of Oak Ridge ("Owner")

and

L.E. Wooten & Company dba The Wooten Company ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: Water for Fire Protection Study ("Project").

Engineer's services under this Agreement are generally identified as follows: Study available water supply and possible storage and access opportunities for fire protection. ("Services").

Owner and Engineer further agree as follows:

**1.01 Basic Agreement and Period of Service**

- A. Engineer shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above ("Additional Services").
- B. Engineer shall complete its Services within the following specific time period: 120 Days from Date of Executed Agreement.
- C. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's Services is impaired, or Engineer's Services are delayed or suspended, then the time for completion of Engineer's Services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

**2.01 Payment Procedures**

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer's invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) 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, Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in

writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

## 2.02 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

### A. Owner shall pay Engineer for Services as follows:

An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class, plus reimbursement of expenses incurred in connection with providing the Services and Engineer's consultants' charges, if any.

Engineer's Standard Hourly Rates are attached as Appendix 2.

The total compensation for Services and reimbursable expenses is estimated to be an amount not to exceed \$19,500.00.

## 2.03 *Additional Services: For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus, reimbursement of expenses incurred in connection with providing the Additional Services and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 2.*

## 3.01 *Termination*

### A. The obligation to continue performance under this Agreement may be terminated:

#### 1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
- b. By Engineer:
  - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
  - 2) upon seven days written notice if the Engineer's Services are delayed for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.i.
- c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.
- d. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such

party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Engineer's consultants' charges, if any.

#### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Engineer or its consultants.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:
  - 1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer.
  - 2. any such use or reuse, or any modification of the documents, without written verification, completion, 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 its officers, directors, members, partners, agents, employees, and consultants.
  - 3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
  - 4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project and (2) agree that Engineer's total liability to Owner

under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.

- I. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- K. This Agreement is to be governed by the law of the state in which the Project is located.
- L. Engineer's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

#### 7.01 *Definitions*

- A. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- B. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating,

relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8.01 *Attachments:*

Appendix 1 – Scope of Services

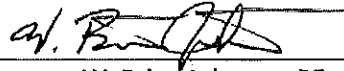
Appendix 2 - Engineer's Standard Hourly Rates

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:  
Town of Oak Ridge

Engineer:  
L.E. Wooten & Company dba The Wooten Company

By: \_\_\_\_\_  
Print name: Bill Bruce  
Title: Town Manager  
Date Signed: \_\_\_\_\_

By:   
Print name: W. Brian Johnson, PE  
Title: Vice President  
Date Signed: 6/2/2021

Engineer License or Firm's Certificate No. (if required):  
F-0115  
State of: North Carolina

Address for Owner's receipt of notices:  
P. O. Box 374  
8315 Linville Road  
Oak Ridge, NC 27310

Address for Engineer's receipt of notices:  
120 N. Boylan Avenue  
Raleigh, NC 27603

**PRE-AUDITED STATEMENT**

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

Print Name: Sandra B. Smith, CMC, NCCMC

Title: Town Clerk

By (Signature): \_\_\_\_\_

Date Signed: \_\_\_\_\_

**APPENDIX 1  
TO THE  
ENGINEERING SERVICES CONTRACT  
BETWEEN  
TOWN OF OAK RIDGE  
AND  
LIE. WOOTEN & COMPANY DBA THE WOOTEN COMPANY  
FOR  
SCOPE OF SERVICES  
TO  
WATER FOR FIRE PROTECTION STUDY**

The following Attachment shall become a part of the Contract Agreement.

**PROJECT INCLUDES**

The project includes the following proposed work: explore the feasibility of a fire water system. The system may include land acquisition, well drilling/wellhead construction, and engineering and construction of a storage facility for fire department access.

**SCOPE OF SERVICES (STUDY)**

1. Review the following options for cost and effectiveness as a water supply for firefighting:
  - a. Use of multiple ground level (possibly buried) storage tanks and hydrants at strategic locations around Town. Locations determined in consultation with Oak Ridge Fire Department.
  - b. Installation of an elevated storage tank on Fire Department property with multiple hydrants at the base of the tank. Tank to meet Town design standards. Tank to be sized so as not to preclude potential future use as potable water supply.
  - c. Installation of an elevated tank and main lines along NC-150 and NC-68 and possibly other strategic corridors with fire hydrants.
2. Provide map of possible locations for each option.
3. Review possible water supply alternatives for each of the previously listed options
  - a. Wells
  - b. Purchase water from Winston-Salem along Haw River Rd. corridor or NC-150 corridor
4. Hold an initial meeting with Owner to verify project scope and division of work between Owner and Engineer.
5. Develop cost opinions of the alternatives and complete a present worth analysis.
6. Develop a report summarizing the data and present results to Owner in a draft report and in one review meeting. Provide Owner with three (3) hard copies and one (1) PDF file of the final report based on comments received in review meeting.



#### **ADDITIONAL SERVICES**

In addition to the foregoing services being performed, the following services may be provided upon prior written authorization of the Owner.

1. Conduct research and surveys and prepare necessary plats and maps for the determination of property Ownership and Identification of sites and easements to be acquired for the construction of the project.
2. Provide Subsurface Utility Engineering (SUE) services through the project corridor or critical areas within the corridor.
3. Prepare redesigns for the Owner after Final Plans and Specifications have been accepted by the Owner.
4. Appear before courts or boards on matters of litigation or hearings related to the project.
5. Design other additional utilities improvements not included in the original scope of services.
6. Grant/Loan administration.
7. Geotechnical or Hydrogeological Services.

#### **SERVICES PROVIDED BY THE OWNER**

1. Designate a person to act as the Owner's representative with respect to the work to be performed under the agreement. Such person shall have complete authority to transmit instructions, receive information, interpret, and define the Owner policies.
2. Provide such legal, accounting, and insurance counseling services as may be required for the project and such auditing services as the Owner may require to ascertain how or for what purpose any contractor has used the monies paid to him under the construction contract.
3. Pay all permit and application fees required for the project approval and construction.
4. Assist the Engineer by placing at his disposal all available information pertinent to the projects as may be required by the Engineer.
5. Guarantee access to and make all provisions for the Engineer to enter upon public and private property as required to perform his services.
6. Examine all sketches, drawings, specifications, proposals, and other documents presented by the Engineer, obtaining advice of an attorney, insurance counselor, and other consultants as the Owner deems appropriate for such examination.
7. Provide frequent observation of the project in order to apprise the Engineer of specific matters relating to the project that would foster good relations among all parties involved as well as to allow work to progress in an orderly manner.

8. Give prompt written notice to the Engineer whenever the Owner observes or otherwise becomes aware of any defect in the project or changed circumstances.
9. Furnish the Engineer in a timely manner with copies of pertinent correspondence relating to the project which would not otherwise have been delivered to the Engineer.
10. Bear all cost of incidentals for the compliance with the requirements of this article and the foregoing article entitled "Additional Services".
11. Provide E-verify affidavit document for Engineer's execution.

<http://www.ncim.org/SiteCollectionDocuments/E-Verify%20FAQs%20-%20Sept2013.pdf>

This is Appendix 2, Engineer's Standard Hourly Rates, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated [REDACTED].

**Engineer's Standard Hourly Rates**

**A. Standard Hourly Rates:**

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 2.01, 2.02, and 2.03, and are subject to annual review and adjustment.

Wage Category	Hourly Billing Rate
Engineer I	\$ 106
Engineer II	\$ 135
Engineer III	\$ 161
Engineer IV	\$ 193
Engineer V	\$ 232
Architect II	\$ 138
Designer I	\$ 75
Designer II	\$ 91
Designer III	\$ 117
Designer IV	\$ 140
Construction Admin I	\$ 109
Construction Admin II	\$ 165
Construction Admin III	\$ 232
Construction Observer / Resident Project Representative	\$ 99
Utility Coordinator II	\$ 122
Utility Coordinator III	\$ 154
Survey Technician I	\$ 50
Survey Technician II	\$ 65
Survey Technician III	\$ 85
Survey Technician IV	\$ 117
Surveyor II	\$ 110
Surveyor III	\$ 129
Surveyor IV	\$ 167
GIS Analyst II	\$ 83
GIS Analyst III	\$ 114
GIS Analyst IV	\$ 124
Community Development Coordinator	\$ 118
Project Assistant	\$ 79
Reimbursables: Mileage will be billed at the current IRS Standard Mileage Rate, Subcontracted Services and other expenses at cost plus 10%.	
Annual adjustments are made on July 1st of each year. The above hourly rates reflect current rates for the period through June 30, 2021. Hourly billing rates will change next on July 1, 2021 to reflect Direct Payroll Costs (salaries) being paid at that time.	
<i>Effective Rates July 1, 2020 through June 30, 2021</i>	