

NORTH CAROLINA  
WAKE COUNTY

CONTRACT FOR ENGINEERING SERVICES

THIS CONTRACT is entered into by and between [REDACTED] hereinafter referred to as the “Engineer” and the Town of Garner, a North Carolina municipal corporation. hereinafter referred to as the “Town”.

WITNESSETH

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

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

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

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

1. Scope of Services/Description of Project  
[Add Project Description]

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

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

The Engineer now has or will secure at their expense, including subconsultants, all personnel and facilities required to perform the services to be rendered under this Contract. Such personnel are not employees of, nor have they any direct contractual relationship with the Town. The Engineer is authorized to engage subconsultants, including surveyors, geotechnical and materials testing firms, to assist in the work included under this Contract to the extent such services are included herein. No subcontract work is authorized for which the Town will incur any costs beyond those agreed upon and set forth in Section 4.

## 2. Services Provided by the Town

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

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

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

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

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

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

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

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

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

## 3. Schedule/Time of Performance

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

- The Engineer shall provide Preliminary Plans to the Town within \_\_\_\_\_ calendar days following receipt of written notice to proceed from the Town.
- The Engineer shall provide 65% construction plans within \_\_\_\_\_ calendar days following notification of approval of the Preliminary Plans from the Town.
- Engineer shall provide all finalized right-of-way plats to the Town within \_\_\_\_\_ calendar days following notification of approval of the 65% plans.
- Preliminary plats may be produced prior to approval of the 65% plans for use in appraisal work by the Town. The Engineer shall provide plans completed to approximately 65% state

and the finalized right-of-way plats for approval by Town Council at a Project Public Hearing.

- The Engineer shall provide final completed construction plans and documents to the Town within [redacted] calendar days following Town Council authorization of the final design and right-of-way acquisition.

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

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

#### 4. Compensation/Time of Payment

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

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

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

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

#### 5. Standard of Care

Engineer shall perform for or furnish to Town professional engineering and related services in all phases of the project to which this Contract applies as hereinafter provided. Engineer shall serve as Town's prime design professional and engineering representative for the project providing professional engineering consultation and advice with respect thereto. Engineer may employ such Engineer's

Consultants as Engineer deems necessary to assist in the performance or furnishing of professional engineering and related services hereunder Engineer shall not be required to employ any Engineer's Consultant unacceptable to Engineer.

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

#### 6. Opinions of Probable Construction Cost

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

#### 7. Notices

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

Town of Garner	[Company Name]
Attn: Leah Harrison	Attn:
Telephone:919-773-4423	Telephone:
Address: 900 7 <sup>th</sup> Avenue	Address:
Garner, NC 27529	

#### 8. Non-discrimination

In consideration of the signing of this Contract, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, natural hair or hairstyles, ethnicity, creed, color, sex, pregnancy, marital or familial status, sexual orientation, gender identity or expression, national origin or ancestry, National Guard or veteran status, religious belief or non-belief, age, and disability with reference to the subject matter of this Contract, no matter how remote.

#### 9. Minority or Women Owned Businesses

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

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

the Town by written notice.

10. Assignment

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

11. Applicable Law/Forum/Mediation

All matters relating to this Contract shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Contract shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division. Participation in a non-binding mediation is a condition precedent to filing any lawsuit arising out of this Contract.

12. Insurance

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

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

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

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

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

**Certificate of Insurance** - Engineer agrees to provide the Town a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Engineer's insurer. If Engineer receives a non-renewal or cancellation

notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Engineer agrees to notify the Town within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

Town of Garner  
Town Manager  
900 7<sup>th</sup> Avenue  
Garner, NC 27529

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

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

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

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

### 13. Indemnity

To the maximum extent allowed by law, the Engineer shall defend, indemnify, and save harmless the Town of Garner, its agents, officers, and employees, from and against all charges that arise in any manner from, in connection with, or out of this contract to the extent proximately caused by the negligent acts, errors or omissions of the Engineer or subcontractors or anyone directly or indirectly employed by any of them. In performing its duties under this section, the Engineer shall at its sole expense defend the Town of Garner, its agents, officers, and employees with legal counsel reasonably acceptable to the Town. As used in this subsection – "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, expenses, interest, reasonable attorney's fees, and amounts for alleged violations of North Carolina law or federal law, including but not limited to, sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders. Nothing in this section shall affect any warranties in favor of the Town that are otherwise provided in or arise out of this contract. Nothing in this section shall require the Engineer to defend

the Town of Garner if the Engineer is a “design professional” as defined in N.C.G.S. § 22B-1(f)(4), or if this Contract includes “design professional services” as defined in N.C.G.S. § 22B-1(f)(6). This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contract under this contract.

#### 14. Intellectual Property

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

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

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

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

#### 15. Force Majeure

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

#### 16. Advertising

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

## 17. Cancellation

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

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

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

## 18. Laws/Safety Standards

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

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

### A. Accident Prevention

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

### B. Environmental Protection

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

### C. Employee Education and Training

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

## 19. Applicability of North Carolina Public Records Law

Notwithstanding any other provisions of this Contract, this Contract and all materials submitted to the Town by the Engineer are subject to the public records laws of the State of North Carolina and it is the responsibility of the Engineer to properly designate materials that may be protected from

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

## 20. Miscellaneous

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

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

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

## 21. Right of Audit and Examination of Records

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

- a. The Town may conduct an audit of any services performed and fees paid subject to this Contract. The Town, or its designee, may perform such an audit throughout the contract period and for three (3) years after termination thereof or longer if otherwise required by law.
- b. The Engineer and its agents shall maintain all books, documents, papers, accounting records, contract records and such other evidence as may be appropriate to substantiate costs incurred under this Contract. The Town, or its designee, shall have the right to, including but not limited to: review and copy records; interview current and former employees; conduct such other investigation to verify compliance with contract terms; and conduct such other investigation to substantiate costs incurred by this Contract.
- c. "Records" shall be defined as data of every kind and character, including but not limited to books, documents, papers, accounting records, contract documents, information, and materials that, in the Town's sole discretion, relate to matters, rights, duties or obligations of this Contract.

- d. Records and employees shall be available during normal business hours upon advanced written notice. Electronic mail shall constitute written notice for purposes of this section.
- e. Engineer shall provide the Town or its designee reasonable access to facilities and adequate and appropriate workspace for the conduct of audits.
- f. The rights established under this section shall survive the termination of the Contract, and shall not be deleted, circumvented, limited, confined, or restricted by contract or any other section, clause, addendum, attachment, or the subsequent amendment of this Contract.
- g. The Engineer shall reimburse the Town for any overcharges identified by the audit within ninety (90) days of written notice of the Town's findings.

22. E – Verify

Engineer represents and covenants that the Engineer and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). The Town is relying on this section in entering into this contract.

23. Iran Divestment Act Certification

Engineer represents, covenants, and certifies that it is not listed on the list of restricted companies developed and published by the North Carolina State Treasurer as required by NCGS Section 147-86.58

24. Companies Boycotting Israel Divestment Act Certification

Engineer represents, covenants, and certifies that it is not listed on the list of restricted companies developed and published by the North Carolina State Treasurer as required by NCGS Section 147-86.81.

25. Incorporation of Documents/Complete Agreement

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

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

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

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

THIS CONTRACT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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

**ENGINEER**

**TOWN OF GARNER**

By:

By:

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Jodi Miller  
Town Manager

ATTEST:

ATTEST:

By:

By:

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Stella Gibson  
Town Clerk

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

\_\_\_\_\_  
David Beck  
Finance Director

THIS INSTRUMENT APPROVED AS TO FORM

\_\_\_\_\_  
Terri Jones  
Town Attorney

(Affix Town Seal)