

AGREEMENT

FOR

PROFESSIONAL SERVICES

BETWEEN

JACOBS ENGINEERING GROUP INC.

AND

TOWN OF CAROLINA BEACH

**AGREEMENT FOR
PROFESSIONAL SERVICES**

TABLE OF CONTENTS

ARTICLE 1	General Obligations of Consultant	1
ARTICLE 2	Compensation	1
ARTICLE 3	Payments	1
ARTICLE 4	Period of Service	1
ARTICLE 5	Changes in Scope of Services	1
ARTICLE 6	Standard of Care	2
ARTICLE 7	Indemnification	2
ARTICLE 8	Limitation of Liability	2
ARTICLE 9	Insurance	3
ARTICLE 10	Relationship of Consultant to Client	3
ARTICLE 11	Personnel	3
ARTICLE 12	Ownership of Instruments of Service and Data	4
ARTICLE 13	Permits and Licenses	4
ARTICLE 14	Adherence to Laws	4
ARTICLE 15	Nondisclosure of Proprietary and Confidential Materials	4
ARTICLE 16	Certification or Sealing of Instruments of Services by Professional Consultant	5
ARTICLE 17	Force Majeure	5
ARTICLE 18	Project Delay	6
ARTICLE 19	Construction Phase Services	6
ARTICLE 20	Governing Law	7
ARTICLE 21	Alternate Dispute Resolution	7
ARTICLE 22	Notices and/or Communications	8
ARTICLE 23	Miscellaneous	8

**AGREEMENT FOR
PROFESSIONAL SERVICES**

THIS AGREEMENT, made and executed as of the _____ day of _____, 20__ by and between **JACOBS ENGINEERING GROUP INC.**, with a place of business at 111 Corning Rd., Suite 116, Cary, NC 27518 (hereinafter called “Consultant”) and Town of Carolina Beach, a municipal corporation, with a place of business at 1121 N Lake Park Blvd., Carolina Beach, NC 28428 (hereinafter called “Client”), collectively referred to herein as “Parties”, provides as follows:

ARTICLE 1

GENERAL OBLIGATIONS OF CONSULTANT

The description of the Client’s project (the “Project”) and scope of services (hereinafter “Services”) to be provided to Client is stated in a formal Proposal from Consultant dated _____ (the “Proposal”). The Proposal is made a part of this Agreement by reference.

ARTICLE 2

COMPENSATION

Consultant will be compensated for Services as set forth in the Proposal.

ARTICLE 3

PAYMENTS

Consultant will submit monthly invoices for compensation and expenses by electronic transmission. Payments will be due within 30 days after receipt of invoices and shall be made by electronic funds transfer to the bank and account designated in the invoice. Past due amounts will accrue interest at one and one-half percent (1½%) per month, without limiting other remedies.

ARTICLE 4

PERIOD OF SERVICE

Consultant shall make its best efforts to complete its Services for the Project within the time period set forth in the Proposal.

ARTICLE 5

CHANGES IN SCOPE OF SERVICES

Client may, at any time, make changes in the scope of Services for the Project or in the definition of Services to be performed. In the event Client notifies Consultant of its desire to make a

change in the scope of Services that may change the cost of performance, Consultant shall, within ten (10) working days after receiving such notice, give Client notification of any potential change in price for the Services. Equitable adjustments to price and time of performance resulting from scope of Services changes will be negotiated and upon mutual agreement by Client and Consultant, this Agreement will be modified by a written instrument, signed by both parties, to reflect the changes in scope of Services, price and schedule.

ARTICLE 6

STANDARD OF CARE

- A. Consultant shall perform the Services with reasonable care, consistent with applicable professional and industry standards and in compliance with all applicable laws. Following completion of its Services and for a period of twelve (12) months thereafter, if the Services provided hereunder do not conform to the foregoing standards and the same is reported to Consultant by Client in writing promptly after recognition thereof, Consultant shall, at no cost to Client, furnish all remedial engineering, design or consulting Services required in connection therewith as soon as reasonably possible after receipt of such report from Client; and Consultant shall have no liability for costs related to the repair, replacement, addition or deletion of materials, equipment or facilities as a result of such failure to conform to the above-referenced warranties, which costs shall be deemed costs of the project, whether incurred during performance of the Services or after completion of the Services.
- B. All representations, warranties and guarantees made by Consultant in connection with its Services are limited to those set forth in this Article. **IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED.** For any deficiencies in the Services, Client shall be restricted to the remedies expressly set forth in this Article, whether asserted on the basis of contract, tort (including negligence) or otherwise.

ARTICLE 7

INDEMNIFICATION

Consultant will defend, indemnify and hold the Client harmless from all claims, liabilities, demands, costs, expenses (including attorneys' fees) and causes of action arising out of third party claims for bodily injury (including death) and damage to tangible property to the extent caused by a negligent act or omission of Consultant, its employee or subconsultant. No negligence shall be attributed to Consultant based on any acts or omissions of Client's contractors or other consultants.

ARTICLE 8

LIMITATION OF LIABILITY

The total aggregate liability of Consultant arising out of the performance or breach of this Agreement shall not exceed twenty-five percent (25%) of the compensation paid to Consultant under this Agreement. Notwithstanding any other provision of this Agreement, Consultant shall have no liability to the Client for contingent, consequential or other indirect damages including, without limitation, damages for loss of use, revenue or profit; operating costs and facility

downtime; or other similar business interruption losses, however the same may be caused. The limitations and exclusions of liability set forth in this Article shall apply regardless of the fault, breach of contract, tort (including negligence), strict liability or otherwise of Consultant, its employees or subconsultants. The Parties agree that the limitations and exclusions of liability set forth herein shall not be interpreted as a form of indemnification.

ARTICLE 9 INSURANCE

- A. During the term of this Agreement, Consultant shall, at its sole expense, secure and maintain in force policies of insurance of the following types:
1. Workers' compensation coverage in accordance with the statutory requirements of the jurisdiction in which services are to be performed.
 2. Employer's liability insurance with a minimum of \$250,000.
 3. Comprehensive General Liability Insurance, subject to a limit for bodily injury and property damage combined of at least \$1,000,000 aggregate.
 4. Automobile liability insurance subject to a limit for bodily injury and property damage combined, of at least \$1,000,000 per occurrence.
- B. Consultant shall furnish Client certificates of insurance evidencing the insurance coverages required in this Article 9. The certificates shall stipulate that should any of the above insurance policies be cancelled before the termination of this Agreement, the issuing company will endeavor to mail thirty (30) days' written notice to Client.

ARTICLE 10 RELATIONSHIP OF CONSULTANT TO CLIENT

The Consultant shall be and shall operate as an independent contractor with respect to the Services performed under this Agreement and shall not be nor operate as an agent, fiduciary or employee of Client. This Agreement is not intended to be one of hiring under the provisions of a Workers' Compensation statute or other law and shall not be so construed.

ARTICLE 11 PERSONNEL

Consultant agrees that during Consultant's performance of Services hereunder, adequate provision shall be made to staff and retain the services of such competent personnel as may be appropriate or necessary for the performance of such Services. Client shall have the right to review the personnel assigned by Consultant, and Consultant shall remove any personnel not acceptable to Client. Consultant may remove personnel assigned to the Project without Client's prior approval, provided the progress of the Services shall not be unreasonably impaired.

ARTICLE 12

OWNERSHIP OF INSTRUMENTS OF SERVICE AND DATA

- A. Client agrees to defend, indemnify and hold harmless Consultant and its employees from and against claims resulting from re-use of the design data, drawings, estimates, calculations and specifications prepared by Consultant (“instruments of service”) on extensions of the project or at a location other than that contemplated by this Agreement. Client is advised that should Client re-use the instruments of service at another location, the instruments of service should be reviewed and sealed by Client or an engineer licensed in the jurisdiction where the instruments of service are sought to be re-used.
- B. All materials and information that are the property of Client and all copies or duplications thereof shall be delivered to Client by Consultant, if requested by Client, upon completion of Services. Consultant may retain one complete set of reproducible copies of all of its instruments of service.

ARTICLE 13

PERMITS AND LICENSES

Consultant represents to Client that it has and will maintain during the performance of the Services under this Agreement any permits or licenses which, under the regulations of federal, state, or local governmental authority, it may be required to maintain in order to perform the Services.

ARTICLE 14

ADHERENCE TO LAWS

Consultant shall adhere to federal, state, and local laws, rules, regulations, and ordinances applicable to performance of the Services hereunder including, without limitation, all applicable provisions of federal and state law relating to equal employment opportunity and non-discrimination.

ARTICLE 15

NONDISCLOSURE OF PROPRIETARY AND CONFIDENTIAL MATERIALS

Client and Consultant agree that any disclosure will be made on the following basis:

- A. Confidential Client Information (“Primary Data”) disclosed to Consultant which is identified in writing by Client as proprietary to Client shall be: (1) safeguarded, (2) maintained in confidence, and (3) made available by Consultant only to those of its employees or others who have a need-to-know and agree to equivalent conditions pertaining to nondisclosure as contained herein.
- B. Upon completion of the Project or sooner if Client so requests, the Consultant shall return to Client’s representative all Primary Data furnished to the Consultant under this

Agreement and shall, if requested, deliver to the Client's representative all drawings, schedules, calculations, and other documents generated by Consultant for use in connection with the Project ("Secondary Data").

- C. Consultant shall not use for itself or to disclose to third parties any Primary Data or Secondary Data without the prior written consent of Client.
- D. The nondisclosure obligations pertaining to Primary and Secondary Data shall terminate three (3) years from date Consultant's association with this Project terminates. The nondisclosure obligations shall not apply to any data which:
 - 1. Was known to the Consultant (and previously unrestricted) before disclosure of Primary Data to Consultant under this Agreement or before generation of Secondary Data;
 - 2. Is subsequently acquired by the Consultant from a third party who is not in default of any obligation restricting the disclosure of such information; or
 - 3. Is subsequently available or becomes generally available to the public.
- E. Notwithstanding this nondisclosure obligation, Consultant may nevertheless draw upon its experience in its future association with other clients.

ARTICLE 16

CERTIFICATION OR SEALING OF INSTRUMENTS OF SERVICE BY PROFESSIONAL CONSULTANT

All specifications, drawings, and other engineering documents that are prepared by Consultant shall be certified or sealed by a registered professional engineer. Such certifications or seals shall be valid for the state in which the specifications, drawings, or other engineering documents are to be used or applied.

ARTICLE 17

FORCE MAJEURE

Any delays in or failure of performance by Consultant or Client, other than the payment of money, shall not constitute default hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the reasonable control of Client or Consultant, as the case may be, including but not limited to, acts of God or the public enemy; compliance with any order or request of any governmental authority; fires, floods, explosion, accidents; riots, strikes or other concerted acts of workmen, whether direct or indirect; or any causes, whether or not of the same class or kind as those specifically named above, which are not within the reasonable control of Client or Consultant respectively. In the event that any event of force majeure as herein defined occurs, Consultant shall be entitled to a reasonable extension of time for performance of its Services under this Agreement.

ARTICLE 18
PROJECT DELAY

If the Consultant's proposal calls for provision of its Services under a guaranteed maximum price, fixed fee, or stipulated lump sum basis and the Consultant's work on any phase of the Services is extended by one or more force majeure events or other delays not attributable in whole or in part to the fault of Consultant, then the guaranteed maximum price, fixed fee, or stipulated lump sum, as the case may be, shall be equitably adjusted.

ARTICLE 19
CONSTRUCTION PHASE SERVICES

If this Agreement includes the furnishing of any Services during the construction phase of the Project, the following terms will apply:

- A. If Consultant is called upon to observe the work of Client's construction contractor(s) for the detection of defects or deficiencies in such work, Consultant will not bear any responsibility or liability for such defects or deficiencies or for the failure to so detect. Consultant shall not make inspections or reviews of the safety programs or procedures of the construction contractor(s), and shall not review their work for the purpose of ensuring their compliance with safety standards.
- B. If Consultant is called upon to review submittals from construction contractors, Consultant shall review and approve or take other appropriate action upon construction contractor(s)' submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the contract documents. The Consultant's action shall be taken with such reasonable promptness as to cause no delay in the work while allowing sufficient time in the Consultant's professional judgment to permit adequate review. Review of such submittals will not be conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the construction contractor, all of which remain the responsibility of the construction contractor. The Consultant's review shall not constitute approval of safety precautions or of construction means, methods, techniques, sequences or procedures. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- C. Consultant shall not assume any responsibility or liability for performance of the construction services, or for the safety of persons and property during construction, or for compliance with federal, state and local statutes, rules, regulations and codes applicable to the conduct of the construction services.
- D. All services performed by others, including construction contractors and their subcontractors, shall be warranted only by such others and not by the Consultant.
- E. All contracts between Client and its construction contractor(s) shall contain broad form indemnity and insurance clauses in favor of Client and Consultant, in a form satisfactory to Consultant.

ARTICLE 20
GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

ARTICLE 21
DISPUTE RESOLUTION

- A. Client and Consultant understand and appreciate that their long term mutual interests will be best served by affecting a rapid and fair resolution of any claims or disputes which may arise out of this Agreement. Therefore, both Parties agree to use their best efforts to resolve all such disputes as rapidly as possible on a fair and equitable basis. Toward this end both Parties agree to develop and follow a process for presenting, rapidly assessing, and settling claims on a fair and equitable basis.
- B. If any dispute or claim arising under this Agreement cannot be resolved by the project managers for the Parties within thirty (30) days after they identified the problem, the Parties agree that either of them may refer the matter to a panel consisting of one (1) executive from each party not directly involved in the claim or dispute for review and resolution. A copy of the Agreement, agreed upon facts (and areas of disagreement), and concise summary of the basis for each side's contentions will be provided to both executives who shall review the same, confer, and attempt to reach a mutual resolution of the issue.
- C. If the dispute cannot be resolved under the process set forth in Section B, the Parties may elect to resolve the dispute through non-binding mediation. If mediation is to be utilized, the Parties shall select a single unrelated but qualified Mediator who shall hold a hearing (not to exceed half a day) during which each Party shall present its version of the facts (supported, if desired, by sworn, written testimony, and other relevant documents), its assessment of damages, and its argument. The Parties shall provide the Mediator with copies of all documents provided to their senior executives under Section B at least ten (10) days prior to the scheduled date of the mediation hearing. The Parties may also provide the Mediator with copies of any laws or regulations that they feel are relevant to the dispute. A copy of the Agreement and any disputed Purchase Orders will be provided to the Mediator. Formal written arguments, legal memorandum, and live testimony are discouraged but may be permitted at the discretion of the Mediator. Both Parties agree to make any involved employees or documents available to the other Party for its review and use in preparing its position under this clause without the need for subpoena or other court order.
- D. Following the mediation, the Mediator will meet with both Parties and provide each of them, on a confidential basis, with his/her views of the strengths and weaknesses of their respective positions. The Parties will then reconvene and, with the assistance of the Mediator, attempt to resolve the matter. If the Parties cannot achieve resolution on the day of the mediation hearing or within forty-eight (48) hours thereafter, the Mediator will, within fifteen (15) additional days, issue a written, non-binding decision on the issue.
- E. If the matter has not been resolved utilizing the processes set forth above and the Parties are unwilling to accept the non-binding decision of the Mediator, either or both Parties may

elect to pursue resolution through litigation. In the event of any litigation between the Parties, it is agreed and stipulated that the case shall be heard and decided by the court, without a jury.

- F. The costs of the Mediator shall be borne equally by the Parties. Each Party will bear its own costs of mediation.

ARTICLE 22

NOTICES AND/OR COMMUNICATIONS

All notices and/or communications to be given under this Agreement shall be in writing and shall be addressed as follows:

To Consultant

Original to: Verd Anna Pettigrew
Position: Project Manager
Address: Jacobs Engineering Group Inc.
111 Corning Rd., Suite 116
Cary, NC 27518

Copy to: Phil Ogden
Position: Manager of Projects
Address: Jacobs Engineering Group Inc.
111 Corning Rd., Suite 116
Cary, NC 27518

To Client

Original to: Gigi Baggarley
Position: GIS Administrator
Address: Town of Carolina Beach
1121 N Lake Park Blvd.
Carolina Beach, NC 28428

Copy to: Bruce Oakley
Position: Town Manager
Address: Town of Carolina Beach
1121 N Lake Park Blvd.
Carolina Beach, NC 28428

Either party may, by written notice to the other, change the representative or the address to which such notices, certificates, or communications are to be sent.

Any notice or communication required in writing hereunder shall be given by registered, certified, or first class mail (postage required), TWX, telex, or telecopy addressed to the party at its address set forth above. Communications by TWX, telex, or telecopy shall be confirmed by depositing a copy on the same day with the U.S. Post Office for transmission by registered, certified, or first class mail in an envelope properly addressed. The postmark date of notices sent by mail (except for confirmatory notices) shall be the date of notice.

ARTICLE 23

MISCELLANEOUS


- A. *Waiver.* Waiver by either party of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way effect, limit, or waive such party's rights thereafter to enforce and compel strict compliance with all the terms and conditions of this Agreement.

- B. *Severability.* Any provision of this Agreement prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of this Agreement.
- C. *Rights and Remedies.* The specific remedies set forth in this Agreement, including but not limited to those remedies with respect to the quality of the Services performed by Consultant hereunder, are the exclusive remedies of the Parties.
- D. *Transfer of Ownership.* Client represents that either it is the sole owner of the facilities which are the object of the Services or that it is authorized to bind and does bind all owners of such facilities to the releases and limitations of liability set forth in this Agreement. Client further agrees that any future recipient of any interest in the facilities and the Services will be bound by such releases and limitations of liability such that the total aggregate liability of Consultant to Client and such recipients shall not exceed the limits of liability set forth in this Agreement.
- E. *Publicity.* Neither of the Parties shall make any press release, news disclosure or other advertising related to the Project that includes the name of the other party without first obtaining the written approval of the other party.
- F. *Entirety of Agreement.* This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations and discussions concerning the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

CONSULTANT:
JACOBS ENGINEERING GROUP INC.

CLIENT:

By:  Digitally signed by Philip Ogden
 DN: cn=Philip Ogden, c=US,
 email=philip.ogden@jacobs.com
 Date: 2022.12.22 11:43:17 -
 05'00'

By: _____

Title: Manager of Projects _____

Title: Town Manager _____