

AGREEMENT BETWEEN CLIENT AND ENGINEER
FOR PROFESSIONAL SERVICES

Project Name: Sidewalk Improvements, Town of Swansboro

ENGINEER's Project No. 25078

THIS AGREEMENT is made *effective as of the* _____ day of _____, 2025, by and between the **Town of Swansboro**, a North Carolina municipality, hereinafter called CLIENT, and ARENDELL ENGINEERS PA., hereinafter called ENGINEER.

The CLIENT and ENGINEER for mutual consideration hereinafter set forth, agree as set forth below and as set forth in the attached standard provisions:

- 1.0 ENGINEER'S SERVICES: ENGINEER shall perform professional services in connection with the Project as set forth below and contained in this Agreement:

Services provided shall be as described in the Proposal for Professional Services, Scope of Services attached as Exhibit A, dated July 16, 2025 and made a part of this agreement herein.

- 2.0 ENGINEER shall start performing services hereunder beginning as of the "effective date."

- 3.0 ENGINEER COMPENSATION:

In accordance with this Agreement, the ENGINEER shall provide professional services for which the CLIENT shall compensate ENGINEER as follows:

Fees shall be in accordance with Exhibit A, Proposal for Professional Services, Fee Proposal dated July 16, 2025.

OTHER:

- 3.1 Payments will be made to the ENGINEER on a monthly basis upon presentation of an approved invoice.

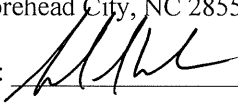
- 4.0 SPECIAL PROVISIONS:

- 4.1 The Agreement shall be governed by the laws of the State of North Carolina.
- 4.2 The ENGINEER shall acquire and maintain statutory workmen's compensation insurance coverage where applicable and comprehensive general liability insurance coverage. ENGINEER shall name the Town of Swansboro as additional insured on comprehensive general liability insurance policy.
- 4.3 The ENGINEER agrees to acquire and maintain professional liability insurance with a limit of at least \$1,000,000 for each claim and an annual aggregate of at least \$2,000,000.

- 4.4 In recognition of the relative risks and benefits of the Project to both the CLIENT and the ENGINEER, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law and to the extent not covered by insurance pursuant to Section 4.3 above, to limit the liability of the ENGINEER and ENGINEER's officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the ENGINEER and ENGINEER's officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed \$100,000 or the ENGINEER's total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.
- 4.5 ENGINEER is not responsible for the identifying, discovering, removal and/or treatment (remediation) of any hazardous waste, known or unknown at the site, nor for the consequences of any hazardous waste materials of any kind at the site, including, but not limited to asbestos and PCB's, as well as materials not yet known as hazardous.
- 4.6 Any notices required to be given under this Agreement may be given by enclosing the same in a sealed envelope, postage prepaid, addressed to the CLIENT at 601 W. Corbett Ave, Swansboro, N.C. 28584 and to the ENGINEER at 1004 Arendell Street, Morehead City, N.C. 28557 and by depositing same with the U. S. Postal Service. When so given, such notice shall be given from the time of mailing the same.

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

ENGINEER:
Arendell Engineers PA
1004 Arendell Street
Morehead City, NC 28557

By:  _____

Title: PRESIDENT _____

Date: 07/16/2025 _____

Witness:  _____

CLIENT:
Town of Swansboro
601 W. Corbett Avenue
Swansboro, NC 28584

By: _____

Title: _____

Date: _____

Witness: _____

AGREEMENT BETWEEN CLIENT AND ENGINEER

STANDARD PROVISIONS

1.0 CLIENT 'S RESPONSIBILITY:

The CLIENT shall, unless otherwise provided for in this agreement, at no cost to the ENGINEER:

- 1.1 Furnish all reasonable geotechnical data necessary for the Project including all appropriate professional interpretations. The ENGINEER makes no representations concerning soil conditions and is not responsible for any liability that may arise out of the performance or failure to perform soils investigations and testing.
- 1.2 Guarantee full and free access for the ENGINEER to enter upon all property for the performance of the ENGINEER's services.
- 1.3 Furnish to the ENGINEER all existing studies, reports and other available data and services of others pertinent to the Scope of Services, and obtain additional reports and data as required; and ENGINEER shall be entitled to rely on such information and services in performance of services hereunder.
- 1.4 Give prompt written notice to the ENGINEER whenever the CLIENT observes or otherwise becomes aware of any defect in the Project or other event which may substantially affect the ENGINEER's performance of services under this Agreement.

2.0 PAYMENTS TO THE ENGINEER:

- 2.1 Progress payments shall be made in proportion to the services rendered and as indicated within this Agreement and shall be due and owing upon the ENGINEER's submittal of any invoice. Past due amounts owed shall include a late payment charge which will be computed at the interest rate of 0.67 percent per month, which is an Annual Percentage Rate of 8 percent, and will be applied to the balance unpaid 30 days after the date of the original invoice.
- 2.2 The ENGINEER may, upon seven days written notice, suspend services if CLIENT fails to make payments as required in this Agreement.
- 2.3 No deductions shall be made from the ENGINEER's compensation on account of penalty or other sums withheld from payment to Contractors.
- 2.4 Hourly rates and reimbursable expenses shall be subject to periodic revision as stated on the Rate Schedule. In the event revisions are made during the lifetime of this Agreement, the increased or decreased hourly rates and Reimbursable Expenses shall apply to all remaining compensation for services performed by the ENGINEER where such rates provide the basis for the ENGINEER's compensation.
- 2.5 Reimbursable expenses are in addition to ENGINEER's compensation for services performed on an hourly basis and include expenditures made by the ENGINEER, his employees or his consultant(s) in the interest of the project.

2.6 If the Project is delayed or if the ENGINEER's services on the project are delayed or suspended for more than three months for reasons beyond the ENGINEER's control, the ENGINEER may, after giving seven days written notice to the CLIENT, terminate this Agreement and the CLIENT shall compensate the ENGINEER in accordance with the termination provision contained hereinafter in this Agreement.

3.0 GENERAL PROVISIONS:

3.1 All drawings, Specifications, computer data, and other work data of the ENGINEER for this Project are instruments of service for this Project only. The CLIENT shall not reuse any of the ENGINEER's instruments of service on extensions of this Project or on any other project without the written permission of the ENGINEER. Any unauthorized reuse shall be at the CLIENT'S risk and the CLIENT agrees to hold harmless the ENGINEER from all claims, damages, and expenses including attorney's fees arising out of such unauthorized reuse of the ENGINEER's instruments of service by the CLIENT or by others acting through the CLIENT.

3.2 Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without prior written consent of the other party. 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. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent associates and consultants as ENGINEER may deem appropriate to assist in the performance of the services hereunder.

3.3 This Agreement may be terminated by either party by seven days written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party. If this Agreement is terminated, the ENGINEER shall be paid for services performed and accepted by the CLIENT through the termination notice date including Reimbursable Expense.

3.4 This Agreement represents the entire and integrated agreement between the ENGINEER and CLIENT and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement may be amended only by written instrument signed by both the CLIENT and the ENGINEER.

3.5 In the event the parties to this Agreement are unable to reach a settlement of any fee dispute arising out of the services under this agreement, then such disputes shall be settled by mediation by a mediator to be mutually agreed upon by both parties, and shall proceed in accordance with the Rules of Mediation of the American Arbitration Association then pertaining. If the parties cannot agree on a single mediator, then the mediator(s) shall be selected in accordance with the above-referenced rules. In the event the matter cannot be resolved through mediation, the parties agree that any civil proceeding must be filed in Carteret County, North Carolina.

3.6 Should litigation occur between the two parties relating to the provisions of this Agreement, all reasonable litigation expenses, collection expenses, witness fees, court costs and attorney's fees incurred by the prevailing party shall be paid by the non-prevailing party to the prevailing party.

3.7 Neither party shall hold the other responsible for damages caused by acts of God, strikes, lockouts,

accidents, or other events beyond the control of the other or the other's employees and agents.

- 3.8 In the event any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding on the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- 3.9 The ENGINEER is not responsible for design and construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences or procedures required for the Contractor to perform his work. Omitted services include but are not limited to shoring, scaffolding, underpinning, temporary detainment of excavations, and any erection methods and temporary bracing.
- 4.0 The ENGINEER intends to render his services under this agreement in accordance with generally accepted professional practices for the intended use of the Project and makes no warranty either expressed or implied.
- 4.1 Any estimate of construction costs prepared by the ENGINEER represents his judgment as a design professional and is supplied for the general guidance of the CLIENT. Since the ENGINEER has no control over the cost of labor and materials, or over competitive bidding or market conditions, the ENGINEER does not guarantee the accuracy of such estimates as compared to Contractors bids or actual cost to the CLIENT.

**TOWN OF SWANSBORO
SIDEWALK IMPROVEMENTS (25078)
SWANSBORO, NORTH CAROLINA
EXHIBIT A
PROPOSAL FOR PROFESSIONAL SERVICES**

July 16, 2025

INTRODUCTION

The Town proposes to construct five (5) new sections of 5' wide sidewalk totaling approximately 7,031 linear feet in several locations in Swansboro, North Carolina. The new sidewalks will be along Old Hammock Road and Main Street Extension, Queen's Creek Road and Highway 24, Hammocks Beach Road, Pineland Drive to the Cottages along Old Hammock Road, and the northside of Highway 24 between Old Hammocks Road to Park Lane. This proposal is for the professional surveying and engineering services required to complete field surveying, design, NCDOT approvals, and opinions of probable construction costs, preparation of Contract Documents, bidding & negotiation, and construction administration. Construction administration will involve bi-weekly visits to the site or the CLIENT's office to discuss project status.

PROJECT TEAM

Arendell Engineers will be the Project Engineers responsible for coordination of the activities of the project team, and be the point of contact for the CLIENT. Land surveying and mapping services will be provided by Charles F. Riggs & Associates, Inc.

PROJECT SCOPE

The scope of services proposed herein represents the **BASIC SERVICES** and is based on the experience of this firm on similar projects and project components, the scope of the project as defined by this proposal and the regulatory requirements of agencies of the State of North Carolina with jurisdiction over construction at the site.

BASIC SERVICES

References to the "**ENGINEER**" in the scope of services are to the ENGINEER as the project manager responsible to the CLIENT for the execution of the services proposed. Execution of the services by the ENGINEER includes execution of work by members of the project team as required to execute all aspects of the scope of services. References to the "**CLIENT**" refer to the Town of Swansboro.

The following scope of services is proposed:

1.0 – CLIENT COORDINATION AND DATA COLLECTION

Following receipt of written authorization to proceed with Site Evaluation and Data Collection, the ENGINEER shall:

- 1.1 *Coordination with CLIENT.* Work with the CLIENT to identify the overall project goals and confirm the scope of the project and the project schedule.
- 1.2 *Topographic and location surveying.* Conduct a location of the streets and shoulders to the right-of-way lines and on private properties along the five (5) project areas where the sidewalks will be located. Surveying also includes location and topographic surveying of right-way-lines and property corners, edge of pavements and road centerlines, and location of existing underground & overhead utilities.

2.0 – PRELIMINARY DESIGN AND COST OPINION

Following receipt of written authorization to proceed with Preliminary Design, the ENGINEER shall:

- 2.1 *Preliminary Design.* Complete preliminary design of the sidewalk improvements. Meet with the CLIENT in person to review location of sidewalk and coordinate project elements and approve the preliminary design.
- 2.2 *Opinion of probable costs.* Prepare opinions of probable costs for the sidewalk as represented in the preliminary design. Submit to the CLIENT for approval.

3.0 – FINAL DESIGN, PERMITTING AND COST OPINIONS

Following approval of the preliminary design by the CLIENT, the ENGINEER shall:

- 3.1 *Final design.* Based on the approved preliminary design and the topographic and location survey prepare, for incorporation into the Contract Documents, final drawings to show the general scope, extent and character of the work to be furnished and performed by the contractor(s) (hereinafter called "Drawings") and Specifications.
- 3.2 *Permitting and NCDOT approval.* Meet with NCDOT personnel before and during project to coordinate project elements and preparation and submittal of documents.
- 3.3 *Update opinion of probable project costs.* Prepare opinions of probable project costs for the sidewalk improvements developed in task 2.2. The opinions will include costs for construction and contingencies.
- 3.4 *Construction Documents.* Prepare for review and approval by the CLIENT, their legal counsel and other advisors contract agreement forms, general conditions, and supplementary general conditions, all of which shall be consistent with the forms and pertinent guides of the Engineer's Joint Contract

Documents Committee (EJCDC), and assist in the preparation of other related documents as specifically required by the CLIENT. Furnish the above documents and Drawings and Specifications (hereinafter referred to as the Contract Documents) and present and review them in person with the CLIENT.

- 3.5 *Present final design to CLIENT.* Prior to final submittal to NCDOT, present the Final Design Documents including the opinion of probable construction costs, to the CLIENT in person. Assist the CLIENT in review of the documents.

4.0 BIDDING AND NEGOTIATIONS

Upon CLIENT authorization to proceed with Bidding and Negotiation, the ENGINEER shall:

- 4.1 *Advertise for Bids.* Assist CLIENT in advertising for and obtaining bids for construction, materials, equipment and services and maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conference and receive and process deposits for Bidding Documents.
- 4.2 *Issue Addenda.* Issue Addenda as appropriate to interpret, clarify or expand the Bidding Documents.
- 4.3 *Evaluate Subcontractors.* Consult with and advise the CLIENT as to acceptability of subcontractors, suppliers, and other persons and organizations proposed by the prime contractor(s) for those portions of the work as to which such acceptability is required by the Bidding Documents.
- 4.4 *Substitute Materials.* Consult with the CLIENT concerning and determine the acceptability of substitute materials and equipment proposed by the contractor(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.
- 4.5 *Bid Opening.* Attend the bid opening, prepare bid tabulation summary and assist the CLIENT in assembling and awarding contracts for construction, materials, equipment or services. Issue Notice of Award. Prepare contract documents for execution by CLIENT and Contractor. Issue notice of award and notice to proceed.

5.0 CONSTRUCTION ADMINISTRATION

Upon CLIENT authorization to proceed with Construction Administration, the ENGINEER shall:

- 5.1 *General Administration of the Construction Contract.* Consult with and advise the CLIENT and act as their representative as provided in the Standard General Conditions of the Construction Contract. The extent and limitations of the duties of the ENGINEER as assigned in the Standard General Conditions shall not be modified, except as the ENGINEER may agree to in writing. All of CLIENT instructions to the contractor shall be issued through the ENGINEER who will have the

authority to act on behalf of the CLIENT to the extent provided in the Standard General Conditions except as otherwise provided in writing.

- 5.2 *Visits to the Site and Observation of Construction.* Make visits to the site at intervals appropriate to the various stages of Construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of the contractor(s)' work. Based on information obtained during the site visits and on observations by other members of the project team, the ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and the ENGINEER shall keep the CLIENT informed of the progress of the work.
- 5.3 *Defective Work.* During such site visits and on the basis of observations of the work, the ENGINEER may disapprove of or reject the contractor(s)' work while it is in progress if ENGINEER believes the work will not produce a completed project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the project as reflected in the Contract Documents.
- 5.4 *Interpretations and Clarifications.* Issue necessary interpretations and clarifications of the Contract Documents and in connection herewith prepare work directive changes or change orders as required.
- 5.5 *Shop Drawings.* Review and approve (or take action to obtain review and approval by the appropriate member of the project team) Shop Drawings, samples and other data which contractor(s) is required to submit, but only for conformance with the design concept of the project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.
- 5.6 *Substitutes.* Evaluate and determine the acceptability of substitute materials and equipment proposed by the contractor(s).
- 5.7 *Inspections and Tests.* Have authority, as representative of the CLIENT, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testing and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with the Contract Documents).
- 5.8 *Disputes between CLIENT and Contractor.* Act as the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of the CLIENT and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and

progress of the work. ENGINEER shall not be liable for the results of any such interpretations or decisions rendered in good faith.

5.9 *Applications for Payment.* Based on the ENGINEER's on-site observations as an experienced and qualified design professional and upon review of applications for payment and the accompanying data and schedules, the ENGINEER shall determine the amounts owed to the contractor(s) and recommend in writing payments to the contractor(s).

5.10 *Inspections.* Conduct an inspection of the work to determine if the work is Substantially Complete and a final inspection to determine if the work is acceptable so that recommendations can be made in writing to the CLIENT for final payment to the Contractor.

ADDITIONAL SERVICES

The work described in the scope of services, paragraphs 1.1 through 5.10 does not include work in the following categories of work. Work in these categories or other services requested by the CLIENT shall be considered Additional Services.

If the CLIENT wishes the ENGINEER to perform any of the following Additional Services, the CLIENT shall so instruct the ENGINEER in writing and ENGINEER shall perform or obtain from others such services and will be paid therefore on an hourly basis in accordance with the rate schedule for professional services for this firm.

- Services resulting from significant changes in the general scope, extent or character of the project, or major changes in the documentation previously accepted by the CLIENT where changes are due to causes beyond the ENGINEER's control.
- Providing renderings or models.
- Detailed consideration of operations, maintenance and overhead expenses; value engineering and the preparation of rate schedules, earnings and expense statements, cash flow and economic evaluations, feasibility studies, appraisals and valuations.
- Furnishing the services of environmental scientists, biologists, fisheries scientists, or other specialized scientific testing, evaluations or services not specifically included in the scope of services.
- Preparation of operations and maintenance manuals.
- Surveying services in connection with staking out work of contractor(s).
- Services for obtaining easements or rights-of-way and creating documents for construction or access easements.
- Preparing to serve or serving as ENGINEER or witness in any litigation, arbitration, or other legal or administrative proceeding except where required by the scope of services.
- The services of an independent cost estimator shall be Additional Services.

PROJECT SCHEDULE

ENGINEER is in a position to begin work on this project on or about July 14, 2025. A schedule for surveying and design can be coordinated to meet the specific needs of the CLIENT.

FEE PROPOSAL

Fees are proposed on a lump sum basis. Travel expenses (mileage only on this project) will be billed at the prevailing IRS allowable rate. Fees for permitting and legal advertisements in newspapers for bidding shall be paid by the CLIENT.

The following fees are proposed:

TASK#	DESCRIPTION	TOTAL
1.0	Client Coordination & Data Collection	\$35,532.00
2.0	Preliminary Design	\$13,440.00
3.0	Final Design, Permitting & Cost Opinions	\$17,934.00
4.0	Bidding & Negotiation	\$5,691.00
5.0	Construction Administration	\$19,656.00
TOTALS		\$92,253.00
Estimated Mileage Expenses		\$1,200.00
PROJECT TOTAL		\$93,453.00