

**CITY OF FAYETTEVILLE  
WORK AUTHORIZATION  
FOR  
PROFESSIONAL SERVICES  
BY  
HAZEN AND SAWYER**

---

In accordance with the General Services Agreement (Agreement) dated April 1, 2022, between the CITY OF FAYETTEVILLE (hereinafter called OWNER) and HAZEN AND SAWYER (hereinafter called CONSULTANT), OWNER hereby authorizes CONSULTANT to proceed and CONSULTANT agrees to perform in accordance with the terms of the Agreement and this Work Authorization, the following services for the following Project:

**I. PROJECT**

This Work Authorization is for professional services related to:

This Work Authorization is for professional services related to the City of Fayetteville Watershed Master Plan Program – Cross Creek. Hazen and Sawyer will provide project management services and development of proposed solution concepts for the Cross Creek watershed as Phase II – Part B of the Cross Creek watershed master plan. This work authorization is a continuation of Phase II – Part A, which was developed before the total quantity and characteristics of proposed solutions were known and did not include final deliverable preparation. This work authorization will be for the not-to-exceed fee shown in Exhibit A which is hereby attached and incorporated herein by reference.

Funding Mechanism: Stormwater Enterprise Fund

Division/Department Representing the City: Stormwater/Public Services

**II. AGREEMENT & SCOPE OF SERVICE**

The terms of the Agreement, attached as Exhibit B, are hereby incorporated by reference as if written herein and the parties confirm that its terms are a part of this Work Authorization.

The Scope of Services to be provided by CONSULTANT, in connection with this Authorization is as detailed in Exhibit A.

The CONSULTANT shall request written confirmation and or execute an additional Work Authorization describing any scope change before performing any work beyond the scope specified in this Work Authorization. The confirmation shall identify any change in compensation and/or delay in completion which the scope changes entails and must be approved by the City Manager or his designee.

**III. RESPONSIBILITIES**

The responsibilities of the OWNER and CONSULTANT, in addition to those provided in the Agreement which are specific to this Project, are as described in Exhibit A.

**IV. COMPENSATION**

OWNER shall compensate CONSULTANT for providing the services set forth herein in accordance with the terms of the Agreement.

In the absence of a lump sum fee agreement, it is understood and agreed that:

1. CONSULTANT will perform under this Agreement on a best effort, not-to-exceed ceiling price basis and will notify OWNER when the ceiling price will be exceeded.
2. The not to exceed compensation (including travel) for this Work Authorization is \$651,885. This is not a guaranteed maximum amount but CONSULTANT shall not continue performing work in excess of this amount without further specific authorization. OWNER will be billed only for actual time worked and identified expenses.

Payment shall be made in accordance with the terms of the above referenced Agreement.

**V. SCHEDULE**

All work under this Work Authorization shall begin February 1, 2024, and shall be complete by September 30, 2024.

**VI. MISCELLANEOUS**

1. The terms in this Work Authorization shall have the same meaning as provided in the Agreement.

2. **DIVESTMENT OF COMPANIES BOYCOTTING ISRAEL OR INVEST IN IRAN CERTIFICATION** Contractor certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58; (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel ((i) and (ii) to be collectively referred to as “FD Lists”); and (iii) it will not take any action causing it to appear on the Treasurer’s FD Lists created by the NC State Treasurer during the term of this Contract. By signing this Contract, Contractor further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the City for any and all damages, costs and attorneys’ fees incurred by the City in connection with any claim that this Contract or any part thereof is void due to Contractor appearing on the Treasurer’s FD Lists at any time before or during the term of this Contract.
3. **E-Verify- CONSULTANT** acknowledges that “E-Verify” is the federal E-Verify program operated by the U.S. Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. CONSULTANT further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with N.C. Gen. Stat. § 64-26(a). CONSULTANT pledges, attests and warrants through execution of this contract that CONSULTANT complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by CONSULTANT shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Work Authorization.
4. **Force Majeure-** 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, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
5. **Morality Clause-** If, in the sole opinion of the City of Fayetteville, at any time CONSULTANT or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an “Actor”) engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the City of Fayetteville or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the City of

- Fayetteville's finances, public standing, image, or reputation or are embarrassing or offensive to the City of Fayetteville or may reflect unfavorably on the City of Fayetteville or are derogatory or offensive to one or more employee(s) or customer(s) of the City of Fayetteville, the City of Fayetteville may immediately upon written notice to CONSULTANT terminate this Agreement, in addition to any other rights and remedies that the City of Fayetteville may have hereunder or at law or in equity.
6. Venue and Forum Selection- The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Fourteenth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina
  7. Termination for Cause- In the event of substantial failure by CONSULTANT to perform in accordance with the terms of this contract, City of Fayetteville shall have the right to terminate CONSULTANT upon ten calendar (10) days written notice in which event CONSULTANT shall have neither the obligation nor the right to perform further services under this contract nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed.
  8. Termination for Convenience- Upon thirty (30) calendar days' written notice to CONSULTANT, the City of Fayetteville may, without cause and without prejudice to any other right or remedy legally available to the City of Fayetteville, terminate this Contract. Upon such notice, CONSULTANT shall have neither the obligation nor the right to perform services under this contract nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed in accordance with the terms stated herein. In such case of termination, CONSULTANT shall be paid for the completed and accepted work executed in accordance with this Contract prior to the written notice of termination. Additionally, upon mutual agreement, CONSULTANT may be paid for any completed and accepted work which takes place in order to achieve a specifically identified item in the scope of services or a milestone of the Contract, between the written notice of termination and the effective date of termination. Unless otherwise stated or agreed upon, the effective date of termination shall automatically occur 30 days' after the written notice is sent by the City of Fayetteville.
  9. Protest – Protest related to this procurement must be addressed to the Purchasing Manager for City of Fayetteville, 433 Hay St, Fayetteville, NC 28301 and shall be received, in writing, within 2 calendar days of bid award. Responses will be in writing by email and first-class mail not later than (7) calendar days following receipt of said

protest by the Purchasing Manager.

11. **CITY'S TERMS SUPERSEDE:** To the extent a conflict exists between the terms of this Agreement and the terms and conditions in any of the attachments to the Agreement, the terms of this Agreement shall govern.
  
12. Survival of Terms – All warranties, covenants, and representations contained within this contact and all applicable work authorizations, if any, shall continue in full force and effect for three (3) years after the execution and delivery of the final product, act, or service taken in furtherance of this contract. Survivability shall not be impacted, or otherwise shall not be rendered null or void, by the termination or natural expiration of this contract or other applicable work undertaken in furtherance of this contract.

[Signature page to follow]

CONSULTANT ACCEPTANCE:

HAZEN AND SAWYER



BY: Matthew Jones

TITLE: Associate Vice President

DATE: 02/27/24

AUTHORIZATION BY:

CITY OF FAYETTEVILLE

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

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

\_\_\_\_\_  
Jody Picarella  
Chief Financial Officer

**EXHIBIT A**  
**Phase II – Part B - Watershed Study for Cross Creek**  
**Scope of Services**

**PROJECT DESCRIPTION**

**GENERAL OVERVIEW**

This scope of services includes proposed solution alternatives analyses and preparation of final watershed master plan deliverables for the Cross Creek Watershed. This scope (Phase II – Part B) is a companion to the work authorization (Phase II – Part A) executed on 06/28/2023 in advance of finalizing concern areas and selecting proposed solutions to develop. Phase I resulted in the identification of 83 proposed solutions that are to be developed. Figure E.1.1 shows the study area indicating the streams, sub-basins, and concern areas that were analyzed as part of Phase I. This scope of services focuses on elements not previously covered by Phase II – Part A. All project management and analyses shall follow the most current version of the City of Fayetteville Consultant Management and Standards Manual (CMSM) (CMSM dated October 2021, Addendum #1 dated April 2022, and Addendum #2 dated February 2023). This scope includes the following tasks:

- Task 1 – Project Management and Meetings
- Task 2 – Development of Proposed Solutions
- Task 3 – Final Deliverables
- Task 4 – Additional Services

This scope of services is a summation of Phase II work to be performed in high priority sub-basins, as defined by the Program Manager (PgM), in the Cross Creek Watershed. It includes detailed hydrologic and hydraulic analysis for a total drainage area of approximately 4.0 square miles and total stream length of approximately 11.5 river miles. All project management and modeling shall follow the most current version of the City of Fayetteville Consultant Management and Standards Manual (CMSM) to be provided by the PgM.

**BASIC SERVICES:** Consultant will provide the following basic services for the Study area. In the performance of these services all standards for project management, reporting and technical tasks will be in conformance with the latest edition of the CMSM. If additional effort is required as a result of the CMSM being modified after a contract is executed, the consultant shall notify the PgM of the additional services needed prior to incurring that effort.

**Task 1 – Project Management and Meetings**

1. **Project Management** – Consultant will prepare a Microsoft Project schedule, provide monthly reporting updates, including notification of any out-of-scope work, and coordinate with FNI as the Program Manager per the CMSM.
2. **Progress Meetings** – Consultant will conduct monthly, one-hour virtual progress meetings with City and PGM staff for a total of 8 meetings. Meeting notes will be provided by the Consultant within one week. As necessary, weekly phone calls will also be held to discuss anything considered critical or urgent.

**Task 2 – Development of Proposed Solutions**

**2a. Refinement and Modeling of Selected Proposed Solutions –**

- a. The consultant will develop concept-level modeling, including future conditions, for the selected proposed solutions per the CMSM. These proposed solutions include concern areas with medium and high severity classifications, with some exceptions as directed by the CMT.

Proposed solutions will be developed in enough detail to understand the feasibility of implementation based upon available information (pending regulatory requirements) and to develop a planning level cost estimate for budgetary consideration. Each project will be evaluated against level of service requirements established in Section 6.0 of the CMSM. It is assumed that proposed projects within some concern areas may result in minimal improvement or may show improvement but may not fully meet level of service goals. For these cases, the Consultant will perform a maximum of three proposed project refinement modeling simulations with the goal being to provide the City with an understanding of the maximum benefit likely achievable relative to the level of service goals. A combined modeling scenario that includes all proposed projects will undergo a combined-effect evaluation to verify if a proposed project at one location does not result in a lower level of service in other areas. Similarly, for proposed solutions that increase peak flows within the primary system due to improved hydraulic efficiency of the secondary system and alignment of peaks between the primary and secondary system, downstream impacts will be quantified with respect to increases in primary system flood elevations and widths. Modeling of tailwater impacts from the primary system on the secondary system will be limited, with proposed solution development and scoring based upon a free discharge condition.

- b. The consultant will provide recommendations for phasing as requested. The phasing recommendations will consider constructability, incremental benefits of each project (number of structures removed from flooding, crossings no longer subject to overtopping, etc.), understanding of potential downstream impacts, and annual funding capacity of the City.
- c. CMT will supply consultants with economic development overlay areas (overlay areas) for each watershed and a detailed report that catalogues how these overlay areas have been implemented in other communities. Proposed solutions selected for further refinement within these overlay development areas shall also be sized for water quality and quantity considerations of undeveloped upstream properties, as feasible. If not feasible, that should be noted in the report. The maximum number of proposed solutions to be further refined for water quality and quantity considerations in these areas shall be established following conclusion of concern area identification. The water quality and quantity level of service goals and/or requirements for these proposed solutions will be defined by the CMT. The consultant will review the Economic Development report and overlay areas provided and identify proposed solutions that could benefit from one of the identified measures.
- d. The consultant will meet with the CMT to review the final proposed solutions (included in meetings in Task 1) and make up to two (2) rounds of revisions.

**2b. Cost Estimates and Exhibits –**

- a. The consultant will develop opinions of probable construction costs for each of the selected proposed solutions based upon a template provided by the PgM and as specified in the CMSM.
- b. The consultant will develop exhibits of the selected proposed solutions to be consistent with content and formatting shown in the pilot study report provided by PgM and associated templates provided by the PgM. ArcGIS Pro templates developed by Hazen in parallel with program templates developed by others will be utilized for most exhibit preparation, with the resulting PDF exhibits matching the style and content of program templates. Exhibits will include the pre- and post-proposed solution results to demonstrate the efficacy of the proposed solution. If a proposed solution needs additional or different exhibits given a unique situation, the consultant will discuss with the PgM in advance of deviating from the examples provided. Due to the unique scale and nature of flooding concerns along the Cross Creek primary system, it is anticipated that material developed for primary system proposed solutions may differ from other proposed solutions.

**2c. Prioritization of Proposed Solutions –**

- a. The CMT will provide a ranking system for the proposed solutions, to be utilized by the consultants for all proposed solutions developed.
- b. The consultant will provide data tables to summarize the quantity for each criterion included in the ranking system as well as to implement the scoring system to rank their proposed solutions developed in their watersheds.
- c. The scoring and ranking system will be consistent with guidance provided in the CMSM and subsequent addenda, as well as the scoring and ranking system utilized by Hazen for the BV3 watershed study. The criterion would measure the efficacy of the project with regards to that data. For example, how many flooded structures, or what length of roadway inundation, did the project mitigate. It is not anticipated that the criteria will include benefit cost analyses or other types of time-intensive criteria.

**2d. Deliverables –**

- a. Develop the following: report chapter and applicable tables; opinions of probable construction costs; and, exhibits as specified by the CMSM, pilot study examples, and/or the QC checklist.
- b. All GIS information updated and/or created as part of the proposed solutions will be provided in the Geodatabase being utilized throughout the study and in accordance with the CMSM.
- c. All modeling files updated and/or created as part of the proposed solutions will be provided to the PgM in the appropriate format as specified in the CMSM.
- d. CMT comments will be incorporated in the final report.

**Task 3 – Final Deliverables**

This task includes the development of a final report documenting the entire project. All Primary and Secondary Systems as well as Phase I and Phase II project components will be documented in a single report. This task also includes the final data deliverables as described below.

**3a. Final Report –**

- a. As part of the Phase II report process, the consultant will create an executive summary, graphics, cost estimates, appendices, and other applicable information and combine it with all Phase I report chapters previously developed, into a draft final report. The report will conform to standards established by the CMSM and report template.
- b. An electronic copy, in pdf format, of the draft report will be provided to the PgM for review by the CMT.
- c. Up to two (2) rounds of CMT comments will be incorporated in the final report.
- d. The final report will be provided in electronic format. The electronic deliverable will be provided in pdf format with bookmarks for easy navigation.

**3b. Data Package –**

- a. Any final revised GIS information will be provided to the PgM in the same Geodatabase being utilized throughout the study.
- b. The CMT will review the models, GIS, and all other deliverables outside of the report that have been required with every QA. Any missing information or revised information will be required as part of the final deliverable package.

**3c. Preliminary Council Meeting –**

- a. Presentation content will be developed for a Council Work Session providing a summary of preliminary Cross Creek watershed study results. This presentation is expected to occur after proposed solution modeling, scoring, and cost opinions for the watershed have largely been drafted but not yet finalized.
- b. Presentation contents are expected to show a few representative proposed solutions and an overall summary of the watershed and associated proposed solutions.

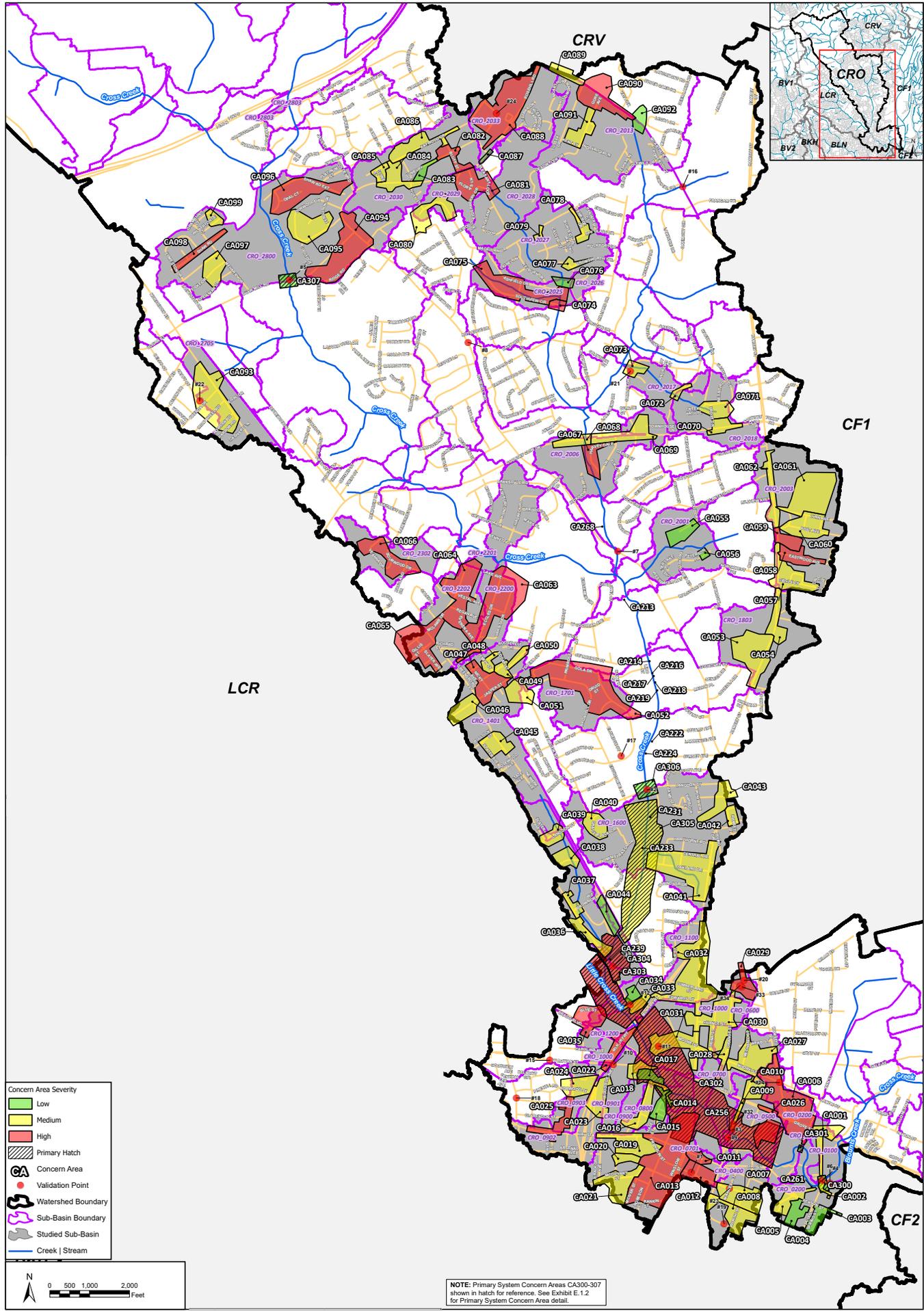
- c. The consultant will attend the Council Work Session and either present the material or be available for questions as needed.

**3d. Final Council Meeting –**

- a. Upon completion of the final report and data package, the consultant will prepare presentation content summarizing the Cross Creek watershed study for a City Council meeting or work session.
- b. The consultant will attend the Council meeting or work session and either present the material or be available for questions as needed.

**SPECIAL SERVICES:** During the above-described tasks, additional tasks, assistance, or other needs may be identified. Should additional needs be identified which fit the general description of Watershed Studies identified herein, the City may authorize use of Special Services and/or negotiate additional Work Authorizations to complete those tasks. Specific tasks may include, but not be limited to:

- Additional RAS or Infoworks modeling
- Modeling primary and secondary system interactions
- Impoundment H&H routing
- Public outreach or public outreach planning
- Items related to the risk register



# CROSS CREEK PRIORITY 1 STUDY

## E.1.1 SECONDARY AND PRIMARY SYSTEM CONCERN AREA LOCATIONS

**LABOR SUMMARY**

Tasks and Descriptions	Combined Totals (CT)				
	Hours	Labor	Expense	Subs	TOT
1 Project Management and Meetings	130	\$26,250	\$0	\$1,210	\$27,460
2 Development of Proposed Solutions	2405	\$346,525	\$0	\$63,400	\$409,925
2a Refinement and Modeling of Selected Proposed Solutions	750	\$114,050	\$0	\$63,400	\$177,450
2b Cost Estimates and Exhibits	1035	\$145,075	\$0	\$0	\$145,075
2c Prioritization of Proposed Solutions	480	\$66,300	\$0	\$0	\$66,300
2d Deliverables	140	\$21,100	\$0	\$0	\$21,100
3 Final Deliverables	920	\$154,500	\$0	\$0	\$154,500
3a Draft Final Deliverables	460	\$73,600	\$0	\$0	\$73,600
3b Revised Final Deliverables	260	\$43,100	\$0	\$0	\$43,100
3c April Council Presentation	100	\$18,900	\$0	\$0	\$18,900
3d Final Council Presentation	100	\$18,900	\$0	\$0	\$18,900
10 Special Services (Specific Effort to be Authorized Later) Subtasks are shown for information only, with all invoicing to be compiled under main tasks 1, 2, and 3	0	\$60,000	\$0	\$0	\$60,000
<b>TOTAL CONTRACT</b>	<b>3455</b>	<b>\$587,275</b>	<b>\$0</b>	<b>\$64,610</b>	<b>\$651,885</b>

LABOR SUMMARY	Hazen Staff															
											Combined Totals (CT)					
	Sr.		Associate		Sr. Prin.		Prin. Engr.		Asst. Engr.		Hours	Labor	Expense	Subs	TOT	
	\$225.00		\$175.00		\$145.00		\$130.00		\$110.00							
	CT	ETD	CT	ETD	CT	ETD	CT	ETD	CT	ETD						
1	Project Management and Meetings	70	0.0	60	0.0	0	0.0	0	0.0	0	0.0	130	\$26,250	\$0	\$1,210	\$27,460
2	Development of Proposed Solutions	95	0.0	650	0.0	480	0.0	600	0.0	580	0.0	2405	\$346,525	\$0	\$63,400	\$409,925
2a	Refinement and Modeling of Selected Proposed Soluti	30	0.0	360	0.0	20	0.0	200	0.0	140	0.0	750	\$114,050	\$0	\$63,400	\$177,450
2b	Cost Estimates and Exhibits	35	0.0	160	0.0	400	0.0	140	0.0	300	0.0	1035	\$145,075	\$0	\$0	\$145,075
2c	Prioritization of Proposed Solutions	10	0.0	90	0.0	60	0.0	220	0.0	100	0.0	480	\$66,300	\$0	\$0	\$66,300
2d	Deliverables	20	0.0	40	0.0	0	0.0	40	0.0	40	0.0	140	\$21,100	\$0	\$0	\$21,100
3	Final Deliverables	200	0.0	360	0.0	140	0.0	100	0.0	120	0.0	920	\$154,500	\$0	\$0	\$154,500
3a	Draft Final Deliverables	60	0.0	180	0.0	80	0.0	80	0.0	60	0.0	460	\$73,600	\$0	\$0	\$73,600
3b	Revised Final Deliverables	60	0.0	100	0.0	20	0.0	20	0.0	60	0.0	260	\$43,100	\$0	\$0	\$43,100
3c	April Council Presentation	40	0.0	40	0.0	20	0.0	0	0.0	0	0.0	100	\$18,900	\$0	\$0	\$18,900
3d	Final Council Presentation	40	0.0	40	0.0	20	0.0	0	0.0	0	0.0	100	\$18,900	\$0	\$0	\$18,900
10	Special Services (Specific Effort to be Authorized Later) Subtasks are shown for information only, with all invoicing to be compiled under main tasks 1, 2, and 3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	\$60,000	\$0	\$0	\$60,000
<b>TOTAL CONTRACT</b>		<b>365.0</b>	<b>0.0</b>	<b>1070.0</b>	<b>0.0</b>	<b>620.0</b>	<b>0.0</b>	<b>700.0</b>	<b>0.0</b>	<b>700.0</b>	<b>0.0</b>	<b>3455</b>	<b>\$587,275</b>	<b>\$0</b>	<b>\$64,610</b>	<b>\$651,885</b>

LABOR SUMMARY	ESP Staff														Combined Totals (CT)				
	Principal in Charge		Senior Project Engineer III		Senior Project		Designer III		Designer II		Designer I		Admin. Assistant III						
	\$220.00		\$195.00		\$130.00		\$115.00		\$105.00		\$90.00		\$70.00						
	CT	ETD	CT	ETD	CT	ETD	CT	ETD	CT	ETD	CT	ETD	CT	ETD	Hours	Labor	Expense	TOT	
1	Project Management and Meetings	0	0	0	0	8.5	0	0	0	1	0	0	0	0	0	10	\$1,210	\$0	\$1,210
2	Development of Proposed Solutions	0	0	0	0	100	0	420	0	20	0	0	0	0	0	540	\$63,400	\$0	\$63,400
2a	Refinement and Modeling of Selected Proposed Solutions	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0
2b	Cost Estimates and Exhibits	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0
2c	Prioritization of Proposed Solutions	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0
2d	Deliverables	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0
10	Special Services (Specific Effort to be Authorized Later)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0
<b>TOTAL CONTRACT</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>108.5</b>	<b>0.0</b>	<b>420.0</b>	<b>0.0</b>	<b>21.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>550</b>	<b>\$64,610</b>	<b>\$0</b>	<b>\$64,610</b>

**GENERAL SERVICES AGREEMENT FOR CONSULTING SERVICES BETWEEN**

**CITY OF FAYETTEVILLE  
FAYETTEVILLE, NORTH CAROLINA**

**AND**

**HAZEN AND SAWYER**

**APRIL 1, 2022**

**STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND**

**GENERAL SERVICES AGREEMENT  
FOR CONSULTING SERVICES**

**THIS AGREEMENT**, effective the 1<sup>st</sup> day of April by and between **THE CITY OF FAYETTEVILLE, NORTH CAROLINA** (hereinafter referred to as **CITY**), with principal business offices at Fayetteville, North Carolina, and **HAZEN AND SAWYER** (hereinafter referred to as **CONSULTANT**), a corporation with principal business offices at 4011 Westchase Blvd., Suite 500, Raleigh, NC 27607.

**W I T N E S S E T H:**

**WHEREAS, CITY**, is engaged in the operation and maintenance of facilities and services which from time to time require revision, renovation and extension of existing facilities, and the construction of new facilities and other related projects; and

**WHEREAS**, the professional services of engineers, architects, surveyors and others will from time to time in the future be needed by the **CITY** in the renovation of existing facilities, and in the construction of new facilities and other related projects; and

**WHEREAS**, pursuant to N.C.G.S. 143-64.31 it is the public policy of this State that municipalities announce all requirements for architectural, engineering and surveying services, to select firms qualified on the basis of demonstrated competence and qualification and to negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

**WHEREAS, CONSULTANT** provides professional consulting services of the nature required by the **CITY** and employs trained and experienced engineering, technical and/or other personnel possessing adequate knowledge, skills and experience to provide professional services to the **CITY**; and

**WHEREAS**, the **CITY** proposes to announce to various competing firms its need for professional consulting services in the future by requesting Proposals and the subsequent acceptance of proposals and the issuance of written authorizations to proceed, which together with this Agreement shall constitute a contract between the **CITY** and the **CONSULTANT**; and

**WHEREAS**, the parties contemplate that the services of **CONSULTANT** will be performed in various stages in accordance with separate authorizations to be issued by **CITY**, and the parties desire to set forth the basic terms of their agreement in this General Services Agreement rather than in separate authorizations to be issued by **CITY**.

**NOW THEREFORE, IN CONSIDERATION** of the premises and the mutual covenants herein contained, the parties hereto do hereby contract and agree as follows:

**ARTICLE 1 - REQUEST FOR PROPOSAL-SUBMITTAL OF PROPOSAL.** As the need for consulting services arise, **CITY** will request a Proposal for said services from **CONSULTANT** which shall describe the scope of work, program, estimated schedule and **CITY'S** requirements.

If **CONSULTANT** has the qualified personnel to meet **CITY'S** requirements to perform the consulting services requested by the **CITY**, **CONSULTANT** will submit to **CITY** within the time specified a written Proposal describing the necessary engineering, technical and/or other services, guidance, opinions and advice to be provided. The Proposal shall set forth in general terms **CONSULTANT'S** recommendations to carry out the work. **CONSULTANT** shall list the background and experience of **CONSULTANT'S** personnel to be assigned to the project. Said Proposal shall contain a fee schedule setting forth fees for services of the various categories of personnel to be assigned to **CITY'S** project.

**ARTICLE 1.1 - ACCEPTANCE OF PROPOSAL.** **CITY** and **CONSULTANT** contemplate certain discussions, negotiations and possible changes to the Proposal submitted by **CONSULTANT**. Upon a meeting of the minds, **CONSULTANT** shall submit the final Proposal which shall set forth the agreement of the parties. If said Proposal is acceptable, the **CITY** shall accept same in writing. **CONSULTANT'S** fee schedule shall remain in effect during the term of this Agreement, unless modified by the parties in writing. **CITY** shall provide **CONSULTANT** with a specific written Authorization to Proceed for each Proposal accepted by **CITY**.

**ARTICLE 2 - TERM OF AGREEMENT.** The term of this General Services Agreement for Consulting Services shall be for three (3) years from the date it is effective. The Agreement may be extended thereafter by mutual written agreement of the parties.

**ARTICLE 2.1 - ASSIGNMENT.** It is the intent of this Agreement to secure the personal services of the **CONSULTANT** and failure of the **CONSULTANT** for any reason to make the personal services available to the **CITY** for the purposes described in this Agreement shall be cause for termination of this Agreement. The **CONSULTANT** shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of **CITY**. Nothing contained in this paragraph shall prevent **CONSULTANT** from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist **CONSULTANT** in the performance of services rendered.

**ARTICLE 3 - COMPENSATION.** **CONSULTANT** shall submit to **CITY** monthly invoices for services performed during that month, computed on the basis of the Proposal accepted by **CITY**. **CITY** agrees to pay **CONSULTANT'S** monthly invoice within thirty (30) days after said invoice is received by the **CITY**. Adjustments to an invoice for billing errors may extend the time for payment. For clarity, compensation to **CONSULTANT** shall be based upon Task and/or Work Authorizations that are provided to and agreed upon by the **CITY**. The Signing of this General Services Agreement does not bind or obligate the **CITY** to pay **CONSULTANT** any compensation.

**ARTICLE 3.1 - VERIFICATION OF INVOICES.** **CITY** has the right to require the **CONSULTANT** to produce for inspection all **CONSULTANT'S** time records, salaries of personnel and charges for direct expenses for which cost-plus compensation is provided. **CONSULTANT** agrees to provide **CITY** with said records on a timely basis and cooperate with **CITY** to verify the accuracy of all invoices.

**ARTICLE 3.2 - COSTS AND EXPENSES.** **CONSULTANT** will invoice **CITY** for all travel and living expenses of its employees assigned to a project which said expenses shall be at actual cost, unless said costs or expenses are specifically set forth and included in a fixed price contract. Accommodations for **CONSULTANT'S** employees shall be arranged by **CONSULTANT**. Living expenses for **CONSULTANT'S** employees shall be the usual and customary expenses for accommodations to which **CONSULTANT'S** employees are accustomed, and which are prevailing in Cumberland County, North Carolina.

**ARTICLE 3.3 - NON APPROPRIATION.** Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the **CITY** are from appropriations

and monies from the City Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the CITY to pay the terms of this agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the CITY.

**ARTICLE 4 - PROFESSIONAL STANDARDS AND DUTIES OF CONSULTANT.**

**CONSULTANT** shall be held to the same standard and shall exercise the same degree of care, skill and judgment in the performance of services for **CITY** as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Cumberland County, North Carolina.

**ARTICLE 4.1 - CONSULTANT NOT RESPONSIBLE FOR CONSTRUCTION MEANS OR SAFETY.** A **CONSULTANT** for general construction projects shall not be responsible for any general contractor's or other project participant's failure to fulfill their contractual responsibilities to the **CITY**, nor shall **CONSULTANT** be responsible for construction means, methods, techniques, sequences, or procedures. Neither shall **CONSULTANT** be responsible for a project safety program or safety precautions unless **CONSULTANT'S** Proposal sets forth a safety program which is accepted by **CITY** and becomes a part of the agreement between the parties.

**ARTICLE 4.2 - CONSULTANT AS CONSTRUCTION MANAGER.** In the event the **CITY** contracts with the **CONSULTANT** to provide Construction Management Services, the **CONSULTANT** shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with the plans and specifications. In no event shall **CONSULTANT** be responsible for any contractor's, subcontractor's, vendor's, or other project participant's failure to comply with federal, state or local laws, ordinances, regulations, rules, codes, orders, criteria, or standards unless it has contracted with the **CITY** to do so.

**ARTICLE 5 - ESTIMATES OF COST AND TIME.** Although **CONSULTANT** has no control over the cost of labor, materials, equipment or services furnished by others, or over contractor's, sub-contractor's, or vendor's methods of determining prices, or over competitive bidding or market conditions, nevertheless **CONSULTANT'S** cost estimates and time estimates shall be made on the basis of current labor and material prices and the **CONSULTANT'S** experience and qualifications, and **CONSULTANT'S** estimates shall represent its best judgment as an experienced and qualified professional familiar with electric, water and sewer utility projects, or other projects for which **CONSULTANT** is employed. Although **CONSULTANT** has no control over the resources provided by contractors to meet contract schedules, nevertheless **CONSULTANT'S** estimates or forecast of schedules shall be made on the basis of its experience and qualifications and shall represent **CONSULTANT'S** best judgment as an experienced and qualified professional familiar with electric, water and sewer utility projects, or other projects for which **CONSULTANT** is employed. **CONSULTANT** does not guarantee that project costs and schedules will not vary from the estimates and schedules given to **CITY**.

**ARTICLE 6.0 - LIABILITY, INDEMNIFICATION AND INSURANCE.**

**6.1 - GENERAL.** The **CITY** and **CONSULTANT** have considered the risks and potential liability that may exist during the performance of services by **CONSULTANT**, and have agreed to allocate such liabilities in accordance with this Article. During the performance of services under this Agreement, **CONSULTANT** shall purchase and maintain insurance coverage as hereinafter set forth, without lapse or changes contrary to the requirements of this section. Words and phrases used in this Article shall be interpreted in accordance with customary insurance industry usage and practice.

**6.2 - INDEMNITY AND PROFESSIONAL LIABILITY.** To the extent permitted by law, **CONSULTANT** agrees to indemnify and hold harmless the **CITY** and its elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury or damage to the extent caused by any negligent or tortious act, omission or negligence of **CONSULTANT**, its agents, servants,

employees, contractors, licensees, or invitees. Indemnification of the CITY by CONSULTANT does not constitute a waiver of the CITY'S governmental immunity in any respects under North Carolina law. CONSULTANT agrees to purchase and maintain professional liability insurance (errors and omissions insurance) in the amount of \$1,000,000 coverage for each claim, with a general aggregate of \$2,000,000. Said insurance coverage shall be underwritten by an insurance company authorized to do business in the State of North Carolina by the North Carolina Department of Insurance, with an A.M. Best rating of not less than A-VII.

**6.3- LIABILITY INSURANCE.** CONSULTANT agrees to indemnify and hold the CITY, its servants, agents and employees, harmless from and against all liabilities, claims, demands, suits, losses, damages, costs and expenses (including attorney's fees) for third party bodily injury to or death of any person, or damage to or destruction of any third party property, to the extent caused by the negligence of the CONSULTANT, Consultant's employees, and Consultant's subcontractors, for whom CONSULTANT is legally responsible during the performance of services under this Agreement. CONSULTANT shall purchase and maintain at all times during performance of services under this Agreement Commercial General Liability Insurance with combined single limits of \$1,000,000.00 coverage for each occurrence with a general aggregate of \$2,000,000.00, designating the CITY as an additional insured and which said insurance provides CONSULTANT with insurance for contractual liability which CONSULTANT has assumed pursuant to the terms of this Article 6.

**6.4- OTHER INSURANCE.** In addition to professional liability insurance and commercial general liability insurance set forth above, CONSULTANT further agrees to purchase and maintain at all times during the performance of services under this Agreement insurance coverage as follows:

- (a) Worker's Compensation Insurance as provided by North Carolina law which said policy shall also afford coverage to CONSULTANT for employer's liability.
- (b) Automobile liability insurance with \$1,000,000.00 combined single limit for each accident covering bodily injury and property damage.
- (c) The CGL policy required above shall include independent contractor liability coverage.
- (d) The CGL policy required above shall provide CONSULTANT with products and completed operations insurance, said coverage to be written on an occurrence basis, with coverage extended for such a period of time that suits can be filed before the running of the statute of limitations on any claim for injury to person or property due to negligence of CONSULTANT in the design of any building designed by the CONSULTANT under the terms of this Agreement.

**ARTICLE 7 - INDEPENDENT CONTRACTOR.** CONSULTANT is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. CONSULTANT shall be wholly responsible for the methods, means and techniques of performance. CITY shall have no right to supervise methods and techniques of performance employed by CONSULTANT, but CITY shall have the right to observe such performance.

**ARTICLE 8 - COMPLIANCE WITH LAWS.** CONSULTANT agrees that in performing services pursuant to this Agreement to comply with all applicable regulatory requirements including federal, state and local laws, rules, regulations, orders, codes, criteria, and standards. CONSULTANT shall be responsible for procuring all permits, certificates, and licenses necessary to allow CONSULTANT to perform services under this Agreement. CONSULTANT shall not be responsible for procuring permits required for the construction of any building, unless such responsibility is specifically agreed to by CONSULTANT.

**ARTICLE 9 - CITY'S RESPONSIBILITIES.** CITY will furnish to CONSULTANT all of

**CITY'S** requirements for the project, including, but not limited to, scope of work, program, time constraints, schedule milestones, financial constraints, design objectives and design constraints, which are available to the **CITY** or which the **CITY** can reasonably obtain to furnish to **CONSULTANT** to enable **CONSULTANT** to make a Proposal to **CITY**. Additionally, the **CITY** shall also be responsible for the following:

- (1) Make final decisions utilizing information supplied by **CONSULTANT**.
- (2) Designate personnel to represent **CITY** in matters involving the relationship between **CITY**, **CONSULTANT** and third parties.
- (3) Provide such accounting, independent cost estimating, and insurance counseling services as may be required by the project.
- (4) Provide such legal services as **CITY** may require or **CONSULTANT** may reasonably request with regard to legal issues pertaining to the project, including those which may be raised by contractors, subcontractors, vendors or other project participants.
- (5) Enter into contracts for the purchase, construction, or other services with contractors, subcontractors, and vendors.
- (6) Provide financing for the project and make all payments in accordance with the terms of the contract.

**ARTICLE 10 - OWNERSHIP OF DOCUMENTS.** All documents, including drawings and specifications prepared by **CONSULTANT** pursuant to this **AGREEMENT**, are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by **CITY** or others on extensions of the Project or on any other project. Any reuse without written verification or adaption by **CONSULTANT** for the specific purpose intended will be at **CITY'S** sole risk and without liability to **CONSULTANT**. Any such verification or adaptation will entitle **CONSULTANT** to further compensation at rates to be agreed upon by **CITY** and **CONSULTANT**.

**ARTICLE 11 - TERMINATION OF CONTRACT FOR CAUSE.** In the event of substantial failure by **CONSULTANT** to perform in accordance with the terms of this contract, **CITY** shall have the right to terminate **CONSULTANAT** upon ten calendar (10) days written notice in which event **CONSULTANT** shall have neither the obligation nor the right to perform further services under this contract nor shall the **CITY** be obligated to make any further payment for work that has not been performed.

**ARTICLE 12 - TERMINATION OF CONTRACT FOR CONVENIENCE.** Upon thirty (30) calendar days' written notice to **CONSULTANT**, **CITY** may, without cause and without prejudice to any other right or remedy legally available to the **CITY**, terminate this Contract. Upon such notice, **CONSULTANT** shall have neither the obligation nor the right to perform services under this contract nor shall the **CITY** be obligated to make any further payment for work that has not been performed in accordance with the terms stated herein. In such case of termination, **CONSULTANT** shall be paid for the completed and accepted work executed in accordance with this Contract prior to the written notice of termination. Additionally, upon mutual agreement, **CONSULTANT** may be paid for any completed and accepted work which takes place in order to achieve a specifically identified item in the scope of services or a milestone of the Contract, between the written notice of termination and the effective date of termination. Unless otherwise stated or agreed upon, the effective date of termination shall automatically occur 30 days after the written notice is sent by the **CITY**.

**ARTICLE 13 - NONDISCLOSURE OF PROPRIETARY INFORMATION.** **CONSULTANT** shall consider all information provided by **CITY** and all drawings, reports, studies, calculations, plans, specifications, and other documents resulting from the

**CONSULTANT'S** performance of the **SERVICES** to be proprietary, unless such information is available from public sources. **CONSULTANT** shall not publish or disclose proprietary information for any purposes other than the performance of the **SERVICES** without the prior written authorization of **CITY**. **CONSULTANT** shall not make any written or verbal statement to any press or news media concerning the Project without the written authorization of **CITY**.

**ARTICLE 14 - NOTICE.** Any formal notice, demand, or request required by or made in connection with this agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

**TO CITY:**                   **CITY OF FAYETTEVILLE**  
ATTENTION: DOUGLAS J. HEWETT  
CITY MANAGER  
433 HAY STREET  
FAYETTEVILLE, NORTH CAROLINA 28301

**TO CONSULTANT:**       **HAZEN AND SAWYER**  
ATTENTION: Matthew Jones  
Associate Vice President  
4011 WestChase Blvd., Suite 500  
Raleigh, NC 27607

Nothing contained in this Article shall be construed to restrict the transmission of routine communication between representatives of **CONSULTANT** and **CITY**.

**ARTICLE 15 – FORCE MAJEURE.** 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, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**ARTICLE 16 - GOVERNING LAW.** This Agreement shall be governed by the laws of the State of North Carolina.

**ARTICLE 17 - MISCELLANEOUS.**

**17.1 NONWAIVER FOR BREACH.** No breach or non-performance of any term of this Agreement shall be deemed to be waived by either party unless said breach or non-performance is waived in writing and signed by the parties. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance and for any such breach or non-performance each party shall be relegated to such remedies as provided by law.

**17.2 PRECEDENCE.** In the event of any conflict or discrepancy between the terms of this Agreement and the specific written authorization to proceed pursuant to this Agreement, then the written authorization to proceed shall be given precedence over this Agreement in resolving such conflicts or discrepancies. If any conflict or discrepancy is discovered by either party hereto, then the written authorization to proceed, or this Agreement, shall be modified or amended, as necessary.

**17.3 SEVERABILITY.** The invalidity, illegality, or un-enforceability of any portion or provision of this Agreement shall in no way affect the validity, legality and/or enforceability of any other portion or provision of this Agreement. Any invalid, illegal or unenforceable provision of this Agreement shall be deemed severed from this Agreement, and the balance of the Agreement

shall be construed and enforced the same as if the Agreement had not contained any portion or provision which was invalid, illegal or unenforceable. Provided, however, this section 17.3 shall not prevent this entire Agreement from being void in the event any portion or provision of this Agreement which is of the essence of this Agreement shall be deemed void as provided by law or as determined by a court of competent jurisdiction.

**ARTICLE 18 - INTEGRATED AGREEMENT.** The CITY'S request for Proposal, the CONSULTANT'S written Proposal, the CITY'S authorization to proceed and this General Services Agreement for Consulting Services shall be integrated into and shall become the integrated agreement between the parties. CONSULTANT and CITY agree that all prior negotiations, representations, proposals, letters, agreements, understandings, or other communications between them, whether written or oral, are hereby merged into the Agreement and that the Agreement supersedes all such prior negotiations, contracts and/or agreements. This Agreement shall not be modified unless such modifications are evidenced in writing, signed by both CONSULTANT and CITY.

**ARTICLE 19 - BENEFITS LIMITED TO PARTIES.** Nothing herein shall be construed to give any right or benefits hereunder to anyone other than CITY and CONSULTANT.

**19.1 LIMITATIONS.** CONSULTANT's total liability to CITY under each authorization shall not exceed the total compensation paid under the authorization, or \$1,000,000, whichever is greater; any portion of liability determined to be consequential damages under this per authorization limit, shall not exceed the compensation paid under the authorization. In no event shall CONSULTANT's total liability in the aggregate, for all services under this agreement, exceed \$4,000,000. limits set forth in this agreement shall apply notwithstanding any and all causes whatsoever including, but not limited to negligence (of any degree), errors, omissions, warranty, indemnity, strict liability or breach of contract, provided, however, that the foregoing limitation shall not apply to any indemnity obligations of consultant with respect to third party personal injury and death or damage to third party property.

**ARTICLE 20 – VENUE AND FORUM SELECTION.** The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

**ARTICLE 21 - E-VERIFY.** CONSULTANT acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. CONSULTANT further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). CONSULTANT pledges, attests and warrants through execution of this contract that CONSULTANT complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by CONSULTANT shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this contract.

**ARTICLE 22 – MORALITY CLAUSE.** If, in the sole opinion of the CITY, at any time

**CONSULTANT** or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the CITY or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the CITY'S finances, public standing, image, or reputation or are embarrassing or offensive to the CITY or may reflect unfavorably on the CITY or are derogatory or offensive to one or more employee(s) or customer(s) of the CITY, the CITY may immediately upon written notice to **CONSULTANT** terminate this Contract, in addition to any other rights and remedies that the CITY may have hereunder or at law or in equity.

**ARTICLE 23 – PROTEST.** Protest related to this procurement must be addressed to the Purchasing Manager for City of Fayetteville, 433 Hay St, Fayetteville, NC 28301 and shall be received, in writing, within 2 calendar days of bid award. Responses will be in writing by email and first-class mail not later than (7) calendar days following receipt of said protest by the Purchasing Manager.

**ARTICLE 24 - IRAN DIVESTMENT ACT CERTIFICATION.** As mandated by N.C.G.S. 147-86.59(a), **CONSULTANT** hereby certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. **CONSULTANT** further certifies that in accordance with N.C.G.S. 147-86.59(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. **CONSULTANT** certifies that the signatory to this General Services Agreement is authorized by the **CONSULTANT** to make the foregoing statement.

**IN WITNESS WHEREOF,** the parties have executed this Agreement by their duly authorized representatives effective the day and year first above written.

DATE: 4/18/2022  
ATTEST:  
Pamela J. Megill  
CITY CLERK

DATE: 03-25-2022

**CITY OF FAYETTEVILLE,  
NORTH CAROLINA**

BY: Douglas J. Hewett  
Douglas J. Hewett, ICMA-CM  
City Manager



BY: Matthew P. Jones  
Matthew P. Jones, PhD, PE  
Associate Vice President

CITY OF FAYETTEVILLE

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

[Signature]  
Chief Financial Officer