



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 12/5/2022

Consent Agenda

Department: General Services

Presenter(s): Ronnie Lunsford

Contact(s): Ronnie Lunsford, General Services

Subject: Design Consultant Contract with Civil Design Concepts, P.A., for the demolition of the Haynes Tower on the A-B Tech Enka Campus

Brief Summary: The A-B Tech Board of Trustees, the Joint Advisory Committee, and the Buncombe County Commissioners previously approved funding for the demolition of the Haynes Tower building on A-B Tech's Enka Campus. To successfully demolish the building, the County and A-B Tech released a request for qualifications (RFQ) to seek candidates interested in preparing demolition documents for the project. From that RFQ, Civil Design Concepts was selected. The documents and work provided by the firm will include:

- Facilitating a report to identify, and guide remediation for, hazardous materials such as asbestos and mold.
- Ensuring all utilities are disconnected properly and in accordance with applicable laws and codes.
- Preparation of engineered demolition documents.
- Preparation of bid document and facilitation of a formal bid to select a demolition contractor.
- Working with A-B Tech Emergency Services Division to assist with training opportunities before demolition.
- Work with the County and the contractor to develop a plan for maximizing the recycling of materials and minimizing the material going to the landfill.
- Ensuring the owner is left with a safe and sustainable site once demolition is complete.

Recommended Motion & Requested Action: Approve the contract with Civil Design Concepts, P.A.

County Manager's comments and Recommendation: County Manager recommends as presented

AGREEMENT FOR DESIGN CONSULTANT SERVICES

This Agreement for Design Consultant Services is made, and entered into this the 31st day of October 2022, by and between the **COUNTY OF BUNCOMBE**, a political subdivision of the State of North Carolina, (hereinafter "OWNER"), and Civil Design Concepts, P.A., (hereinafter "DESIGNER" or "DESIGN CONSULTANT"), whose principal place of business is: 168 Patton Avenue, Asheville, NC 28801.

For Professional Services in connection with the Project known as:
Buncombe County Government
AB Tech Enka Campus Demolition Project

The Owner and the Design Consultant hereby agree as set forth below:

1. ARTICLE 1 DEFINITIONS

The following words and phrases where appearing in initial capitalization, shall for the purposes of this Agreement have the following meanings:

- 1.1. Project. The Project shall be as described above.
- 1.2. Services. The Services to be performed by the Design Consultant under this Agreement shall consist of the Basic Services described in Article 3 and Article 7 and any other services in the Contractor Documents as part of the Basic Services, and include normal structural, mechanical and electrical architectural design services.
- 1.3. Construction Contract Documents. The Construction Contract Documents shall consist of the plans and specifications prepared by the Design Consultant, and any addenda and change orders thereto, and the Construction Contract between Owner and Contractor, all of which shall be compatible and consistent with this Agreement, which shall Control if there is a conflict.
- 1.4. Construction Costs. The Construction Costs shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Design Consultant. The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Design Consultant, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction. Construction Costs do not include the compensation of the Design Consultant and its consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 6.
- 1.5. Contractor. The Contractor is the person or entity which enters into an agreement with the Owner to perform the construction of any or all of the Project, including, without limitation, the providing of labor, materials, and equipment incorporated or to be incorporated into the Project. The term "Contractor" means the Contractor or its authorized representative, but excludes the Owner's Representative and the Design Consultant.

- 1.6. Basic Services Compensation. Basic Services Compensation shall be the lump sum fee designated in Article 4 to be paid by the Owner to the Design Consultant in connection with the performance of the Basic Services by the Design Consultant.

2. ARTICLE 2 RELATIONSHIP OF THE PARTIES

- 2.1. Design Consultant Services. The Design Consultant shall provide professional engineering services for the Project in accordance with the terms and conditions of this Agreement and all applicable codes and laws. The Design Consultant's performance of services shall be as professional consultant to the Owner to carry out the activities of Project design and construction administration and to provide the technical documents and supervision to achieve the Owner's Project objectives.
- 2.2. Owner Representation. The Owner shall designate a Project Manager to serve as the Owner's Representative. The Owner's Representative has no design responsibilities of any nature. None of the activities of the Owner's Representative supplant or conflict with the design, budget or any other services and responsibilities customarily furnished by the Design Consultant or sub-consultants in accordance with generally accepted architectural/engineering practices except as otherwise modified by this Agreement. Instructions by the Owner to the Design Consultant relating to services performed by the Design Consultant will be issued or made by or through and in accordance with procedural, organizational, and documentation standards established by the Owner's Representative. Communications and submittals of the Design Consultant to the Owner and Contractor shall be in writing and issued or made in accord with similar procedural and documentation standards established by the Owner's Representative. The Owner's Representative shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Design Consultant and Contractor and to call periodic conferences to be attended by the Design Consultant, and his sub-consultants, throughout the term of this Agreement.
- 2.3. Other Consultants. The Owner may provide drawings, consultation, recommendations, suggestions, data and/or other information relating to the Project from other Consultants under separate contract with the Owner, including but not limited to: Surveyor, Utility Locating Service, Geo-technical Consultant, CMARs, and/or Materials Testing Consultant. The Design Consultant is responsible for the coordination of survey, existing utility location, geo-technical services, and/or material testing, including all coordination with surveyor, soils engineers, utility locating contractor, City and/or County officials, and CMARs, if any, required for Project.
- 2.4. Design Consultant Representation.
 - 2.4.1. The Design Consultant shall provide a list of all consultants (and sub-consultants if applicable) which the Design Consultant intends to utilize on the Project prior to commencing work on the Project. The list shall include such information on the qualifications of the consultants as may be requested by the Owner. The Owner will review the consultants proposed. The Design Consultant shall not retain a consultant to which the Owner has a reasonable objection. The Design Consultant shall use individuals or firms that are licensed and regularly engaged in the fields of expertise required for this Project.
 - 2.4.2. All agents and workers of the Design Consultant and its sub-consultants shall be prepared to provide identification at all times they are on the Owner's property including, at a minimum, the company name and telephone number and name. The County reserves the right to require identification badges that contain the information above.

- 2.4.3. The Design Consultant shall receive, compile and report all M/WBE participation of all of its sub-consultants and vendors of this project in a format acceptable to Owner at the commencement of design, and on a monthly basis, should any change from the preliminary submission occur.
- 2.5. Division of Responsibilities/Services. The Design Consultant understands and agrees that should the Owner's Representative or other consultant provide the Design Consultant with any estimating assistance, cost or time control recommendations or other consultation, recommendations or suggestions, any or all such activities on the part of the Owner's Representative, consultant, or any other representative of the Owner shall in no way relieve the Design Consultant of the responsibility of fulfilling its obligations and responsibilities under this Agreement.
- 2.6. Compliance with Laws. Design Consultant represents that it is in compliance with all applicable Federal, State, and local laws, regulations or orders, as amended or supplemented, including Chapter 64 Article 2 of the North Carolina General Statutes regarding the verification of work authorization. The implementation of this Contract shall be carried out in strict compliance with applicable Federal, State, or local laws.

3. ARTICLE 3 BASIC SERVICES

3.1. Scope of Services.

- 3.1.1. The Basic Services to be provided by the Design Consultant shall be performed in the phases described hereinafter which have as their objective design and construction administration of the Project. The Basic Services shall be performed in accordance with the standard of care set forth in this Agreement. The final product shall be suitable for the Owner's purposes, satisfy the Owner's requirements, comply with all applicable codes and laws, and be completed on a timely basis and within the approved budget.
- 3.1.2. The Design Consultant's services shall be performed as expeditiously as necessary for the orderly progress of the Work. The Design Consultant shall submit for the Owner's approval a schedule for the performance of the Design Consultant's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Design Consultant.
- 3.1.3. Upon authorization from the Owner to proceed, and based on the approved Design Narrative, the Design Fee, and Preliminary Programming, the Design Consultant shall prepare **Schematic Design Documents** consisting of drawings and other documents illustrating the design concept, scale and relationship of the Project components, for approval by the Owner.

3.2. **Design Development Phase.**

- 3.2.1. Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Design Consultant shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the project as to, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

- 3.2.2. The Design Consultant shall advise the Owner of any adjustments to the preliminary estimate of Construction Costs

3.3. Construction Document Phase.

- 3.3.1. Upon written authorization from the Owner to proceed, the Design Consultant shall prepare from the approved Design Documents, working drawings and Specifications setting forth in detail the requirements for the construction of the entire Project. The Design Consultant shall assist the owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.
- 3.3.2. The Design Consultant shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.
- 3.3.3. The Design Consultant shall be responsible for, and shall hold the Owner harmless for, any and all claims or damages due to the negligence of the Design Consultant or his employees in the preparation of the Construction Documents.

3.4. Permitting and Bidding/Negotiation.

- 3.4.1. The Design Consultant, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Costs, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.
- 3.4.2. The Design Consultant shall coordinate and document the reproduction, distribution and retrieval of the bidding documents. Further, the Design Consultant shall coordinate and document the collection and return of deposits or payments. In addition to the bidders, documents shall be issued to all required code authorities, contractors, plan room, services, and others, as the Owner designates.
- 3.4.3. *Intentionally left blank for numbering purposes.*
- 3.4.4. The Design Consultant shall request, expedite and submit all information necessary to obtain all necessary permits, licenses and approvals, required for the Project.
- 3.4.5. The Design Consultant shall prepare such clarifications and addenda to the bidding documents as may be required. The Design Consultant will provide these to the Owner for review prior to issuance to all holders of bid documents.
- 3.4.6. The Design Consultant will schedule and conduct a Pre-Bid Conference with prospective bidders to review the Project. The Design Consultant shall provide knowledgeable representatives, including representatives of its consultants, to participate in these conferences to explain and clarify Bidding Documents. Within two (2) days after the Pre-bid Conference the Design Consultant shall deliver to the Owner, if needed, a final Addendum.

- 3.4.7. The Design Consultant shall prepare a certified bid tabulation and recommendation to the Owner concerning the Contract Award.
- 3.4.8. If the estimated Construction Costs are exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall, i) give written approval of an increase in such fixed limit, ii) authorize rebidding or renegotiating of the project within a reasonable time, iii) abandon the Project and terminate in accordance with Article 12, OR iv) participate with the Design Consultant in such re-bidding, re-negotiation, and re-design, at no additional expense to the Owner, as may be necessary to obtain price(s) within the approved budget or price(s) acceptable to the Owner. All re-design must be approved by the Owner. The Design Consultant, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit, if established as a condition of this Agreement
- 3.4.9. Should the Design Consultant re-design or conduct re-bidding under its responsibilities set out in the preceding paragraph, its' Construction Phase and Post Construction Phase services shall be extended to take re-design/re-bid delays into account at no additional expense to the Owner.
- 3.4.10. The Design Consultant shall assist the Owner's Representative in the preparation of the Agreement(s) between Owner and Contractor(s) for the Owner's execution. The Owner's Representative will coordinate award(s) and Notice(s) to Proceed for the Owner.

3.5. Construction Phase.

- 3.5.1. The Construction Phase for each portion of the Project will commence with the award of the Construction Contract and will terminate when the Owner makes the Final Completion payment to the Contractor.
- 3.5.2. The Design Consultant shall consult with the Owner and participate in all decisions as to the acceptability of subcontractors and other persons and organizations proposed by the Contractor for various portions of the work.
- 3.5.3. The Design Consultant shall receive, compile, track and report all W/MBE participation of all contractors, sub-contractors and vendors of this project in a format acceptable to Owner. Reports will be made to the Owner on a monthly basis, utilizing a pay application cover sheet to be supplied and certified by the contractor (format to be provided by Owner).
- 3.5.4. The Design Consultant shall review and approve the Work performed by the Contractor(s) for conformance with Contract Documents.
- 3.5.5. The Design Consultant shall provide necessary Project drawings, in electronic format, to the electrical or data contractor for creation of data "as built" submittal and approval drawings, and to the general contractor for site layout/staking.
- 3.5.6. The Design Consultant shall conduct Pre-installation meetings to review the installation procedures prior to the placement of the work.
- 3.5.7. The Design Consultant shall, when requested by the Owner's Representative, prepare Change Order documentation.

- 3.5.8. The Design Consultant shall render to the Owner's Representative, within two (2) working days unless otherwise authorized by the Owner's Representative, interpretations of requirements of the Contract Documents. The Design Consultant shall make all interpretations consistent with the intent of and reasonably inferable from the Contract Documents.
- 3.5.9. Should errors, omissions or conflicts in the specifications or other Contract Documents by the Design Consultant be discovered, the Design Consultant will prepare and submit to the Owner's Representative, within two (2) working days unless otherwise authorized by the Owner's Representative, such amendments or supplementary documents and provide consultation as may be required, for which the Design Consultant shall make no additional charges to the Owner.
- 3.5.10. The Owner's Representative shall be the point of contact for the Owner, except when the Owner shall direct otherwise. All instructions to the Contractor(s) shall be issued by the Design Consultant except when is directed otherwise by the Owner's Representative.
- 3.5.11. The Design Consultant will have access to the Work at all times. All site visits, observations and other activities by the Design Consultant shall be coordinated with the Owner's Representative and written report of such visits made promptly to the Owner's Representative.
- 3.5.12. The Design Consultant shall make such periodic visits to the Project sites as may be necessary to familiarize themselves generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of such on-site observations, the Design Consultant and its consultants shall take the appropriate steps to guard the Owner against defects and deficiencies in the Work of the Contractor. If the Design Consultant observes any work that does not conform to the Contract Documents, the Design Consultant shall immediately make an oral and written report of all such observations to the Owner's Representative. The Design Consultant shall not be required to make exhaustive or full-time on-site observations to check the quality or quantity of the Work, but shall make as many observations as may be reasonably required to fulfil their obligations to the Owner. The Design Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work.
- 3.5.13. The Design Consultant shall immediately notify the contractor and Owner in writing if the Project falls more than fourteen (14) days (or the number of days set by the County in the preconstruction meeting, which number shall be recorded in the minutes of said meeting) behind schedule. The Design Consultant shall immediately request a recovery plan from the contractor and make appropriate written recommendation to the Owner.
- 3.5.14. Based upon observations at the site and upon the Contractor's applications for payment, the Design Consultant shall determine the amount owing to the Contractor(s), pursuant to the terms of the Owner/Contractor Agreement, and shall issue Certificates for Payment to the Owner in such amounts. The Design Consultant's signing of a Certificate of Payment shall constitute a representation by the Design Consultant to the Owner, based upon the Design Consultant's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated, that to the best of the Design Consultant's knowledge, information and belief, the quality of the Work appears to be in accordance with the Contract Documents (subject to: an evaluation of the Work for

conformance with the Contract Documents upon Substantial Completion; the results of any subsequent tests required by the Contract Documents; minor deviations from the Contract Documents correctable prior to completion; and to any specific qualifications stated in the Certificate for Payment), and that the Contractor is entitled to payment in the amount certified. By signing a Certificate for Payment to the Owner, the Design Consultant shall not be deemed to represent that it has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Construction Contract Sum.

- 3.5.15. If, in accordance with its duty, the Design Consultant advises the Owner's Representative of non-conforming work as stated in subparagraph 3.5.12, the Design Consultant shall confirm the non-conformance in writing to the Owner's Representative within two (2) days of observation.
- 3.5.16. The Design Consultant and the Owner's Representative jointly shall have authority to condemn or reject Work on behalf of the Owner when in the Owner's Representative's or the Design Consultant's opinion the Work does not conform to the Contract Documents. Whenever in the Owner's Representative's or the Design Consultant's reasonable opinion it is considered necessary or advisable to insure the proper implementation of the intent of the Contract Documents, the Owner's Representative shall have the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract Documents whether or not such Work is fabricated, installed or completed.

3.6. Final Completion of Design Services.

- 3.6.1. When the Contractor notifies the Design Consultant that the Work is substantially complete, the Design Consultant and its consultants shall inspect the Work and prepare and submit to the Owner's Representative lists of the Work of the Contractor(s) which is not in conformance with the Contract Documents. The Design Consultant shall transmit such lists to the Contractor(s). The Owner may request that the Design Consultant inspect and prepare a list on any portion of the Work.
- 3.6.2. The Design Consultant shall receive, compile, and report all W/MBE participation of all contractors, sub-contractors and vendors of this project, utilizing a pay application cover sheet to be supplied and certified by the contractor (format to be provided by Owner).
- 3.6.3. The Design Consultant and its consultants shall conduct up to two (2) comprehensive Final Completion inspections at the request of the Owner. If more than two (2) Final Completion inspections are required, through no fault of the Design Consultant, the additional inspections shall be deemed additional services.
- 3.6.4. The Design Consultant shall obtain from the Contractor(s) drawings, prints, and other data necessary for the accurate preparation of the record drawings.
- 3.6.5. The Design Consultant shall make a recommendation in writing to the Owner regarding liquidated damages for each contractor, as may be applicable.
- 3.6.6. Upon correction of the deficiency reports and acceptance of all other close-out submittals and certificates of the Contractor, the Owner's Representative and the Design Consultant shall review and approve the Application for Final Payment and forward it to the Owner

for execution. In addition, the Design Consultant shall certify in writing that the work conforms to the Contract Documents. The Design Consultant shall issue AIA Substantial Completion Certificates for each Contractor.

3.7. Serving as Witness.

3.7.1. The Design Consultant shall provide testimony in public hearings, arbitration proceedings, and legal proceedings, and such testimony shall be provided without additional fee or charge to the Owner unless said testimony is requested by the Owner and consists of expert testimony not related to this Project or Work.

3.8. Construction Warranty.

3.8.1. The Design Consultant and its consultants shall assist the Owner in resolution of warranty issues as may be required to determine responsibility for deficiencies. The Design Consultant and its consultants shall conduct an inspection of the project one (1) month prior to warranty expiration and provide to the Owner a written report specifying any warranty deficiencies which may exist.

4. ARTICLE 4 COMPENSATION

4.1. Basic Services Compensation.

The Owner shall compensate the Design Consultant in accordance with the terms and conditions of this Agreement, including the following:

4.1.1. For the Basic Services of the Design Consultant, Basic Services Compensation shall be in the amount of \$210,500.00.

4.1.2. In the event the Owner requests changes to the Project or elects not to complete the work or any portion thereof, which would decrease the most recently approved CCAP, basic compensation due the Design Consultant, as to such deletion or decrease, shall be adjusted downwards for remaining services to be performed but not for services already performed to the date of receipt by the Design Consultant of the written requested change or notice of the intent not to complete part or all of the work, in accordance with the basic payment schedule set forth in Paragraph 4.2 hereof.

4.1.3. The Basic Services Compensation stated in Paragraph 4.1.1 includes all compensation and other payments due the Design Consultant (manpower, overhead, profit, direct costs, travel, copies, postage, telephone and facsimile service, etc.) in the performance of the Basic Services.

4.2. Payments to the Design Consultant.

Payments on account of the Design Consultant shall be made as follows:

4.2.1. Payments for Basic Services, including any design phase change orders, shall be made in proportion to services performed so that the compensation at the completion of each Phase shall equal the following percentages of the Basic Services Compensation.

Payment shall be made upon presentation of the Design Consultant's statement of services, fully supported by invoices, time cards, and certifications that all sub-consultants have been paid, and other documentation as requested by the Owner.

Schematic Design Phase	15%
Design Development Phase	20%
Construction Documents Phase	40%
Permitting and Bidding/Negotiation Phase	5%
Construction Administration (to include Close Out Documents)	20%
Final Completion of Design Services Phase	100%

- 4.2.2. No deductions shall be made from the Design Consultant's Basic Services Compensation on account of penalty, liquidated damages, retainage or other sums withheld from payments to Contractor.
- 4.2.3. Deductions may be made from the Design Consultant's Basic Services Compensation on account of errors and omissions in the drawings, specifications and other documents prepared by the Design Consultant or in the Design Consultant's performance of its obligations under this Agreement.
- 4.3. Additional Services Compensation.
 - 4.3.1. With respect to any Additional Services, as described in Article 7 herein, performed by the Design Consultant hereunder, the Design Consultant and Owner shall negotiate an equitable adjustment to the Basic Services Compensation. However, if negotiations are not successful prior to the time the additional services are needed, the Owner may direct the Design Consultant to proceed with the Additional Services on a time spent basis with Additional Services Compensation to be computed as follows:
 - 4.3.2. Principals' time at the fixed rate as stated in the proposal submitted by the designer and attached as Exhibit A.
 - 4.3.3. Payments for Additional Services of the Design Consultant shall be made upon presentation of the Design Consultant's statement of services, fully supported by invoices, time cards, and other documentation as requested by the Owner.
- 4.4. Accounting Records.
 - 4.4.1. Records of the Design Consultant with respect to Additional Services and payroll, and consultant and other expenses (including Reimbursable Expenses) pertaining to the Project, shall be kept according to generally accepted accounting principles and shall be available to the Owner or its authorized representative for inspection and copying at mutually convenient times.

5. ARTICLE 5 PERIOD OF SERVICE

- 5.1. Unless earlier terminated as provided in Article 12 hereof, this Agreement shall remain in force for a period which may reasonably be required for the Basic Services and Additional Services hereunder. However, the provisions of the Agreement relating to Professional Responsibility

Construction Warranty; Professional Liability coverage; Indemnification; and Ownership of Documents/Confidential Information shall remain in effect after termination of the other provisions of the Agreement.

- 5.2. Time is of the essence in this Agreement.

6. ARTICLE 6 OWNER'S RESPONSIBILITIES

- 6.1. The Owner shall provide full information regarding the requirements for the Project.
- 6.2. The Owner shall examine documents submitted by the Design Consultant and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Design Consultant's Services.
- 6.3. If required for this Project, the Owner shall furnish a certified land survey of the Project sites, giving as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines, both public and private, above and below grade, including inverts and depths. All associated work will be coordinated by Design Consultant as part of the Basic Services.
- 6.4. The Owner shall pay for the services of a soils engineer or other consultant, when such services are deemed necessary by the Design Consultant or Owner's Representative, to provide reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations for determining subsoil, air and water conditions, with appropriate professional interpretations thereof. All associated work will be coordinated by Design Consultant as part of the Basic Services.
- 6.5. All services, information, surveys and reports required of the Owner shall be furnished at the Owner's expense.
- 6.6. If the Owner so directs, the Owner shall pay for and the Design Consultant shall request, expedite, and obtain all necessary permits, licenses, approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

7. ARTICLE 7 ADDITIONAL SERVICES

- 7.1. If any of the following Additional Services are authorized in advance by the Owner in writing, the Design Consultant shall furnish or obtain from others the authorized Additional Services. If authorized in advance, in writing by the Owner, the Design Consultant shall be paid for these Additional Services by the Owner pursuant to Article 4.3, to the extent they exceed the Basic Services under this Agreement. Additional Services may include:
- 7.1.1. Providing fully detailed presentation models or presentation renderings, not included in Basic Services.
- 7.1.2. Providing financial feasibility or other special studies, not included in Basic Services.

- 7.1.3. Providing planning surveys or alternative site evaluations.
- 7.1.4. Providing services after payment by the Owner of the Final Payment to the Design Consultant other than services called for in the Basic Services.
- 7.1.5. Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practices consistent with the terms of this Agreement.

8. ARTICLE 8 NOTICES

- 8.1. Any notice required by this Agreement or other communications to either party by the other shall be in writing and deemed given when delivered personally or when deposited in the United States Post Office, first class, postage prepaid, addressed as follows, or to such other address as shall be duly given by notice meeting the requirement of this Article.

To Owner: Buncombe County
Attn: General Services Department
40 McCormick Place
Buncombe, NC 28801

To Design Consultant: Civil Design Concepts, P.A.
168 Patton Avenue
Asheville, NC 28801

9. ARTICLE 9 INSURANCE

- ### 9.1. Insurance

- 9.1.1. Design Consultant agrees their insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the Owner's signing of this Agreement. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on Design Consultant's duty to carry adequate insurance. The insurance coverage and limits set forth below shall not act as, be construed, or deemed to be a limitation on the liability of Design Consultant, for losses or damages under this Agreement. The minimum insurance coverage which the Design Consultant shall procure and maintain at its sole cost and expense during the term of the Agreement is as follows:

Worker's Compensation. Coverage at the statutory limits in compliance with applicable State and Federal laws. Design Consultant shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

Employer's Liability. Coverage with minimum limits of \$1,000,000 each employee accident and \$1,000,000 each employee disease.

Commercial General Liability. Insurance covering all operations performed by the Design Consultant with a minimum limit of \$1,000,000 per occurrence with a \$2,000,000 aggregate.

Professional Liability. Insurance covering the Design Consultant for acts, errors, or omissions in performance of the Agreement with a minimum limit of \$1,000,000 per claim for projects under \$15,000,000 and a minimum limit of \$2,000,000 per claim for projects over \$15,000,000.

Business Automobile Liability. Insurance covering all owned, non-owned, and hired vehicles used in performance of this Agreement. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21.

Umbrella/Excess Liability. If the underlying liability policy limits are less than those required, Design Consultant may provide an excess or umbrella policy to meet the required limits of insurance. The excess or umbrella policy shall extend coverage over the underlying professional liability policy. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

Additional Insurance Provisions.

If the Design Consultant maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the Design Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

The Design Consultant shall provide the County with certificates of insurance evidencing the above amounts. Buncombe County and General Services Department shall be named as additional insureds under the commercial general liability and business automobile liability policy(s). Before commencing work and for any subsequent renewals, the Design Consultant shall furnish the County with certificates of insurance on an approved form.

Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the County, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina and in a form acceptable to the County.

Design Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Design Consultant shall ensure that Buncombe County and General Services Department are additional insureds on insurance required from subcontractors.

The Design Consultant shall maintain in force during the performance of this contract and for six (6) years after final completion of the Project, the Professional Liability insurance coverage referenced above.

Waiver of Subrogation: Design Consultant hereby grants to County a waiver of any right to subrogation which any insurer of said Design Consultant may acquire against the County by virtue of payment of any loss under such insurance. Design Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

The limits of coverage under each insurance policy maintained by the Design Consultant shall not be interpreted as limiting the Design Consultant's liability and obligations under this Agreement.

- 9.2. Notwithstanding the foregoing, nothing contained in this Article 9, nor this Contract, shall be deemed to constitute a waiver of the sovereign immunity of the Owner, which immunity is hereby reserved by the Owner.

10. ARTICLE 10 INDEMNIFICATION

- 10.1. Notwithstanding anything to the contrary contained herein, the Design Consultant shall indemnify and hold harmless the Owner and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from (1) the Design Consultant's negligent performance or failure to perform its obligations under this Agreement and (2) any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of personal and/or real property including the loss of use resulting wherefrom and caused by any negligent act or omission of the Design Consultant, anyone directly or indirectly employed by the Design Consultant or anyone for whose acts the Design Consultant may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.
- 10.2. Except as otherwise set forth in this Agreement, the Design Consultant and the Owner shall not be liable to each other for any delays in the performance of their respective obligations and responsibilities under this Agreement which arise from causes beyond their control and without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, atmospheric condition of unusual severity, war, and strikes. Owner shall not be liable to the Design Consultant for acts or failures to act by the Contractor.

11. ARTICLE 11 DISPUTE RESOLUTION PROCEDURE

- 11.1. To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between the Owner and the Design Consultant, that any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the President of the Buncombe County Bar Association shall name a mediator to hear the matter. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. The costs of the process shall be divided equally between the parties to the dispute.
- 11.1.1. The mediation session shall be private and shall be held in Buncombe County, North Carolina or in another North Carolina County agreed upon by both parties. Mediation under this Article 11 shall not be the cause for a delay of the Project which is the focus of the dispute.
- 11.2. If, as a result of mediation, a voluntary settlement is reached and the parties to the dispute agree that such settlement shall be reduced to writing, the Mediator shall be deemed appointed and constituted an arbitrator for the sole purpose of signing the mediated settlement agreement. Such agreement shall be, and shall have the same force and effect as an arbitration award, and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction.

- 11.3. If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Buncombe and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this Article, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

12. ARTICLE 12 TERMINATION, SUSPENSION OR ABANDONMENT

- 12.1. If either party shall substantially fail to perform in accordance with the terms of this Agreement through no fault of the other party, the non-breaching party may terminate this Agreement by delivering seven (7) days' written notice of termination.
- 12.2. If the project is suspended by the Owner for more than thirty (30) consecutive days, the Design Consultant shall be compensated for services performed prior to notice of such suspension.
- 12.3. This Agreement may be terminated by the Owner upon not less than seven (7) days' written notice to the Design Consultant in the event that the project is permanently abandoned. If the Project is abandoned by the Owner for more than ninety (90) consecutive days, the Design Consultant may terminate this Agreement by giving written notice.
- 12.4. If the Owner fails to make payment when due the Design Consultant for services and expenses, the Design Consultant may, upon seven (7) days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Design Consultant within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Design Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.
- 12.5. In the event of termination not the fault of the Design Consultant, the Design Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due. This shall be the exclusive remedy for termination.
- 12.6. Owner shall have no liability to the Design Consultant for any delay or damage caused the Design Consultant due to suspension of the work, or due to any other delay, interruption, hindrance, or interference.
- 12.7. Should the Owner terminate this agreement for any reason under this Article, the Owner will acquire such drawings, including the ownership and use of all drawings, specifications, documents and materials relating to the Project prepared by or in the possession of the Design Consultant. The Design Consultant will turn over to the Owner in a timely manner and in good unaltered condition all original drawings, specifications, documents, materials, and computer files related to the project.

13. ARTICLE 13 SUCCESSORS/ASSIGNMENT

- 13.1. This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns, trustees and personal representatives of the Owner, as well as the permitted assigns and trustees of the Design Consultant.

- 13.2. The Design Consultant shall not assign, sublet or transfer its interest in this Agreement without the written consent of the Owner, except that the Design Consultant may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval of the Owner.

14. ARTICLE 14 OWNERSHIP OF DOCUMENTS/CONFIDENTIAL INFORMATION

- 14.1. The Drawings, Specifications and other documents prepared by the Design Consultant for this Project are for use solely with respect to this Project, the Owner shall be the owner of these documents and shall have all common law, statutory and other reserved rights, including the copyright. The Design Consultant's Drawings, Specifications or other documents shall not be used by the Owner or others on other projects, except by agreement in writing by the Design Consultant.
- 14.2. Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the project is not to be construed as publication in derogation of the Owner's reserved rights.

15. ARTICLE 15 ADDITIONAL PROVISIONS

- 15.1. Unless otherwise provided in this Agreement, the Design Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.
- 15.2. The Design Consultant shall not discriminate against any employee or applicant for employment because of age, gender, race, creed, national origin, or disability. The Design Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event the Design Consultant is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be canceled, terminated or suspended in whole or in part by Owner, and the Design Consultant may be declared ineligible for further Owner contracts.
- 15.3. The Design Consultant shall follow all applicable federal, state, and local laws.
- 15.4. The Owner and Design Consultant agree to endeavor to provide written notification and to negotiate in good faith prior to litigation concerning claims, disputes, and other matters in question arising out of or relating to this Agreement or the breach thereof.
- 15.5. The payment of any sums by the Owner shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Design Consultant.
- 15.6. This Agreement and its Exhibits and Attachments represent the entire and integrated agreement between the Owner and the Design Consultant and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Design Consultant.
- 15.7. This Agreement shall be governed by the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the County of Buncombe and the State of North Carolina.

- 15.8. If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 15.9. Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.
- 15.10. The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.
- 15.11. For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.
- 15.12. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, which shall be sufficient evidence by any one thereof.
- 15.13. **E-VERIFY.** As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR provides the services to the County utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the COUNTY.

In witness whereof, each individual executing this agreement acknowledges that he/she/it is authorized to execute this agreement and further acknowledges the execution of this agreement the day and year first written above.

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

Don Warn, Buncombe County Chief Financial Officer

DESIGN CONSULTANT:

Civil Design Concepts, P.A.

By:  _____

Title: Design Director

Date: 11/18/22

OWNER:

COUNTY OF BUNCOMBE

By: _____

Title: _____

Date: _____



October 12, 2022

PROPOSAL FOR SERVICES – EXHIBIT A

SUBMITTED TO: Ronnie Lunsford, PEM
Buncombe County
40 McCormick Pl. Asheville, NC 28801

SUBMITTED FOR: Civil Design Services for AB Tech Enka Campus Demolition Project
Enka, North Carolina Project # TBD

I SCOPE OF SERVICES:

Thank you for allowing us to provide you this proposal with anticipated services and projected fees for the AB Tech Enka Campus Demolition Project project. The following is an anticipated Scope of Services detailing services anticipated by Civil Design Concepts, P.A., and its consultants.

Information provided in this Scope of Services is based on our experience with past projects and our understanding of this project based on the information we have been provided to date.

A. Topographic, Location Survey: (sub-consultant)

1. Prepare a location / topographic survey of the existing site (approximately +/- 4 acres) suitable for site design purposes.
2. Elevation certificates, ALTA surveys, subdivisions and as-builts are not included in this scope of services but can be provided at an additional cost upon request.
3. Through a qualified subconsultant, identify to the extent practical and provide mapping for those private utilities that can be reasonably located on the subject property and that are not publicly owned or under the ownership of the respective utility as they will not be included or marked as part of the NC One Call locate request. These utilities may include water services, sewer services, phone / data services, power lines, gas lines and other improvements that are deemed as private and are not the responsibility of the respective utility.

B. Design Development/ ACM, LBP & Hazmat Surveys:

1. Coordinate available information and determine needs for additional information necessary to prepare plans for the proposed demolition.
2. Evaluate existing infrastructure to remain after placement of the demo material including water, sewer, storm drainage, steam and communications.
3. Identify any improvements that may be necessary to accommodate future development and or project phasing.

4. Preliminary analysis of the project as it relates to the proposed demolition debris, construction traffic control and debris placement.
5. Develop conceptual layout of proposed access points to the demolition site, truck routing, and other conceptual planning
6. Develop quantity take off and preliminary cost estimate for proposed demolition, related site work and any proposed site utility modifications.
7. Correlate the existing infrastructure information collected during our preliminary investigations with the survey information generated by the project surveyor.
8. **Asbestos Containing Material Survey**
 - a. Terracon will mobilize State of North Carolina licensed asbestos building inspectors to conduct an asbestos evaluation of the structure as required by US Environmental Protection Agency (USEPA) regulation 40 CFR Part 61, National Emissions Standards for Hazardous Air Pollutants (NESHAP). Terracon will conduct a visual assessment of the structure to identify materials suspected of containing asbestos (suspect ACM) such as thermal system insulation, surfacing materials, and miscellaneous materials (e.g., floor tiles, mastics, caulks). Suspect materials will be physically assessed for friability and evidence of damage or degradation. Samples of suspect ACM will be collected for laboratory analysis.
 - b. As this structure is slated for demolition, Terracon will utilize destructive techniques to identify materials that may be present behind walls, in plenum spaces, beneath flooring, or potentially concealed by other materials, including newer construction. This means that we may knock holes in walls and/or ceilings and remove large sections of flooring to survey for additional materials. Terracon will not be responsible for repair or touch-up of sample locations. Reasonable efforts to access suspect materials within known areas of restricted access (e.g., crawl spaces) will be made provided these areas are not determined to be permit-required confined spaces or to pose a health or safety risk to Terracon personnel. Suspect materials that cannot be safely reached will be assumed to contain asbestos.
 - c. Roofing will be sampled unless directed by the Client to assume the materials contain asbestos. Terracon will apply temporary patching to roof sample locations, but the Client is advised to obtain a roofing contractor to repair areas damaged by client-requested roof sampling. Regardless of the decision, by virtue of authorizing our services described herein, the Client agrees to indemnify and hold Terracon harmless from any damages that may ensue as a result of our sampling of roofing materials.
 - d. A laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) will analyze bulk material samples by visual estimation using polarized light microscopy (PLM). If PLM results merit re-analysis by the more quantitative point counting technique or if loose fill vermiculite insulation is encountered, Terracon will contact the Client for authorization if additional costs will be incurred.
 - e. Samples may be submitted for a “positive stop” analysis, which means once a sample is analyzed to contain asbestos, the remaining samples in the same homogenous group are not analyzed and assumed to contain asbestos in similar content. Additionally, Terracon may elect to presume materials to be asbestos-containing based on our experience or

identification of labeled materials in the facility. Materials assumed to contain asbestos will also be documented in our report. It is assumed that up to 225 bulk samples will be collected for PLM analysis.

9. **Lead- Based Paint**

- a. Terracon will visually assess the structure and perform a lead-based paint (LBP) evaluation by collecting a representative number of paint chip samples for analysis by an Environmental Laboratory Accreditation Program (ELAP) approved laboratory for analysis of lead by Atomic Absorption. Representative building component surfaces that may be tested include but are not necessarily limited to: door jambs and trim, window sills and sashes, cabinets, walls, stairs, floors, structural steel, railings, exterior siding, concrete, and roofing. LBP sampling will be limited to readily observable and accessible surfaces in the building. Terracon cannot guarantee a building or property to be LBP free as the possibility exists that LBP coated surfaces may be hidden from sight or in inaccessible locations, or the homogeneous construction areas identified may not be truly homogeneous. It is assumed that up to 40 paint chip samples will be collected for analysis.

10. **Regulated/Universal Materials**

- a. A walkthrough assessment of the building will be performed to identify other hazardous materials which may be present, including: polychlorinated biphenyl (PCB)-containing equipment such as pre-1979 magnetic lighting ballasts and transformers; mercury-containing equipment such as fluorescent light bulbs, high intensity discharge lamps, switches, thermostats, and manometers; air conditioning equipment which may contain chlorofluorocarbons (CFCs); tanks, piping, and sumps associated with chemical and petroleum storage; and, batteries. The findings of this survey will be based solely on visual observations; no samples will be collected as part of this assessment except as noted below.
- b. When assessing chemical storage containers (if present), Terracon will attempt to determine the approximate volume of material stored inside based upon container labeling or by using sight tubes. Terracon will not attempt to open containers or valves for the purpose of assessing volume and/or contents.
- c. In addition to the above inventory, Terracon will visually assess the building for the presence of caulking and/or glazing compounds which, in the judgment of our field personnel, may contain PCBs. It is assumed that up to eight representative samples of these materials will be collected and submitted to a North Carolina-certified laboratory for PCB analysis using EPA Method 8082A.

11. **Reporting**

- a. Terracon will prepare a singular report capturing the results of our Scope of Services. In general, our report will describe the sampling methodology and the results of the evaluations. The report will describe the number, type, and location of suspect ACM samples, the analytical results, the estimated quantity, and the condition of materials identified as ACM. Drawings depicting the location and extent of ACM and/or estimates of ACM removal costs can be provided upon request. The report will document the results of LBP analysis and will identify building component surface coatings identified as LBP. Hazardous building materials observed will be listed, along with estimated

quantities, in the report. Unless otherwise directed, we will provide an electronic copy (PDF) of the report to the Client.

C. Construction Documents: (This section indicates each of the permits that will be applied for and final plans to be issued).

1. Site Access

- a. Refine demolition phase site plan to incorporate changes requested by Owner and any comments received from the NC State Construction Office. These plans will include any temporary parking modifications, pedestrian route improvements or other measures as may be needed to coordinate the removal of the demolished material from the current site and transport the same to alternate site.

2. Grading / Erosion Control / Storm Drainage Plan

- a. Prepare grading, erosion control and storm drainage plans for the proposed waste area to accommodate requirements of Buncombe County and the NCDENR Regional Office. Plan will include any required additions or modifications to the existing storm drainage system.
- b. Submittal of Erosion Control and Storm Water Management Plan with supporting design calculations to the NCDENR Regional Office to secure Erosion Control Permit and Construction Storm Water Discharge Permit.

3. Site Utility Plan

- a. Prepare design documents showing either the removal and/or abandonment of any existing utilities to either 1) remain, 2) be removed or 3) be abandoned in place within the limits of the proposed waste site, including specific guidance to prospective bidders for each condition and relevant termination points.

D. Contract Administration Services:

1. Bidding/Contract Execution

- a. Submit bid documents to the Owner for approval prior to bidding the project and incorporate any identified revisions accordingly.
- b. Prepare a final engineer's construction cost estimate.
- c. Prepare Bid Documents and Contract Documents necessary to complete the bidding process.
- d. Coordinate contract review and approval by Owner's attorney, as required, and coordinate bid advertisement.
- e. Coordinate and conduct Pre-bid meeting.
- f. Address questions from bidders and issue any required addenda to plan holders during bidding process.
- g. Conduct bid opening at the time & location specified.
- h. Review bids for accuracy, prepare certified bid tabulation, confirm bidders' qualifications and licensing, and make recommendation of award to the Owner.
- i. Assist in assuring contract documents are completed and executed completely including

bonding and insurance requirements.

- j. Assist in execution of Contract and issuance of Notice to Proceed.

2. Administering Contract through Project Completion.

- a. Review Applications for payment for concurrence with approved schedule of values and make recommendation to approve or deny.
- b. If change order requests are made, review for legitimacy and accuracy and make recommendation to owner to deny or approve.
- c. Upon Project completion assist owner in finalizing contract (Once all punch list items are completed) and releasing retainage along with securing final lien waivers.

E. Construction Observation:

The following is a list of construction observation services, which will be provided as required and on an as needed basis.

- 1. Attend construction meetings as requested including required pre-construction, monthly and other meetings. Estimated number of meetings: twelve (12)
- 2. Review shop drawings and other submittals for compliance with approved plans.
- 3. Periodic Inspections to determine general compliance of the work with the plans and specifications, which inspection and/or approval shall not constitute a guarantee that the work complies with the plans and specifications and will not relieve the contractor of its primary obligation to adhere to the plans and specifications. Engineer shall have no obligation as to Contractor's means or methods or compliance with OSHA or other health and safety regulations. Estimated number of visits: fifty (50).
- 4. Erosion Control Biweekly observations: In order to receive a Land Disturbance Permit the City of Asheville requires that the developer provide a completed and notarized Certificate of Inspection Agreement they have made with a licensed professional. This agreement requires the professional to conduct erosion control compliance inspections on a bi-weekly basis. The observations are required until such time that the site is considered stabilized by the city. CDC will make these observations and provide the reports to the city in conjunction with our observations of the site work. Since CDC does not control the construction schedule, these observations will be billed on an hourly basis.
- 5. Attendance at one final inspection for each utility (water, sewer, and storm water detention) to determine that the items have been installed in general conformance with the plans and specifications to prepare for final agency inspection. Estimated number of visits: three (3).

F. Closeouts / Record Drawings and Final Report

- 1. Incorporate Contractor's documented field mark-ups and other record drawings into a comprehensive set of record drawings suitable for submittal to the NC State Construction Office. No field survey or as-builts are included under this scope of services.

II CLIENT RESPONSIBILITIES:



The Client shall provide Civil Design Concepts, P.A., with base site information in AutoCAD format, building plans, program descriptions, budget or other information as may be required to complete the work, or shall agree to reimburse Civil Design Concepts, P.A. for the cost of obtaining the information required. The Client shall hold harmless and indemnify Civil Design Concepts, P.A. against injury loss or damage arising out of the negligent acts, errors or omissions arising from information supplied by others.

Further, the Client shall identify and designate one individual to act on behalf of the Client for reviews and approvals. The Client shall identify any special definitions or conditions required for invoicing for services rendered.

III ADDITIONAL SERVICES

All additional work requested by the Owner will be billed on an hourly basis or a negotiated lump sum fee. Extra work will include, but not be limited to:

1. Multiple phases of construction. (This proposal assumes single-phase construction.)
2. Design of off-site utility extensions necessary to serve the project other than described.
3. Change in scope of services as defined within this proposal.
4. Corps of Engineers / Environmental permitting.
5. Changes required due to contractor error.
6. Design modifications requested by Owner after submittals.
7. Design changes due to error in base survey information.
8. Flood study/ Permitting Services.
9. No structural designs included.
10. No geotechnical investigation or designs included.
11. Please note that this scope assumes that we will be provided adequate base information to develop design documents and required footprint information, which includes but is not limited to:
 - a. Topographic data in two-foot intervals provided by professional land surveyor.
 - b. Finalized footprints from the architect including accessible entrance, routes, etc.
 - c. Other information determined to be necessary to complete this project's requirements.
12. Water feature, mechanical or structural engineering design; fees will be negotiated as necessary.
13. Coordination and/or design documentation for any exterior lighting.
14. Site retaining wall permitting or any other structural designs.
15. Traffic Studies, Traffic Impact Analyses, or any required off-site roadway improvements
16. Preliminary Geotechnical / Soils Evaluations or any Construction Materials Testing during construction
17. Dry Utility Coordination for power, phone, cable, gas or other related items
18. Topographic, location, property, subdivision, construction layout or other survey services
19. Easement acquisition assistance for any off-site easements that may be required.
20. Private utility location or coordination for any utilities that are not publicly owned.
21. Wetland delineation, stream identification or jurisdictional determinations as may be required for permitting through the US Army Corps of Engineers.

IV SCHEDULE

Upon acceptance of this proposal Civil Design Concepts, P.A. will work with client to establish a project schedule.



V COST FOR SERVICES

Fees for the above scope of services are as follows:

A. Topographic, Location Survey:	\$ 17,500
B. Design Development/ ACM, LBP & Hazmat Surveys:	\$ 62,500
C. Construction Documents:	\$ 52,000
D. Contract Administration:	\$ 25,500
E. Construction Observation:	\$ 44,500
F. Utility Closeouts/Certifications:	<u>\$ 8,500</u>
TOTAL:	\$210,500

Actual costs at hourly rates of Civil Design Concepts, P.A. personnel assigned to project as follows:

Principal Engineer	\$240/hour
Project Manager	\$175/hour
Senior Project Engineer	\$140/hour
Associate project Engineer	\$110/hour
Construction Administrator	\$100/hour
Senior Civil Engineer Technician	\$100/hour
Civil Engineer Technician	\$ 90/hour
Construction Inspector	\$ 85/hour
Office Administrator	\$ 60/hour

Any work in addition to that outlined in the Scope of Services listed above will be billed on an hourly basis according to the rate schedule shown or a negotiated lump sum fee. Additional Services will only be performed under written authorization from the client. These rates are valid through December 31, 2022, at which time the client will be notified in writing of any rate changes.

Reimbursable expenses are not included in the cost of services. Reimbursable expenses shall include the following: postage and travel @ \$0.60/mi., meals, and other incidental expenses shall be a direct charge per receipt.

Printing and reproduction of plans and specifications will be billed at a 1.1 multiplier of cost.

Payment for services rendered shall be made monthly, due within ten days of the receipt of invoice, for all work completed through the last pay period in the preceding month or according to a schedule provided by the Client. Any invoice outstanding for more than 30 days after receipt will be subject to an interest charge of 1-1/2% per month.

VI PROPOSAL DURATION

This proposal shall be valid for thirty- (30) days. Upon acceptance, it shall become an agreement between the Client and Civil Design Concepts, P.A.

~~VII ADDITIONAL TERMS AND CONDITIONS~~

~~Included is a copy of our Consulting Services Agreement and this Proposal for Services. If the terms of the Agreement and the Proposal are acceptable, please execute the agreement and return to our office.~~



~~When executed this Agreement may be terminated for convenience within 30 days of written notice by Civil Design Concepts, P.A. or Buncombe County, or if either party fails substantially to perform through no fault of the other and does not commence correction of such non-performance within 15 days of written notice and diligently complete the correction thereafter. In the event of termination, Civil Design Concepts, P.A. shall be paid for all authorized services performed and reimbursable expenses incurred to the date of notification. Any expenses incurred by Civil Design Concepts, P.A. due to termination of project by Client shall be paid by Client.~~

CONSULTING SERVICES AGREEMENT

This contract entered into October 12, 2022 by & between Buncombe County, hereinafter called the Client, & Civil Design Concepts, P.A.; Witnesseth that: Whereas the Client desires to engage Civil Design Concepts (sometimes referred to as "CDC") to provide consulting services; and, Whereas the Client finds that the attached Scope of Services and terms of this agreement are acceptable; and, Whereas Civil Design Concepts desires to provide said services and agrees to do so for the compensation and upon the terms and conditions as hereinafter set forth,

Now, therefore, the parties hereto do mutually agree as follows:

1. Scope of Services: Civil Design Concepts shall provide the services attached hereto in the Exhibit A "Proposal for Services", dated October 12, 2022 to this Agreement, hereinafter called services. Additional services will be invoiced in accordance with the attached rate and fee schedule.

2. Standard of Care: Civil Design Concepts will perform its services using that degree of skill and diligence normally employed by professional engineers or consultants performing the same services at the time these services are rendered. CDC shall have the right to rely on any and all information furnished by Client without any requirement to verify same.

3. Authorization to Proceed: Execution of this Consulting Services Agreement will be considered authorization for Civil Design Concepts to proceed unless otherwise provided for in this Agreement or as otherwise modified by the attached project schedule.

4. Changes in Scope: The Client may request changes in the Scope of Services provided in this Agreement. If such changes affect Civil Design Concepts cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this Agreement. Any additional services resulting from a change in scope of services will be pre-approved by the client.

5. Compensation: The Client shall pay the compensation to Civil Design Concepts set forth in the Exhibit "A", Section V, "Cost for Services", as described in the proposal attached hereto. Unless otherwise provided in the Cost for Services, Civil Design Concepts shall submit invoices to the Client monthly (by the 15th day of the month) for work accomplished under this agreement and the Client agrees to make payment to Civil Design Concepts within thirty (30) days of receipt of the invoices. Client further agrees to pay interest on all accounts invoiced and not paid or objected to for a valid cause in writing within said time period at a rate of 1-1/2 percent per month (18 percent per annum), until paid. Client agrees to pay Civil Design Concepts' cost of collection of the amounts due and unpaid after sixty (60) days, including but not limited to, court costs and attorney's fees. Civil Design Concepts shall not be bound by any provision such as contained in a purchase order or wherein Civil Design Concepts waives any rights to a mechanic's lien or any provision conditioning Civil Design Concepts' right to receive payment for its work upon payment to the Client by any third party. These general conditions are notice, where required, that Civil Design Concepts shall file a lien whenever necessary to collect past due amounts. The Client agrees that failure to make payment in full within thirty (30) days or raise any specific objection to the services rendered or charge therefore shall constitute a waiver of any such objection or claim as to any issue Client may have and the failure to make payment or raise any objection as herein required shall bar any claim against CDC in tort or contract. It is also mutually agreed that should the Client fail to make prompt payments as described herein, Civil Design Concepts reserves the right to immediately stop all work under this agreement until all accounts are brought current or terminate this agreement, in the sole discretion of CDC.

6. Personnel: Civil Design Concepts represents that it has, or will secure at their own expense, all personnel required to perform the services under this agreement and that such personnel will be fully qualified and adequately supervised to perform such services. It is mutually understood that should the scope of services require outside subcontracted services; Civil Design Concepts may employ those services at their discretion.

7. Opinions or Estimates of Cost: Any costs estimates provided by Civil Design Concepts shall be considered opinions of probable costs. These along with project economic evaluations provided by Civil Design Concepts will be on a basis of experience and judgment, but, since Civil Design Concepts has no control over market conditions or bidding procedures, Civil Design Concepts cannot warrant that bids, ultimate construction cost, or project economics will not vary from these opinions. Based thereon, Client waives any and all claims against CDC which arise out of any opinion of probable construction cost provided.

8. Termination: This Agreement may be terminated for convenience by either the Client or Civil Design Concepts with 15 days written notice or if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within 5 days of written notice and diligently complete the correction thereafter. On termination, Civil Design Concepts will be paid for all authorized work performed up to the termination date plus reasonable project closeout costs.

9. Limitation of Liability: Civil Design Concepts liability for Client's damages will, in aggregate, not exceed \$1,000,000 for the Scope of Services referenced herein. This provision takes precedence over any conflicting provision of this Agreement, or any documents incorporated into it or referenced by it. This limitation of liability will apply whether Civil Design Concepts liability arises under breach of contract or warranty; tort, including

negligence; strict liability; statutory liability; or any other cause of action, and shall include Civil Design Concepts' directors, officers, employees, and subcontractors. Limits of liability may be increased upon request by Client for additional fees paid.

10. Assignability: This agreement shall not be assigned or otherwise transferred by either Civil Design Concepts or the Client without the prior written consent of the other. Assignability of this contract will not unreasonably be withheld.

11. Severability: The provisions of this Consulting Services Agreement shall be deemed severable, and the invalidity or enforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this consulting services agreement is deemed unenforceable for any reason whatsoever, such provision shall be appropriately limited, and given effect to the extent that it may be enforceable.

12. Ownership of Documents: CDC shall retain all ownership and common-law property rights in all documents, calculations, drawings, maps (together the "Documents"). Upon full and final payment to CDC pursuant to this contract, CDC will grant a one-time, nonexclusive license in the Documents for Client's use on this Project. Client agrees that the deliverables are intended for the exclusive use and benefit of and may be relied upon for this project only by the Client and will not be used otherwise. In the event Client fails to pay all sums when due, CDC reserves the right to withdraw its Documents from any governmental agency to which same have been submitted for the purpose of obtaining approvals or permits and Client acknowledges that it shall have no right to make any use of the Documents whatsoever unless payments are made to CDC in accordance with this Agreement. Client agrees that CDC shall have the right to obtain an injunction to restrain such use if at any time Client fails to make payments to CDC.

13. Excusable Delay: If performance of service is affected by causes beyond Civil Design Concepts control, project schedule and compensation shall be equitably adjusted.

14. Indemnification: Client agrees to indemnify, defend and hold Civil Design Concepts, its agents, employees, officers, directors and subcontractors harmless from any and all claims, and costs brought against Civil Design Concepts which arise in whole or in part out of the failure by the Client to promptly and completely perform its obligations under this agreement, and as assigned in the Exhibit A, or from the inaccuracy or incompleteness of information supplied by the Client and reasonably relied upon by Civil Design Concepts in performing its duties or for unauthorized use of the deliverables generated by Civil Design Concepts.

15. Choice of Law: This Agreement shall be governed by the internal laws of the State of North Carolina.

16. Entire Agreement: This Agreement contains all of the agreements, representations and understandings of the parties hereto and supersedes any previous understandings, commitments, proposals, or agreements, whether oral or written, and may only be modified or amended as herein provided; and as mutually agreed.


17. Attachments to this document: Exhibit A, "Proposal for Services"

Client: Buncombe County

Client Authorized Signature: _____

Print Name: Ronnie Lunsford, PEM

Address: 40 McCormick Pl. Asheville, NC 28801

Signature:  _____
Jesse Gardner (Oct 12, 2022 14:50 EDT)

Name: Jesse Gardner, P.E.

Civil Design Concepts, P.A.
168 Patton Avenue 52 Walnut Street – Suite 9
Asheville, NC 28801 Waynesville, NC 28786