



STROUD ENGINEERING, P.A.

CONSULTING ENGINEERS
107-B COMMERCE STREET
GREENVILLE, NORTH CAROLINA 27858
(252) 756-9352

May 15, 2018

Ms. Diane H. Miller
Town Manager
Town of Oriental
PO Box 472
Oriental, NC 28571

RE: Water System Development Fee Analysis

Dear Ms. Miller:

Thank you for the opportunity to provide the engineering services related to an analysis of water system development fees.

Project Understanding:

House Bill 436 requires that the Town system development fees be based on a written analysis by a financial professional or by a licensed professional engineer. Stroud Engineering, PA proposes to perform this analysis in conformance with criteria stated in paragraph 162A-205 of House Bill 436 and following guidance contained in American Water Works Association (AWWA) Manual M1, Principles of Water Rates, Fees, and Charges.

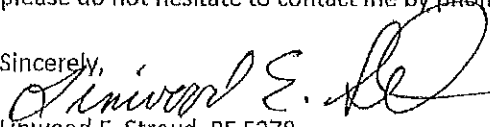
Fees:

Our proposed fee is one lump sum of \$7,500.00 due net 30 days from delivery of report.

This proposal is subject to our **STANDARD TERMS AND CONDITIONS** which are attached hereto and incorporated by reference.


I sincerely appreciate the opportunity to work with you on this project. To authorize work to proceed please sign in the space provided below and return. If you have any questions regarding this proposal please do not hesitate to contact me by phone or email.

Sincerely,


Linwood E. Stroud, PE 5279

Accepted By:

Town of Oriental


Diane H. Miller, Town Manager

Date

5-18-18

107-B COMMERCE ST.
GREENVILLE, NC 27858
(252) 756-9352

102-D CINEMA DRIVE
WILMINGTON, NC 28403
(910) 815-0775

3302-C BRIDGES STREET
MOREHEAD CITY, NC 28557
(252) 247-7479

STROUD ENGINEERING, P. A.
STANDARD TERMS AND CONDITIONS
NC License # C-0647

1. **Definition of Terms.**
 - a. **Engineer** – Stroud Engineering, P. A.
 - b. **Services** – Engineering, surveying, computer aided drafting or other services provided by the Engineer.
 - c. **Client** – Person, corporation, agency or other entity for whom services are rendered.
 - d. **Proposal Letter** – Letter from Engineer to Client defining scope of services and compensation.
 - e. **Work Authorization Form** – Stroud Engineering, P. A.'s work authorization form.

2. **Scope of Services.** The scope of Engineer's services are described in the Proposal Letter or on the Work Authorization Form.

3. **Design Without Construction Phase Services.** If Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, then (1) Engineer's services under this Agreement shall be deemed complete no later than the end of the Bidding or Negotiating Phase; (2) Engineer shall have no design or shop drawing review obligations during construction; (3) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase Consulting and professional services; and (4) Owner waives any claims against the Engineer that may be connected in any way thereto.

4. **Acceptance.** Client agrees the execution of the acceptance of the Proposal Letter or execution of the Work Authorization Form constitutes a legal contract between the Engineer and the Client. Client further agrees that execution of the acceptance of the Proposal Letter or the Work Authorization Form is a material element of the consideration Engineer requires to execute the Services, and if Services are initiated by Engineer prior to execution of this acceptance of the Proposal Letter as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions contained herein. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party.

5. **Schedule for Rendering Services.** Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, if any, are set forth or specific dates by which services are to be completed, if any, are provided in the Proposal Letter, and are hereby agreed to be reasonable. If, through no fault of Engineer, such

periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably. Failure of governmental or other review agencies to complete their reviews and comments in a timely fashion is considered an impairment to the Engineer's services for which Engineer shall not be held responsible. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

6. **Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Engineer will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Engineer to perform changed or additional work, the Services are changed accordingly and Engineer will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Engineer at the time of proposal, Engineer is entitled to a change order equitably adjusting its Services and fee.
7. **Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Compensation section of the Proposal Letter. If not stated, fees will be according to Engineer's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Engineer may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Engineer in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Engineer incurs, including but not limited to attorney fees, to the extent allowed by North Carolina law. Engineer may suspend Services for lack of timely payment.
8. **Permit and Application Fees.** Payment of all permit and application fees is the responsibility of the Client
9. **Use of Documents.**
 - a. All Documents are Instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

- b. Either party to this Agreement may rely on data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- c. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- d. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- e. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- f. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

10. Environmental Condition of Site

- a. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- b. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- c. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- d. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist Engineers or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- e. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- f. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

11. LIMITATION OF LIABILITY. CLIENT AND ENGINEER HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING ENGINEER'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF ENGINEER (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$50,000 OR ITS FEE. FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF ENGINEER'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR

OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGES PAID UNDER ENGINEER'S COMMERCIAL GENERAL LIABILITY POLICY.

12. Indemnification and Mutual Waiver

- a. **Indemnification by Engineer:** To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, Engineers, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Engineers.
- b. **Indemnification by Owner:** Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Engineers as required by Laws and Regulations and to the extent (if any) required in Paragraph 11, Limitations of Liability.
- c. **Environmental Indemnification:** To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Engineers from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- d. **Percentage Share of Negligence:** To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- e. **Mutual Waiver:** To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and Engineers, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

13. Standards of Performance

- a. **Standard of Care:** The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- b. **Technical Accuracy:** Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- c. **Consultants:** Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- d. **Reliance on Others:** Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Engineers may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

14. Insurance. Engineer represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Engineer's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$1,000,000 occ / \$2,000,000 agg); (iii) automobile liability insurance (\$1,000,000 B.I. and P.D. combined single limit); and (iv) professional liability insurance (\$1,000,000 claim / agg). Certificates of insurance will be provided upon request.

15. Dispute Resolution. Client shall not be entitled to assert a Claim against Engineer based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer or surveyor that Engineer has violated the standard of care applicable to Engineer's performance of the Services. Client shall provide this opinion to Engineer and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to North Carolina law.

16. Termination.

- a. **For Convenience.** Upon 30 days prior written notice, Client or Engineer may terminate the performance of any further Services set forth in this Agreement for convenience. Upon the effective date of such termination notice, Engineer shall cease work on all Services set forth in this Agreement. Within 30 days of such termination, Client shall pay Engineer in full for all

Services (and reimbursable expenses) performed prior to termination at which time Engineer shall deliver any completed Documents to Client.

b. **For Cause.** In the event of a material breach of this Agreement, the non-breaching party may terminate this Agreement upon 5 days written notice to the breaching party, which notice must identify the material breach. Upon receipt of such termination notice for cause, the breaching party shall have 14 days in which to cure the breach (the "Cure Period"). Should the breaching party timely cure its material breach of this Agreement, this Agreement may not be terminated for cause. Should the breaching party fail to timely cure its material breach, this Agreement shall be terminated, effective at the end of the Cure Period. Upon the effective date of such termination for cause, Engineer shall cease work on all Services set forth in this Agreement. Within 30 days of termination, Client shall pay Engineer in full for all Services (and reimbursable expenses) performed prior to termination at which time Engineer shall deliver any completed Documents to Client.

c. **Unforeseen Conditions Or Occurrences.** If, during the course of performance of Services pursuant to this Agreement, any unforeseen hazardous substance, material, object, element, or other unforeseen conditions or occurrences are encountered which, in Engineer's judgment, materially affects or may affect the Services to be provided hereunder, the risk involved in providing the Services, or the scope of the Services, Engineer will notify Client. Subsequent to that notification, Engineer may: (a) if practicable, in Engineer's judgment and with Client's approval, complete the original scope of Services in accordance with this Agreement; (b) agree with Client to modify the scope of Services and the estimate of costs to include the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the Parties and incorporated herein; or (c) terminate the Services effective on the date of notification for convenience.

17. **Force Majeure.** Neither party shall be deemed in default of the Agreement to the extent that any delay or failure in the performance of an obligation, other than the payment of money, results from any causes beyond its reasonable control and without its fault or negligence. For this purpose, such acts or events shall include, without limitation, storms, floods, unusually severe weather, acts of God, epidemics, protest demonstrations, war, terrorism or terrorist acts, riot, strikes, lockouts or other industrial disturbances or unanticipated site conditions. In the event that such acts or events do occur, both Parties shall attempt to overcome all difficulties arising and to resume as soon as reasonably possible the normal pursuit and schedule of the Services set forth in this Agreement. The time for performance of Services and the Estimated Completion Date set forth in Section 3.0 shall be extended for a period equal to the delay thereof caused by any such act or event that comes within this Subsection.