North Carolina
Department of Administration

Pat McCrory, Governor
Bill Daughtridge, Jr., Secretary

State Construction Office
Gregory A. Driver, PE, Director

August 28, 2014

McGill Associates, P.A.
PO Box 2259
Asheville, NC 28802

Re: Department of Environment & Natural Resources
Wildlife Resources Commission
Rhodes Pond Dam Repairs
SCO # 131003902 Code: 41209 Item: 4P06

Enclosed are four (4) copies of the proposed Design Contract on the above referenced project. If you are in agreement, please execute the documents on behalf of your firm and forward to the Owner (**DENR - Wildlife Resources Commission**). By copy of this letter we are requesting the Owner, if he concurs, to complete the execution, return one copy to you, forward one copy to us, and retain the remaining copies for his files.

In accordance with Article 1-19 and Article 1-20 of the design contract, you are to furnish copies of agreements between you and your consultants to the **Owner** and to the **State Construction Office**. These agreements are to be returned with the executed design contract.

If you have any questions, please advise.

Sincerely,

Gregory A. Driver, PE

Enclosures
cc: Mark Hamlett (WRC)

Mailing Address:
1307 Mail Service Center
Raleigh, N.C.27699-1307

Telephone *(919) 807-4100*
Fax (919) 807-4110
State Courier #56-02-01
An Equal Opportunity/Affirmative Action Employer

Location:
301 N. Wilmington St., Suite. 450
Raleigh, North Carolina 27601

ADVANCE PLANNING ONLY

NO CONSTRUCTION FUNDS AVAILABLE

STATE OF NORTH CAROLINA
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND DESIGNER

This **AGREEMENT** is made this 28th day of August in the year Two Thousand Fourteen between the State of North Carolina acting through the Department of Environment & Natural Resources - Wildlife Resources Commission, Raleigh, NC hereinafter called the "Owner", and McGill Associates, P.A., Asheville, NC hereinafter called the "Designer".

WITNESSETH, that whereas the Owner intends to construct a project with a scope consisting of Rhodes Pond Dam Repairs hereinafter called the "Project" for which the following has been budgeted:

Code 41209 Item 4P06 SCO # 131003902

A.	Available Funding	$865,000
B.	Required Supplemental Funding	$503,000
Total		**$1,368,000**

Total Project Construction Cost is not to exceed (*one million two-hundred thousand dollars*)	($1,200,000)
Total Contingency Reserve is (*sixty thousand dollars*)	($60,000)
Advance Planning Portion of Design Fee is (*eighty-one thousand seven-hundred fifty dollars*)	($81,750)

NOTE: See Article 14

NOW, THEREFORE, the Owner and the Designer, for the consideration hereinafter set forth, agree as follows:

A. The Designer shall provide professional services for the Project in accordance with the Terms and Conditions of this Agreement and the latest edition of the document entitled "State Construction Manual" which by reference is made a part of this Agreement.

B. The Owner shall compensate the Designer, in accord with the Terms and Conditions of this Agreement, as follows:

(1) For the Designer's **BASIC SERVICES,** as described and defined in Article 1 and Article 14 hereinafter, a Lump Sum of *eighty-one thousand seven-hundred fifty dollars* ($81,750) is authorized.

(2) For the Designer's **ADDITIONAL SERVICES,** as described in Article 2 hereinafter, a fee must be agreed upon with the Owner and the State Construction Office prior to beginning the work. The agreement must be in writing and attached as an amendment to the Agreement. In arriving at this lump sum fee, the maximum rates that will be considered are as follows:

(a) Principals' time at the fixed rate of one-hundred dollars ($100) per hour. For the purpose of this Agreement the Principals are:

Joel L. Storrow, PE

(b) Employees' time computed at a multiple of two and five tenths (2.5) times the employees' hourly rate.

(c) Additional services of professional consultants engaged for the normal structural, mechanical and electrical or architectural services, at a multiple of one and two tenths (1.2) times the amount billed to the Designer for such additional services.

(3) The terms and further conditions of payment shall be as described in Article 7, PAYMENTS TO THE DESIGNER.

C. The Designer agrees to begin work on the Project promptly upon receipt of his fully executed copy of the Agreement and to pursue his work in accordance with the following schedule:

DESIGNER's PRODUCTION SCHEDULE

A - Rhodes Pond Dam Repairs

PHASE	DATE
Schematic Design / Design Development:	November-24-2014
Working Drawings:	January-30-2015
Estimate to Bid:	*To Be Determined*

It is the responsibility of the Designer to maintain the above production schedule. If for any reason it appears any phase of the project will be delayed, the designer shall notify the Owner and the State Construction Office, in writing, prior to the due date of that phase with an explanation of the reason(s) for the delay. If the delay(s) are approved by the Owner and the State Construction Office, the schedule may be modified and the agreement amended. Both failure to give the required notification of delay and failure to meet the production schedule constitute failure to perform in accordance with the terms of this Agreement and the Agreement may be terminated in accordance with Article 10-2.

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ARTICLE 1

BASIC SERVICES OF THE DESIGNER

Schematic Design Phase

1-1 The Designer shall consult with the Owner to ascertain the requirements of the project and shall confirm such requirements to the Owner.

1-2 He shall prepare schematic design studies (see State Construction Manual), leading to a recommended solution together with a general description of the project for approval by the Owner.

1-3 He shall submit to the Owner a statement of probable construction cost based on the area, volume or other current unit costs. (See State Construction Manual.)

1-4 The Designer will be permitted to reduce the scope of the project, within reasonable limits approved by Owner, if such reduction is deemed necessary in order to not exceed the total project budget cost as set forth in the body of Page 1 of this Agreement.

Design Development Phase

1-5 The Designer shall prepare from the approved schematic design studies, for approval by the Owner, the design development documents which shall include site and floor plans, elevations and other drawings, and outline specifications as are necessary to fix and illustrate the size and character of the entire project in its essentials as to kinds of material, type of structure, mechanical and electrical systems, and such other work as may be required, including site and utility requirements.

1-6 He shall submit to the Owner a further statement of probable construction cost. (See State Construction Manual.)

Construction Document Phase

1-7 The Designer shall prepare from the approved design development documents, working drawings and specifications setting forth in detail and prescribing the work to be done and the materials, workmanship, finishes and equipment required for the engineering, architectural, structural, mechanical, electrical and the site work, and for service-connected equipment; and assemble the necessary bidding information, proposal and contract forms, and conditions of the contract, for approval by the Owner. (See State Construction Manual.)

1-8 He shall submit to the Owner a further statement of probable construction cost as indicated by fully developed requirements and current market conditions. (See State Construction Manual.)

1-9 The Designer shall request proposals, conduct a bid opening, evaluate same and make recommendations of award to the Owner within two (2) workdays of the bid opening unless negotiations or redesign is required. Upon award of contracts, Designer shall assure proper execution of the contract documents by the contractors and forward to the Owner for his execution and further approval.

1-10 Prior to bid opening, the Designer shall fulfill the responsibilities of the Designer as outlined in the "Guidelines For Recruitment And Selection of Minority Businesses For Participation In State Construction Contracts," including:

a) Attend the scheduled pre-bid conference to explain minority business requirements to the prospective bidders.

b) Assist the Owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.

c) Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.

d) Review jointly with the Owner, all requirements of G.S. 143-128.2(c) and G.S.143-128.2(f) – (i.e. bidders' proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid and affidavit listing Good Faith Efforts, or affidavit of self-performance of work, if the Contractor will perform work under contract by its own workforce) - prior to recommendation of award.

e) Make documentation showing evidence of implementation of Designer's responsibilities available for review by State Construction Office and HUB Office, upon request.

1-11 The Designer shall prepare and file the required documents for the approval of governmental authorities having jurisdiction over the project.

1-12 In the event that bids and design fees exceed the total project cost as set forth on Page 1 of this Agreement, then the provisions of Article 5 hereof, Limitations of Project Cost and Project Scope, shall apply.

Construction Phase

1-13 The Construction Phase will begin with the notification of award of contracts. The Designer shall issue separate appropriate letters of Notice to Proceed to the single prime, construction manager at risk, or separate letters to each prime contractor in the case of separate prime bidding, which letters shall fix and definitely establish the beginning date of time of performance for the respective contract types, and the required completion date. Copies of each such letter issued by Designer shall be furnished to the Owner and to the State Construction Office.

1-14 The designer's responsibilities during the Construction Phase shall be as described in State Construction Manual, and as set forth hereinafter. His responsibilities shall include the following:

a) Arrange for and give written notice to all appropriate parties as to the time and place as well as conduct of pre-construction conference in coordination with the State Construction Office;

b) Establish and conduct a regular schedule of monthly meetings for contractors' representatives

and a representative of the Owner. Such monthly meetings shall be maintained throughout the entire construction period and shall be for the primary purpose of assessing the progress of the work and recommending such remedial actions as are necessary to maintain progress and to complete the project within the contract time. The Designer shall submit to both the Owner and the State Construction Office a full report of each such meeting. Attendance, purposes, results, reports and conduct of these monthly meetings shall be as more fully described in State Construction Manual;

c) Process and approve, or take other appropriate action in respect of, progress schedules, shop drawings and other required submissions of contractors promptly;

d) Prepare change orders as required, and have such change orders properly executed and approved before authorizing work on account thereof;

e) Process contractors' applications for payment promptly for authorized work and issue certificates of payment;

f) Review "MBE Documentation for Contract Payment" – (Appendix E) for compliance with minority business utilization commitments. Submit Appendix E form with monthly pay applications to the Owner and forward copies to the State Construction Office.

g) Provide general administration of the performance of construction contracts, including inspection and continuous liaison of the work to ensure compliance with plans and specifications, which inspection shall be by qualified and mutually agreed upon representatives of the designer's firm not less than once per week while work is in progress, and as often as necessary to ensure compliance with plans and specifications;

h) Require all in-house consultants and contract consultants participating in the design of the project, and as named in Article 13 of this contract, to provide liaison and inspection services with respect to their portion of the design not less than once per week while work related to their design is in progress and as often as necessary to ensure compliance with plans and specifications;

i) Schedule and conduct final inspection of the project, coordinating the date for such inspection with the Owner and with the State Construction Office;

j) Assemble written guarantees, affidavits, manuals of instruction for operation, and other required and closing papers of the contractors; issue certificates of final completion, certificates of compliance from various in-house and contract consultants as required by G.S. 133-1.1, final certificates for payment; and set date for beginning of the guarantee period, forwarding all closing papers to the Owner;

k) Serve as agent of the Owner as described in this contract, and within the limits and conditions of this contract, guarding the Owner against defects but not guaranteeing performance of the construction contractors.

1-15 The Designer agrees that his representatives on the construction project shall be qualified by training and experience to make decisions and interpretations of plans and specifications, and shall be empowered by the Designer to do so; such decisions and interpretations shall be binding upon the Designer as if made by him; all such decisions shall be confirmed in writing at the earliest reasonable date, with copies to the Owner and the State Construction Office, conditioned that such decisions and interpretations shall not modify adversely the requirements of the contract documents; the designer's representatives shall be replaced promptly and without protest at the request of the Owner, if in the opinion of the Owner and the State Construction Office, such representatives are either negligent or unqualified to perform their duties; and all of the above in this paragraph shall be applicable to consultants referred to in Paragraph 1-14(h) above.

Post-Construction Phase

1-16 Upon completion of the project, the Designer shall correct the drawings to conform to the project as finally constructed, and shall deliver to the Owner and to the State Construction Office corrected record drawings.

1-17 Prior to final payment to the Designer, he shall prepare and deliver to the Owner and to the State Construction Office a final report. (See State Construction Manual.)

1-18 Five percent (5%) of the total fee of the Designer shall be retained until approval of the record drawings and final report by the State Construction Office and the Owner. Final payment can be made after letter of approval is received by the Owner from the State Construction Office.

Other Professional Services

1-19 If the Designer renders basically architectural services, he hereby agrees that all plans, specifications, detail drawings, construction inspection, etc., for engineering work pertaining to heating, ventilating, refrigeration, power service, or other special mechanical or structural work shall be done by his own organization, by registered professional engineers regularly engaged and particularly qualified by experience and training to do this work, or agrees to employ without additional cost to the Owner, and subject to the approval of the Owner, the services of a registered professional engineer, which contract shall bind the engineer to terms and responsibilities substantially as set forth herein regarding design and construction phase services. (See Article 1.) Copies of this Agreement shall be furnished to the Owner and to the State Construction Office.

1-20 If the Designer who is a party to this contract renders basically engineering services, he hereby agrees that plans, specifications, detailed drawings, construction inspection, etc., for architectural work pertaining to this project shall be done by his own organization, by registered professional architects regularly engaged in and particularly qualified by experience and training to do this work, or agrees to employ without additional cost to the Owner, and subject to approval of the Owner, the services of a registered professional architect regularly engaged in the work. This engineer shall enter into a contract agreement with such registered professional architect, which contract shall bind the architect to terms and responsibilities substantially as set forth herein regarding design and construction phase services. (See Article 1.) Copies of this Agreement shall be furnished to the Owner and to the State Construction Office.

1-21 The Designer shall be responsible for all Designer administrative cost related to the project, including, but not limited to, the following:

a) Providing required number of plans and specifications for review for all agencies involved in the project;

b) Paying for all reproduction cost except as set forth in Article 6;

c) Paying all cost of handling, mailing, etc., of plans and specifications to the contractors;

d) Paying for all telephone calls, travel, administrative overhead cost and any other expense incurred by the Designer except for those items set forth in Article 2, Additional Services of the Designer.

ARTICLE 2

ADDITIONAL SERVICES OF THE DESIGNER

2-1 In the event the Owner, with the approval of the State Construction Office, requests in writing that the Designer perform services over, above and beyond the basic services described in Article 1 hereof, then the Designer may be paid for such additional services as herein before provided. Additional services, for which additional compensation may be allowed, are as described hereinafter.

a) Revising previously approved design development or working drawings or specifications to accomplish changes ordered by the Owner, except where required to get the cost within the total project budget;

b) Preparing drawings and specifications for alternate bids for work beyond the scope of that originally contemplated in this Agreement; (when alternates are used to assure keeping project within the total project budget, no additional fee shall apply);

c) Arranging for the work to proceed should the Contractor default due to delinquency or insolvency;

d) Providing contract administration and inspection of construction should the construction contract time be extended due to no fault of the Designer;

e) Making an inspection of the project prior to expiration of the guarantee period and reporting observed discrepancies under guarantees provided by the construction contracts;

f) Other services as may be required will be negotiated.

ARTICLE 3

FULL-TIME CONSTRUCTION INSPECTION

3-1 The Owner, with the prior approval of the State Construction Office, may direct the Designer in writing to provide full-time construction inspection services. The Designer shall be compensated for the additional expense in a manner as mutually agreed upon between the Owner and the Designer and as set forth in a written amendment to this Agreement. Such additional compensation as is agreed to shall take into account the value of inspection services required to be furnished by the Designer under his fee for basic services. If arrangements are effected for the Designer to provide full-time inspection service, the representative proposed by the Designer to act in his capacity shall be subject to the prior approval of the Owner and the State Construction Office, and the conditions of Paragraph 1-15 under Article 1 hereof shall apply to such full-time inspection representative. The use of a full-time inspector does not negate the conditions of Paragraph 1-14(h) under Article 1.

ARTICLE 4

THE OWNER'S REPONSIBILITY

4-1 The Owner shall provide full information as to its requirements for the project, consistent with the total project budget indicated on Page 1 of this Agreement and subject to the approval of the State Construction Office.

4-2 The Owner shall designate, when necessary, a representative authorized to act in his behalf, who shall examine documents submitted by the Designer, and render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the designer's work. The owner's representative shall observe the procedure of issuing instruction to contractors only through the Designer. The owner's representative shall attend monthly job meetings scheduled by the Designer and shall be empowered to make commitments for the Owner at such meetings.

4-3 The Owner shall furnish or pay for, at cost, to the Designer, a survey of the site; giving grades and lines of streets, alleys, pavement and adjoining property, rights of way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, elevations at grid points; locations, dimensions, and data pertaining to existing buildings, utilities and trees; or other requirements for the project. The Owner will pay, at cost, for tests and/or reports requested by Owner and the State Construction Office for determining subsoil and conditions. However, this shall not apply in engineering contracts where the survey is part of the design.

4-4 The Owner shall provide legal services as may be required or necessary for the project.

ARTICLE 5

LIMITATIONS OF PROJECT COST AND PROJECT SCOPE

Total Project Cost

5-1 The total project cost as indicated in the body of Page 1 of this Agreement shall include all costs and expenses for which the Designer is responsible, including the design fee. The contingency fund noted on Page 1 shall be reserved at the time of award of construction contracts.

Cost Limitations

5-2 The total project cost, as indicated in the body of Page 1 of this Agreement, is derived from a specific appropriation or funds specifically provided for the particular project described on Page 1. Accordingly it shall be a condition of this Agreement that the Designer shall conform his plans to a design, the construction cost of which together with the addition of design fees, shall not exceed the total project cost limitations as set forth in the body of Page 1 of this Agreement.

5-3 In the event that during the several stages of development of his plans the designer's Statement of Probable Construction Cost together with design fees exceeds the limitations set forth on Page 1 of this Agreement, or in the event that after receipt of bids the sum total of the lowest bona fide bids for the entire project together with design fees exceeds the limitation set forth on Page 1 of this Agreement, then the Owner shall have the right to require the Designer, without any additional cost to the Owner, to modify his plans and specifications or redesign the project as may be necessary to bring the construction cost plus design fees within the Total Project Cost limitation set forth on Page 1 of this Agreement.

5-4 If the probable construction cost plus design fees, or the sum total of lowest bona fide bids plus design fees, exceeds the limitation of total project cost set forth in the body of Page 1 of this Agreement, and in view of this excess of cost the Owner elects to and does effect arrangements for additional financing sufficient to permit the project to proceed at a total project cost in excess of that originally contemplated by this Agreement, then the Owner may modify the terms of this Agreement with respect to a new authorized and increased total project cost. In order to be valid and binding, any modification of the total project cost by the Owner must be in writing and have the written approval of the State Construction Office.

Scope of Project

5-5 The proposed scope of the project is indicated on Page 1 of this Agreement. The Designer will be permitted to reduce the scope of the project, within reasonable limits approved by Owner, if such reduction is deemed necessary in order to not exceed the total project cost as set forth in the body of Page 1 of this Agreement.

5-6 The total project cost is the primary control criteria and limitation; the scope of the project is secondary to project cost.

ARTICLE 6

REPRODUCTION EXPENSES

6-1 The Designer shall be required to furnish up to 30 sets of complete, approved final plans and specifications for the project. For sets required in excess of the above-mentioned number, the Designer will be paid the actual cost of reproduction. A list of plan deposits not returned to the contractors shall be furnished to the Owner. These deposits, as set forth in Notice to Bidders, shall be credited to the Owner.

ARTICLE 7

PAYMENTS TO THE DESIGNER

7-1 Payments on account of the designer's basic services shall become due and payable in an amount sufficient to increase the compensation for basic services to the following percentages of the basic fee upon completion of the phases of work as indicated hereinafter; monthly payments may be made if progress is satisfactory to the Owner. Payments are not to exceed the stated percentages.

a) Upon approval of Schematic Design Phase_____	15%
b) Upon approval of Design Development Phase_____	20%
c) Upon approval of Working Drawings and Specifications_____	30%
d) Upon Receipt of Bids_____	5%
e) During the Construction Phase, monthly in proportion to the progress of the work, up to and including final inspection and acceptance_____	25%
f) Upon the closing of all construction contracts and the approval of record drawings and final report_____	5%

7-2 Payments for additional services of the Designer, as defined in Article 2, shall be made at the time of the next payment due under schedule of payments for basic services above.

ARTICLE 8

ACCOUNTING RECORDS OF THE DESIGNER

8-1 Records of the designer's personnel, consultants, additional services and reimbursable expenses pertaining to the project, and records of accounts between the Owner and the contractors, shall be kept on a generally recognized account basis, and all such records shall be available to the Owner or his authorized representative at mutually convenient times.

ARTICLE 9

OWNERSHIP OF PLANS AND SPECIFICATIONS

9-1 All designs, drawings, specifications, design calculations, notes and other works developed in the performance of this contract shall become the sole property of the State of North Carolina and may be used on any other design or construction without additional compensation to the Designer. The use of the design, including tracings and specifications, by any person or entity, for the purpose other than the project as set forth in the body on Page 1 of this Agreement, shall be at the full risk of such person or entity and the Designer shall be relieved of any liability whatsoever, including claims for personal injury, property damage, or death as a result of such other use.

ARTICLE 10

TERMINATION OF AGREEMENT

10-1 The Owner may terminate this Agreement for any reason upon ten (10) calendar days' written notice (delivered by certified mail, return receipt requested).

10-2 This Agreement may be terminated by either party upon seven (7) calendar days' written notice (delivered by certified mail, return receipt requested) should one party fail to perform in accordance with its terms through no fault of the other.

10-3 In event of termination, the Designer shall receive payment for services rendered prior to the receipt of written termination notice from the Owner. If termination results from abandonment or suspension of the project, then the Designer will receive termination expenses in the amount of five percent (5%) of the above due payment. If termination results from non-performance of work, then the Designer will not receive termination expenses. Any work done by the Designer prior to termination shall become the property of the Owner.

10-4 For the purpose of evaluating services rendered to termination, the following shall apply:

a) Schematic Design Phase	15%
b) Completion of Design Development Phase	20%
c) Delivery of Working Drawings and Specifications for review	25%
d) Approval of final drawings and specifications	5%
e) Upon Receipt of Bids	5%
f) Construction Phase monthly in proportion to progress of work	25%
g) Approval of record drawings and final report	5%

ARTICLE 11

SUCCESSORS AND ASSIGNS

11-1 The Owner and the Designer each binds himself, his partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither the Owner nor the Designer shall assign, sublet or transfer his interest in this Agreement without the written consent of the other.

ARTICLE 12

EXTENT OF AGREEMENT

12-1 This Agreement represents the entire and integrated agreement between the Owner and the Designer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written consent.

ARTICLE 13
PROFESSIONAL CONSULTANTS

13-1 The Designer agrees to contract with the following Consultants for specialized portions of the work. Each such Consultant shall be required to comply with the conditions of this Agreement to the same extent as the Designer.

(NONE)

ARTICLE 14

SUPPLEMENTAL AGREEMENT

This project will terminate with the receipt of approved **Working Drawings and Specifications, Ready to Bid**, unless extended in writing by the Owner. Upon such extension and full funding, the lump sum fee shown on Page 1 and Page 2 will be increased to **$108,000** for completion of the project which includes fee charges for anticipated change orders during the construction phase, utilizing the contingency reserve up to the total project authorization of **$1,368,000**.

Design Fee Calculation:		Approved as of August-28-2014
Basic Services	$75,000 x 65% =	$48,750
Surveying	$13,500	$13,500
Geotechnical	$9,000	$9,000
Permitting	$10,500	$10,500
	---	---
Total Design Fee	**$108,000**	**$81,750**

IN WITNESS WHEREOF the Owner and the Designer have executed this Agreement, the day and year first above written.

Witness:

Dany Bilges

Designer

McGill Associates, P.A.

By: [signature]

Date: 9-11-2014

Witness:

Corinne Jodrin

Owner - State of North Carolina through

Department of Environment & Natural Resources - Wildlife Resources Commission

By: Mark Hamlett

(Name & Title) DESIGN SERVICES SECTION CHIEF

Date: 9/18/2014