

# **Professional Service Agreement**

## **Scope of Work and Terms Document**

# **City of Fayetteville, NC**

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is made as of the \_\_\_8\_\_\_ day of November 2024 by and between the City of Fayetteville, a North Carolina City and Municipal Corporation (“City”), and Pond & Company (“Consultant”).

In consideration of mutual promises and covenants in this Agreement, the Parties agree as follows:

### ARTICLE 1. Services

1.1 Background & Scope of Work. The City desires to engage Consultant to provide certain professional services as fully described and outlined in the Proposal (Exhibit 1) which is attached hereto and fully incorporated into this Agreement by reference. Consultant is willing to provide such services as outlined in the Proposal on the terms and conditions stated in this Agreement.

1.2 Time of Performance. Consultant will perform the services promptly and according to the Proposal provided. The City will cooperate with Consultant as reasonably required to complete the services outlined in the Proposal. Both Parties acknowledge that changes from or delays in the timeline may extend the date(s) for delivery of the service(s).

1.3 Term. The term of this Agreement shall begin on the date expressed in the introductory paragraph of this Agreement and shall continue until terminated based upon the completion of services by Consultant or as otherwise outlined in the Proposal.

### ARTICLE 2. Payment

2.1 Basis of Compensation. The City shall pay Consultant for services rendered under this Agreement in amounts tied to the various project milestones as set forth in the Proposal. Each payment shall be invoiced upon completion of each successive milestone and the City shall pay within thirty (30) days. In no event shall the payment for all work performed pursuant to this Agreement exceed the amount of \$538,832.00 without prior written authorization of the City. Such payment shall be full compensation for all work performed and for all labor, materials, supplies, equipment and incidentals necessary to complete the work.

2.2. Records. Consultant shall keep records and accounts pertaining to this Agreement available for inspection by the City for a period of three (3) years after final payment. Copies of records and accounts pertaining to this Agreement shall be made available to the City upon request.

**ARTICLE 3. Termination**

3.1 Termination for Cause. In the event of substantial failure by Consultant to perform in accordance with the terms of this Agreement, the City shall have the right to terminate Consultant upon ten calendar (10) days written notice, in which event Consultant shall have neither the obligation nor the right to perform further services under this Agreement; nor shall the City be obligated to make any further payment for work that has not been performed. Consultant shall provide to the City all reports, surveys or other related documents upon the City's request.

3.2 Termination for Convenience. Upon thirty (30) calendar days' written notice to Consultant, the City may, without cause and without prejudice to any other right or remedy legally available to the City, terminate this Agreement. Upon such notice, Consultant shall have neither the obligation nor the right to perform services under this Agreement nor shall the City be obligated to make any further payment for work that has not been performed in accordance with the terms stated herein. In such case of termination, Consultant shall be paid for the completed and accepted work executed in accordance with this Agreement prior to the written notice of termination. Additionally, upon mutual agreement, Consultant may be paid for any completed and accepted work which takes place in order to achieve a specifically identified item in the scope of services or a milestone of the Agreement, between the written notice of termination and the effective date of termination. Unless otherwise stated or agreed upon, the effective date of termination shall automatically occur 30 days after the written notice is sent by the City. Consultant shall provide to the City all reports, surveys or other related documents upon the City's request.

**ARTICLE 4. Liability, Indemnification and Insurance**

4.1 General. The City and Consultant have considered the risks and potential liability that may exist during the performance of services by Consultant and have agreed to allocate such liabilities in accordance with this Article. During the performance of services under this Agreement, Consultant shall purchase and maintain insurance coverage as hereinafter set forth, without lapse

or changes contrary to the requirements of this section. Words and phrases used in this Article shall be interpreted in accordance with customary insurance industry usage and practice.

4.2 Indemnity & Professional Liability Insurance. To the extent permitted by law, Consultant agrees to defend, indemnify and hold harmless the City of Fayetteville and its elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury or damage caused by any act, omission or negligence of Consultant, its agents, servants, employees, contractors, licensees, or invitees. Indemnification of the City by Consultant does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law. Consultant agrees to purchase and maintain professional liability insurance (errors and omissions insurance) in the amount of \$1,000,000 coverage for each claim, with a general aggregate of \$2,000,000. Said insurance coverage shall be underwritten by an insurance company authorized to do business in the State of North Carolina by the North Carolina Department of Insurance, with an A.M. Best rating of not less than A.

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

4.4 Other Insurance. In addition to professional liability insurance and commercial general liability insurance set forth above, Consultant further agrees to purchase and maintain at all times during the performance of services under this Agreement insurance coverage as follows:

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

**ARTICLE 5. Independent Contractor** Consultant is an Independent Contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an Independent Contractor. Consultant shall be wholly responsible for the methods, means and techniques of performance. City shall have no right to supervise methods and techniques of performance employed by Consultant but City shall have the right to observe such performance.

**ARTICLE 6. Other**

6.1 Assignment. It is the intent of this Agreement to secure the personal services of Consultant and failure of Consultant for any reason to make the personal services available to the City for the purposes described in this Agreement and Proposal shall be cause for termination of this Agreement. Consultant shall not assign this Agreement without prior written consent of the City.

6.2 Non-Appropriation. Notwithstanding any other provisions of this Agreement, the Parties agree that payments due hereunder from the City are from appropriations and monies from the City Council and other governmental entities. In the event sufficient appropriations or monies are not made available to the City to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the City.

6.3. Governing Law. The validity, interpretation, and execution of this Agreement and the performance of and rights accruing under this Agreement are all to be governed by the laws of the State of North Carolina.

6.4 Venue & Forum. The Parties expressly agree that if litigation is brought in connection with this Agreement and (1) the litigation proceeds in the Courts of the State of North Carolina, the Parties agree that the appropriate venue shall be in Cumberland County (Fourteenth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the Parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

6.5 Non-Discrimination. Consultant agrees not to discriminate by reason of age, race, religion, color, sex, national origin, disability or other applicable law while performing the services required herein.

6.6 Compliance with Laws. Consultant agrees to comply with all applicable laws, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government.

6.7 Severability. The Parties agree that if any provision of this Agreement shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform to the purposes of this Agreement and the requirements of applicable law.

6.8 Amendment. The City and Consultant may, from time to time, request changes in services to be performed by Consultant. Any such changes that are mutually agreed upon by the City and Consultant shall be incorporated herein by written amendment to this Agreement. It is mutually agreed and understood that no alteration or validation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto, and that any oral understanding or agreements not incorporated herein, unless made in writing and signed by the Parties hereto, shall not be binding.

6.9 Entire Agreement. This Agreement constitutes the entire agreement between the Parties. Any proposed change to this Agreement shall be submitted to the City for its prior approval. No modification, addition, deletion, etc., to this Agreement shall be effective unless and until such changes are reduced to writing and executed by the authorized officers of each party.

6.10 Force Majeure. Neither party shall be deemed to be in default of its obligations hereunder if and *so long as* it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

6.11 Morality Clause. If, in the sole opinion of the City, at any time Consultant or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more of the actions below, the City may immediately upon written notice to Consultant, terminate this Agreement, in addition to any other rights and remedies that the City may have hereunder or at law or in equity:

1. bring disrepute, contempt, scandal, or public ridicule to the Actor;
2. subject the Actor to prosecution;
3. offend the community or public morals/decency;
4. denigrate individuals or groups in the community served by the City;
5. is scandalous or inconsistent with community standards or good citizenship;
6. adversely affect the City's finances, public standing, image, or reputation;
7. is embarrassing or offensive to the City or may reflect unfavorably on the City; and,
8. is derogatory or offensive to one or more employee(s) or customer(s) of the City.

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

6.13 Divestment of Companies Boycotting Israel or that Invest in Iran Certification.


Consultant certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58; (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel ((i) and (ii) to be collectively referred to as "FD Lists"); and (iii) it will not take any action causing it to appear on the Treasurer's FD Lists created by the NC State Treasurer during the term of this Agreement. By signing this Agreement, Consultant further agrees, as an independent obligation, separate and apart from this Agreement, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the City in connection with any claim that this Agreement or any part thereof is void due to Consultant appearing on the Treasurer's FD Lists at any time before or during the term of this Agreement.

6.14 Survival of Terms. All warranties, covenants, and representations contained within this Agreement and all applicable work authorizations, if any, shall continue in full force and effect for three (3) years after the execution and delivery of the final product, act, or service taken in furtherance of this Agreement. Survivability shall not be impacted, or otherwise shall not be rendered null or void, by the termination or natural expiration of this Agreement or other applicable work undertaken in furtherance of this Agreement.

6.15 CITY'S TERMS SUPERSEDE. To the extent that there are terms in any of the attachments that conflict with the terms of this Agreement, the terms of this Agreement are superseding.

[Signature page to follow]

**Pond & Company**

By: 

Printed Name: Matthew Wilder, PLA

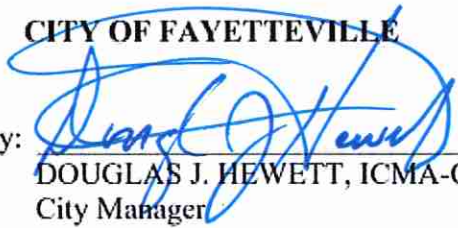
Title: Vice President

Date: November 08, 2024

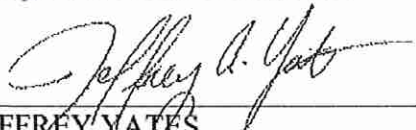
ATTEST:

  
PAMELA MEGILL  
City Clerk

Date: 12/16/2024

**CITY OF FAYETTEVILLE**  
By:   
DOUGLAS J. HEWETT, ICMA-CM  
City Manager

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

  
JEFFREY YATES  
Assistant City Manager/Interim Chief Financial Officer



**Request for Qualifications for Engineering Services**  
**For The**  
**“Cape Fear River Trail Extension”**

**PURPOSE**

The City of Fayetteville is requesting the submission of qualification statements from consulting Civil Engineering & Landscape Architecture firms to provide professional design engineering services for the development of the Cape Fear River Trail Extension. The trail extension will run south parallel with the Cape Fear River, starting at 700 Cape Fear River Trail and ending at Persons Street. One firm will be selected to provide design engineering services for the project.

**PROJECT DESCRIPTION**

The Cape Fear River Trail Extension is located in the City of Fayetteville and shall consist of a (10)-ft. wide asphalt/concrete multi-use trail with (2)-ft. crushed stone shoulders and (3)-ft. turf shoulder. The existing Cape Fear River Trail is a path for walkers, joggers, bicyclists and others utilizing non-motorized transportation. The existing Cape Fear River Trail winds for 7 miles, one-way, through a beautiful blend of trees, plants and wildlife with spectacular views of the river.

The Cape Fear River Trail Extension trail shall be a paved surface and boardwalk designed to AASHTO and ADA guidelines. It will provide a seamless and safe non-motorized route between the existing Cape Fear River Trail and the future River Park.

The consultant will work with a steering committee formed at the onset of the project. The City of Fayetteville will coordinate and facilitate all steering committee and public meetings. The consultant will be expected to provide necessary visuals (for the meetings and website) and be present to discuss any issues or questions that arise.

*Note: The City of Fayetteville reserves the right to award contracts on any, all or none of the projects for which firms are selected under this RFQ. The City of Fayetteville further reserves the right to reduce the scope of work of a consultant and re-assign projects to other selected consultants and to terminate the professional services contract of selected consultants based on consultant non-performance (i.e. schedule, responsiveness, quality of design, accuracy of documents, etc.) and on the consulting firm's workload and availability of the staff included in the design team as described in the firm's qualification statement. The City of Fayetteville reserves the right to remove any or all work described above in this RFQ and issue a new RFQ for any portion of the work. The City of Fayetteville reserves the right to use any of the firms selected for any of the above work. Assignment of projects to selected consultant shall be contingent on availability of funds.*

## **SCOPE OF SERVICES**

Consultants shall provide complete design engineering services. Work will include, but not be limited to, trail design engineering and construction cost estimates. Consultants will work with key representatives of the City of Fayetteville and the established steering committee throughout all phases of project development.

The last section of the trail that was completed was the Cape Fear River Trail Phase 2 Part C. It was designed in-house and with the City's engineering consultant Steve Fleming and Associates. Plans from that phase are included as a link for reference.

There is potential for construction administration services if the project is implemented for construction.

### **Deliverables:**

#### **50% Construction Document plan set**

Submit two (2) sets of full size and half size plan sets at 50% Contract Documents, as well as a digital copy, to the City of Fayetteville for review. The construction document plan sets will be presented to the steering committee and presented at a public hearing. Consultant will attend both meetings and incorporate public feedback as necessary into the final plan set.

#### **Draft Final (90%) and Final Construction Document plan set**

Submit two (2) sets of full size and half size plan sets at Draft Final and 100% completion of the Contract Documents, as well as digital copies, to the City of Fayetteville for review. The 90% construction document plan will be presented to the steering committee and presented at a public hearing.

### **Development of Trail Signage**

The project will include regulatory and directional signage and include kiosk locations. The signage plan will be included as part of the construction document plan set.

**Coordinate and Obtain Necessary Permits (i.e., grading easements, wetland delineations, etc.)**

### **Opinion of Probable Construction Cost (OPCC)**

#### **A. Additional Design and Coordination Services**

- a) **Preparation of easements including coordination with private property owners, legal descriptions, and exhibits**
- b) **Design and coordination with the City of Fayetteville**
- c) **Utility relocation and coordination**
- d) **Geotechnical engineering as needed for final design**
- e) **Boardwalk and/or pedestrian bridge design**
- f) **Identify and design necessary wetland mitigation**
- g) **Coordination with neighboring property owners**
- h) **Comparison of facility alternatives (i.e. lifecycle analysis of material types for boardwalk)**
- i) **Generate annual maintenance costs**
- j) **Support material for potential grant applications**
- k) **Meetings and workshops beyond those described above**
- l) **Landscaping plan**
- m) **Complete wetland delineation for project extent**

### **Bid-Phase**

Preparation of Bid Advertisement, attend pre-bid meeting, review of all bids in consultation with City of Fayetteville, and determination if low bidder is properly licensed to perform the Work (if consultant will be conducting construction administration).

### **SELECTION PROCESS / SCHEDULE**

The selection process and schedule will be as follows:

**Advertisement** - An advertisement for the Request for Qualifications (RFQ) will be published on the City of Fayetteville website as required in the City's Purchasing Policy, available at the City of Fayetteville, and posted on the following website:

- [www.fayettevillenc.gov](http://www.fayettevillenc.gov)

## Notification of Interest, and Inquiries/Questions

**Inquiries/Questions and Deadline** - All inquiries/questions regarding this RFQ must be directed to Kimberly Toon by email at [kimberlytoon@fayettevillenc.gov](mailto:kimberlytoon@fayettevillenc.gov) and must reach the office by **5:00 PM on September 16, 2024**

**Qualification Statements** - Written qualification statements must be received no later than **2:00 PM on September 27, 2024**. Qualification statements received after this deadline will not be considered.

**Submittal Material** - Consultants interested in providing services as described in this RFQ shall submit one (1) original and one thumb drive of the material in digital format, in a sealed envelope labeled on the outside "**RFQ - Cape Fear River Trail Extension**" along with the firm name. Send or deliver qualification statements to:

Attention: Kimberly Toon

Purchasing Manager

433 Hay Street

Fayetteville, NC 28301

**Selection** – One firm will be selected with a second firm being selected as an alternate. The alternate shall be used only if negotiation with the first firm is unsuccessful. Firms will be notified after selection is made.

**Contract Agreements** - A contract agreement with the selected firm will be negotiated and executed prior to the start of the project.

## SELECTION CRITERIA

The selection of a firm will be based on the qualification information exhibited in both written and graphic form in the Consultant's qualification statement and reference checks. The City of Fayetteville may require interviews and reserves the right to interview or not interview firms as it determines to be necessary. Consultant firms will be evaluated on the following criteria:

Criteria for selection:

**Project Team:** The make-up/description of the firm's project team. The preferred team will have trail design and construction experience. A local presence is also an important consideration in the selection process. The names of the individuals involved and the roles they will perform (principal-in-charge, project manager, project designer, planner/designer, engineer, etc.) will be listed. Provide a description of the qualifications and experience of the specific individuals that will be involved in the work described in this RFQ, including the staff of other professional firms. Identify their experience with similar type projects. Include registration numbers of landscape architects and engineers.

**Design Ability, Design Excellence, and Similar Project Experience:** While construction funding has not been determined, firms must have experience in providing full design and construction engineering services for state funded projects and their required design specifications. Identify any projects in the last five years with government contracting procedures. Provide a brief description of the firm's role in the project and provide a client contact person for each project.

**Construction Cost Control and Scheduling:** Consultants shall demonstrate their ability to prepare construction documents based on the construction budget set forth by the Owner at the beginning of project. The City of Fayetteville seeks to utilize sustainable design concepts and principles. The trail will be designed and constructed so that future maintenance costs are minimized. Consultants are required to demonstrate understanding of design criteria and construction techniques that might address these concerns. Describe your firm's approach/method for cost control and keeping design and construction projects on schedule. Briefly explain how costs might be controlled during design and construction. Describe how the design will reflect the need to reduce future maintenance costs.

## **DOCUMENT REQUIREMENTS**

Qualification Statements should be limited to 8.5 x 11 sheet size printed, copied front and back. Qualification Statements should be bound with one staple in top left corner. No three ring notebooks, spiral bindings, plastic covers. A sheet printed on both sides will count as two pages.

Prospective Consultants shall submit one (1) copy of their statement and one copy on a thumb drive. Each qualification statement should follow the requested format and be organized with tabs according to the following major categories. Addenda will not be considered.

**Firm Information and Project Team** – Briefly provide firm information including a description of the project team, listing key individuals involved and the role they will perform (principal-in-charge, project manager, consulting architect/engineer, etc.) Indicate how the work described in this RFQ will fit into the total workload of the firm and provide hourly rates for all team members. List license and/or certification of each individual. List any sub-consultants intended to be used and the qualifications, expertise, licensing, and/or certification.

**Similar Project Experience (Graphics & Narrative)** – List projects completed during the last five (5) years that demonstrate experience with projects of similar character and scope. Briefly describe each project, including function, size and scope, and current status. For each project list the key individuals, such as principal-in-charge, project manager, consulting engineer, etc., who were responsible for the work.

**Construction Cost Control and Scheduling** – Consultants shall demonstrate their ability to prepare design documents based on the construction budget set forth by the Owner at the beginning of project. Describe your firm's approach/method for cost control and keeping design and construction projects on schedule. Briefly explain how costs might be controlled during design and construction. Long-term maintenance is an issue, describe how the design will reduce future maintenance costs.

**Experience with State/Federal Funding** – The selected firm must have experience in full-service design of state and/or federally funded projects. Submit a list of the most recent projects in the last five (5) years and provide a client contact for each project.

**Timeline** – Provide an estimated timeline for design and construction phases

## GENERAL PROVISIONS

**Submittal Ownership / Costs** – Upon submission, all information becomes the property of the City of Fayetteville which has the right to use any or all ideas presented in any submission in response to this RFQ, whether or not the statement results in a contract with the submitting Consultant. All costs for development of the written statements and the oral presentation are entirely the obligation of the Consultant and shall not be remunerated in any manner by the City of Fayetteville.

**Non-Warranty of Request for Qualifications** – Due care and diligence has been used in preparing this RFQ. However, the City of Fayetteville shall not be responsible for any error or omission in this RFQ, nor for the failure on the part of the Consultants to ensure that they have all information necessary to affect their submittals.

**Request for Clarification** – The City of Fayetteville reserves the right to request clarification of information submitted and to request additional information of one or more Consultants, either orally or in writing.

**Acceptance/Rejection of Submittals** – The City of Fayetteville reserves the right to accept or reject any or all qualification statements in whole or in part, with or without cause, to waive technicalities, or to accept statements or portions thereof which, in the City of Fayetteville's judgment, best serve the interest of the City.

The City of Fayetteville reserves the right to allow alterations, modifications, or revisions to individual elements of the Scope of Services any time during the period of contracts which result from this RFQ.

**Collusion** – The Consultant, by submitting a qualification statement, declares that the submission is made without any previous understanding, agreement, or connections with any persons, Consultants, or corporations making a competing submission on the same project, and that it is in all respects, fair, and in good faith without any outside control, collusion, or fraud.

**Americans with Disabilities Act (ADA) Compliance** – The City of Fayetteville will comply with the Americans with Disabilities Act (ADA) which prohibits discrimination on the basis of a disability. The City of Fayetteville will make reasonable accommodations in all programs to enable participation by an individual with a disability who meets essential eligibility requirements. If any accommodations are necessary, participants are encouraged to notify the City of Fayetteville staff.

**Minority/Women/Small Business Enterprise** – The City of Fayetteville does not discriminate against any person or business in pursuit of these opportunities on the basis of race, color, national origin, religion, sex, age, disability, or veteran's status.

**Insurance and Indemnity Requirements** - The Consultant shall indemnify, defend, and save harmless the City of Fayetteville, its officers, appointees, volunteers, agents, employees and assigns, its board, employees and agents from and against all claims, losses, costs, damages, expense, and liability for bodily injury, sickness, disease, or death, or injury to or destruction of property, real or personal, arising from any work including for all negligent or intentional acts, errors, or omissions of the Consultant, or any subcontractor, supplier, employee, agent, etc. in the performance of professional services provided to the City of Fayetteville.

The Consultant further agrees to purchase and maintain during the life of any contracts entered into with City of Fayetteville the following insurance with an insurance company acceptable to the City of Fayetteville and authorized to do business in the State of North Carolina:

**Automobile:** Bodily injury and property damage liability covering all owned, non-owned, and hired automobiles for limits of not less than \$1,000,000 each person/ \$1,000,000 each occurrence.

**Comprehensive General Liability:** Bodily injury and property damage liability insurance as shall protect the Consultant from claim of bodily injury or property damage which arises from operations of this contract. The amounts of such insurance shall not be less than \$1,000,000 bodily injury and property damage liability each occurrence/aggregate. This insurance shall include coverage for product/completed operations and contractual liability assumed under the indemnity provision of this contract. The City of Fayetteville, its officers, appointees, volunteers, employees and agents shall be listed as an "Additional Insured"

**Consultant's Professional Liability:** In a limit of not less than \$1,000,000.

**Workers' Compensation and Occupational Disease Insurance:**

Coverage A - Worker's Compensation: Meeting the statutory requirements of the State of North Carolina

Coverage B - Employer's Liability: \$100,000 each accident / \$100,000 disease - each employee / \$500,000 disease - policy limits.

Certificates of such insurance will be furnished to the City of Fayetteville and shall contain the provision that the City of Fayetteville be given thirty days written notice of any intent to amend or terminate by either the Consultant or the insuring company.

**EXHIBIT 1**



October 30, 2024

Mr. Anthony Ramsey, ASLA  
Landscape Architect  
Fayetteville-Cumberland County Parks and Recreation Department  
910.433.1646  
121 Lamon St.,  
Fayetteville, NC 28301

**RE: Cape Fear River Trail Extension – Professional Design Services Fee Proposal**

Dear Mr. Ramsey,

Pond & Company (Pond) is pleased to submit this proposal for survey, environmental, geotechnical, landscaping, trail, and engineering design services for the above-referenced project. The paragraphs below describe the professional services and fees to accomplish this work.

**Point of Contact**

Juan Morales will be your Project Manager and Client liaison. Matt Wilder, Vice President, will serve as Principal-in-Charge and Technical Quality Control. We will develop a detailed schedule once we receive notice to proceed.

**Project Understanding:**

The Cape Fear River Trail Extension is a multi-use path (MUP) facility in the City of Fayetteville, approximately 0.7 miles in length, that will connect the existing Cape Fear River Trail to the Cape Fear Botanical Garden and the future River Park at Person St.

As requested by the City of Fayetteville, this scope has been prepared to summarize the services needed to complete the Cape Fear River Trail Extension. The design will include MUP corridor alignment, paving, drainage, boardwalks and retaining walls, stream crossings, stormwater controls, pavement markings, utilities, landscaping, and a trailhead at the future River Park.

Pond will perform all design services in accordance with:

- AASHTO Guide for the Development of Bicycle Facilities
- PROWAG Shared Use Path Accessibility Guidelines
- ADA Standards for Accessible Design (2010)
- City of Fayetteville Standard Details
- NCDOT Roadway Design Manual

The paragraphs below describe the professional services and fees to accomplish this work.

**Task 1 – Preliminary Design Phase (25%)**

**Project Kick-Off and Preliminary Site Assessment**

- A. This task will begin with the collection of available background information, GIS data, and aerial photography to prepare maps for the project area to facilitate field data collection, interdisciplinary

- discussions, and coordination with the City. Information to be mapped includes topography, natural resources, FEMA floodways and floodplains, public right-of-way, recorded hazardous waste generators and sites, cultural resources, and community facilities.
- B. The Pond team will then coordinate an in-person kick-off meeting and site visit with the City to review the project scope, complete a visual assessment of the site, and identify potential issues to be addressed during design, including approximate extent (but not delineation) of potential jurisdictional features, visible bedrock, the location of existing infrastructure, swales, visible utilities, significant trees, and other critical constraints that may significantly impact the design scope and the construction costs for the trail.
  - C. Pond will submit the project design criteria and a list of required permits for review and approval by the City in advance of the start of the preliminary design. The approved design criteria will be used in developing the preliminary and final plans and will be consistent with the scope of the project and the standards listed under Project Understanding (Page 1). The design criteria will include design speed, minimum horizontal radius, minimum trail widths, shoulder widths, minimum profile grade, maximum profile grade, maximum pavement cross slope, maximum shoulder cross slope, minimum horizontal clear width, and minimum vertical clearance.
  - D. With the information gathered, Pond will develop a preliminary corridor to define the trail grading limits to produce a field survey envelope and site assessment to be reviewed by the City. The revised envelope will be used by Pond's survey and Geotech subs and by our environmental specialists to complete the existing conditions mapping and site assessment (see Task 2).
  - E. Using the existing conditions mapping and site assessment data and the approved design criteria, Pond will refine the preliminary corridor to a 25% level of design and prepare a preliminary opinion of probable cost (OPCC). The preliminary design drawings will include survey, jurisdictional water resources delineation, trail alignment, profiles, preliminary storm drainage, access points, boardwalk locations, preliminary landscape concept and materials palette, preliminary trailhead area, and cross sections. Bikeway design elements include but are not limited to asphalt/concrete trail, pedestrian boardwalk/bridges, sidewalk and curb ramps (if needed at the trailhead), storm drainage structures, and other associated applicable site improvements.
  - F. At this stage, Pond will update the existing conditions flood model with a digital terrain from the field survey (see Task 2.A) and available LiDAR data to create a revised existing condition model. Additional cross-sections will be added to the model in the vicinity of the proposed trail improvements to assess the implication of impacts on the floodplain.
  - G. Pond will coordinate a 25% review meeting with the City to go over any comments the City may have.
  - H. The Preliminary Design Phase (25%) deliverables will include:
    - a. 25% Preliminary Plans:
      - i. Cover Sheet
      - ii. General Notes and Legend
      - iii. Typical Sections
      - iv. Plans and Profiles
      - v. Landscape Materials Palette
      - vi. Cross Sections
    - b. 25% OPCC
    - c. Design Criteria
    - d. List of Required Permits
  - I. Meetings:

- a. Kickoff Meeting and Site Visit
- b. 25% Review Meeting
- c. Design Coordination Meeting (2 virtual)

## **Task 2 – Existing Conditions Mapping and Site Assessment**

### Field Survey

- A. The Pond Team includes a surveyor who will provide the existing conditions survey of the area defined in the attached Figure 1 - Project Survey Limits, or equivalent to be determined during the above-described Task 1. If additional survey is deemed necessary, our surveyor will prepare an additional services proposal to be reviewed and approved by the City. The field survey data will include the items in Appendix 1 – Surveying Services.

### Water Resources Delineation

- B. Pond's scientists will complete an on-site identification of potential waters of the United States (WOTUS) within the ~45-acre Environmental Survey Boundary (ESB; Figure 1) that may be subject to Section 404 of the Clean Water Act (CWA) regulation. The on-site delineation of WOTUS will be conducted in accordance with the 1987 Corps of Engineers Wetlands Delineation Manual and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0). Delineated resources will be flagged in the field and mapped using a survey-grade GPS unit capable of sub-meter accuracy. Representative data for jurisdictional WOTUS will be captured using the USACE Wetland Determination Data Form – Atlantic and Gulf Coastal Plain Region. A general pedestrian survey of the potentially suitable protected species habitat will be conducted to ascertain the probability of the occurrence of threatened and endangered species on the site. The proposed project site is located in the Cape Fear watershed and is not within a water supply watershed. No state-regulated buffers are associated with the Cape Fear watershed. Additionally, as the project is not within a water supply watershed, no City of Fayetteville-regulated buffers are anticipated within the project area (Part II, Chapter 29, Article III, Sec. 29-67). The project will be subject to the requirements of Part II, Chapter 30, Article 30-3.H.10 (Cape Fear River Overlay [CFRO] District) for development within 100 feet adjacent to the top of bank along the Cape Fear River. Field-collected GPS data of streams and wetlands will be processed and added to GIS mapping for the project site. Following the completion of the on-site water resources delineation, findings will be summarized in an Environmental Summary Report.

### Phase 1 – Cultural Resources Assessment

- C. Pond will conduct a Phase 1 Cultural Resource Survey and report to evaluate the probability of encountering cultural resources throughout the project area, and to establish the direct and indirect area of potential effect (APE) according to guidance provided by the State Historic Preservation Office (SHPO). All work will be performed under the direction of an archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards for Archaeology (36 CFR 61). The review will consist of a GIS analysis within the project area examining historic maps, the natural environment (topography, geomorphology, hydrology), and data for previously recorded cultural resources on file with the North Carolina Archeological Site File. Additionally, the field methodology will follow the Office of State Archaeology (OSA) guidelines, requiring up to 186 shovel tests to be completed based on the ESB size. This evaluation will include the discovery and documentation of up to two (2) archaeological sites and

one (1) new above-ground resource. The final deliverable will be a technical report concerning the results and recommendations of the analysis.

### Geotechnical Subsurface Investigation

Our sub-consultant will perform a geotechnical subsurface investigation for the 25% trail alignment corridor to include field exploration, laboratory testing, and engineering recommendations.

- D. Field exploration: this scope includes 16 standard penetration tests (SPT) borings distributed along the trail, bridges, and boardwalks. Borings will be performed with a geotechnical drill rig by using hollow stem augers in general accordance with ASTM D6151. If auger refusal is encountered shallower than the target depths presented herein, the boring will be terminated at that depth. Rock coring to assess the character, and continuity of the refusal material is not included in the scope of this exploration. Sampling will be performed in general accordance with ASTM D1586 with SPTs obtained at regular intervals. This will include four SPTs in the upper 10 feet and then at 5-foot intervals thereafter to the boring termination depths. During the field exploration, if unexpected or soft soil conditions are encountered, deeper and/or additional borings may be needed to adequately evaluate the subsurface conditions. If so, Pond will contact the City to discuss and only move forward with additional services after authorization is provided. The borings will be backfilled upon completion of the exploration with the drill cuttings. Excess soil spoils will be spread and left at the site.
- E. Laboratory Testing: Soil samples obtained during the subsurface exploration will be transported to a laboratory for classification and to perform a limited number of engineering index property tests on select samples. The laboratory test data will be used in our engineering analyses and will support the recommendations within the geotechnical report. Laboratory testing will be performed in general accordance with applicable ASTM procedures. The laboratory tests proposed are as follows:
  - a. Water content, ASTM D2216 – 10 tests.
  - b. Atterberg limits, ASTM D4318 – 10 tests.
  - c. Fines content (washed #200 sieve), ASTM D1140 – 10 tests.
  - d. CBR Test, ASTM D1883 – 5 tests.
- F. Reporting: The results of the field exploration and laboratory tests will be used in the engineering analyses and in the formulation of geotechnical recommendations for this project. The recommendations will be presented in a written report, which will be signed and sealed by a Professional Engineer licensed in North Carolina. The geotechnical report will include:
  - a. Discussion of the general subsurface based on a review of readily available geologic maps.
  - b. Descriptions of subsurface conditions encountered in the borings.
  - c. Laboratory test results.
  - d. Discussions of geotechnical issues related to site grading, such as the presence of existing fill, shallow groundwater, partially weathered rock, rock, and/or soft soils.
  - e. Recommendations for site grading, structural fill, and suitability of on-site materials for re-use.
  - f. Foundation (pile) design for the proposed boardwalks and bridges.
  - g. Asphalt pavement design.

An electronic copy of the final report will be provided to the City in PDF format for review.

- G. As part of this task, Pond will visit the site to do a verification of the survey and a field reconnaissance of existing drainage features.

#### Flood Plain No-Rise Analysis

- H. At the preliminary design stage, Pond will create the proposed conditions model to evaluate the ability to achieve a No-Rise. The existing conditions model will be updated with proposed cross-sections from preliminary plans. The modeling analysis at the preliminary design stage will inform the design changes necessary to achieve a No-Rise Certification. The model will be updated at the 90% and 100% design phases to ensure that the No-Rise Certification can be achieved. If a no-rise condition cannot be obtained, then a Conditional Letter Map of Revision (CLOMR) and Letter of Map Revision (LOMR) would be the next step in meeting FEMA regulatory NFIP regulations, Section 65.5. CLOMR and LOMR are not included.

#### **Task 3 – Stakeholder and Utility Coordination**

- I. The stakeholders may include but are not limited to the following:
- NCDOT
  - Cape Fear Botanical Garden
  - Duke Energy
  - Emergency responders
- J. Pond, with the collaboration of the City, will schedule a virtual meeting with each stakeholder during the 25% phase and will coordinate a site visit with NCDOT, Duke Energy, and the Botanical Gardens during the 60% phase.
- K. Pond will also attend two (2) steering committee meetings to go over the project plans and answer any technical questions, one meeting at each the 25% and 60% phase of the project.
- L. As part of this task, Pond will identify all utilities located within the project boundaries and will coordinate with the City to obtain plans for any proposed utilities in the project area. The City will contact all identified utilities and request any information needed for coordination including as-builts and easements.
- M. During the 25% phase, Pond, with the collaboration of the City, will coordinate a preliminary utility virtual meeting with the utilities to review plans and schedule. Pond will submit the project plans for review by the identified utility owners and coordinate the resolution of any conflicts identified.
- N. Pond will design all adjustments for City-owned drainage systems as described in this scope that are required to construct the project. Any other design adjustments to utilities owned by the City (i.e., water and sewer) will be considered an additional service.
- O. If necessary, Pond will obtain additional vertical utility location data; however, vertical subsurface elevation information for non-gravity utility is not included in the scope of work and will be considered an additional service.
- P. Deliverables:
- a. PDF copy of the 25% Plans will be submitted to NCDOT, Duke Energy, the Botanical Gardens, and the emergency responder's representative.
  - b. PDF copies of the 25%, 60%, and 90% Plans will be submitted to the identified utility owners.
  - c. An 11x17 hard copy of the 60% plan set will be mailed to NCDOT, Duke Energy, and the Botanical Gardens prior to the field site visit.

**Q. Meetings:**

- a. Four (4) virtual meetings during the preliminary phase to be up to 2 hours each in duration, which includes preparation and meeting minutes.
- b. One (1) field site visit NCDOT, Duke Energy, and the Botanical Gardens during the 60% phase to be up to 12 hours in duration, which includes travel time and site walk.
- c. Two (2) steering committee meetings to be up to 8 hours in duration, which includes travel time.
- d. One (1) virtual coordination meeting with the City personnel.
- e. Two (2) virtual coordination meetings with the utility owners.

**Task 4 – Design Development Phase (60%)**

- A. Our team will revise the preliminary plans based on the comments from the City and will further refine the design to prepare the Design Development Phase (60%) plans, an update of the OPCC, and an outline of the specifications for submittal and review.
- B. At this stage, Pond will review the project for potential constructability issues such as construction access (including drilling equipment for boardwalks or cranes for bridges if needed), staging, floodplain elevation, cross-section at Central Road bridge, and underpass options at the Southern Railroad underpass.
- C. The Design Development Drawings include the following technical items:
  - a. Hydraulic Analysis and Drainage Design: Pond will perform preliminary hydraulic analysis for drainage pipe crossings and linear ditches along the proposed alignment for incorporation into the trail plans. This analysis will be based upon the topographical information included in the survey and base mapping and supplemented with GIS contour information, USGS Quad maps, and FEMA information. The anticipated tasks associated with the hydraulic analysis and drainage design include:
    - i. Conduct field reconnaissance of existing and proposed drainage features and patterns associated with proposed trail pipe crossings and existing ditches (see Task 2).
    - ii. Size all cross pipes along trail alignment and determine critical trail profile minimums to allow for the proposed cross pipes. Incorporate these critical profile control points to adjust the vertical trail alignment.
    - iii. Provide drainage ditch design to appropriately drain low areas adjacent to the proposed trail and to replace existing ditches impacted by the proposed trail.
    - iv. Evaluate and design necessary revisions to existing hydraulic structures (drop inlets, cross pipes, headwalls, intersections of tributaries with main channel) that may be impacted by the proposed bikeway.
    - v. Finalize hydraulic designs for ditches, storm drainage systems, drop-inlet locations, outfall analyses, and final cross-pipe designs.
    - vi. Draft the proposed drainage features (ditches, cross pipes, inlets, etc.) and label them appropriately.
    - vii. Draft the anticipated ditches and final cross pipes into the trail profile sheets
  - b. Landscape Plans: Pond landscape architects will refine the 25% preliminary design of the landscaping. The design effort will focus on the enhancement of the connection with the existing Cape Fear Trail and the small trailhead at the future River Park.
  - c. Signage: Pond will include MUTCD compliance trail signage and will propose locations for trail wayfinding to be designed/provided by the City.

d. Structures:

- i. Pond anticipates the need for two pedestrian prefabricated bridges with an approximated length of 150 LF and 200 LF; however, our structural engineer's recommendation is to determine the type of bridges to be installed and the foundations to support them once the flood study is completed and a better understanding of the stream force load is available. Pond will schedule a bridge discussion meeting with the City to go over available options. Bridge design is not part of this scope and will be considered an additional service to be negotiated with the City after the bridge coordination meeting.
- ii. Due to the site conditions, Pond has also identified the need for up to 900 LF of a precast concrete boardwalk system such as the one manufactured by Permatrak or similar. Pond will provide the manufacturer with the required information and parameters to produce the design details needed to produce permit plans and bid package, including horizontal and vertical alignment, work points, and flood modeling information. The manufacturer will submit detailed boardwalk shop drawings during the construction phase of the project.
- iii. Retaining walls are not currently anticipated as part of the project.

D. The Design Development Phase (60%) deliverables will include:

- a. Design Development Phase Plans
  - i. Cover Sheet
  - ii. General Notes and Legend
  - iii. Typical Sections
  - iv. Details
  - v. Plans and Profiles
  - vi. Demolition and Clearing Plan
  - vii. Pavement Markings and Signing Plans
  - viii. Grading and Drainage Plan
  - ix. Erosion Control Plans and Details
  - x. Construction Access Plans
  - xi. Trailhead Plans
  - xii. Landscape Plans and Details
  - xiii. Structural Plans
  - xiv. Cross Sections
- b. 60% OPCC
- c. Specifications Outline
- d. Geotechnical Report
- e. Preliminary Hydraulic Analysis and Storm Drainage Report

E. Meetings:

- a. Design coordination meetings (up to 2 virtual meetings)
- b. Pedestrian Bridge Coordination Meeting Virtual
- c. 60% Review Meeting

### **Task 5 - Construction Documentation Phase (90% and 100%)**

- A. In this phase, Pond will prepare the 90% and 100% Construction Documents to include plans, specifications, and OPCC. Based on the approved 60% Design Development drawing set, Pond will continue to coordinate the site design and preparation of construction documents. The Construction Documents will contain the comprehensive technical information necessary for pricing/bidding and construction by qualified contractors and will be sealed by the appropriate licensed professional.
- B. The 90% plans will include temporary and permanent easement areas needed to perform utility work, erosion control, grading, and any other proposed improvements. During this task, Pond will meet with the City's agent to discuss the proposed improvements and answer technical questions.
- C. As part of the easement support services, Pond will prepare exhibits in accordance with NCGS 47-30 suitable for recording in the County Register of Deeds. The plat will illustrate the limits of the subject properties and other required items to include the bearings and distances with the associated area. The exhibits will be submitted to the City for review and approval.
- D. Pond will submit 90% Construction Documents for review and approval by the City and coordinate a 90% Review Meeting to go over final comments. Pond will then revise the Construction Documents to reflect the review comments as necessary and prepare the 100 % Construction Documents.
- E. The Construction Documentation Phase deliverables will include:
  - a. Construction Documentation (90%/100%) Plans
    - i. Cover Sheet
    - ii. General Notes and Legend
    - iii. Typical Sections
    - iv. Details
    - v. Summary Tables (Drainage, Ditches, and Earthwork)
    - vi. Plans and Profiles
    - vii. Horizontal Control Sheets
    - viii. Demolition and Clearing Plan
    - ix. Traffic Management Plans
    - x. Pavement Markings and Signing Plans
    - xi. Grading and Drainage Plan
    - xii. Erosion Control Plans and Details
    - xiii. Construction Access Plans
    - xiv. Trailhead Plans
    - xv. Landscape Plans and Details
    - xvi. Structural Plans
    - xvii. Cross Sections
  - b. 90%/100% OPCC
  - c. Draft and Final Specifications
  - d. Draft and Final Drainage Report
  - e. Easement Exhibits
- F. Meetings:
  - a. Design coordination meetings (up to 3 virtual meetings)
  - b. 90% Review Meeting

## Task 6 - Permitting

- A. Pond will submit, track, and apply for plan approval for Construction Documents from the agencies listed below:
- a. City of Fayetteville Building Permit
  - b. City of Fayetteville Floodplain Development Permit
  - c. City of Fayetteville Infrastructure Permit
  - d. City of Fayetteville Stormwater Management
  - e. NCDEQ Erosion Control Permit
  - f. NCDOT Encroachment Agreement for the two bridge underpasses
  - g. Army Corp of Engineers
  - h. North Carolina Department of Environmental Services

The City will be responsible for payment of any permitting fees.

### B. Environmental Permitting

- a. USACE Section 404 Nationwide Permit: Pond anticipates that temporary/permanent impacts associated with the proposed development will be authorized under USACE Nationwide Permit (NWP) 14 (Linear Transportation Projects) and/or Nationwide Permit 42 (Recreational Facilities). Pond will prepare one (1) pre-construction notification upon the completion of 90% design documents to obtain verification of coverage under the appropriate Nationwide Permit. Additionally, Pond will complete one (1) in-person meeting with USACE Wilmington District regulatory personnel to discuss the project and application ahead of submittal.
  - b. USACE Jurisdictional Determination: Following client review of the Environmental Summary Report, and as a component of the USACE NWP pre-construction notification, an Approved or Preliminary Jurisdictional Determination Request (AJD/PJD) package will be prepared and submitted to the USACE Wilmington District for review and concurrence of delineated resources. The AJD would identify the limits of waters on the project site determined to be jurisdictional under the CWA and provide written confirmation that the jurisdictional determination is correct and can be relied upon to withstand legal challenges for a period of five (5) years. A Preliminary Jurisdictional Determination (PJD) may be prepared as an alternative to the AJD if the jurisdictional status of water resources does not require challenging as non-jurisdictional. Coordination will be completed with the client ahead of initiating the USACE determination deliverable to confirm the recommended approach.
  - c. NCDEQ Section 401 Water Quality Certification: Pond anticipates that temporary/permanent impacts associated with the proposed development project will meet the terms and conditions for a General Section 401 Water Quality Certification as administered by NCDEQ. Pond will prepare and submit a pre-filing meeting request to NCDEQ, as required by the Clean Water Act Section 401 Certification Rule. If impacts to water resources exceed that of the general certification threshold, an individual 401 Water Quality Certification may be prepared via a contract change order.
- C. Stormwater Management: once the project reaches the 60% design phase, Pond will coordinate with the City Stormwater Department to determine the project requirements to obtain a stormwater detention waiver. Based on the results of this coordination, Pond will either prepare an application to obtain the mentioned waiver or establish suitable locations for stormwater detention treatment, design stormwater structures, and prepare a stormwater management report. The stormwater detention waiver and the

design of stormwater management structures are not included in this scope and will be considered additional services. Pond will submit a request for additional services once the coordination with the City Stormwater Department is completed.

- D. **Water Quality:** Pond will also coordinate with the City of Fayetteville Stormwater Department to reach approval for water quality due to the addition of built-upon-area (BUA). Pond anticipates the need for quality treatment devices; however, it is our recommendation to start the design of those devices after the preliminary stages of the project. The water quality coordination will be concurrent with stormwater detention and our team will submit a request for additional services once the mentioned coordination is completed.
- E. **Floodplain Development Permit:** Coordinate with the local community certified floodplain administrator to determine if hydrologic/hydraulic modeling will be needed for the project and obtain the current effective floodplain model. This coordination will determine the appropriate direction based on the required floodplain ordinance requirements for the community. Pond assumes that the existing conditions model will need to be updated, and a No-Rise analysis will need to be performed.
- F. **Meetings:**
  - a. Two (2) virtual permit pre-submittal meetings.
  - b. One (1) pre-submittal field visit.
  - c. Meetings time is included in this task with each of the above agencies during the course of preparing appropriate permit applications.

#### **Task 7 – Bid Assistance**

- A. Pond will assist the City with the following services:
  - a. Attend pre-bid meeting.
  - b. Provide up to two (2) addenda and/or notice to bidders for clarifications to the plans and specifications resulting from the pre-bid meeting.
  - c. Review material substitution requests.
  - d. Attend the bid opening, review the bids, and provide advice.
- B. **Deliverables:**
  - a. Pond will provide two (2) full-size and two (2) half-size sets at 100% completion (bid set).
  - b. Pond will prepare any necessary written addenda (up to two (2) assumed).

#### **Task 8 – Construction Support**

- A. Pond will provide the following construction support services for an anticipated construction period of 9 months:
  - a. Attend the Pre-Construction Meeting:
    - a. Pond Project Manager and Technical Advisor
  - b. Attend Monthly Construction Progress Meetings
    - a. Nine (9) site visits to be up to 9 hours in duration to include travel time and minutes.
  - c. Respond to Design Submittals and RFIs
    - a. Incomplete submittals will be rejected. Repeatedly incorrect or incomplete submittals by the General Contractor will result in additional services.
  - d. Coordination with the Construction Inspector
  - e. Punch list site walk and closeout report.

### Additional Services

Additional Services are all those services authorized in advance by the City, to be performed by Pond which are not included in this scope of work and are due to causes beyond the control of Pond. Additional service requests shall be answered in writing and documented by including graphic information about the areas to be modified, and an itemized cost/time analysis for the task in reference. Additional services include, but are not limited to, the following:

- A. Bridge abutment design and prefabricated bridge design coordination (fee range provided on fee structure below)
- B. CLOMR/LOMR
- C. Unspecified Additional Survey and Mapping Services
- D. Unspecified Additional Geotechnical Services
- E. Stormwater Management Plan and Calculations
- F. Post-construction water quality treatment
- G. Client direction that results in changes to previously approved design

### Conditions of Service

- The City will provide site access and provide the Pond team with information regarding planned and existing site features.
- The City will review the deliverables in a timely manner and provide appropriate feedback.
- This scope assumes that the project-impacted water resources will meet the terms and conditions for coverage under the Nationwide Permit Program. Individual Section 404 and 401 Clean Water Act permitting has been excluded from this scope.
- This scope assumes that project buffer impacts will meet the terms and conditions for allowable encroachments within water resource buffers.
- This scope assumes the project will meet the terms and conditions for coverage under a General Water Quality Certification.
- This scope assumes all field survey efforts can be completed in one mobilization. Additional field mobilizations can be completed as a change order.
- The City will provide the FEMA effective model.
- Significant changes in the proposed project limits may result in the need for additional surveys, reevaluation, or additional coordination and will be accounted for via a change order, if necessary.
- The current task order excludes the following:
  - Retaining walls design.
  - Tree preservation/tree save plans.
  - Coordinating and leading Steering Committee meetings and agendas.
  - Additional exhibits and materials for steering committee meetings.
  - Design of wayfinding signage.
  - Property access coordination.
  - Preparation and coordination of Individual Water Quality Certification coverage.
  - National Environmental Policy Act (NEPA) documentation
  - Formal consultation associated with Section 7/Section 10 of the Endangered Species Act nor Section 106 of the National Historic Preservation Act.
  - Phase II Environmental Site Assessment

- Specific protected species surveys are not included. If potentially suitable protected species habitat is identified during the water resource delineation, species-specific surveys may be required. If protected species surveys are deemed necessary, they may be completed via a contract change order.
- Rock coring
- Identification of contaminated soils or groundwater
- Water quality analysis due to built-upon area (BUA) and design of water quality treatment devices/structures.
- A stormwater detention waiver permit application
- The design of stormwater detention facilities
- Meetings, additional field visits, or additional reports, beyond those described herein.
- Permitting fees or mitigation costs beyond those specifically stated in the scope narrative.
- Fees associated with express permitting
- As-builts
- Construction testing and/or inspection

### Schedule

Upon notice to proceed Pond will begin the conceptual design within 5 business days. The total project, including the City review period, is expected to be completed within 9 months.

### Fee Structure

The following fee includes professional design services and all project-related expenses to complete the scope of work outlined above:

Task 1 – Preliminary Phase (25%)	\$52,811.00
Task 2 – Existing Conditions Mapping and Site Assessment	\$196,235.00
Task 3 – Stakeholder and Utility Coordination	\$13,830.00
Task 4 – Design Development Phase (60%)	\$91,388.00
Task 5 – Construction Documentation Phase (90% and 100%)	\$111,918.00
Task 6 – Permitting	\$21,080.00
Task 7 – Bid Assistance	\$8,560.00
Task 8 – Construction Support	\$35,560.00
<b>Total Design Fee</b>	<b>\$531,382.00</b>
Expenses	\$7,450.00
Fee Total	\$538,832.00
Additional Services (Pedestrian Bridge Abutment Design and Bridge Design Coordination – To be Determine During Task 4)	\$40,000.00 to \$80,000.00

We appreciate your time and consideration in reviewing our proposal. Please let us know if you have any questions and thank you again for your trust in our firm. Should you find this proposal acceptable, please review and sign below, as well as the attached standard contract form.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JMM' with a large flourish at the end.

Juan M. Morales, PE  
Senior Project Manager  
Attachments

A handwritten signature in blue ink, appearing to read 'Matt Wilder' with a large flourish at the end.

Matt Wilder, PLA, ASLA  
Vice President | Local Government



## Appendix 1 - Surveying Services

All survey services performed will be completed by the standards as set forth by the Rules of Standard Practice as outlined by the North Carolina Board of Engineers and Land Surveyors and North Carolina General Statutes to include GS 47-30 (Mapping Requirements) and North Carolina Administrative Code - 21 NCAC 56.1606 (Specifications for Topographic and Planimetric Mapping, Including Ground, Airborne, and Spaceborne Surveys). The survey will be horizontally tied to the North Carolina State Plane Coordinate System under the North American Datum of 1983 (NAD83). Vertically, the project will be tied to the North American Vertical Datum of 1988 (NAVD88). The project's units will be the U.S. Survey Foot.

The existing conditions survey will include existing improvements and surface features that will be located by the survey inclusive of buildings, parking areas, sidewalks, concrete pads, curb/gutter, paving, pavement markings in parking lots and streets, driveways, street signage, walls, fences, ditches, and visible improvements within the project area. Exterior of buildings within the project area will be dimensioned. Individual trees 30" DBH and greater will be field located and identified on the final plan. Shrubs and bushes will be shown in outlined areas only and not individually located. Visible above ground evidence of utilities to include power poles, fire hydrants, traffic control, valves, etc. will be located by the survey. Corresponding top, bottom and invert elevations of storm and sanitary structures that are accessible and without the need for confined space entry will also be recorded. Pipe sizes entering and exiting these structures will also be noted where accurately attainable. Storm drainage and sanitary systems will be traced and located to one structure beyond the survey limits of the project.

A topographic survey of the area will be performed within the survey area. Elevations will be shown to the nearest 0.1' on lawn or "soft" areas while on paved or "hard" surfaces elevations will be shown to the nearest 0.01'. Contours will be created at a one-foot interval. Building finish floor elevations that are accessible will be obtained at each entrance of any building within the survey area limits.

In order to locate non-gravity utilities in the project area, the survey will include a Subsurface Utility Engineering (SUE) investigation to include Quality Level B (utility designation) services. Radio-frequency Electromagnetic and Ground Penetrating Radar technology will be used to designate the approximate horizontal location of underground utility lines within the project area. These locations will be painted, field sketched and surveyed. All work will be performed in close coordination with utility owners, and available utility maps from these owners will be used for this project if available. Although SUE methods provide a high level of assurance for the location of subsurface utilities, the possibility exists that not all features can be identified.

## TERMS AND CONDITIONS

This Agreement between City of Fayetteville ("Client") and **Pond & Company** ("POND"), a Georgia corporation with its corporate headquarters located at 3500 Parkway Lane, Suite 500, Peachtree Corners, GA 30092, is effective as of December 4, 2024. The parties agree as follows:

**1.0 Services:**

POND agrees to perform for Client the professional services ("Services") described in the POND proposal dated

October 30, 2024 ("Proposal"), attached and incorporated herein. Because of the uncertainties inherent in the Services contemplated, time schedules are only estimated schedules and are subject to revision unless otherwise specifically described in the Proposal. As full consideration for the performance of Services, Client shall pay to POND the compensation provided for in the Proposal.

**2.0 Integration:**

These Terms and Conditions, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties. If any term or provision hereunder, or any portion hereof, is held to be invalid or unenforceable, it shall not affect any other term or provision hereunder or any part thereof, unless the invalidity or unenforceability of such term(s) or provision(s) tends to render the Agreement commercially useless to either party, in which case the entire Agreement shall become null and void.

**3.0 Access to Site:**

Unless otherwise stated, POND will have reasonable access to the site for activities necessary for the performance of the services. If reasonable access is not provided and consequently POND is denied or delayed in performing our services, the associated cost may be viewed as an additional expense.

**4.0 Billings/Payment:**

Invoices for POND services shall be submitted, at POND'S option, either upon completion of such services, on a project basis or on a monthly basis and are due when rendered. Client shall promptly review all invoices and shall notify POND in writing within ten (10) days of date of invoice, provide reasons for the objection, and promptly pay the undisputed amount. Invoices shall be considered "Past Due" if not paid within 30 days after receipt of invoice for services rendered. If the invoice is not paid within 30 days, POND may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, stop work on the performance of the service. Unpaid accounts shall be subject to a monthly service charge of 1% per month on the unpaid balance at the sole election of POND. In the event any portion or all of an account remains unpaid 90 days after proper billing, the Client shall pay all costs of collection, including reasonable court costs and attorney's fees. Client shall remit payment to POND's corporate headquarters address above.

**5.0 Reimbursable Expenses:**

Reimbursable expenses will be billed at a multiplier of 1.15 times the cost incurred.

**6.0 Additional Services:**

Additional services include increase or change in scope of project, major revisions when such revisions are inconsistent with written approvals or instructions previously given, services after award of contract in evaluation of substitutions proposed by the construction contractor, correction of discrepancies between copies of the Contract Documents and the electronic media after the 30-day acceptance period and any other services that are not included within the Proposal. POND will only perform additional services when authorized in writing by the Client or Client's representative.

**7.0 Client Furnished Services:**

Any services provided by the Client for POND shall be deemed reliable, and POND shall be entitled to rely on the accuracy and completeness of any services and information furnished.

~~**8.0 Indemnification:**~~

~~The Client shall indemnify and hold harmless POND and all of its personnel from and against any claims, damages, losses and expenses (including reasonable attorney's fees) arising out of or resulting from the negligent performance of the services, provided that any such claim, damage, loss or expense is caused by the negligent act, omission, and/or strict~~

~~liability of the Client, anyone directly employed by the Client (except POND), or anyone for whose acts any of them may be liable.~~

#### ~~9.0 Risk Allocation:~~

~~In recognition of the relative risks, rewards and benefits of the project to both the Client and POND, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by the law, POND's total aggregate liability to the Client for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any cause or causes, shall not exceed total fee. Such causes include, but are not limited to, POND negligence, errors, omissions, strict liability, breach of contract or breach of warranty.~~

#### 10.0 Dispute Resolution:

Any claims, counterclaims, or disputes between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by negotiation, mediation or litigation. The parties shall first endeavor to settle the dispute through direct discussions or negotiations. If the parties do not resolve the dispute or claim within thirty (30) days of the first notice thereof, either party may request mediation, which shall take place within thirty (30) days of the date the request is made. If both parties do not agree to mediation within ten (10) days of said request, or if the mediation does not result in a resolution of the dispute, then either party may proceed with litigation. No written or oral representation during any settlement negotiations or mediation shall be deemed as party admissions.

~~Any litigation arising out of this Agreement or the breach thereof must be filed in the state courts of Gwinnett County, Georgia, which shall be the sole and exclusive venue for all such litigation. The parties to this Agreement consent to jurisdiction in Gwinnett County, Georgia, and waive any objection thereto.~~

#### 11.0 Standard of Care:

POND shall perform Services for Client with a standard of care ordinarily exercised by other firms providing similar services in accordance with accepted and sound professional practices, and conforms to applicable laws, codes and regulations.

#### 12.0 Exchange of Electronic Media:

When exchange of data by electronic media is required by this agreement, the following shall apply:

##### 12.1 Client to POND

The Client shall deliver to POND electronic files suitable for use in the format, specification, media and hardware platform (production system) agreed upon between the parties. POND shall review the files within a reasonable time period and determine whether electronic files are suitable for POND's use on the project. If the electronic files are unsuitable for use, POND shall notify the Client of the deficiencies. The Client shall make the required corrections and return the electronic files to POND.

##### 12.2 POND to Client or Third Parties

POND shall deliver to the Client electronic files in the format agreed upon between the parties. These files are compatible only with the software and version agreed upon and may not be compatible with future versions of the software. The Client shall review the electronic files received from POND and notify POND of any discrepancies within a reasonable time period, but no longer than 60 days. POND shall make the required corrections and return the electronic files to Client.

POND agrees that it is responsible for the accuracy of the original sealed documents. If at any time there exists a difference between the submitted electronic files and the original sealed documents, the original sealed documents will govern as the official delivered contract documents.

POND will not release electronic files to third parties without a written authorization of the Client.

#### 13.0 Termination of Services:

This Agreement may be terminated by written notice by either the Client or POND, should the other fail to perform its obligations hereunder or for convenience. In the event of termination, the Client shall pay POND for all services appropriately and completely rendered to the date of termination and all associated reasonable reimbursable expenses.

#### 14.0 Ownership of Documents:

All documents, including electronic media, produced by POND under this Agreement shall remain the property of POND and may not be used by the Client for any reason without the written consent of POND; such written consent not to be

unreasonably withheld, conditioned or delayed. Any unauthorized use or distribution shall be at Client's and Recipient's sole risk and without liability to POND. Client further agrees that documents produced by POND pursuant to this Agreement will not be used for any project not expressly provided for in this Agreement without POND's written approval; such written approval not to be unreasonably withheld, conditioned or delayed. The Client will indemnify, defend, and hold

harmless POND for any and all claims, counterclaims, losses, costs, damages, awards or judgments arising from the unauthorized use of the documents.

If Client terminates this Agreement and POND authorizes the use of incomplete documents for Client's future use, POND shall not be liable for any errors or omissions and Client agrees their use of the incomplete documents is at their sole risk.

#### **15.0 Force Majeure:**

POND is not responsible for damages and delays caused by factors beyond POND's reasonable control, including but not limited to damages and delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or disapprove of POND's services or work product promptly, or damages and delays caused by faulty performance by the Client or by contractors of any level. When such delays beyond POND's reasonable control occur, the Client agrees POND is not responsible for damages, nor shall POND be deemed to be in default of this Agreement.

#### **16.0 Discovery of Unanticipated Hazardous Materials:**

Hazardous materials may exist where there is no reason to believe they could or should be present. POND and the Client agree that the discovery of unanticipated hazardous materials may constitute a changed condition mandating a renegotiation of the scope of work or termination of services at the election of either party. POND and the Client also agree that the discovery of unanticipated hazardous materials may make it necessary for POND to take immediate measures to protect human health and safety, and/or the environment. POND agrees to notify the Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. The Client encourages POND to take any and all prudent "first aid" measures that in POND's opinion are justified to preserve and protect the health and safety of POND's personnel and the public, and/or the environment, and the Client agrees to compensate POND for reasonable additional cost of such work. The Client waives any claim against POND, and agrees to indemnify, defend and hold POND harmless from any claim or liability for injury or loss arising from POND's encountering unanticipated hazardous materials. The Client also agrees to compensate POND for any time reasonably spent and expenses incurred by POND in defense of any such claim, with such compensation to be based upon POND's prevailing fee schedule and expense reimbursement policy. The Client is fully responsible for and assumes all risks associated with such conditions.

#### **17.0 Site Operations:**

POND field personnel will avoid hazards and potentially dangerous exposure to and contact with utilities which are visible to them at the site. The Client recognizes that POND's personnel may not identify all subsurface utility lines and manmade objects, and that the information upon which POND relies may contain errors, may be incomplete, or insufficient. POND is not responsible for any reasonably unforeseeable damage or loss due to undisclosed or unknown surface or subsurface conditions, owned by Client or third parties. Evaluations of existing buildings require that certain assumptions be made regarding existing conditions, many of which are not able to be reviewed by reasonable visual observation. These assumptions cannot be verified without substantial cost or demolition. Where the detailed investigation of such a condition is not authorized, POND shall not be responsible for the condition of the existing structure and utilities. The Client understands that actual field conditions may subsequently be found to vary from design assumptions which in turn may alter or increase the scope of the design and/or construction services.

#### **18.0 Construction Activities:**

Unless specifically stated otherwise, the Client and his contractor(s) are fully and solely liable for all means and methods of construction, temporary bracing and shoring, and construction site safety.

#### ~~**19.0 Consequential Damages:**~~

~~Neither party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.~~

**20.0 Governing Law:**

This Agreement shall be deemed to be executed in Gwinnett County, Georgia and shall be governed by the laws in the State of Georgia. It is agreed that all actions related to this Agreement shall be submitted to the jurisdiction of the state or federal courts in the State of Georgia and that the venues for same shall be located in Gwinnett County, Georgia.

By signing in the space provided below, I verify that I am an Officer or authorized agent of the Client and agree that I have fully read, understand and accept the Terms and Conditions as stated above.

_____	_____
<b>Client</b>	<b>Pond &amp; Company</b>
_____	_____
<b>Signed (Must be an Officer or Authorized Agent)</b>	<b>Signed (Must be an Officer or Authorized Agent)</b>
_____	_____
<b>Typed Name</b>	<b>Typed Name</b>
_____	_____
<b>Title</b>	<b>Title</b>
_____	_____
<b>Date</b>	<b>Date</b>



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
11/11/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Aon Risk Services Northeast, Inc. New York NY Office One Liberty Plaza 165 Broadway, Suite 3201 New York NY 10006 USA	<b>CONTACT NAME:</b> _____	
	<b>PHONE (A.C. No. Ext.):</b> (866) 283-7122	<b>FAX (A.C. No.):</b> (800) 363-0105
<b>E-MAIL ADDRESS:</b> _____		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURED</b> Pond & Company, Inc. 3500 Parkway Lane Suite 500 Peachtree Corners GA 30092 USA	<b>INSURER A:</b> Greenwich Insurance Company	22322
	<b>INSURER B:</b> XL Specialty Insurance Co	37885
	<b>INSURER C:</b> Allied World Surplus Lines Insurance Co	24319
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**      **CERTIFICATE NUMBER:** 570109361858      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	Limits shown are as requested	
							LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER: _____			CGD740998404	12/31/2023	12/31/2024	EACH OCCURRENCE	\$2,000,000
							CHARGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
							MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$2,000,000
							GENERAL AGGREGATE	\$4,000,000
							PRODUCTS - COMP/OP AGG	\$4,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			CAH740998504	12/31/2023	12/31/2024	COMBINED SINGLE LIMIT (Ea accident)	\$2,000,000
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
							Medical Payments Li	\$5,000
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION						EACH OCCURRENCE	
							AGGREGATE	
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY EMPLOYEE (OR PARTNER/ EXECUTIVE OFFICER/ MEMBER) (Mandatory in NJ) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	CWG740998304	12/31/2023	12/31/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE-EA EMPLOYEE	\$1,000,000
							E.L. DISEASE-POLICY LIMIT	\$1,000,000
C	<b>Architects &amp; Engineers Professional</b>			03123252 Prof Liab - Claims Made SIR applies per policy terms & conditions	12/31/2023	12/31/2024	Each Claim Aggregate	\$1,000,000 \$2,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 RE: Professional Service Agreement, Cape Fear River Trail Extension, City of Fayetteville, its officers, appointees, volunteers, employees and agents are included as Additional Insured in accordance with the policy provisions of the General Liability policy..

<b>CERTIFICATE HOLDER</b>  City of Fayetteville 433 Hay Street Fayetteville NC 28301 USA	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	<b>AUTHORIZED REPRESENTATIVE</b>  <i>Aon Risk Services Northeast, Inc.</i>

Holder Identifier:

Certificate No.: 570109361858

