

# REQUEST FOR BOARD ACTION / CONTRACT CONTROL FORM

**Tracking Number:** 10

**Date of Request:** February 8, 2008

**Date Request Received:** February 13, 2008

**Board Meeting Date Requested:** February 18, 2008

**Board Meeting Date Assigned:** February 18, 2008

**Short Title:** Resolution Authorizing A Contract With And Purchase Order To Southern Engineering For Technical And Operational Support Of The Pender County Utilities Office: \$7,700 Per Month

- Request Status:**
- Request is proceeding to Board of Commissioners
  - More information is needed – see attached
  - Request on hold – no further information needed
  - Other:

**Background:** : Since November 30, 2007, Pender County has been without a Public Utilities Director. During this time, we have relied heavily on Greg Thompson/Southern Engineering to review drawings, develop ordinances, plans and policies, attend meetings with USDA Rural Development, NC DENR and in general, assist with running the Department.

*(Administrative Use Only)*

We were paying him at his going rate of \$125 per hour. The former County Manager negotiated a discounted rate if we would pay him by the month at \$7,700 - this represents half of his fee based on a 40 hour work week.

## CONTRACT TYPE

Staff recommends that the County approve this contract and purchase order so that Mr. Thompson can continue working with the Utilities Department.

- Renewal
- For Service(s)
- Intergovernmental – County as Grantee
  - Federal Grantor
  - State Grantor
  - Grant or
- County as Grantor
  - County Funds
  - Other Funds:
- Revision
- For Equipment

**Specific Action Requested:** The Board of Commissioners is requested to authorize a contract with and a purchase order to Southern Engineering: \$7,700 per month.

**PURCHASING** Budgeted Item:  Yes  No  
Date Rec'd:  Reviewed and Approved  
 Comments on Reverse

Requested by: Melinda Knoerzer  
Department: Pender Utilities  
Title: Administrative Assistant  
Contact Phone: 910.259.1280  
Contact Fax: 910.259.1579

Date Sent: \_\_\_\_\_  
Signed: \_\_\_\_\_

**ATTORNEY**  Reviewed and Approved  
Date Rec'd:  Legal Problem(s)  
 Comments on Reverse

Date Sent: \_\_\_\_\_  
Signed: \_\_\_\_\_

**FINANCE** Sufficient Funds  Available  
Date Rec'd:  Not Available  
 Budget Amendment Necessary  
 Budgeted Amendment is Attached  
 Comments on Reverse

Date Sent: \_\_\_\_\_  
Signed: \_\_\_\_\_

**CLERK** Signature(s) Required:  
 Board Chairman/County Manager  
 Other:

Date Rec'd Approved by Board:  Yes  No  
At meeting on

**MANAGER'S RECOMMENDATION:**

Respectfully Recommend Approval

AD  
Initials

**RESOLUTION: NOW THEREFORE BE IT RESOLVED** by the Board of Commissioners that

a contract with and purchase order to Southern Engineering is authorized in the amount of \$7,700 per month for assistance in the daily operation of the Public Utilities Office and in the amount of \$5,600 for mapping services to update Local Water Supply Plan.

60-407490-6040      Water Treatment Plant

**AMENDMENTS:**

MOVED \_\_\_\_\_ SECONDED \_\_\_\_\_

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ UNANIMOUS

YEA VOTES: Williams \_\_\_ Tate \_\_\_ Blanchard \_\_\_ Brown \_\_\_ Rivenbark \_\_\_

\_\_\_\_\_  
J. David Williams, Jr., Chairman      02/18/08  
Date

\_\_\_\_\_  
Attest      02/18/08  
Date

**SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”) between

Pender County (“Owner”)

and Southern Engineering Services Inc (“Engineer”)

Engineer agrees to provide the services described below to Owner for Operational Support (“Project”).

Description of Engineer’s Services: Southern Engineering Services Inc. (SESI) will provide technical support and expertise

for operation and maintenance activities associated with the daily operations of Pender County’s water and sewer

districts. Duties include review and comment of water & sewer applications, letters, assistance with permit applications, preparation of agenda items for meetings of the Pender County Board of Commissioners, commenting on operational permits and assisting

with reporting requirements. Duties also include providing support for staff during meetings with regard to water and sewer or at, at the request of the County, attend meetings to provide and gather information for the interest of Pender County or the Water and Sewer District.

Engineering design, permitting construction management and surveying services are considered additional services.

Owner and Engineer further agree as follows:

**1.01 Basic Agreement**

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

**2.01 Payment Procedures**

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer’s standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer’s invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in

full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

**3.01 Additional Services**

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer’s employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer’s consultants’ charges, if any.

**4.01 Termination**

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

b. By Engineer:

1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

## 5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

## 6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

## 7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

## 8.01 Total Agreement

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

**9.01 Payment (Lump Sum Basis)**

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

1. A Lump Sum amount of \$ 7,700 /month

B. The Engineer's compensation is conditioned on the time to complete construction not exceeding \_\_\_\_ months. Should the time to complete construction be extended beyond this period, total compensation to Engineer shall be appropriately adjusted.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

ENGINEER:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

License or Certificate No. and State \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In order to maintain compliance with regulatory authorities, operators of water distribution systems are required to periodically submit updates to their "Local Water Supply Plan" which is a detailed report of the system and is required by the North Carolina Department of Environment and Natural Resources, Division of Water Resources. Pender County is required to submit an updated plan for active systems operated by the County's District's by April 1, 2008. The report requires a system map identifying the location and various elements of the system. The map will also serve a management tool for staff and can be utilized by other Departments such as Planning and Fire Services to address a variety of needs.

Southern Engineering Services Inc. proposes to provide the map necessary to meet the requirements of the "Local Water Supply Plan" as an additional service for a lump sum of \$5,600. Southern Engineering will deliver the hard copies and a digital copy to the County for future use.

Proposal submitted February 11, 2008.

Gregory R Thompson, PE, PLS

President, Southern Engineering Services Inc.

