

REQUEST FOR BOARD ACTION / CONTRACT CONTROL FORM

Tracking Number: 15.

Date of Request: July 14, 2008

Date Request Received: July 14, 2008

Board Meeting Date Requested: July 21, 2008

Board Meeting Date Assigned: July 21, 2008

Short Title: Resolution Approving Agreement For Professional Services Between The Wooten Company And Pender County.

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

Background: Recently, the Board of Commissioners authorized staff to negotiate an agreement for services with The Wooten Company regarding two projects known as the Comprehensive Land Use Plan and the Unified Development Ordinance. Staff and the County Attorney reviewed the contract and came to a satisfactory agreement with Wooten on the terms of the contract.

(Administrative Use Only)

Specific Action Requested: Approve resolution.

Requested by: Patrick Davenport
Department: Planning
Title: Director
Contact Phone: 910.259.1200
Contact Fax:

CONTRACT TYPE

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

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

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: Finance and County Attorney

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

MANAGER'S RECOMMENDATION:

Respectfully Recommend Approval

PEP
Initials

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

the Commission hereby approves an agreement for services with The Wooten Company for the development of a Comprehensive Growth Management Plan, Small Area Plans, and Unified Development Ordinance, with a total estimated budget of \$222,000 for the project. The Chairman/County Manager is authorized to execute any document necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Williams ___ Tate ___ Blanchard ___ Brown ___ Rivenbark _____

J. David Williams, Jr., Chairman

7/21/08

Date

Attest

7/21/08

Date

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made this ___ day of _____, 2008 between L.E Wooten & Company, Inc., dba The Wooten Company, a North Carolina corporation, ("CONSULTANT") and The County of Pender ("CLIENT").

1. Services: CONSULTANT agrees to perform Basic Services and (if properly requested in writing) Additional Services at the rates and in the manner described in the Scope of Work, attached hereto as Exhibit A ("Scope of Services and Compensation"), Exhibit B ("Schedule"), and Exhibit C ("Fee Schedule for Additional Services") and incorporated herein by. The lump sum amounts or hourly rates for additional services shown in Exhibit A may be adjusted by Consultant if the time for the completion of the project is extended due to causes other than the negligence of CONSULTANT.

2. Authorization: CLIENT authorizes CONSULTANT to begin performing these SERVICES upon the execution of this Agreement.

3. Payment of Invoices: CONSULTANT will submit invoices to CLIENT based upon CONSULTANT's estimate of the proportion of the total services actually completed during the billing period. CLIENT recognizes that timely payment is a material part of this Agreement. Each invoice is due and payable within sixty (60) calendar days of the date of the invoice. CLIENT will pay an additional charge of one and one-half percent (18% annually) per month not to exceed the maximum rate allowed by law for any payment received by CONSULTANT more than sixty (60) calendar days from the date of the invoice.

4. Disputed Invoices: If CLIENT disputes any part of an invoice, CLIENT will notify CONSULTANT in writing of such dispute within ninety (90) days of the date of such invoice. If CLIENT fails to notify CONSULTANT as required above, CLIENT waives any and all claims, rights related to the work covered by such invoices. CLIENT will pay when due that portion of invoice, if any, not in dispute. If CLIENT fails to pay any undisputed invoiced amounts within thirty (30) calendar days of the date of the invoice, CONSULTANT may suspend its performance or terminate this Agreement without incurring any liability to CLIENT and without waiving any other claim against CLIENT. All time spent and expenses incurred, including any attorney's fees, in connection with the collection of any delinquent amount will be paid by CLIENT to CONSULTANT per CONSULTANT's standard fee rates.

5. Subconsultants/Subcontractors: CLIENT understands and agrees that CONSULTANT may hire subconsultants to assist in the performance of the Services.

6. Standard of Care: **CONSULTANT provides no express or implied warranties or guarantees of any kind.** CONSULTANT only agrees that the standard of care for all Services performed or furnished by CONSULTANT under this Agreement will be the care and skill ordinarily used by members of CONSULTANT's profession practicing under similar circumstances at the same time and in the same locality.

7. Notification of Breach or Delay: CLIENT shall provide prompt written notice to CONSULTANT if CLIENT becomes aware of any fault, defect or delay in the CONSULTANT's work or the work of any subcontractor or subconsultant, including any error, omission or inconsistency in such work or any alleged breach of contract by CONSULTANT. The failure of CLIENT to provide such written notice within five (5) business days from the time CLIENT became aware of, or should have become aware of, the fault, defect, error, omission, inconsistency or breach, shall constitute a waiver by CLIENT of any and all claims against CONSULTANT arising out of such fault, defect, delay, error, omission, inconsistency or breach.

8. Certifications: CONSULTANT shall not be required to sign any documents, no matter by whom requested, that would result in CONSULTANT having to certify, guarantee or warrant the existence of conditions whose existence CONSULTANT cannot ascertain. CLIENT agrees not to make resolution of any dispute with CONSULTANT or payment of any amount due to the CONSULTANT in any way contingent upon CONSULTANT's signing any such certification or document.

9. Documents and Records: The CLIENT will furnish or cause to be furnished to the CONSULTANT such reports, data, studies, plans, specifications, documents and other information in its possession deemed necessary by the CONSULTANT for proper performance of the CONSULTANT's services. The CONSULTANT may rely upon the documents so provided in performing the services required under this Agreement; provided, however, that the CONSULTANT assumes no responsibility or liability for their accuracy. CONSULTANT will retain records (documents and maps) for a period of five (5) years following completion of this project. During this time, CONSULTANT will reasonably make available the records to the CLIENT. CONSULTANT may charge a reasonable fee in addition to its professional fees for retrieving or copying such records. CLIENT shall rely only on hard copies of documents provided by CONSULTANT, and waives any claim against CONSULTANT for discrepancies between electronic versions and hard copies of documents.

10. Additional Services and Change Orders: CONSULTANT will treat as a change order any written or oral order (including directions, instructions, interpretations or determinations) from CLIENT which request changes in the Services. CONSULTANT will give CLIENT written notice within ten (10) days of the change order of any resulting increase in fee. The fee schedule provided in Exhibit C will be used in determining increases in fees. Unless CLIENT objects in writing within five (5) days, the change order becomes a part of this Agreement.

11. Third-Party Rights: This agreement is solely for the benefit of the parties hereto and nothing herein, express or implied, is intended to confer any right or remedy on any person other than CLIENT and CONSULTANT.

12. Force Majeure: CONSULTANT shall not be responsible for any delays, damages, costs, expenses, liabilities or other problems that may arise as a result of a force majeure. A "force majeure" is defined as any event arising from causes beyond the reasonable control of CONSULTANT, including but not limited to fire, flood, unusual

inclement weather, acts of God, civil strikes or labor disputes, riots, acts or failures of government.

13. Limitation of Liability: If CONSULTANT fails to perform its services in accordance with its Standard of Care, CLIENT agrees to seek recourse only against CONSULTANT and not against its officers, employees, directors, shareholders, or entities. In addition, CLIENT agrees that CONSULTANT's liability to CLIENT for any and all claims (including, but not limited to, claims for negligence, breach of contract, breach of warranty, strict liability, errors and omissions), losses, expenses, or damages arising out of or related to this Agreement shall not exceed \$50,000 or the fee paid to CONSULTANT under this Agreement, whichever is greater. In additional consideration for this Agreement, both CLIENT and CONSULTANT hereby waive any right to pursue any and all claims for consequential damages, including any claims for lost profits against one another.

14. Indemnity: CLIENT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the CONSULTANT from and against any and all claims, liabilities, losses, damages, costs or expenses, including, without limitation, reasonable attorneys fees, awards, fines, damages or judgments arising out of or relating to, any or all of the following: (a) any inaccurate, insufficient or incomplete information provided to CONSULTANT by CLIENT and any and all actions, advice, decisions or judgments made or recommended by CONSULTANT in reliance on such information; (b) any events, problems or circumstances arising out of or related to CLIENT's negligence or breach of this Agreement; (c) any and all claims or liabilities resulting from CLIENT's (or CLIENT's contractors, agents, employees or representatives) violation of federal, state or local statutes, regulation ordinances.

15. Representatives and Notices: On behalf of CONSULTANT, only the following individuals have authority to modify or alter the terms and conditions of this agreement:

Amos L. Moore, Jr., President
Dan K. Boone, Vice President
V. Stephen Player, Secretary-Treasurer

All notices required pursuant to this agreement shall be given in writing, shall be sent via facsimile, certified registered mail, or by a national courier service to the individuals and addresses set forth below.

Notices to CONSULTANTS shall be sent to: V. Stephen Player
120 N. Boylan Avenue
Raleigh, NC 27603

Notices to CLIENT shall be sent to: _____

16. Assignment/ Status: The CLIENT will not delegate, assign, sublet, or transfer any interest in this Agreement without the written consent of CONSULTANT.

CONSULTANT will not assign or transfer its interest in this Agreement without the written consent of CLIENT. CONSULTANT is an independent contractor and not the agent or employee of CLIENT.

17. Termination: Either party may terminate the Services with cause upon thirty (30) days advance written notice or without cause upon ninety (90) days advance written notice. If CLIENT terminates without cause or if CONSULTANT terminates for cause (including failure of CLIENT to pay invoices in a timely fashion), CLIENT will pay CONSULTANT costs incurred, non-cancelable commitments, and fees earned to the date of termination and through demobilization, including any cancellation charges of vendors and subcontractors, and all demobilization costs.

18. Community Relations: CONSULTANT acknowledges that CLIENT or its designated representative shall be responsible for handling public and community relations activities concerning the Scope of Work undertaken pursuant to this Agreement (except to the extent CLIENT authorizes CONSULTANT). Except for statements made by CLIENT or statements contained in any report CLIENT makes which becomes public, CONSULTANT shall not refer to CLIENT in any advertising or public announcement without CLIENT's prior written consent.

19. Severability: If any of the provisions contained in this agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. The Court shall instead reform or replace any void or unenforceable provision with a valid and enforceable provision that gives meaning to the intention of the provision or shall strike the provision from the agreement.

20. Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the CLIENT and the CONSULTANT shall survive the completion of the services and the termination of this Agreement.

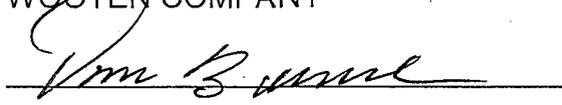
21. Complete Agreement: The Parties acknowledge this Agreement, including the Scope of Work attached hereto constitutes the entire Agreement between them. Unless stated otherwise in this Agreement, this Agreement may not be modified except in a writing signed by both parties.

22. Applicable Law. This agreement shall be construed and enforced in accordance with the laws of the State of North Carolina, excluding only its conflict of laws principles.

CLIENT:
THE COUNTY OF PENDER

CONSULTANT:
L.E. WOOTEN & COMPANY, dba THE
WOOTEN COMPANY

BY: _____

BY:  _____

Name: _____

Name: Dan K. Boone

Title: _____

Title: Vice President

Date: _____

Date: July 11, 2008

ATTEST:

By: _____

Printed Name: _____

Title: Clerk to the Board

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

County Attorney

PRE-AUDIT CERTIFICATION:

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

Finance Director

EXHIBIT A- SCOPE OF WORK, and COMPENSATION

1.0 Project Initiation

- 1.1 Meeting with Staff.** Conduct a project initiation meeting with the county staff to review project objectives, project schedule, and document preparation methodology and formatting. Assist Planning Director with developing a specific public involvement strategy to involve, inform, and educate the elected and appointed officials, stakeholder groups, and the general public regarding the project.
- 1.2 Planning Workshop.** Conduct a two-day workshop with the Board of Commissioners, Planning Board, advisory committees, planning department staff, representatives from county and state agencies involved with or impacted by land development, stakeholder groups, and interested citizens. The workshop will:
- provide an overview of project objectives and expectations and as an educational forum to discuss planning principles
 - practices, and methodologies identify planning issues and concerns to be addressed in the growth management plan and UDO.

2.0 Evaluation

- 2.1 Review of Existing Plans.** Review existing plans, policies, and ordinances to determine implementation needs and issues to be addressed as well as to identify inconsistencies among the various existing plans and ordinances. Existing plans to be analyzed will include, but will not be limited to, the *Pender 2020 Growth Management Plan, CAMA Land Use Plan Update, Zoning Ordinance, Subdivision Ordinance, Thoroughfare Plan, Street Collector Plan, Natural Area Inventory, Flood Damage Prevention Ordinance, and Manufactured Home/Travel Trailer Ordinance.*
- 2.2 Summary Assessment.** Prepare a summary of findings and review findings with the Advisory Committees, Board of Commissioners, and Planning Board. Assessment will serve as the basis for discussion about the specific issues and needs to be addressed in updating and revising the growth management plan and in preparing the unified development ordinance. Assessment will identify conflicting policies, standards, requirements, and practices and the need for updates, modernizations, and revisions to both the growth management plan and the UDO. Conduct a review meeting with the Advisory Committees as well as a joint review meeting with the Advisory Committees, Board of Commissioners, and Planning Board to obtain consensus.

3.0 Document Preparation—Growth Management Plan

- 3.1 Analysis of Existing Conditions.** Prepare an analysis of existing conditions that affect growth and land development in Pender County including existing land use, population, housing, economy, transportation, utilities, natural features, etc. Prepare a trends analysis, update population projections, and estimate future land needs. Key planning, land development, and growth issues and concerns will be summarized. Analysis of existing conditions will draw upon background data contained in previously completed plans and documents. Critical time-sensitive data will be updated and data voids will be

filled. Specific focus areas will include the Hampstead/US Highway 17 Corridor, the Rocky Point area, and the southern US Highway 421 Corridor area. Analysis will be reviewed with the Advisory Committee in a work session meeting.

- 3.2 Formulation of Goals, Objectives, and Policies.** Prepare land development goals and objectives and policy statements that address the community's vision for the future growth, including those specific to the Hampstead, Rocky Point, and US Highway 421 corridor focus areas. Review draft goals, objectives, and policies with advisory committee in a work session meeting as well as a joint review meeting with Advisory Committee, Board of Commissioners, and Planning Board.
- 3.3 Preparation of Alternative Growth Scenarios and Preferred Development Plan.** Prepare alternative development scenarios, review the scenarios with the Advisory Committee in a work session meeting, and prepare a recommended conceptual future land use map for the entire county as well as the focus areas. Review the recommended preferred alternative with the Advisory Committee, Board of Commissioners, and Planning Board in a joint work session meeting.
- 3.4 Preparation of an Implementation Strategy.** Prepare recommendations for implementing the growth management plan and review the implementation strategies with Advisory Committee in a work session meeting.

4.0 Document Preparation—Unified Development Ordinance

- 4.1 Draft UDO Document Preparation.** Draft technical standards and requirements after obtaining a general consensus regarding growth management goals, objectives, and policies. Prepare a preliminary draft unified development ordinance document in accordance with the selected ordinance preparation methodology and format. Preliminary draft document will be prepared in functional components such as general administration, zoning, general design and performance standards, subdivision procedures and design standards, etc. As each component of the preliminary draft is completed, forward to the County staff for review and approval prior to forwarding to the Advisory Committee for review.

5.0 Review of Draft Documents

- 5.1 Advisory Committee.** Conduct Advisory Committee review meetings at strategic points in the development of the growth management plan and UDO including:
- Summary Assessment of Existing Plans and Ordinances
 - Analysis of Existing Conditions
 - Formulation of Goals, Objectives, and Policies
 - Preparation of Alternative Growth Scenarios
 - Development of Implementation Strategies
 - UDO components including Administrative, Zoning, General Design Standards, and Subdivision Design Standards
- 5.2 Planning Board and Board of County Commissioners.** Conduct joint meetings of the Planning Board of Board of Commissioners at key points in the development of the growth management plan and UDO including:

- Summary Assessment of Existing Plans and Ordinances
- Formulation of Goals, Objectives, and Policies
- Preparation of Alternative Growth Scenarios
- Preliminary Draft of the UDO

5.3 Public Informational Meetings. Conduct a series of five public informational meetings with identified stakeholders and the general public to review the preliminary draft growth management plan and UDO. Meetings to be held in each of the five Board of Commissioner districts. Prepare an Executive Summary of both documents and a Summary of Major Changes that highlight the most significant changes between the proposed documents and the existing plans and regulations.

5.4 Public Hearing. Assist the County staff in the presentation of the growth management plan and UDO at a public hearing as required by the North Carolina General Statutes.

6.0 Deliverables

Submit fifty hardcopies of the adopted growth management plan, UDO, and small area plans, a camera-ready hardcopy, and one electronic copy of the adopted documents, map data, and graphics to the County.

7.0 Compensation

Compensation is will be a lump sum fee of Two Hundred Twenty-one Thousand Nine Hundred Dollars (\$221,900.00) which cannot be exceeded without permission of Pender County. This amount includes all project costs including all travel time and expenses including the cost of preparing fifty (50) hardcopies, an electronic copy, and a camera-ready hardcopy of the adopted documents. Monthly invoices will be submitted to the County based upon the percentage total work completed during the month. Invoice will include a delineation of tasks performed during the month.

Exhibit B

Project Schedule
Pender County Growth Management Plan and Unified Development Ordinance

Project Activity	Month																	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1.0 Project Initiation																		
1.1 Project initiation meeting with staff (teleconference)																		
1.2 Planning workshop																		
2.0 Evaluation																		
2.1 Review of existing plans and ordinances																		
2.2 Summary assessment																		
2.3 Advisory committee #1																		
2.4 Joint planning board/board of commissioners meeting #1																		
3.0 Document Preparation																		
3.1 Analysis of existing conditions																		
3.2 Advisory committee #2																		
3.3 Goals, objectives, policies																		
3.4 UDO administrative component																		
3.5 Advisory committee #3																		
3.6 Joint planning board/board of commissioners meeting #2																		
3.7 Alternative growth scenarios & preferred develop. plan																		
3.8 Advisory committee #4																		
3.9 Joint planning board/board of commissioners meeting #3																		
3.10 UDO zoning component																		
3.11 Advisory committee #5																		
3.12 Implementation strategies																		
3.13 UDO general design standards component																		
3.14 Advisory committee #6																		
3.15 UDO subdivision design component																		
3.16 Advisory committee #7																		
4.0 Document Review																		
4.1 Joint planning board/board of commissioners meeting #4																		
4.2 Public informational meetings (5)																		
4.3 Public hearing																		
5.0 Deliverables																		

Exhibit C

Fee Schedule for Additional Services

SCHEDULE OF FEES
PLANNING DEPARTMENT COST BREAKDOWN
HOURLY RATES FOR WAGE CATEGORIES

Wage Category	Hourly Billing Rate
Planner IV	\$ 160
Planner II	\$ 124
GIS Specialist III	\$ 94
GIS Specialist II	\$ 67
Project Coordinator	\$ 84
Planning / Community Development Specialist II	\$ 74
Project Assistant	\$ 55

Reimbursables: Mileage will be billed at the current IRS Standard Mileage Rate, Subcontracted Services and other expenses at cost plus 10%.

The Wooten Company makes annual adjustments on July 1st. The above hourly rates reflect current rates for the period through June 30, 2009. Hourly billing rates (per diem rates) will change effective July 1, 2009 to reflect Direct Payroll Costs (salaries) being paid at that time. Mileage rate will change as the IRS rate changes.