



## REQUEST FOR BOARD ACTION

ITEM NO. 9.

**DATE OF MEETING:** September 7, 2010

**REQUESTED BY:** Mike Taylor, Director, Pender County Public Library

**SHORT TITLE:** Resolution Approving Contract and Purchase Order to Southern Engineering for Professional Design Services for the Topsail Regional Library Project: \$29,107

**BACKGROUND:** In 2009 the county engaged Southern Engineering for site work design for the proposed Topsail Regional Library project. The original estimate of \$32,025 for civil engineering was found to be inadequate to address site issues such as wetland mitigation, site modification, access and access storm water improvements design, and so forth. Additional civil design work is necessary to provide to the architects in order that preliminary project design can be completed by November as planned.

The additional scope of work proposed is not to exceed \$29,107, which includes an estimated \$4,200 for reimbursable expenses. Specific changes are listed in Exhibit A with the new proposed contract. Funding for this work will be appropriated from general fund balance.

**SPECIFIC ACTION REQUESTED:** To consider a resolution approving the contract and purchase order with Southern Engineering Services not to exceed \$29,107.

**COUNTY MANAGER'S RECOMMENDATION**

Funding for these services must be appropriated from excess general fund balance. The services are related to a one-time capital improvement project and will not be a recurring cost.

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Initial

**RESOLUTION**

**NOW, THEREFORE BE IT RESOLVED**

that a contract and purchase order to Southern Engineering Services is approved in the amount of \$29,107 for civil engineering services related to the Topsail Regional Library project. The County Manager is authorized to execute any/all agreements necessary to implement the resolution.

Expenditure: 60-404533-6076      Hampstead Library  
Revenue: 10-399000              General Fund Balance

**AMENDMENTS:**

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

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

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

\_\_\_\_\_  
Jimmy T. Tate, Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
ATTEST

\_\_\_\_\_  
Date

**AGREEMENT  
BETWEEN PENDER COUNTY  
AND  
SOUTHERN ENGINEERING SERVICES, INC.  
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 TOPSAIL REGIONAL LIBRARY (“Project”).

Description of Engineer’s Services: PROVIDE CEVIL ENGINEERING AND LAND SURVEYING SERVICES FOR THE  
CIVIL SITE DESIGN AND PERMITTING ASSOCIATED WITH THE TOPSAIL REGIONAL LIBRARY AND COUNTY  
ANNEX RENOVATION PROJECT. THE PROPOSAL DATED AUGUST 10, 2010 IS ATTACHED HERETO AND  
INCLUDED BY REFERANCE AS EXHIBIT “A” AS PART OF THIS AGREEMENT.

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.

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.

## 8.01 Total Agreement

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 (Not To Exceed)**

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

1. A not to exceed amount \$ \$29,107

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: Gregory R. Thompson  
GREGORY R. THOMPSON

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

Date Signed: 08-19-10

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

NORTH CAROLINA LICENSE NO. 3092

Address for giving notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for giving notices:  
SOUTHERN ENGINEERING SERVICES, INC.  
3215 PORTER ROAD  
CURRIE, NORTH CAROLINA 28435

SOUTHERN ENGINEERING SERVICES, INC.

3215 PORTER ROAD

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**Topsail Library - Breakdown for Civil Change Order  
August 10, 2010**

**Exhibit "A" - Document**

	(PO 603)	Paid to date (Inv. # 241R)	Cost to Finish	Proposed Contract	Description of line item
<b>Task I Site Investigation</b>					Completed
a. Boundary Survey	\$2,000	\$2,000	\$0	\$0	
b. Topographic Survey - Library Site	\$4,500	\$4,500	\$0	\$0	
c. Topographic Survey - 75 Library Rd.	\$1,500	\$1,500	\$0	\$0	
d. Data Processing	\$1,200	\$1,200	\$0	\$0	
e. Mapping	\$960	\$960	\$0	\$0	
<b>Subtotal</b>	<b>\$10,160</b>	<b>\$10,160</b>	<b>\$0</b>	<b>\$0</b>	

<b>Task II Initial Regulatory Contact</b>					Completed
a. NCDENR	\$750	\$750	\$0	\$0	
b. USCOE	\$225	\$225	\$0	\$0	
c. NCDOT	\$250	\$250	\$0	\$0	
<b>Subtotal</b>	<b>\$1,225</b>	<b>\$1,225</b>	<b>\$0</b>	<b>\$0</b>	

<b>Task III Civil Design/Permitting</b>					
a. Sewer	\$2,500	\$970	\$3,500	\$3,500	Initial Proposal covered service connection to school's gravity system. Revised Pricing includes possible changes for Library to operate its own septic system or to extend sewer main line.
b. Site Plan/Stormwater	\$6,450	\$5,000	\$2,426	\$2,426	Original site was 3.2 acers. Site for library was compressed to 2.6 acers. This change required placing all improvements into smaller area and resulted in redesign of site plan.
c. Soils Investigation	\$1,900	\$6,940	\$0	\$0	Laboratory testing required to provide soil characteristics for use in foundation design. Engineering for Foundation work is included under Architects contracts however soils testing was not included under that contract. Soils Lab work was included in civil quote for stormwater and as a result, it was more economical for Pender County to add this work to Southern Engineering's contract. This work has been completed.
d. Erosion Control Plan	\$900	\$300	\$900	\$900	Additional redesign due to compressed site.
e. Water	\$1,495	\$2,260	\$4,360	\$4,360	Initial Proposal covered service connection only and site layout was planned to miss existing water main which crosses site. Compressed site boundary forced impacts to existing water main. Water main must be relocated and requires permitting from NCDENR.
f. NCDOT-HWY 17 Access	\$1,250	\$1,665	\$5,750	\$5,750	Initial design was to utilize the existing drive connection for existing library. The modifications to site boundary requires new drive and a new turnlane on Hwy 17. This work also involves modification to NCDOT stormwater system.
g. Wetlands (404/401)	\$1,800	\$1,800	\$3,026	\$3,026	Initial Proposal was to mitigate wetlands on site with constructed wetlands. Compressed site boundary greatly limits ability to mitigate impacts on site. Wetland impacts could be mitigated by protecting wetlands located on other county property, possible 421 site, and will require a new agreement with the Corps of Engineers and permitting with record plat for conservation easements.
h. Construction Specs	\$1,000	\$0	\$1,000	\$1,000	Specifications associated with permitting documents necessary for acquiring permits.
i. Drafting/Data Processing	\$2,145	\$2,000	\$2,745	\$2,745	Drafting for development of permit drawings.
j. Administrative	\$1,200	\$1,003	\$1,200	\$1,200	Administrative efforts for design and permitting.
<b>Subtotal</b>	<b>\$20,640</b>	<b>\$21,939</b>	<b>\$24,907</b>	<b>\$24,907</b>	

<b>Total</b>	<b>\$32,025</b>	<b>\$33,324</b>	<b>\$24,907</b>	<b>\$24,907</b>	
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Reimbursable Expenses - Budget	--	\$140	\$4,200	\$4,200	Estimate of cost for copies, postage, permit fees
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<b>Total Including Estimate for Reimbursables</b>		<b>\$33,464</b>	<b>\$29,107</b>	<b>\$29,107</b>	
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