Agenda Date: February 21, 2011

AGENDA
CRAVEN COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION
MONDAY, FEBRUARY 21, 2011
8:30 A.M.

CALL TO ORDER

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

APPROVE MINUTES OF FEBRUARY 7, 2011 REGULAR SESSION

1. DEPARTMENT OF SOCIAL SERVICES MATTERS
   A. Home and Community Care Block Grant (HCCBG) Request: Tonya Cedars, Area Agency on Aging; Alfreda Stout, Assistant Social Services Director
   B. Energy Program Budget Amendment: Alfreda Stout

2. REGISTER OF DEEDS DEPARTMENTAL BRIEFING: Sherri Richard, Register of Deeds

3. RECREATION DEPARTMENTAL BRIEFING: Eddie Games, Recreation Director

4. MAINTENANCE DEPARTMENTAL BRIEFING: Steve Creel, Maintenance Director

5. CONVENTION CENTER FEE SCHEDULE: Mary Harris, Convention Center Director

6. BUDGET AMENDMENTS: Rick Hemphill, Finance Director

7. TAX RELEASES AND REFUNDS: Ronnie Antry, Tax Administrator

8. APPOINTMENTS
   A. Craven Aging Planning Board
   B. New Bern Planning Board
   C. First Craven Sanitary District
   D. Upcoming Appointments – March

9. COUNTY ATTORNEY'S REPORT: Jim Hicks

10. COUNTY MANAGER'S REPORT: Harold Blizzard

11. COMMISSIONERS' REPORTS

Agenda Date: February 21, 2011
Presenters: Tonya Cedars, Alfreda Stout
Agenda Item No. 1
Board Action Required: Yes

DEPARTMENT OF SOCIAL SERVICES MATTERS

A. HOME AND COMMUNITY CARE BLOCK GRANT (HCCBG) REQUEST

Tonya Cedars of the Area Agency on Aging will present some background on the Home and Community Care Block Grant program.

Assistant DSS Director, Alfreda Stout, will present the following budget amendment:

DSS Senior Meals/Senior Companion – Budget additional funding of $6,882 for the Home and Community Care Block Grant for Older Adults (HCCBG) from the Division of Aging. Ninety percent of the funding ($6,193) is provided by federal and state government. The remaining ten percent ($689) is required County match. Additionally, an extra $672 will also be received for USDA home delivered meals. This revenue source will supplant that designated from fund balance at onset of fiscal year. Also, an extra $3,334 will be received for senior companion. This is simply a pass-through that is paid to Coastal Community Action.

Board Action: Roll call vote to approve budget amendment.

B. ENERGY PROGRAM BUDGET AMENDMENT

Ms. Stout will present the following budget amendment:

DSS Mandated Public Assistance – Additional funding of $ 584 received from Progress Energy - Energy Neighbor Fund. Funding is 100 % State requiring no County match.

Board Action: Roll call vote to approve budget amendment.

Agenda Date: February 21, 2011
Presenter: Sherri Richard
Agenda Item No. 2
Board Action Required: No

REGISTER OF DEEDS DEPARTMENTAL BRIEFING

Register of Deeds, Sherri Richard, will present an overview of her department.

Board Action: Receive Information

Agenda Date: February 21, 2011
Presenter: Eddie Games
Agenda Item No. 3
Board Action Required: No

RECREATION DEPARTMENTAL BRIEFING

Recreation Director, Eddie Games, will provide an overview of the activities and facilities of the Recreation Department.

Board Action: Receive Information

Agenda Date: February 21, 2011
Presenter: Steve Creel
Agenda Item No. 4
Board Action Required: No

MAINTENANCE DEPARTMENTAL BRIEFING

Maintenance Director, Steve Creel, will provide an overview of the County's maintenance operation.

Board Action: Receive information

Agenda Date: February 21, 2011
Presenter: Mary Harris
Agenda Item No. 5
Board Action Required: Yes

CONVENTION CENTER FEE SCHEDULE

As we do each year at this time, we have reviewed the Convention Center rates and completed a competitive analysis which includes other convention centers, hotels, and banquet facilities. As a result of increased costs, particularly electricity, we recommend a 5% increase in our rental rates beginning January, 2012. Based on our analysis, our rates will still be competitive with other facilities in our market. In the past we have experienced little or no resistance on rate increases.

Unlike most similar facilities, our Convention Center does not charge a fee for use of lines during group events. In an effort to generate additional revenues to offset our increasing costs and stay in line with other facilities, it is recommended that a linen fee of $5.00 per linen be charged effective immediately.

Attachment #5 is the proposed 2012 space rental rates as compared to 2011 rates.

Board Action: A voice vote will be sufficient to approve the fee schedule.

Agenda Date: February 21, 2011
Presenter: Rick Hemphill
Agenda Item No. 6
Board Action Required: Yes

BUDGET AMENDMENTS

Finance Director, Rick Hemphill, will present the following budget amendments for the Board's approval.

Amendments: *General/Pass through* – Need to budget additional program funds totaling $5,360 awarded at Juvenile Crime Prevention Council meeting - $1,782 for JCPC administration comm for children, $1,000 for area day reporting and $2,578 for juvenile restitution.

Tax Collections – Need to budget additional $100,000 for Board approved tax refunds. Increase primarily due to anticipated refunds owed to property owners residing at MCAS Cherry Point.

Board Action: A roll call vote is needed to approve budget amendments.

Agenda Date: February 21, 2011
Presenter: Ronnie Antry
Agenda Item No. 7
Board Action Required: Yes

TAX RELEASES AND REFUNDS

Craven County Tax Administrator, Ronnie Antry, will present the routine requests for tax releases and refunds contained in Attachment #7 for the Board's approval.

Board Action: A roll call vote is needed to approve tax releases and refunds.

Agenda Date: February 21, 2011
Presenter:
Agenda Item No. 8
Board Action Required: Yes

APPOINTMENTS

A. CRAVEN AGING PLANNING BOARD

At the Board's last meeting, a request from the Craven Aging Planning Board for appointment to two vacant positions was received. One vacancy was filled at that time, leaving one remaining vacancy for a member from the Havelock/Harlowe area.

B. NEW BERN PLANNING BOARD

An appointment to replace Mark Best as an ETJ representative on the New Bern Planning Board was deferred at the last meeting.

C. FIRST CRAVEN SANITARY DISTRICT

The First Craven Sanitary District is requesting an appointment to replace Mr. Troy Jones, who has resigned. Attachment #8.C. contains a copy of the letter, which recommends appointment of Mr. Doug Cowan, along with the Resolution of Appointment.

D. UPCOMING APPOINTMENTS - MARCH

The term of Harry Mercer as a Fire Tax Commissioner in Township 9 is due to expire in March. In addition, the Emergency Services Department is awaiting confirmation from Fire Tax Commissioners and Firemen's Relief Fund Trustees that they will accept reappointments that the Board acted upon at its last meeting.

Board Action: The Board will need to make all necessary appointments.

Agenda Date: February 21, 2011
Presenter: Jim Hicks
Agenda Item No. 9

COUNTY ATTORNEY'S REPORT

Agenda Date: February 21, 2011
Presenter: Harold Blizzard
Agenda Item No. 10
Board Action Required: Yes

COUNTY MANAGER'S REPORT

A. CONVENTION CENTER REPAIRS

Attachment #10.A. is a copy of an engineering proposal to assist the County in selecting a repair method, obtaining bids for the work, and overseeing the repairs to the Convention Center. Tom Admay, Engineered Foundation Solutions (EFS) owner, was previously an employee of ECS Carolinas which thoroughly evaluated the settlement problems at the Convention Center in preparation for the lawsuit that was recently settled. Mr. Admay's familiarity with the Convention Center's settlement issues will save the County time and money in the process of addressing problems at the facility. EFS proposed to perform the work in three (3) phases for a fixed fee of $8,000. Extra site visits would cost $1,000 and any additional services would be negotiated.

Board Action: Authorize Chairman to execute the contract.

B. UPCOMING BUDGET PROCESS

Staff will review with the Board the current and historical financial information to be considered in the upcoming budget development process.

Board Action: Receive Information

Agenda Date: February 21, 2011
Presenter:
Agenda Item No. 11

COMMISSIONERS' REPORTS

Attachment #5

NEW BERN RIVERFRONT CONVENTION CENTER
Proposed 2012 RENTAL RATES COMPARISON

	SQUARE FEET	DIMENSIONS	THEATRE SEATING	CLASSROOM SEATING	RECEPTION STYLE	BANQUET SEATING	DAILY RENTAL RATE *2011*	DAILY RENTAL RATE *2012*
COLONIAL CAPITAL BALLROOM (A, B & C)	12,000	100 X 120	1,350	770	1,350	1,000	$ 2,625	$2,755
BALLROOM A	6,000	60 X 100	650	375	650	500	$ 1,312	$1,375
BALLROOM B	3,500	58 X 60	390	220	390	250	$ 785	$825
BALLROOM C	2,500	42 X 60	280	175	260	150	$ 630	$700
TRYON ROOM (A and B)	2,030	42 X 48	225	145	225	150	$ 575	$600
TRYON ROOM A	1,100	42 X 26	140	85	140	90	$ 365	$380
TRYON ROOM B	930	42 X 22	70	55	75	60	$ 285	$300
BERNE ROOM	1,680	42 X 40	175	120	175	120	$ 475	$500
CRAVEN BOARD ROOM	450	19 X 24					$ 250	$250
HERITAGE HALL	8,000				800		$ 500	$550
PROMENADE	1,900						$ 250	$250
RIVERFRONT VERANDA	3,740				100	320	$ 500	$500
ENTIRE FACILITY	29,800						$ 4,275	$4,655

Policy: A Complete listing of booking policies and priorities are enclosed.

Rental rates reflect initial set-up and dismantling of in-house equipment including tables and chairs. All other equipment and changes in the initial set-up will be billed at the prevailing rates.

A linen fee will be applied to final bill. This fee is based upon use of linen for each event.

Space rental rates include an 8 hour shift for personnel. Additional charges may be applied for groups with extended hours. All signed contracts require a minimum 50% deposit to be considered definite. The remaining space rental balance is due one week prior to the date of the event.

Insurance coverage, as required per contract, should stipulate the New Bern Riverfront Convention Center, County of Craven, their officers, directors, agents, and employees be named as additional insured.

Move-in / move-out rates are one-half the rate shown.

Standard Banquets utilizing the space for 4 hours or more are one-half the rental rate shown with a minimum of $1,000 spent on food in the upstairs meeting rooms; $1,500 spent on food in Ballroom B or Ballroom C; $3,000 spent on food in Ballroom A or Ballroom B & C together; $5,000 spent on food in the entire Colonial Capital Ballroom.

Wedding receptions require full space rental.

Holiday rates may be subject to additional labor charges for holiday personnel.

The New Bern Riverfront Convention Center estimates a 5% increase in daily rental rates for 2013 and beyond.

CREDIT MEMOS SUBJECT TO BOARD APPROVAL ON 02/21/2011

Attachment #7.

TAXPAYER NAME	ACCT#/TICKET#		AMOUNT
ADRIANO, EVIA DID NOT OWN 1/1/2010	0084044	2010-0000330	41.61
ARTHUR, JASON THOMAS & SARAH DID NOT OWN 1/1/2010	0066971	2010-0098216	93.31
ASPEGREN, LARS DID NOT OWN 1/1/2010	0084870	2010-0001720	122.90
ASPEGREN, LARS DAVIS DID NOT OWN 1/1/2010	0074931	2010-0001721	72.58
BANK OF AMERICA DOUBLE LISTED-SEE ACCT 57227	0057727	2010-0002438	212.66
BECK, SONNY DID NOT OWN 1/1/2008	0070769	2008-0003712	106.28
BENNETT, MARY BROCK APPRAISAL ERROR CORRECTION	0006687	2010-0004019	28.77
BOOKOUT, RANDALL D & CYNTHIA R APPRAISAL ERROR CORRECTION	0039913	2010-0005057	72.87
BROWN, DONEARL SR & MARCIA A APPRAISAL ERROR CORRECTION	0063910	2010-0006326	76.41
CONCRETE PLUS OF NEW BERN INC OUT OF BUSINESS 1/1/2010	0060014	2010-0010664	117.73
CREATIVE TOUCH SALON AND SPA I APPRAISAL ERROR CORRECTION	0085215	2010-0011814	76.42
DAVIS, ALBERT APPRAISAL ERROR CORRECTION	0056006	2010-0094615	76.47
DUNN, JENNIFER ANN DID NOT OWN /1/1/2010	0034832	2010-0015091	79.74
DUNN, JENNIFER ANN DID NOT OWN 1/1/2009	0034832	2009-0016470	1.44

CREDIT MEMOS SUBJECT TO BOARD APPROVAL ON 02/21/2011

TAXPAYER NAME	ACCT#/TICKET#		AMOUNT
FAISON, OZIE T JR DID NOT OWN 1/1/2010	0043393	2010-0016505	53.97
FIRST PORTLAND CORPORATION CORRECT APPRAISAL ERROR	0055714	2010-0017156	141.43
FRAZIER, GREGORY T & REBECCA N DID NOT OWN 1/1/2010	0008076	2010-0018117	46.96
GREEN, DAVID DOUBLE LISTED-SEE ACCT 29874	0084407	2010-0020786	824.63
GRUENEBAUM, JAMES LEE BOAT ON BOARD MILITARY BASE	0044778	2009-0091371	5,942.22
GRUENEBAUM, JAMES LEE BOAT LOCATED ON MILITARY BASE	0044778	2010-0021235	423.97
HARGETT, ABNER & JUANITA APPRAISAL ERROR CORRECTION	3110850	2010-0022274	126.21
HARRIS, BARBARA MOORE DID NOT OWN 1/1/2010	0076438	2010-0022744	40.61
HARRIS, BARBARA MOORE DID NOT OWN 1/1/2009	0076438	2009-0090536	56.96
HARRIS, BARBARA MOORE DID NOT OWN 1/1/2008	0076438	2008-0090488	61.52
HT CAROLINA COLOURS LLC ORDERED BY BOARD OF E & R 2-8-2011	0081933	2010-0025544	2,914.81
IPOCK, GRACE N SENIOR EXC. REMOVED IN ERROR	0028347	2010-0026241	155.02
KLUDY, WILLIAM RAYMOND DID NOT OWN 1/1/2010	0055656	2010-0029292	8.38
MILNOR, STACY MARIE DOUBLE LISTED-SEE ACCT 72602	0085074	2010-0035620	134.60

CREDIT MEMOS SUBJECT TO BOARD APPROVAL ON 02/21/2011

TAXPAYER NAME	ACCT#/TICKET#		AMOUNT
MITCHELL, LOUISE H APPRAISAL ERROR CORRECTION	0023167	2010-0035831	77.86
NEW MARKET HDS LLC APPRAISAL ERROR CORRECTION	0063260	2010-0090853	1,491.40
PETRITSCH, ROBERT DID NOT OWN 1/1/2010	0084837	2010-0040701	84.86
PRICE, HENRY JOE DID NOT OWN STOR BLDG 1/1/2010	0086486	2010-0098228	4.15
SIERS, AUDREY G CORRECTED APPRAISAL ERROR	6510820	2010-0046679	174.57
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0050076	109.59
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0050073	276.42
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0097952	63.15
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0097953	63.15
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0097954	63.15
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0097955	63.15
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0097956	63.15
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0097957	63.15
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0097958	63.15

CREDIT MEMOS SUBJECT TO BOARD APPROVAL ON 02/21/2011

TAXPAYER NAME	ACCT#/TICKET#		AMOUNT
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0097959	63.15
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0097960	63.15
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0097961	63.15
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0097962	63.15
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0097963	63.15
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0097964	63.15
T-SQUARE PROPERTIES LLC ORDERED BY BOARD OF E & R 2-8-2011	0049145	2010-0098010	63.15
UNKNOWN OWNER APPRAISAL ERROR CORRECTION	0029164	2010-0052651	28.67
UNKNOWN OWNER APPRAISAL ERROR CORRECTION	0029164	2010-0052652	167.31
WETHERINGTON, GROVER C & LINDA DOUBLE LISTED-SEE ACCT 72125	7694400	2010-0054827	146.97

52 -CREDIT MEMO(S) 15,556.38

REFUNDS SUBJECT TO BOARD APPROVAL ON 02/21/2011

TAXPAYER NAME	ACCT#/TICKET#		AMOUNT
ALT, JOHN J & RISA R APPRAISAL ERROR CORRECTION	0078789	2010-0000854	88.48
BARRY, PAUL R DID NOT OWN 1/1/2010	0083218	2010-0002922	7.80
BARRY, PAUL R ADJUSTED PER BILL OF SALE	0083218	2010-0002921	54.24
BAYER INVESTMENTS INC APPRAISAL ERROR CORRECTION	0440640	2010-0094429	337.22
BECK, SONNY DID NOT OWN 1/1/2008	0070769	2008-0003712	17.49
BENDER, ILENE WETHERINGTON APPRAISAL ERROR CORRECTION	0031332	2010-0090465	236.40
BRANCH BANKING & TRUST COMPANY APPRAISAL ERROR CORRECTION	0081068	2010-0005603	255.17
BRYAN, KERRI ANN DOUBLE BILLED-SE ACCT 17835	0048087	2010-0006713	42.39
BUCHER, DENNIS K & DIANN E APPRAISAL ERROR CORRECTION	0038836	2010-0007016	253.18
BUNN, BENNIE G III & MARION APPRAISAL ERROR CORRECTION	1039200	2010-0007216	66.90
BUTLER, STEPHEN NATHAN & GIBSO APPRAISAL ERROR CORRECTION	0019843	2010-0007509	55.75
CLARK HOMES OF GREENVILLE LLC- APPRAISAL ERROR CORRECTION	0050742	2010-0095761	34.97
CUMBER, WILLIAM EARL APPRAISAL ERROR CORRECTION	0058620	2010-0090555	236.40
DUNN, JENNIFER ANN DID NOT OWN 1/1/2009	0034832	2009-0016470	97.08

REFUNDS SUBJECT TO BOARD APPROVAL ON 02/21/2011

TAXPAYER NAME	ACCT#/TICKET#		AMOUNT
DUNN, JENNIFER ANN DID NOT OWN 1/1/2008	0034832	2008-0016415	101.80
DUNN, JENNIFER ANN DID NOT OWN 1/1/2007	0034832	2007-0016007	93.43
GRUENEBAUM, JAMES LEE BOAT ON BOARD MCAS CHERRY POINT	0044778	2009-0091138	785.97
GRUENEBAUM, JAMES LEE APPRAISAL ERROR CORRECTION	0044778	2010-0021234	120.56
HANNAH, JERRY & TERESA APPRAISAL ERROR CORRECTION	0081676	2010-0021977	18.52
HARMAN, STEVEN C JR & ANNE M APPRAISAL ERROR CORRECTION	0034350	2010-0022517	47.09
KENT, LEE & RITA APPRAISAL ERROR CORRECTION	0051076	2010-0098055	253.18
KRISE, JAMES & SHARON APPRAISAL ERROR CORRECTION	0034348	2010-0029665	32.58
LEWIS, LARRY T & PATRICIA D APPRAISAL ERROR CORRECTION	0048247	2010-0030949	9.18
LEWIS, THOMAS A & BARBARA D APPRAISAL ERROR CORRECTION	0078797	2010-0031030	147.89
LIGHTBODY, JACK S & KATIE T APPRAISAL ERROR CORRECTION	0063329	2010-0096191	140.97
LUCAS, CHRISTOPHER R & REBECCA APPRAISAL ERROR CORRECTION	0045997	2010-0096259	21.80
MCCLATCHEY, DEAN B & MAXINE D APPRAISAL ERROR CORRECTION	0034481	2010-0098066	1,157.41
MCGRANAGHAN, SHANE D & AMANDA APPRAISAL ERROR CORRECTION	0080045	2010-0034364	17.26

REFUNDS SUBJECT TO BOARD APPROVAL ON 02/21/2011

TAXPAYER NAME	ACCT#/TICKET#		AMOUNT
MCLAWHORN, ALFRED M & TERESA G APPRAISAL ERROR CORRECTION	0072113	2010-0034575	193.61
MONETTE, JAMES G JR & WELLS, B DOUBLE LISTED-SEE ACCT 38256	0071276	2010-0097198	63.88
MONETTE, JAMES G JR & WELLS, B DOUBLE LISTED-SEE ACCT 38256	0071276	2009-0039534	70.11
OLDE SOUTH CONSTRUCTION LLC APRAISAL ERROR CORRECTION	0043307	2010-0039098	793.55
PALUMBO, THOMAS & PAMELA APPRAISAL ERROR CORRECTION	0040203	2010-0039671	168.79
RANDOLPH, MARY D APPRAISAL ERROR CORRECTION	5944055	2010-0042642	25.03
RICE, PATRICK T & KERRY L APPRAISAL ERROR CORRECTION	0059906	2010-0043281	124.02
ROBERTS, JOHN & DEBORAH APPRAISAL ERROR CORRECTION	0063370	2010-0098083	37.35
ROSADO, DAVID M & MARJORIE J APPRAISAL ERROR CORRECTION	0066062	2010-0044405	112.34
S & A OF NEW BERN LLC ORDERED BY BOARD OF E&R ON 10-19-10	0076350	2010-0044969	21.28
SCOTT, LEON C JR & HELEN RUTH APPRAISAL ERROR CORRECTION	6421050	2010-0098088	1,001.84
SUGGS, SAMUEL D APPRAISAL ERROR CORRECTION	6989351	2010-0091001	77.07
URICK, PHILIP M & PATRICIA Z APPRAISAL ERROR CORRECTION	0056033	2010-0052712	532.89
VOGEL, GLENN C & TIETUEN A APPRAISAL ERROR CORRECTION	0017039	2010-0053228	512.84

REFUNDS SUBJECT TO BOARD APPROVAL ON 02/21/2011

TAXPAYER NAME	ACCT#/TICKET#		AMOUNT
WALKER, WILLIAM C & BETTY ANN APPRAISAL ERROR CORRECTION	0033830	2010-0053539	309.35
WEST, ELIZABETH HRS APPRAISAL ERROR CORRECTION	7666200	2010-0054684	715.23
YOUNG, BRITT K & EISEN, ANGELA ORDERED BY BOARD OF E&R ON 10-19-10	0080133	2010-0058045	21.28
	45	-REFUND(S)	9,511.57

Attachment #8.C.

FIRST CRAVEN SANITARY DISTRICT
560 HIGHWAY 55 EAST
P.O. BOX 608
BRIDGETON, NC 28519

PHONE (252) 633-6500 **FAX (252) 633-6824**

Edward Riggs, Jr.
Manager

Raymond E. Benton
Chairman

February 10, 2011

Mr. Harold Blizzard
Craven County Manager
406 Craven Street
New Bern NC 28560

Re: First Craven Sanitary District Board Vacancy

Dear Mr. Blizzard:

Due to the recent resignation of Mr. Troy R. Jones, we now have a vacancy on the Board of Directors of the First Craven Sanitary District.

At a recent meeting, the District Board discussed the vacancy and is requesting that the Craven County Board of Commissioners appoint Mr. Douglas Cowan to fill out the remaining term for Mr. Jones.

Mr. Douglas Cowan, of 170 Aurora Road Ernul, and owner of the Askin's General Store, served as a member of the First Craven Sanitary District Board from 2002-2007. He was originally appointed to our Board by the Craven County Commissioners on August 5, 2002 to fill another vacancy at the time.

In this regard, I have enclosed a copy of the resignation of Mr. Jones and a copy of a proposed resolution for this appointment for consideration by the Craven County Board of Commissioners. Once an appointment is made, please return a signed original resolution for our files.

Thank you for help in this matter. If you or the County Commissioners have any questions concerning this request or any other matter concerning the District, please feel free to call me at 633-5511 or call the District Manager, Mr. Edward Riggs Jr., at 633-6500.

Sincerely,

Eddie Rowe

Eddie Rowe
Vice-Chairman, First Craven Sanitary District

Cc: Jim Hicks, Attorney
Thomas F. Mark, County Commissioner District 1

To The First Craven Sanitary District

I hereby resign my position as a member of the First Craven Sanitary District Board effective February 9, 2011.

Sincerely

Troy R. Jones

RESOLUTION

WHEREAS, Mr. Troy R. Jones, one of the 5 elected members of the First Craven Sanitary District Board of Directors, has resigned his office and,

WHEREAS, the Craven County Board of Commissioners has the authority to appoint a replacement to fill the vacancy created by this resignation,

NOW THEREFORE BE IT RESOLVED, that the Craven County Board of Commissioners, pursuant to the authority vested in it by the North Carolina General Statute 130A-54, hereby appoint, Mr. Douglas Cowan of 170 Aurora Road Ernul, resident of the First Craven Sanitary District as a member to the Sanitary District Board to fill the vacancy to serve until his successor is elected and quailified.

Adopted this ____ day of _____, 2011, upon motion by Commissioner _____, and seconded by Commissioner _____.

Craven County Board of Commissioners

_____
Chairman

Attest:

_____
Clerk

Attachment #10.A.

ENGINEERED FOUNDATION SOLUTIONS, PLLC

February 17, 2011

Craven County Commissioners
Attn: Mr. Harold Blizzard
Via email hblizzard@cravencountync.gov

Reference: Proposal to Assist in the Process of Addressing the Settlement at the Craven County Convention Center in New Bern, NC

Dear Mr. Blizzard,

As requested, Engineered Foundation Solutions, PLLC, EFS, is pleased to have this opportunity to present a proposal to assist the Craven County Commissioners in selecting a repair method, obtaining bids for the work, and overseeing the repairs to correct the settlement of the floor slab, steps, and walkways at the Craven County Convention Center in New Bern.

As an employee of ECS Carolinas, LLP and more recently with EFS I have worked on evaluating the cause of the settlement and determining possible methods to address the settlement and am very familiar with the facility and its issues.

Scope of Services

Phase I: Assisting in selecting the repair method to be used.

1. EFS will prepare a summary report based on the reports previously prepared which discusses the cause of the observed settlement and lays out the various options to address the situation. The report will be structured and written with the general public as the intended audience. The report will be submitted in electronic format for printing by others.

2. EFS will attend a public meeting to make a presentation of the summary report and repair alternatives, and answer questions which the County Commissioners and/or members of the general public may have about the settlement and the proposed repairs.

Phase II: Assisting in the bidding process

1. EFS will write the technical portion of the bid package for both the repair method selected and for an alternate repair method.

2. EFS will attend a pre-bid meeting at the site to explain the proposed work to the prospective bidders.

3. EFS will review bids submitted to assist the County Commissioners in selecting a contractor to perform the repairs.

Phase III: Overseeing the repairs

1. EFS will attend a pre-construction meeting.

2. EFS will visit the site once the Contractor has begun work to verify that the work is being performed in accordance with the Plans and Specifications and to help resolve any problems which may be occurring.

3. EFS will be available to answer any questions that the County Commissioners, Contractor, or others may have during the repair process.

4. EFS will review the Contractor's daily logs and reports.

5. EFS will visit the site to review the work when the Contractor reports that the work is approximately 90% completed to verify that the work is as it should be and to develop a punch list.

EFS' services will be focused on the repair of the floor slab, exterior steps and walkways. It is anticipated that others will address cosmetic repairs such as carpet, painting, patching cracks in walls, or other items that may be related to the settlement, but are not structural in nature.

Schedule

The summary report will be prepared within 10 working days of your authorization to proceed.

Fee

For the scope of services outlined above our fixed fee would be:

Phase I: $2,000

Phase II: $2,500

Phase III: $3,500

Extra site visits beyond the five outlined above will be billed at a lump sum of $1,000 for each visit. The fee for other services requested beyond those outlined above would be negotiated prior to providing the additional services.

Our services will be provided in accordance with the attached Terms and Conditions.

Please call if you have any questions, or if we can be of further assistance.

Respectfully,
Engineered Foundation Solutions, PLLC
Thomas V. Admay, P.E.

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

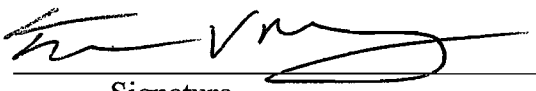
_____ _____

Signature Date

_____

Printed Name and Title

The Scope of Services, Schedule, and Fee outlined above are agreed to by:



2-17-2011

Signature Date

Thomas V. Admay, P.E. for Engineered Foundation Solutions, PLLC

_____ _____

Signature Date

Harold Blizzard for Craven County, NC

Engineered Foundation Solutions, PLLC
TERMS AND CONDITIONS OF SERVICE- for Craven County, NC

These Terms and Conditions of Service, including any supplements that may be agreed to, along with the accompanying Scope of Services and Professional Fees constitute the entire Agreement ["AGREEMENT"] under which Services are to be provided by **Engineered Foundation Solutions, PLLC** ["EFS"] (including its employees, officers, successors and assigns) for Client ["CLIENT"] (including its employees, officers, successors and assigns).

1.0 INDEPENDENT CONSULTANT STATUS

1.1 Except as may be otherwise noted herein, EFS shall serve as an independent professional consultant to CLIENT and shall have control over, and responsibility for, the means and methods for providing the Services under this AGREEMENT, including the retention of Subcontractors and Subconsultants. Unless expressly stated in EFS' Scope of Services, EFS shall not serve as CLIENT'S agent or representative.

2.0 SCOPE OF SERVICES

2.1 It is understood that the Scope of Services, Professional Fees, and time schedule defined in the Scope of Services are based on information provided by CLIENT and/or CLIENT'S contractors and consultants. CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, or if conditions are discovered that could not be foreseen by a reasonable person, the Scope of Services may change, even while the Services are in progress.

3.0 STANDARD OF CARE

3.1 EFS shall strive to perform its professional Services in a manner consistent with that level of skill and care ordinarily exercised by competent members of the same profession providing similar Services in the same region, under similar conditions during the same time period. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any EFS report, opinion, plan or other Document of Service, in connection with EFS' Services.

3.2 CLIENT understands and agrees that EFS' professional judgment must rely on the facts learned during performance of the Scope of Services. CLIENT acknowledges that such data collection is limited to the immediate area that is sampled, tested and/or observed. Consequently, CLIENT agrees that it shall not bring a claim, based upon facts subsequently learned, regarding conditions between sampling/testing points, in areas not evaluated by EFS, or which were not part of the immediate area(s) explicitly evaluated by EFS.

3.3 EFS' professional Services shall be provided in a manner consistent with sound engineering and professional practices. If a situation arises that causes EFS to believe compliance with CLIENT'S wishes could result in EFS violating applicable Laws or Regulations, or will expose EFS to claims or other charges, EFS shall so advise CLIENT. If CLIENT'S actions or inaction result in a violation of applicable Laws or Regulations, EFS shall have the right to terminate its Services in accordance with the TERMINATION provisions of this AGREEMENT.

3.4 If CLIENT decides to disregard EFS' recommendations with respect to complying with applicable Laws or Regulations, EFS shall determine if EFS is required to notify the appropriate public officials. CLIENT agrees that such determinations are EFS' sole right to make. CLIENT also agrees that EFS shall not bear liability for failing to report conditions that are CLIENT'S responsibility to report.

4.0 CLIENT DISCLOSURES

4.1 CLIENT shall furnish and/or shall direct CLIENT'S consultant(s) or agent(s) to furnish EFS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed beneath the Site's surface, where the Scope of Services requires EFS to penetrate the Site surface.

4.2 CLIENT shall notify EFS of any known, assumed, or suspected regulated, contaminated, or Hazardous Materials that may exist at the Site prior to EFS mobilizing to the Site. Such Hazardous Materials shall include but not be limited to any substance which poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form ["Hazardous Materials"].

4.3 If any Hazardous Materials are discovered, or are reasonably suspected by EFS after its Services are initiated, a Changed Condition shall exist.

5.0 INFORMATION PROVIDED BY OTHERS

5.1 CLIENT waives any claim of liability against EFS regarding any claim for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents and other information in any form provided to EFS, including such information that becomes incorporated into EFS Documents of Service.

6.0 CONCEALED RISKS

6.1 CLIENT acknowledges that special risks are associated with the identification of concealed conditions [i.e., subsurface conditions, conditions behind a wall, etc., that are hidden from view, are not readily apparent, or cannot be accessed for sampling/testing].

6.2 Conditions that EFS infers to exist between sampling/testing points may differ significantly from the conditions that exist at the sampling/testing points. Since some conditions can change substantially over time, the CLIENT recognizes that, because of natural occurrences or human intervention at or near the Site, actual conditions discovered through sampling/testing may be subject to rapid or gradual change.

6.3 EFS will make reasonable efforts to anticipate and identify potential concealed conditions for exploration, sampling or testing. However, CLIENT understands that such risks cannot be eliminated and agrees that the Scope of Services is that which CLIENT agrees suits CLIENT'S own risk tolerances. CLIENT may request EFS to evaluate the risks and provide a higher level of exploration to reduce such risks, if desired or appropriate.

7.0 RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES

7.1 CLIENT warrants that it possesses the authority to provide right of entry permission for the performance of EFS' Services. CLIENT hereby grants EFS and its subcontractors and/or agents, the right to enter from time to time onto the property owned by CLIENT and/or other(s) in order for EFS to perform the Scope of Services.

7.2 Except where EFS' Scope of Services explicitly includes obtaining permits, licenses, and/or utility clearances for the performance of EFS' Services, CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by EFS.

7.3 EFS will take reasonable precautions to limit damage to the Site and Improvements during the performance of EFS' Services. CLIENT understands that use of exploration, sampling, or testing equipment may cause some damage, the correction and restoration of which is not part of this AGREEMENT, unless explicitly stated in EFS' Scope of Services, and reflected in the Professional Fees.

7.4 CLIENT agrees that it will not bring any claims for liability or for injury or loss allegedly arising from procedures associated with exploration, sampling or testing activities, or discovery of Hazardous Materials, or suspected Hazardous Materials, or EFS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.

8.0 UNDERGROUND UTILITIES

8.1 In addition to CLIENT-furnished information regarding underground utilities, EFS shall take reasonable and locally customary precautions, possibly including contacting local public and/or private utility locating services, and/or conducting research of publicly available information, to identify underground utilities, as deemed appropriate in EFS' professional opinion. The extent of such precautions shall be at EFS' sole discretion.

8.2 CLIENT recognizes that despite due care, EFS may be unable to identify the locations of all subsurface utility lines and man-made features, and that information obtained by EFS and/or EFS' subcontractor(s) or provided to EFS from any entity may contain errors or be incomplete.

8.3 CLIENT agrees that EFS shall not be liable for damage or injury, consequential economic damages, and/or penalties resulting from damage to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to EFS' attention in writing and correctly shown on the diagram(s) furnished by CLIENT or CLIENT'S consultants, or for underground features not marked, or improperly located by governmental or quasi-governmental locators, utility owners, or private utility locating services.

9.0 SAMPLES

9.1 Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are the property of CLIENT. EFS will store samples not consumed in laboratory testing for up to sixty (60) calendar days after the issuance of any document containing data obtained from those samples, unless other arrangements are mutually agreed upon in writing. Samples consumed by laboratory testing procedures will not be stored as outlined above.

9.2 Unless CLIENT directs otherwise, CLIENT authorizes EFS to dispose of CLIENT'S non-hazardous samples and sampling or testing process byproducts in accordance with applicable Laws.

10.0 ENVIRONMENTAL RISKS

10.1 All substances on, in, or under CLIENT'S Site, or obtained from CLIENT'S Site as samples or as byproducts of the sampling process, are and will remain CLIENT'S property.

10.2 When Hazardous Materials are known, assumed, or suspected to exist at the Site, EFS shall take appropriate precautions deemed prudent in EFS' sole and professional opinion to comply with applicable Laws and Regulations, and to reduce the risks to EFS' employees, public health, safety, and welfare, and the environment. CLIENT agrees to compensate EFS for such precautions.

10.3 When Hazardous Materials are known, assumed, or suspected to exist at the Site, EFS will handle such materials as Hazardous Materials. EFS or EFS' subcontractors will containerize and label such Materials in accordance with applicable Law, and will leave the containers on Site. CLIENT is responsible for the retrieval and lawful removal, transport and disposal of such contaminated samples, and sampling process byproducts.

10.4 Unless explicitly stated in EFS' Scope of Services, EFS shall not subcontract nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S request, EFS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT, not EFS, shall make final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by Hazardous Materials contaminants and shall otherwise exercise prudence in arranging for lawful disposal.

10.5 In those instances where EFS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes, EFS shall do so only as CLIENT'S agent (notwithstanding any other provision of this AGREEMENT to the contrary) so that EFS shall not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.

10.6 Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of EFS' Services indicated herein, CLIENT agrees this risk cannot be eliminated. CLIENT will not hold EFS liable for such cross-contamination if EFS provides its Services in accordance with the applicable Standard of Care.

10.7 CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit EFS to render a professional opinion about the likelihood of the site having a Recognized Environmental Condition on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and EFS cannot know or state for an absolute fact that the Site is unaffected by one or more Recognized Environmental Conditions. Given the foregoing, CLIENT'S acceptance of this AGREEMENT shall signify that CLIENT understands the limitations associated with Phase I ESAs.

11.0 OWNERSHIP OF DOCUMENTS

11.1 With the exception of the copies of the EFS Documents of Service provided to the CLIENT, all documents, technical reports, letters, photos, boring logs, field data, field notes, laboratory test data, calculations, designs, plans, specifications, reports, or similar documents and estimates of any kind furnished by EFS ["Documents of Service"] maintained in any form deemed appropriate by EFS, are and remain, the property of EFS.

11.2 Any exploration, reconnaissance, data review, observations, testing, surveys or similar Services, analyses and recommendations associated with the Services shall be provided by EFS (including subcontracted Services) for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT is not permitted.

11.3 CLIENT agrees to not use EFS' Documents of Service for any other projects, or for the Project which has changed in scope, or extensions of the Project, from the details contemplated in EFS' Documents of Service. Any reuse without EFS' written consent shall be at CLIENT'S sole risk and without liability to EFS or to EFS' subcontractor(s).

11.4 CLIENT agrees that EFS' Documents of Service may not under any circumstances be altered by any party except EFS. CLIENT warrants that EFS' Documents of Service shall be used only and exactly as submitted by EFS.

11.5 Except for daily field reports and concrete test reports sent electronically by EFS to CLIENT and CLIENT'S designees, the following shall apply to all electronic files: Files in electronic media format of text, data, graphics, or other types that are furnished by EFS are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies shall govern.

12.0 SAFETY

12.1 CLIENT agrees that EFS is responsible solely for the basic safety of EFS' employees on the Project Site. These responsibilities shall not be inferred by any party to mean that EFS has responsibility for any portion of site safety for any reason. Unless otherwise expressly agreed to in writing, EFS' Scope of Services excludes responsibility for any aspect of site safety other than for EFS' own employees, and nothing herein shall be construed to relieve CLIENT and/or its other contractors, consultants, or other parties from their responsibility for the safety of their own employees. For active construction sites, CLIENT also agrees that the General Contractor is solely responsible for Project Site safety, and that EFS personnel rely on the safety measures provided by the General Contractor.

12.2 In the event EFS expressly assumes health and safety responsibilities for toxic or other concerns specified, the acceptance of such responsibility does not and shall not be deemed an acceptance of responsibility for any other health and safety requirements, such as those relating to excavating, trenching, shoring, drilling, backfilling, blasting, or other construction activities.

13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

13.1 CLIENT understands that construction testing and observation Services are conducted to reduce, not eliminate, the risk of problems arising during or after construction or remediation, and that provision of such Services does not create a warranty or guarantee of any type.

13.2 Monitoring and/or testing Services provided by EFS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction, nor for complying with applicable Laws and codes.

13.3 The professional activities of EFS, or the presence of EFS employees and subcontractors, shall not be construed to imply EFS has any responsibility for the means, methods, techniques, sequencing of construction, or procedures of construction selected, for safety precautions and programs incidental to the Contractor's Work. Furthermore, EFS does not and shall not have or accept authority to supervise, direct, control, or stop Contractor's Work.

13.4 EFS strongly recommends that CLIENT retain EFS to provide its Services on a full time basis to lower the risk of defective or incomplete Work being installed by CLIENT'S contractor(s). If CLIENT elects to retain EFS on a part time basis for any aspect of construction monitoring and/or testing, CLIENT accepts the increased risks that a significantly lower level of construction quality may occur and that such defects may not be undetected by EFS' part time observations. Therefore CLIENT waives any and all claims against EFS related to unsatisfactory quality or performance of elements observed or tested by EFS on a part time basis.

14.0 CERTIFICATIONS

14.1 CLIENT may request, or governing jurisdictions may require, EFS to provide a "certification" regarding Services provided by EFS. Any "certification" required of EFS by the CLIENT, or jurisdiction(s) having authority over some or all aspects of the Project, shall consist of EFS' inferences and professional opinions based on limited sampling, observations, tests, and/or analyses performed by EFS at discrete locations and times. EFS' "certification" shall consist of EFS' professional opinion of a condition's existence, but EFS does not guarantee that such condition exists, nor does it relieve other parties of responsibilities or obligations such parties have. CLIENT agrees not to make resolution of any dispute with EFS or payment of any amount due to EFS in any way contingent upon EFS signing any such "certification" documents.

15.0 BILLINGS AND PAYMENTS

15.1 Billings will be based on the unit rates, travel costs, and other reimbursable expenses stated in the Professional Fees. Any Estimate of Professional Fees stated in this AGREEMENT shall not be considered as a not-to-exceed or lump sum amount unless otherwise explicitly stated in this AGREEMENT.

15.2 Should EFS identify a Changed Condition, EFS shall notify the CLIENT of the Changed Condition(s) that in EFS' professional judgment require an amendment of the Professional Fees, time schedule, and/or Scope of Services. EFS and CLIENT shall promptly and in good faith negotiate an amendment to this AGREEMENT.

15.3 CLIENT recognizes that time is of the essence with respect of payment of EFS' invoices, and that timely payment is a material part of the consideration of this AGREEMENT. Payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the Professional Fees. Invoices shall be due and payable upon receipt.

15.4 If CLIENT disputes all or part of an invoice, CLIENT shall provide EFS with written notice stating in detail the facts of the dispute within twenty-one (21) calendar days of the invoice date and agrees to pay the undisputed amount of such invoice promptly.

15.5 EFS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by EFS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute and resolved in favor of CLIENT. Payment will first be applied to accrued interest and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.

15.6 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit in which EFS is not involved, upon CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by EFS in enforcing any provision of the AGREEMENT, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.

15.7 Payment of any invoice by the CLIENT shall be taken to mean that the CLIENT agrees to the provisions of the AGREEMENT and is satisfied with EFS' Services and is not aware of any defects in those Services, unless CLIENT has provided notice to EFS in accordance with the DEFECTS IN SERVICE provisions of this AGREEMENT.

16.0 DEFECTS IN SERVICE

16.1 CLIENT and CLIENT'S personnel and contractors shall promptly inform EFS of any actual or suspected defects in EFS' Services, to help EFS take those prompt, effective measures that in EFS' opinion will help reduce or eliminate the consequences of any such defect. Corrections of defects attributable to EFS' Services shall be provided at no cost to CLIENT, except in the case that the deficiency is directly attributable to CLIENT-furnished information, CLIENT shall compensate EFS for the costs of correcting such defects.

16.2 Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects in Services. CLIENT shall compensate EFS for Additional Services required as a result of jurisdictional review requirements.

17.0 INSURANCE

17.1 EFS represents that it and its subcontractors and subconsultants are protected by Workers Compensation insurance, and that EFS is covered by general liability, automobile and professional liability insurance policies which it deems reasonable and adequate.

17.2 EFS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in EFS insurance, the cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

18.0 LIMITATION OF LIABILITY

18.1 **CLIENT AGREES TO ALLOCATE CERTAIN OF THE RISKS ASSOCIATED WITH THE PROJECT BY LIMITING EFS' TOTAL LIABILITY TO CLIENT, SUBJECT TO AVAILABLE INSURANCE PROCEEDS, ARISING FROM EFS' PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. EFS' TOTAL LIABILITY TO CLIENT SHALL BE LIMITED TO EFS' INSURANCE LIMITS.**

18.2 CLIENT agrees that EFS shall not be responsible for bodily injury and property damage or losses arising directly or indirectly, in whole or in part, from acts or

omissions by the CLIENT, its employees, agents, staff, consultants or subcontractors or by any other person or combination of persons to the extent such injury, damage, or loss is caused by acts or omissions of CLIENT, its employees, agents, staff, consultants or subcontractors.

19.0 INDEMNIFICATION

19.1 EFS agrees, subject to the limitation of liability provisions of this AGREEMENT, to hold harmless and indemnify CLIENT from and against damages arising from EFS' negligent performance of its Services to the extent that such injury is found to be caused by EFS' negligent acts, errors or omissions, specifically excluding any damages caused by any third party or by the CLIENT.

19.2 To the fullest extent permitted by applicable Law, CLIENT agrees to indemnify, defend, and hold EFS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ["Damages"] caused in whole or in part by the negligent acts, errors, or omissions of the CLIENT and CLIENT'S employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) injury to or loss of value to tangible personal property; or (c) a breach of this AGREEMENT, except to the extent such Damage is caused by the sole negligence or willful misconduct of EFS.

19.3 It is specifically understood and agreed that in no case shall EFS be required to pay an amount of Damages disproportional to EFS' culpability, or any share of any amount levied to recognize more than actual economic damages, subject to any limitations of liability and INDEMNIFICATION provisions contained in this AGREEMENT.

19.4 IF **CLIENT** IS A HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, **EFS** RECOMMENDS THAT LEGAL COUNSEL BE RETAINED BY **CLIENT** BEFORE ENTERING INTO THIS **AGREEMENT** TO EXPLAIN **CLIENT'S** RIGHTS, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS **AGREEMENT. CLIENT** AGREES THAT FAILURE OF **CLIENT** TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS **AGREEMENT.**

19.5 If CLIENT is a residential builder or residential developer, CLIENT shall indemnify, defend and hold harmless EFS against any and all claims or demands due to injury or loss initiated by one or more homeowners, unit-owners, or their homeowners' association, cooperative board, or similar entity against CLIENT which results in EFS being brought into the dispute.

20.0 CONSEQUENTIAL DAMAGES

20.1 CLIENT shall not be liable to EFS and EFS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other, regardless of the nature of the fault, or wherever committed by the CLIENT or EFS, their employees, consultants, agents, contractors or subcontractors, or whether such liability arises in breach of contract or warranty, tort (including negligence), Statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.

20.2 EFS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by EFS, its employees, agents, or subcontractors.

21.0 SOURCES OF RECOVERY

21.1 All claims for damages related to the Services provided under this AGREEMENT shall be made against the EFS entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of EFS, unless such claims are based on acts unrelated to the provision of Services under this AGREEMENT.

21.2 CLIENT agrees that it will not seek Damages from any individual associated with EFS as an officer, principal, partner, employee, or owner, from any and all claims or liability for injury or loss that would require such individual to relinquish personal assets to satisfy such claim.

22.0 THIRD PARTY CLAIMS EXCLUSION

22.1 This AGREEMENT shall not create any rights or benefits to parties other than CLIENT and EFS. No third-party shall have the right to rely on EFS' opinions rendered in connection with EFS' Services without both CLIENT'S and EFS' written consent and the third-party's agreement to be bound to the same terms and conditions contained in this AGREEMENT as CLIENT, and third-party's agreement that EFS' Scope of Services performed is adequate.

23.0 DISPUTE RESOLUTION

23.1 All claims, disputes or controversies ["Disputes"] arising out of, or in relation to the interpretation, application or enforcement of this AGREEMENT shall be decided as follows:

23.2 Should third-party dispute resolution be required, through mediation or litigation, the non-prevailing party shall reimburse the prevailing party for the prevailing party's documented legal costs, in addition to whatever other judgments or settlement sums may be due. Such legal costs include, but are not be limited to, reasonable attorney's fees, court costs, forensic consultants and expert witness fees, and other documented expenses.

23.3 Where legal action is brought by either party to resolve a dispute, the claim shall be brought and tried in Craven County, North Carolina. CLIENT waives the right to remove any litigation action to any other jurisdiction, unless mutually agreed to by both parties.

23.4 This AGREEMENT including all matters related to performance and remediation shall be interpreted according to the substantive Laws of the state of North Carolina (but not including its choice of law rules).

24.0 CURING A BREACH

24.1 A party that believes the other has materially breached this AGREEMENT shall issue a written termination notice to the other, identifying the cause for termination within five (5) business days of identifying such cause. Both parties shall then bargain promptly and in good faith to cure such cause. If an acceptable cure can be achieved within fourteen (14) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.

24.2 Either party may waive any right provided by this AGREEMENT in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.

25.0 TERMINATION

25.1 CLIENT or EFS may terminate this AGREEMENT for breach of this AGREEMENT, or for any other reasons which may arise. In the event of termination, the party effecting termination shall so notify the other party in writing, and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.

25.2 Irrespective of which party shall effect termination, or the cause therefore, EFS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate EFS for Services rendered and costs incurred, in accordance with EFS' prevailing Fee Schedule and expense reimbursement policy. Services shall include those rendered up to the time of termination, as well as those associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.

26.0 TIME BAR TO LEGAL ACTION

26.1 Unless prohibited by Law, and notwithstanding any Statute that may provide additional protection, CLIENT and EFS agree that claims by either party arising out of this AGREEMENT or the Services provided hereunder shall not be initiated more than two (2) years from the time the party knew, or should have known, of the condition giving rise to its claim, and shall under no circumstances be initiated more than three (3) years from the date of substantial completion of EFS' Services.

27.0 ASSIGNMENT

27.1 Except for Services normally or customarily subcontracted by EFS in the performance of its Services including, but not limited to surveyors, specialized consultants, drilling and excavating subcontractors, and testing laboratories, neither the CLIENT nor EFS may delegate, assign, sublet or transfer its duties, responsibilities or interests in this AGREEMENT without the written consent of the other party.

28.0 SEVERABILITY

28.1 Any provision of this AGREEMENT later held to violate a Law, Statute, or Regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and EFS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of, or at least addresses, the issues covered by the original provision.

29.0 TITLES

29.1 The titles used in this AGREEMENT are for general reference only and are not part of the AGREEMENT.

30.0 SURVIVAL

30.1 All obligations arising prior to the termination of this AGREEMENT and all provisions of this AGREEMENT allocating responsibility or liability between the CLIENT and EFS shall survive the substantial completion of Services and the termination of this AGREEMENT.

31.0 ENTIRE AGREEMENT

31.1 This AGREEMENT including the Scope of Services and Professional Fees and all exhibits, appendixes, and other documents appended to it, constitute the entire AGREEMENT between CLIENT and EFS. CLIENT acknowledges that all prior understandings and negotiations are superseded by this AGREEMENT. CLIENT acknowledges acceptance of these terms by submitting a CLIENT Work Authorization to EFS.

31.2 CLIENT and EFS agree that subsequent modifications to this AGREEMENT shall not be binding unless made in writing and signed by authorized representatives of both parties.

31.3 All preprinted Terms and Conditions on CLIENT'S purchase order or Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by this AGREEMENT.

31.4 If CLIENT fails to provide EFS with a signed copy of this AGREEMENT or a Work Authorization, by the act of authorizing and accepting the services of EFS, CLIENT agrees to be fully bound by the terms of this AGREEMENT as if signed by CLIENT.

◄ END OF TERMS AND CONDITIONS OF SERVICE ►