

September 21, 2021

Steve Garrison
County Manager
Rutherford County
Government 289 N. Main St.
Rutherfordton, NC 28139

Re: Proposal for Engineering Services
RS Middle School Building Redevelopment
(Conceptual Phase)

Dear Steve:

Odom Engineering, PLLC is pleased to submit this proposal to provide Engineering Services for the Proposed **RS MIDDLE SCHOOL BUILDING REDEVELOPMENT (PROJECT)**. This proposal, if accepted, also serves to document the agreement between **Odom Engineering, PLLC (ENGINEER)** and **Rutherford County Government (OWNER)**.

More specifically, the Engineer will provide the following:

- | | |
|---|-------------|
| • Site Measurement/Data Collection and CAD Drawings of Existing Buildings | \$15,000.00 |
| • Structural Inspection | \$ 5,000.00 |
| • Conceptual Layout (Floor Plan showing space allocation) With 2 revisions | \$23,000.00 |
| • Construction Cost Estimate based on the approved <u>Conceptual Layout</u> | \$ 6,000.00 |

Conceptual Design Phase - Project Design Fee: \$49,000.00

Note:

This does not include Contract Documentation, Construction Drawings/Details for permitting and construction.

CHANGE ORDER & ADDITIONAL WORK

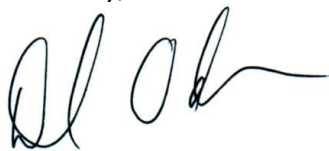
- A. Information received apart from the official issued documents/drawings from the owner shall be treated as a cause for change-order. It shall be done in an hourly basis or a Lump Sum Change Order Fee will be provided for owner's approval/agreement.
- B. Change/Revision after the plan has been approved or after 2 building layout revisions shall be considered as a Change Order.
- C. Change/Revision shall be requested in writing. Should it entail an additional fee; an approval of the change order should be provided prior to updating the plan.
- D. For Hourly Rate – refer to Appendix B.

PAYMENT PROCESSING

- A. The owner shall provide Odom Engineering instructions, documentation and related information to properly fulfill Owner's company billing procedures.
- B. Bi-Weekly Payment Requests will be made to the Owner.

This document and the attached Consultant Contract Provisions (Appendix A) & Hourly Rate (Appendix B) represents the entire understanding between the **ENGINEER** and the **OWNER** in respect of the **PROJECT** and may only be modified in writing signed by both parties. If it satisfactorily sets forth your understanding of our agreement, please sign in the space provided below.

Sincerely,



David Odom, P.E.

Attachments
Appendix A
Appendix B

Accepted this day ____ of _____, 20____

(Signature)

(Printed Name)

(Title)

CONSULTANT CONTRACT PROVISIONS

1. **CONTRACT** – These Contract Provisions and the accompanying Proposal constitute the full and complete Agreement between the parties and may be changed, amended, added to, superseded, or waived only if both parties specifically agree in writing to such amendment of the Agreement. In the event of any inconsistency between these Contract Provisions and any proposal, contract, purchase order, requisition, notice to proceed, or like document, these Contract Provisions shall govern.

2. **RIGHT OF ENTRY** – When entry to property is required for the CONSULTANT to perform its services, the Client agrees to obtain legal right-of-entry on the property.

3. **DOCUMENTS** – All reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form, prepared by CONSULTANT are instruments of CONSULTANT's service that shall remain CONSULTANT's property. The Client agrees not to use CONSULTANT-generated documents for marketing purposes, for projects other than the project for which the documents were prepared by CONSULTANT, or for future modifications to this project, without CONSULTANT's express written permission.

Any reuse or distribution to third parties without such express written permission or project-specific adaptation by CONSULTANT will be at the Client's sole risk and without liability to CONSULTANT or its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors. Client shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless CONSULTANT from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized reuse or distribution.

4. **DISPOSAL OF SAMPLES** – CONSULTANT will discard samples upon completion of the work covered under this Agreement, unless the Client instructs otherwise in writing.

5. **HAZARDOUS MATERIALS** – The scope of CONSULTANT's services for this Agreement does not include any responsibility for detection, remediation, accidental release, or services relating to waste, oil, asbestos, lead, or other hazardous materials, as defined by Federal, State, and local laws or regulations.

6. **CONSTRUCTION PHASE SERVICES** – If CONSULTANT performs any services during the construction phase of the project, CONSULTANT shall not supervise, direct, or have control over Contractor's work. CONSULTANT shall not have authority over or responsibility for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the Contractor. CONSULTANT does not guarantee the performance of the construction contract by the Contractor and does not assume responsibility for the Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

7. **STANDARD OF CARE** – CONSULTANT and its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors will exercise that degree of care and skill ordinarily practiced under similar circumstances by design professionals providing similar services. Client agrees that services provided will be rendered without any warranty, express or implied.

CONSULTANT shall exercise usual and customary professional care in its efforts to comply with applicable codes, regulations, laws rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement.

8. **OPINION OF PROBABLE COSTS** – When required as part of its work, CONSULTANT will furnish opinions of probable cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by CONSULTANT hereunder will be made on the basis of CONSULTANT's experience and qualifications and will represent CONSULTANT's judgment as an experienced and qualified design professional. However, users of the probable cost opinions must recognize that CONSULTANT does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.

9. **SUSPENSION OF WORK** – The Client may, at any time, by written notice, suspend further work by CONSULTANT. The Client shall remain liable for, and shall promptly pay CONSULTANT for all services rendered to the date of suspension of services, plus suspension charges, which shall include the cost of assembling documents, personnel and equipment, rescheduling or reassignment, and commitments made to others on Client's behalf.

Client shall pay CONSULTANT pursuant to the rates and charges set forth in the Proposal. CONSULTANT will submit monthly invoices to Client for services rendered and expenses incurred. If Client does not pay invoices within thirty (30) days of submission of invoice, CONSULTANT may, upon written notice to the Client, suspend further work until payments are brought current. The Client agrees to indemnify and hold CONSULTANT harmless from any claim or liability resulting from such suspension.

10. **CHANGES OR DELAYS** – Unless the accompanying Proposal provides otherwise, the proposed fees constitute CONSULTANT's estimate to perform the services required to complete the Project. Required services often are not fully definable in the initial planning; accordingly, developments may dictate a change in the scope of services to be performed. Where this occurs, changes in the Agreement shall be negotiated and an equitable adjustment shall be made.

Costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities, direction, or information, or if CONSULTANT's failure to perform is due to any act of God, labor trouble, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure, or interruption or any other cause beyond the reasonable control of CONSULTANT. Temporary work stoppage caused by any of the above may result in additional cost beyond that outlined in the accompanying Proposal.

11. **LIABILITY** – To the fullest extent permitted by law, the total liability, in the aggregate, of CONSULTANT and CONSULTANT's officers, directors, employees, agents, and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to CONSULTANT's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed the total compensation received by CONSULTANT under this Agreement, or the total amount of \$_____, whichever is greater.

12. **CONFLICTS OF INTEREST** – This assignment may involve parties with adverse interests to clients with whom CONSULTANT has current or past relationships. It is CONSULTANT policy to make reasonable attempts to identify such relationships prior to acceptance of a professional assignment, but CONSULTANT cannot assure that conflicts or perceived conflicts will not arise, and CONSULTANT does not accept responsibility for such occurrences.

13. **REIMBURSABLE EXPENSES** – CONSULTANT will bill direct nonpayroll expenses at cost plus 10%. Direct expenses include all reasonable expenses resulting from required responses to subpoenas or court orders related to work under the Contract.

14. **MISCELLANEOUS**

Governing Law: The laws of the state in which the CONSULTANT office executing this Agreement is located shall govern the validity and interpretation of this Agreement.

Invalid Terms: In the event any of these Contract Provisions are found to be illegal or otherwise unenforceable, the unenforceable Contract Provision will be stricken. Striking such a Contract Provision shall have no effect on the enforceability of the remaining Contract Provisions and those remaining Contract Provisions shall continue in full force and effect as if the unenforceable Contract Provision were never included in the Agreement.

Mediation: The Client and CONSULTANT agree to submit all claims and disputes arising out of this Agreement to non-binding mediation prior to the initiation of legal proceedings. This provision shall survive completion or termination of this Agreement; however, neither party shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal proceedings to litigate such claim or dispute under the applicable law.

CONSULTANT Reliance: CONSULTANT shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's consultants and contractors, and information from public records, without the need for independent verification.

Certifications: CONSULTANT shall not be required to sign any documents, no matter by whom requested, that would result in CONSULTANT's having to certify, guaranty, or warrant the existence of conditions that CONSULTANT cannot ascertain.

Third Parties: Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or CONSULTANT. CONSULTANT's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against CONSULTANT because of this Agreement or CONSULTANT's performance of services hereunder.

Consequential Damages: Neither the Client nor the CONSULTANT shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

APPENDIX B

CLASSIFICATION	RATE/HOUR
Senior Engineer	\$160.00
Project Manager	\$135.00
Autocad Technician	\$90.00
Data Collection Field Crew	\$100.00
Site Inspector	\$80.00
Admin Works/Clerical	\$75.00

- End of Appendix B -