

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: December 5, 2005

**SUBJECT: ENGINEERING SERVICES CONTRACT
PHASE I - MUD CREEK SANITARY SEWER INTERCEPTOR
CANE CREEK WATER AND SEWER DISTRICT**

ATTACHMENTS: COPY ENGINEERING SERVICES CONTRACT

SUMMARY OF REQUEST:

The Board of Commissioners at its August 1, 2005 selected William G. Lapsley and Associates, P.A. to provide engineering services for the Mud Creek Sanitary Sewer Interceptor Phase I project. Attached is a contract for these engineering services.

The County Engineer will be available to discuss this matter with the Board of Commissioners if needed.

COUNTY MANAGER'S RECOMMENDATION/ACTION REQUIRED:

AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT FOR SERVICES, made this ____ day of _____, 2005, by and between Henderson County Board of Commissioners in their capacity as Directors of the Cane Creek Water and Sewer District, hereinafter referred to as the "OWNER," and William G. Lapsley & Associates, P.A., 1635 Asheville Highway, Post Office Box 546, Hendersonville, North Carolina, hereinafter referred to as the ENGINEER:

The OWNER intends to construct the Mud Creek Sewer Project – Phase I, hereinafter “Project.” The “Project” will consist of two (2) sections described as follows:

Section 1 – Approximately 3,500 LF of 24 inch gravity sewer line with manholes and appurtenances and a sewer lift station (0.7 MGD) with approximately 9,800 LF of 10 inch sewer force main and appurtenances to serve the Mud Creek Drainage Basin and the proposed Riverstone residential subdivision.

Section 2 – Approximately 4,800 LF of 12 inch gravity sewer line with manholes and appurtenances and a sewer lift station (0.2 MGD) with approximately 200 LF of 6 inch sewer force main and appurtenances to serve the proposed Tap Root Dairy industrial park subdivision.

ENGINEER agrees to perform various and all professional engineering services as listed in Section A for the design and construction of the Project.

WITNESSETH: That the parties hereto, and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed;

SECTION A - ENGINEERING SERVICES

Unless otherwise set out below, all of the following services shall be performed by the ENGINEER as basic services performed under this AGREEMENT FOR ENGINEERING SERVICES for the basic compensation as provided in Section B of this AGREEMENT FOR ENGINEERING SERVICES.

1. The ENGINEER shall submit proposed route for review and written approval by the OWNER.
2. Upon the review and written approval by the Owner of the proposed route, the ENGINEER shall perform the necessary design surveys, accomplish the detailed design of the Project prepare construction drawings, specifications and contract documents and prepare a final cost estimate based on the final design for the entire system. The ENGINEER shall complete the final plans, specifications and contract documents and submit for approval of the OWNER and all State regulatory agencies as shown on the attached “PROJECT SCHEDULE,” unless otherwise agreed to by both parties. All plans and specifications prepared by the ENGINEER shall bear the signature and seal of the ENGINEER. If subsurface explorations (such as boring, soil tests, rock soundings and the like) are

required, the ENGINEER will furnish coordination of said explorations without additional charge, but such explorations shall be considered additional services and shall be paid for by the OWNER as reimbursable expenses as provided in Section B – 3 of this AGREEMENT FOR ENGINEERING SERVICES.

3. None of the following or their immediate family members, during the tenure of the subject person or for one year thereafter, shall have any direct or indirect financial interest in this contract, the Construction Contract, any subcontract, or any other work associated with the Project: employees or agents of the OWNER who exercise any function or responsibility with respect to the Project and officials of the OWNER, including members of the governing body. This same paragraph shall be incorporated into the Construction Contract and shall be required to be incorporated into any subcontract entered for the Project by any contractor performing work on the Project.
4. The professional engineering firm of William G. Lapsley & Associates, P.A. (WGLA), shall provide the periodic observation of the Project during construction and, upon Project completion, provide written certification to Henderson County that the Project has to the best of its knowledge been constructed in compliance with the Construction contract. WGLA shall have sole responsibility for providing periodic observation of the Project. The OWNER shall not contract with any third party to conduct observations of the Project. The OWNER shall notify the ENGINEER when the OWNER wishes to visit the site and be accompanied by the ENGINEER or ENGINEER'S representative.
 - a. Completion certification shall be as shown on the attached Exhibit B. The OWNER shall have no obligation to pay the ENGINEER the final payment (for each Section) on this Project until such certification (for each Section) has been submitted to the OWNER.
5. The ENGINEER shall be responsible for soliciting bids for each Section of the Project on behalf of the OWNER. The ENGINEER shall further be responsible for preparing all of the necessary bid documents, including but not limited to preparation of all documents listed in Paragraph A-2 above, the Invitation to Bid, the OWNER-CONTRACTOR construction agreement, generally accepted General Conditions to the construction contract, Supplementary General Conditions, a Contract Change Order form, and an Application for Payment for, hereinafter "Bidding Documents." All of said Bidding Documents must be approved by the OWNER before the ENGINEER can advertise for bids. Upon such approval by the OWNER, the ENGINEER shall submit ten (10) copies of said Bidding Documents to the OWNER for use by the OWNER. The cost of said Bidding Documents shall be included in the basic compensation paid to the ENGINEER.
6. Upon the approval of the Bidding Documents the ENGINEER shall solicit bids for each Section in accordance with N.C.G.S. Chapter 143, Article 8, entitled "Public Contracts," and applicable State and Federal regulation. Further, the ENGINEER will attend and conduct the bid opening, tabulate the bid proposals, make an analysis of the bids, and make recommendations for awarding the contract(s) for construction. The ENGINEER shall make his recommendation based upon the lowest responsive responsible bid, based upon

the quality, performance and time specified in the bid proposal. If fewer than three bids are received on the Project, the ENGINEER shall return the bids received unopened to the bidders and shall, at the request of the OWNER, re-advertise the bidding to be opened at the time and place agreed to by the OWNER for no additional charge. Further, if the bid proposals received are for an amount in excess of the ENGINEER'S final cost estimate prepared in accordance with Paragraph A-2 above, the ENGINEER shall, at the request of the OWNER, either (1) redesign the Project so as to bring the cost within the OWNER'S budget, or (2) to negotiate with the lowest responsive responsible bidder to bring the cost within budget.

7. The ENGINEER will furnish additional copies of the Bidding Documents for each Section of the Project as required by prospective bidders, material suppliers, and other interested parties, but may charge them for the reasonable cost of such copies. Upon award of a construction contract(s), the ENGINEER will furnish to the OWNER five sets of the Bidding Documents and Contract Documents for execution for each construction contract awarded. The cost of these sets shall be included in the basic compensation paid to the ENGINEER.
8. The drawings prepared by the ENGINEER under Paragraph A-2 above shall be in sufficient detail to permit the actual location of the proposed improvements on the ground. The ENGINEER shall prepare and furnish to the OWNER without any additional compensation, three copies of map(s) showing the general location of needed construction easements and the land to be acquired. Property surveys, property plats, property descriptions, abstracting and negotiations for land rights shall be accomplished by the OWNER, unless the OWNER requests the ENGINEER to provide those services, in which case the ENGINEER shall be additionally compensated as set out in Section B of this AGREEMENT FOR ENGINEERING SERVICES.
9. The ENGINEER will establish baselines at the project site for locating the work together with a suitable number of bench marks adjacent to the work as shown in the contract documents. Further, the ENGINEER shall be responsible for maintaining all project construction data.
10. The ENGINEER will be responsible for filing applications for and securing all required permits for the Project from Federal, State, and local authorities.
11. The ENGINEER shall serve as the Construction Contract Administrator on behalf of OWNER, and shall in all matters act in the best interest of OWNER. As Construction Contract Administrator, the ENGINEER shall be responsible for the general administration of the business relating to the Construction Contract, the issuance of certificates of payment, the keeping of accounting records, the approval of materials, equipment, and apparatus used in the work. The ENGINEER shall be considered to be the OWNER'S representative in all matters concerning the Construction Contract and shall have the responsibility to act on behalf of the OWNER in carrying out OWNER'S responsibilities in the Construction Contract unless otherwise indicted in the Construction Contract, or otherwise indicted below:

- a. The ENGINEER will promptly and expeditiously convey to the CONTRACTOR any and all instructions, directions, and other appropriate communications to the CONTRACTOR from the OWNER. In like manner, ENGINEER shall promptly and expeditiously convey to the OWNER and all communications to the OWNER from the CONTRACTOR.
- b. The ENGINEER will promptly review all submittals of the CONTRACTOR, including all shop drawings and working drawings. The ENGINEER shall be responsible for ensuring that such submittals of the CONTRACTOR conform to the Construction Contract. Upon determining that the submittals conform to the Construction Contract, the approval by the ENGINEER shall promptly approve the same. Approval by the ENGINEER shall constitute the ENGINEER'S representation to the OWNER that such submittal is in conformance with the Construction Contract.
- c. Upon receipt, the ENGINEER shall carefully review and examine the CONTRACTOR'S Schedule of Values, together with any supporting documentation or data, which the OWNER or the ENGINEER may require from the CONTRACTOR. The purpose of such review and examination shall be to protect the OWNER from an unbalanced Schedule of Values which allocates greater value to certain elements of the work than is indicated by such supporting documentation or data, or than is reasonable under the circumstances. If the Schedule of Values is not found to be appropriate, or if the supporting documentation or data is deemed to be inadequate, and unless the OWNER directs the ENGINEER to the contrary in writing, the Schedule of Values shall be returned to the CONTRACTOR for revision of supporting documentation or data. After making such examination, if the Schedule of Values is found to appropriate as submitted, or if necessary, as revised, the ENGINEER shall sign the Schedule of Values thereby indicating his informed belief that the Schedule of Values constitutes a reasonable, balanced basis for payment of the Construction Contract Price to the CONTRACTOR. The ENGINEER shall not sign such Schedule of Values in the absence of such belief unless directed to do so in writing by the OWNER.
- d. The ENGINEER shall carefully observe the work of the CONTRACTOR whenever and wherever necessary, and shall, at a minimum, observe work at the Project site not less frequently than once per day that the work is actually performed on the Project by the CONTRACTOR, and/or CONTRACTOR'S agents, employees subcontractors, or anyone else performing work on the Project on the CONTRACTOR'S BEHALF. The purpose of such observations shall be to determine the quality and quantity of the work in comparison with the requirements of the Construction Contract. The ENGINEER shall be responsible for ordering the CONTRACTOR to uncover any of the work (and for observing any work uncovered pursuant to such order) where necessary to protect OWNER from defects or deficiencies in the work. In making any observations, the ENGINEER shall

protect the OWNER from continuing deficient or defective work, from continuing unexcused delays in the schedule and from over payment to the CONTRACTOR. The ENGINEER shall record all observations in an Log Book. Such entries in the Log Book shall include, but not be limited to: date, time, weather conditions, specific location(s) of the Project observed, listing of equipment on site, the number of the CONTRACTOR'S employees on the job the presence or absence of the CONTRACTOR'S Project foreman, elevation readings taken, material being used, and any and all observations made and other appropriate data necessary to fully and accurately record such observation. The ENGINEER shall submit copies of said on Log Book on a monthly basis to the OWNER for the OWNER'S records, together with any appropriate comments or recommendations from the ENGINEER to the OWNER.

- e. In addition to the monthly submission of the log reports, the ENGINEER shall be responsible for, reporting immediately upon observation, any and all substantial deficiencies or substantial nonconformities observed in the work to the OWNER. The ENGINEER shall consult with the OWNER before ordering the corrective action to be taken by the CONTRACTOR for such substantial deficiencies or substantial nonconformities. A substantial deficiency or substantial nonconformity shall mean a deficiency or nonconformity which would involve a change in Contract Price or Contract Time as those terms are defined in the Construction Contract, or which would affect the operational integrity and function of the Project, or any portion thereof. It shall be within the ENGINEER'S discretion to determine whether a deficiency or nonconformity is substantial Where ENGINEER shall have the authority to order the corrective action, if any, to be taken by the CONTRACTOR for such deficiency or nonconformity, notwithstanding any consultations with the OWNER, the ENGINEER shall be responsible for using his authority and powers to immediately reject the nonconforming or deficient work, and to properly communicate the corrective action necessary to the CONTRACTOR.. In all matters, the ENGINEER shall act so as not to cause an unreasonable delay in the progress of the work.
- f. The ENGINEER shall promptly provide appropriate interpretations as necessary for the proper execution of the work. In all interpretations made, the ENGINEER shall act so as to protect the OWNER against defects and deficiencies in the work, inexcusable delays, and from overpayment to the CONTRCTOR.
- g. The ENGINEER shall reject in writing any work of the CONTRACTOR which is not in compliance with the Construction Contract. ENGINEER shall provide a copy of such written rejections to the OWNER at the same time such written rejections are given to the CONTRACTOR. OWNER may waive in writing any such rejections received. In the event OWNER waives any such rejections received, ENGINEER shall immediately communicate such waiver to the CONTRACTOR in writing.

- h. The ENGINEER shall require observation or re-observation and testing or re-testing of the work in accordance with the provisions of the Construction Contract whenever appropriate.
- i. The ENGINEER shall initially approve periodic and final payments owed to the CONTRACTOR under the Construction Contract predicated upon observations of the work contained in the CONTRACTOR'S Request for Payment, and evaluations of the CONTRACTOR'S rate of progress in light of the remaining Contract Time and shall issue to the OWNER approvals of payment in such amounts. By issuing an Approval of Payment to the OWNER, the ENGINEER reliably informs the OWNER that the ENGINEER has made the observation of the work, and that the work for which payment is approved has reached the quantities or percentages of completion shown, or both, that the quality of the CONTRACTOR'S work meets or exceeds the requirements of the Construction Contract, and that under the terms and conditions of the Construction Contract it is appropriate for the OWNER to pay to the CONTRACTOR the amounts approved.
- j. The ENGINEER shall promptly review all Change Order requests submitted by either the OWNER or the CONTRACTOR. The ENGINEER shall evaluate all Change Orders requested by the CONTRACTOR in light of all unforeseeable circumstances or conditions attendant upon the project. The ENGINEER shall require of the CONTRACTOR any and all documentation necessary to validate any Change Order requested by the CONTRACTOR, including but not limited to cost estimates and weather reports. Approval by the ENGINEER of any Change Order requested by the CONTRACTOR shall be a representation to the OWNER that such Change Order is warranted by unforeseeable circumstances or conditions attendant to the project. The ENGINEER shall act at all times to protect the OWNER from defects or deficiencies in the work, unnecessary or exorbitant changes in the work, and unreasonable delays in the progress of the work.
- K. Based upon observations of the project, the ENGINEER shall certify in writing to the OWNER the fact that, and the date upon which, the CONTRACTOR HAS ACHIEVED Substantial Completion of the project, and the fact and date upon which the CONTRACTOR has achieved Final Completion of the project. Such ENGINEER submits the CONTRACTOR'S request for Final Payment under the Construction Contract.
- l.. The responsibility of the ENGINEER for enforcing the faithful performance of the CONTRACTOR is not relieved or affected in any respect by the presence of the OWNER or the OWNER'S employees or agents at the site. The ENGINEER agrees that the responsibility assumed by him for approving and certifying work for payment is not shared by the OWNER, the OWNER'S employees or other OWNER agents.

12. The ENGINEER shall provide the OWNER with one set each of reproducible record (as-built) drawings and two sets of prints at no additional cost to the OWNER. Such drawings shall reflect the actual construction of the project. The ENGINEER'S submission of said record drawings shall be a representation of the ENGINEER based upon the ENGINEER'S periodic observations and review of CONTRACTOR'S notes that the drawings accurately reflect the actual construction of the Project.
13. The ENGINEER shall transmit to the OWNER all manuals, operating instructions, warranties, certificates, guarantees and other documents and things required by the Construction Contract and submitted by the CONTRACTOR.
14. The ENGINEER shall at no cost to the OWNER, promptly correct any errors, omission, deficiencies, or conflicts in the work product of the ENGINEER, its consultants, or both.
15. The ENGINEER shall be available to furnish engineering services and consultations necessary to correct unforeseen project operation difficulties for a period of one year after the date of statement of substantial completion of the project. This service will include instruction of the OWNER in initial project operation and maintenance, but will not include supervision of normal operation of the system. The ENGINEER will assist the OWNER in performing a review of the Project during the 11th month after the date of the Certificate of Substantial Completion, and the ENGINEER will properly document any work which the CONTRACTOR needs to perform, and the ENGINEER will properly notify the CONTRACTOR and the OWNER of the same. The ENGINEER will then oversee the performance of such corrections by the CONTRACTOR or CONTRACTOR'S agent(s) observe and determine if said work has been performed in accordance with the Construction Contract, reject such corrections if they are not performed in accordance with the Construction Contract, and continue to oversee said corrections until they are completed in a manner that conforms with the Construction Contract. The ENGINEER will act so as to protect the OWNER from defects and deficiencies in such corrections, and so as not to unreasonably delay the progress of such corrections and will provide written certification (in form acceptable to the OWNER) of the corrections to the OWNER.

SECTION B -- COMPENSATION FOR ENGINEERING SERVICES

1. The OWNER shall pay the ENGINEER for all professional services performed under Section A, Basic Engineering Services. A total fee for all services outlined in Section A including reimbursable expenses shall not exceed \$83,000 for Phase I – Section I and \$63,000 for Phase I – Section II for a total of \$146,000. If payment to the ENGINEER reaches the \$146,000 maximum the ENGINEER shall be considered to have been fully compensated for all services required under Section A, including all reimbursable expenses. No additional compensation for such services shall be required, and ENGINEER shall be obligated to complete all services stated in Section A.

2. The following WAGE RATE SCHEDULE shall be used in computing payments due the ENGINEER under this AGREEMENT FOR ENGINEERING SERVICES for additional services required during the duration of the Project:

WAGE RATE SCHEDULE

Professional Fees

| | |
|----------------------------------|-------------------|
| Principal Engineer | \$110.00 per hour |
| Project Manager | \$98.00 per hour |
| Project Engineer | \$90.00 per |
| hour | |
| Associate Engineer | \$55.00 per hour |
| Engineering Technician | \$50.00 per hour |
| Construction Observer | \$50.00 per hour |
| Computer-aided Design Technician | \$45.00 per hour |
| Clerical | \$35.00 per hour |

3. Reimbursable Expenses shall mean the actual expenses incurred in connection with the Project for: travel, toll telephone calls, facsimile transmissions, copying, postage, lab tests, boring, reproduction of Drawings and similar Project-related items.
4. Time of Payment. ENGINEER shall submit monthly to the OWNER an itemized statement for basic and additional service rendered and for reimbursable expenses incurred. OWNER shall, within thirty (30) days of receipt of an itemized invoice, either make payment to ENGINEER for the total amount due as reflected on the invoice, or shall send ENGINEER a written objection to the invoice based upon the quality or quantity of the services reflected therein or based on the total amount due. In the event the OWNER sends a written objection to ENGINEER within thirty (30) days of OWNER'S receipt of ENGINEER'S invoice, ENGINEER shall be required to respond in writing to OWNER'S written objection within fifteen (15) days. In addition, ENGINEER shall be responsible for scheduling a meeting with OWNER to discuss differences between OWNER'S written objection and ENGINEER'S written response. The purpose of such a meeting shall be to resolve any such differences. Such a meeting shall be a condition precedent to ENGINEER'S ability to pursue any remedies under the contract, at law or in equity, for the collection of monies pursuant to any invoice to which the OWNER has filed a timely written objection, including but not limited to suspension of services or termination. In the event OWNER fails to make payment, or send a written objection within thirty (30) days from receipt of the invoice, interest shall accrue at a rate of two percent (2%) per month on the unpaid amount due as shown on the invoice and ENGINEER shall retain all remedies under the AGREEMENT FOR ENGINEERING SERVICES, at law, and in equity.

SECTION C – PROJECT SCHEDULE

The engineering services described in Section A of this AGREEMENT FOR ENGINEERING SERVICES are to be provided by the ENGINEER in a timely manner in accordance with the following schedule:

| | <u>Due Date</u> |
|--------------------------------|-------------------|
| Field Survey & Schematic Plan | November 28, 2005 |
| Final Plans & Specifications | December 19, 2005 |
| Permits & Easements Obtained | January 30, 2006 |
| Award of Construction Contract | April 3, 2006 |
| Construction Completed | October 1, 2006 |

It is understood by both parties that every reasonable effort will be made to meet these target dates. Failure to meet the dates due to reasons beyond the control of either party to this agreement will not represent cause for termination.

SECTION D – ADDITIONAL ENGINEERING SERVICE

In addition to the foregoing being performed, the following services may be provided UPON PRIOR WRITTEN AUTHORIZATION OF THE OWNER. Such services shall be compensated in accordance with WAGE RATE SCHEDULE (see Section B), unless such services have previously been denominated as reimbursable expenses in this AGREEMENT FOR ENGINEERING SERVICES, in which case they shall be compensated in accordance with Paragraph B-3.

1. Site surveys for water treatment plants, sewage treatment works, dams, reservoirs, and other similar special surveys as may be required.
2. Laboratory tests, well tests, boring, specialized geological, soils hydraulic, or other similar special surveys as may be required.
3. Property surveys, detailed description of sites, maps, drawings, or estimates related thereto; assistance in negotiating for land and easement rights.
4. Necessary data and filing maps for water rights, water adjudication and litigation.
5. Redesigns ordered by the OWNER after final plans have been accepted by the OWNER, unless such redesigns are to correct errors or omissions made by the ENGINEER, the ENGINEER'S employees, or the ENGINEER'S agents.
6. Preparation of environmental impact assessments or environmental impact statements.

7. Performance of detailed staking necessary for construction of the project in excess of the control staking set forth in Section A Paragraph 9 of this AGREEMENT FOR ENGINEERING SERVICES.

SECTION E – GENERAL PROVISIONS

1. This AGREEMENT FOR ENGINEERING SERVICES shall be governed by the laws of the State of North Carolina.
2. The ENGINEER shall obtain and maintain, at the ENGINEER'S expense, such insurance as will protect the ENGINEER from claims under the Worker's Compensation Act. Further, the ENGINEER shall be required to obtain and maintain standard form (a) comprehensive general liability and property damage insurance in the amount of \$1,000,000.00; and (b) comprehensive automobile liability on all owned, hired, and non-owned vehicles used by the ENGINEER for limits not less than \$500,000.00. Such policies shall name the OWNER as an additional insured, or loss payee, and shall include a provision prohibiting cancellation or termination without thirty (30) days prior written notice by Certified Mail to OWNER. A Certificate of Insurance in a form acceptable to OWNER shall be provided to OWNER by the ENGINEER before commencing performance of this AGREEMENT FOR ENGINEERING SERVICES. Such insurance shall provide protection for all claims for bodily injury, including death, property damage and contractual liability, products/completed operations, broad form property damage and explosion, collapse and underground damage where applicable. In addition to the above insurance, ENGINEER shall be required to obtain and maintain throughout the term of the AGREEMENT FOR ENGINEERING SERVICES errors and omissions coverage in amount of \$1,000,000.00.
3. This AGREEMENT FOR ENGINEERING SERVICES may not be assigned by either party without the prior written consent of the other party.
4. No Third Party Beneficiaries. Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.
5. Any provision of this AGREEMENT FOR ENGINEERING SERVICES that is prohibited, unenforceable, or not authorized in any jurisdiction, shall as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability, or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability, or legality of such provision in any other jurisdiction.
6. This AGREEMENT FOR ENGINEERING SERVICES can be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
7. This AGREEMENT FOR ENGINEERING SERVICES shall be binding upon, inure to the benefit of, and be enforceable by the respective parties hereto.

8. Termination for Cause. This AGREEMENT FOR ENGINEERING SERVICES may be terminated by either party for material breach by the other party; provided, however, that such non-breaching party shall notify the breaching party in writing of the exact nature of the breach, and the breaching party shall be given a period of thirty (30) days after such written notice in which to correct such breach before the non-breaching party shall have a right to terminate. In the event such breach is not corrected within said thirty (30) day period, the non-breaching party may notify said breaching party of the effective date of any such termination effected hereunder.
9. Termination for Convenience. The OWNER shall have the right to terminate this AGREEMENT FOR ENGINEERING SERVICES for convenience, but shall give the ENGINEER seven (7) days prior written notice of the effective date of such termination. In the event of such termination, the ENGINEER shall be entitled to receive compensation for any and all services performed hereunder, up to and including the effective termination date.
10. The failure to enforce any provision herein shall not be a waiver of any rights hereunder. To be effective, a waiver of any rights hereunder must be expressly stated in writing and signed by the waiving party or the waiving party's authorized representative.
11. The Preliminary Design and the Design for Construction shall become and be the sole property of the OWNER. The ENGINEER may maintain copies thereof for its records and for its future professional endeavors.
12. Any notices required by the terms of this AGREEMENT FOR ENGINEERING SERVICES shall be considered duly delivered if deposited in the U.S. Mail in a postpaid envelope addressed as follows:

To the COUNTY:

Charles Russell Burrell, County Attorney
County of Henderson
100 North King Street
Hendersonville, NC 28792

To the ENGINEER:

William G. Lapsley, P.E.
William G. Lapsley & Associates P.A.
Post Office Box 546
Hendersonville, NC 28793

13. ENGINEER shall abide by all terms of the Fair Labor Standards Act I performing this AGREEMENT FOR ENGINEERING SERVICES. Further, the ENGINEER shall not discriminate against any employee or applicant for employment, nor any proposed contractor under any Construction Contract for the project, nor any contractor's employees or agents, because of physical or mental handicap, race, religion, color, sex, national origin or age.

14. No approval by the OWNER of any portion of the engineering services provided by the ENGINEER under the terms of this AGREEMENT FOR ENGINEERING SERVICES

shall operate as to transfer any responsibility to the OWNER for the accuracy, quality, feasibility of such engineering services.

15. This AGREEMENT FOR ENGINEERING SERVICES constitutes the entire and exclusive agreement between the parties with reference to the project and supersedes any and all prior communications, discussion, negotiations, understandings, or agreements. This AGREEMENT FOR ENGINEERING SERVICES may only be amended by written document, duly executed by both parties.

IN WITNESS WHEREOF, both parties have caused this AGREEMENT FOR ENGINEERING SERVICES to be executed in duplicate, each to have the force and effect of an original, this the day and year first above written.

HENDERSON COUNTY BOARD OF
COMMISSIONERS (on behalf of the Cane
Creek Water and Sewer District)
(Owner)

Attest: (County Seal)

Clerk

William Moyer, Chairman

WILLIAM G. LAPSLEY & ASSOCIATES, P.A.

ENGINEER

Attest: (Corporate Seal)

Corporate Secretary
STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

William G. Lapsley, President

I, _____, Notary Public for said County and State, certify that Elizabeth W. Corn personally came before me this day and acknowledged that she is Clerk to the Board of Commissioners of Henderson County, a body politic and corporate and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its Chairman of the Board of Commissioners, sealed with its Corporate Seal, and attested by herself as it Clerk.

Witness my hand and official seal, this the ____ day of _____, 2005.

(Official Seal)

My commission expires:

Notary Public

.....
STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, _____, Notary Public for said County and state, certify that _____ Garland T. Jones, III _____ personally came before me this day and acknowledged that he is Corporate Secretary to William G. Lapsley and Associates, P.A., a North Carolina Professional Association, and that by authority duly given and as the act of the Association, the foregoing instrument was signed in its name by its President, sealed with its Corporate Seal and attested by him as its Corporate Secretary.

Witness my hand and official seal, this the ____ day of _____, 2005.

(Official Seal)

My commission expires: _____
Notary Public

EXHIBIT B

CERTIFICATION

I, William G. Lapsley, the President of William G. Lapsley & Associates, P.A., 1635 Asheville Highway, Post Office Box 546, Hendersonville, North Carolina 28793, do certify on behalf of the said William G. Lapsley & Associates, P.A., the following to the Henderson County Commissioners in their capacity as Directors of the Cane Creek Water and Sewer District of Henderson County, North Carolina:

1. That the said William G. Lapsley & Associates, P.A., has contracted with the said Henderson County Commissioners, in their capacity as Directors of the Cane Creek Water and Sewer District, to perform various and all professional engineering services for the said Cane Creek Water and Sewer District's Mud Creek Interceptor Sewer Project.