

**MASTER GEOTECHNICAL, MATERIAL TESTING, AND/OR SPECIAL INSPECTIONS  
SERVICES AGREEMENT**

BETWEEN

**Wake County Board of Education**

hereinafter referred to as the Owner

AND

**(name)**

hereinafter referred to as the Consultant

For multiple projects started between July 1, 20\_\_ and June 30, 20\_\_

# **MASTER GEOTECHNICAL, MATERIAL TESTING, AND/OR SPECIAL INSPECTIONS SERVICES AGREEMENT**

## **AGREEMENT**

made this \_\_\_\_ day of \_\_\_\_ in the year of Two Thousand \_\_\_\_

between the Owner: **Wake County Board of Education**

and the Consultant **(Name, Address)**

For Professional Services to be provided as authorized by the Owner pursuant to this Agreement and the terms and conditions of the Individual Project proposals.

## **ARTICLE 1**

### **TERMS AND CONDITIONS**

- 1.1 WORK: If authorized to perform services pursuant to an Individual Project Proposal Agreement (IPPA), the Consultant shall provide the services outlined in the IPPA in accordance with this Agreement and the IPPA. Any IPPA shall specify the services authorized for the particular project. The Consultant shall not provide any services or any work without an IPPA. The execution of this Agreement does not guarantee that any IPPA or work will be authorized by the Owner.
- 1.2 TIME:
- 1.2.1 GEOTECHNICAL CONSULTING SERVICES: Subject to any limitations stated in the IPPA, the specified Geotechnical Consulting investigation shall be completed and the logs and report(s) delivered to the Owner and the Consultant within Thirty (30) calendar days after written authorization to proceed is received. In the event that circumstances beyond the Geotechnical Consultant's control force a delay that prohibits or may prohibit the Geotechnical Consultant's compliance with this Paragraph, the Geotechnical Consultant shall inform the Owner immediately. The Owner shall evaluate the circumstances presented by the Geotechnical to the Owner and shall inform the Geotechnical Consultant of any time extension authorized.
- 1.2.2 MATERIAL TESTING SERVICES FOR PRECONSTRUCTION PHASE SERVICES: The material testing services shall be performed in accordance with the timeline contained in the IPPA. In the event that circumstances beyond the Material Testing Consultant's control force a delay that prohibits or may prohibit the Material Testing Consultant's compliance with this Paragraph, the Material Testing Consultant shall inform the Owner immediately. The Owner shall evaluate the circumstances and shall inform the Material Testing Consultant of any time extension authorized.
- 1.2.3 MATERIAL TESTING SERVICES FOR CONSTRUCTION PHASE SERVICES: Subject to any limitations stated in the IPPA, the specified material test results shall be completed and report(s) delivered to the Owner, Consultant and the Contractor within three (3) calendar days after the tests. In the event that circumstances beyond the Material Testing Consultant's control force a delay that prohibits or may prohibit the Material Testing Consultant's compliance with this Paragraph, the Material Testing Consultant shall inform the Owner immediately. The Owner shall evaluate the circumstances and shall inform the Material Testing Consultant of

any time extension authorized. The Material Testing Consultant shall respond to requests for testing from the contractors no later than 24 hours after notification.

- 1.2.4 SPECIAL INSPECTIONS: The Consultant as Special Inspector shall provide preconstruction and construction phase services as required by Section 1704 of the NC Building Code, and in accordance with the specific proposal attached to the IPPA.

- 1.3 COMPENSATION: The Consultant shall be compensated, if at all, according to the attached rate and price schedule identified as Exhibit A to this Agreement, this Paragraph and the applicable IPPA. Exhibit A shall itemize the cost of the geotechnical investigation and engineering services (including the furnishing of all materials, apparatus, labor and any required insurance) for soil boring and other exploration procedures, sampling, field and laboratory testing, preparing and submitting boring logs and report(s) and providing geotechnical services during construction. Exhibit A shall specify the hourly rate schedule for any services that may be utilized under this Agreement. The IPPA shall specify the geotechnical investigation and engineering services as well as the material testing services required for the project and shall state the maximum compensation authorized for the work specified in the IPPA. The Consultant shall be compensated for work performed pursuant to an IPPA in the amount of either (1) the actual value of the services authorized by the IPPA and performed by the Consultant at the rate specified in Exhibit A or the maximum compensation authorized by the IPPA authorizing the work, whichever is lower, or (2) a lump sum amount the parties have agreed to in the IPPA. The execution of this Agreement does not guarantee the Consultant any compensation or any work. The Consultant shall not be compensated for any work or services performed without specific authorization in an IPPA.

- 1.4 BILLING AND PAYMENT:

- 1.4.1 Billing for the investigation shall be directed to the Owner's Representative at the following address:

Wake County Public School System  
Facilities Design & Construction Department  
11 Corning Road, Suite 190  
Cary, NC 27518

- 1.4.2 Payment shall be made within forty-five (45) days of receipt of an acceptable invoice from the Consultant.

- 1.5 INSURANCE: The Consultant shall purchase and maintain insurance for protection from claims under workers' or workmen's compensation acts; claims resulting from negligent acts or omissions for damages because of bodily injury, including personal injury, sickness, disease or death of any of the Consultant's employees or any other person; claims for damages because of injury to or destruction of personal property including loss of use resulting therefrom; and claims arising out of the performance of this Agreement and caused by negligent acts or omissions for which the Consultant is legally liable. Minimum limits of coverage shall be:

Insurance Description	Minimum Required Coverage
a. Workers' Compensation	Statutory
b. Public Liability	Combined Single Limit
Bodily Injury and Property Damage	\$1,000,000.00 Each Occurrence
c. Automobile Liability	Combined Single Limit
Bodily Injury and Property Damage	\$1,000,000.00 Each Accident
d. Professional Liability:	\$1,000,000.00 Each Occurrence

- 1.5.1 A certificate of insurance documenting evidence of such insurance shall be furnished to the Owner. The Consultant shall also provide a policy endorsement requiring the Owner to

- receive thirty (30) days prior written notice of cancellation for any statutorily permitted reason other than non-payment of premium. In addition, the Consultant shall provide at least five (5) business days written prior notice to the Owner's Representative at the address noted above and via email ("fdc-insure@wcpss.net") of the cancellation, non-renewal (without replacement), or the material reduction of coverage or limits of any of the policies. Upon notice of such cancellation, nonrenewal or reduction, the Consultant shall procure substitute insurance so as to assure the Owner that the minimum limits of coverage are maintained continuously throughout the period of this Agreement.
- 1.5.2 The Consultant shall deliver to the Owner a Certificate of Insurance for its Professional Liability coverage annually, so long as it is required to maintain such coverage under paragraph 1.5.4.
- 1.5.3 All insurance policies (with the exception of Worker's Compensation and Professional Liability) required under this Agreement shall be endorsed to name the Owner, *Wake County and the Wake County Board of Education* as additional insured for the insurance and shall contain a waiver of subrogation against the Owner.
- 1.5.4 The Consultant shall maintain in force during the performance of this agreement and for one year after final completion of the Project, the Professional Liability Insurance coverage mentioned above.
- 1.6 QUALIFICATIONS: All work shall be performed by qualified personnel under the supervision of a Registered Professional Engineer. All reports shall bear the seal of a Registered Professional Engineer.
- 1.6.1 By execution of this Agreement, the Consultant warrants that (a) it is an experienced and duly licensed firm or individual having the ability and skill necessary to perform all the Services required of it under this Agreement; (b) it has the capabilities and resources necessary to perform its obligations hereunder; and (c) it is familiar with all current laws, rules and regulations which are applicable to this Agreement.
- 1.6.2 It shall be the responsibility of the Consultant throughout the period of performance under this Agreement to exercise the abilities, skills and care customarily used by Consultants of the training and background needed to perform the Services required under this Agreement who practice in the Research Triangle Park area or similar communities.
- 1.7 FOR PRECONSTRUCTION PHASE SERVICES: Deliver three (3) copies of Geotechnical Report(s) and logs to the Owner's Representative and one to the Consultant. It is understood that the Owner, the Owner's Representative, or the Consultant on the Owner's behalf, may make and distribute copies of the reports and boring logs as necessary in connection with the proposed project without incurring obligation for additional compensation.
- 1.8 FOR CONSTRUCTION PHASE SERVICES: Deliver one (1) copy of test report(s) to the Owner, one (1) to the Consultant, one (1) to the City/County, one (1) to the Engineer, and one (1) to the Contractor. It is understood that the Owner or the Consultant may make and distribute copies of the reports as necessary in connection with the proposed Project without incurring obligation for additional compensation.
- 1.9 PROTECTION OF PROPERTY: The Consultant shall contact the Owner and all utility companies for information regarding buried utilities and structures, shall take all reasonable precautions to prevent damage to property, visible and concealed and shall reasonably restore the site to the condition existing prior to the Consultant's entry, including, but not limited to, backfilling of holes, patching of slabs and pavements, repair of lawns and plantings, removal of all superfluous stakes or other items which might prove dangerous to persons, and removal of brush cut by the Consultant. Each boring should be plugged temporarily, pending additional groundwater readings. At the completion of the groundwater readings, the borings shall be permanently plugged, including patching of slabs and pavements.
- 1.10 TERM: This Agreement and its Exhibits shall survive and remain in effect from July 1, 2021, through June 30, 2023. As such, the rates and prices identified in Exhibit A shall remain

unchanged and effective for any IPPA authorized by the Owner from July 1, 2021, through June 30, 2023.

- 1.11 MISCELLANEOUS: The Consultant shall provide documentation acceptable to the Owner showing the amount of MBE participation (including a complete list of all sub consultants and their final subcontract amounts).
- 1.11.1 APPLICABLE WAKE COUNTY BOARD OF EDUCATION POLICIES. The Design Consultant acknowledges that the Wake County Board of Education has adopted policies governing its relationship with vendors and conduct on School System property and agrees to abide by any and all relevant WCPSS policies during the term of the Agreement and while on School System property. WCPSS's Design Consultant related policies can be viewed at <https://www.wcpss.net/Page/45862> and are incorporated into this Agreement by reference.
- 1.11.2 The Consultant shall comply with the Owner's site or school building access procedures when working on any existing school campus.
- 1.12 APPLICABLE LAWS: This Agreement and the relationship of the parties shall be governed by the laws of the state of North Carolina.
- 1.12.1 Consultant shall comply with all applicable laws and regulations in providing services under this Agreement. Consultant shall not employ any individuals to provide services to the Owner who are not authorized by federal law to work in the United States. Consultant represents that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system. Consultant further warrants that it will use the E-Verify system to verify employment eligibility of all its employees throughout the term of this Agreement, and that it will remain in compliance with all I-9 requirements throughout the term of this Agreement. Consultant shall also ensure that any subcontractors use the E-Verify system at all times while providing subcontracted services in connection with this Agreement. Contractor is responsible for providing affordable health care coverage to all of its full-time employees providing services to the school system. The definitions of "affordable coverage" and "full-time employee" are governed by the Affordable Care Act and accompanying IRS and Treasury Department regulations.
- 1.13 LUNSFORD ACT/CRIMINAL BACKGROUND CHECKS: The Consultant also acknowledges that G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. The Consultant shall conduct or arrange to have conducted at its own expense sexual offender registry checks on each of its employees, agents, ownership personnel, or contractors ("contractual personnel") who will engage in any service on or delivery of goods to school system property or at a school-system sponsored event, except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at: (1) the administrative office or loading dock of a school; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites. The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the Registries"). For the Consultant's convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>. The Consultant shall provide certification on the Sexual Offender Registry Check Certification Form that the registry checks were conducted on each of its contractual personnel providing services or delivering goods under this Agreement prior to the commencement of such services or the delivery of such goods. The Consultant shall conduct a current initial check of the registries (a check done more than 30 days prior to the date of this Agreement shall not satisfy this contractual obligation). In addition, the Consultant agrees to conduct the registry checks and provide a supplemental certification form before any additional contractual personnel are used to deliver goods or provide services pursuant to this Agreement. The Consultant further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. The Consultant shall not assign any individual to deliver

goods or provide services pursuant to this Agreement if said individual appears on any of the listed registries. The Consultant agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents to the Owner upon request. The Consultant specifically acknowledges that the Owner retains the right to audit these records to ensure compliance with this section at any time in the Owner's sole discretion. Failure to comply with the terms of this provision shall be deemed a material breach of the Agreement. In addition, the Owner may conduct additional criminal records checks at the Owner's expense. If the Owner exercises this right to conduct additional criminal records checks, the Consultant agrees to provide within seven (7) days of request the full name, date of birth, state of residency for the past ten years, and any additional information requested by the Owner for all contractual personnel who may deliver goods or perform services under this Agreement. The Consultant further agrees that it has an ongoing obligation to provide the Owner with the name of any new contractual personnel who may deliver goods or provide services under the Agreement. The Owner reserves the right to prohibit any contractual personnel of the Consultant from delivering goods or providing services under this Agreement if the Owner determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others.

- 1.14 ANTI-NEPOTISM: Consultant warrants that, to the best of its knowledge and in the exercise of due diligence, none of its corporate officers, directors, or trustees and none of its employees who will directly provide services under this Agreement are immediate family members of any member of the Wake County Board of Education or of any principal or central office staff administrator employed by the Board. For purposes of this provision, "immediate family" means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law relationships. Should Consultant become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Agreement, Consultant shall immediately disclose the family relationship in writing to the Superintendent of the Schools. Unless formally waived by the Board, the existence of a family relationship covered by this Agreement is grounds for immediate termination by Owner without further financial liability to Consultant.
- 1.15 RESTRICTED COMPANIES LISTS: Consultant represents that as of the date of this Agreement, Consultant is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Consultant also represents that as of the date of this Agreement, Consultant is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.
- 1.16 Sales and Use Tax: Consultant shall be responsible for complying with any applicable sales and use tax obligations imposed by Chapter 105, Article 5 of the North Carolina General Statutes.
- 1.17 INDEMNIFICATION:
- 1.17.1 Notwithstanding anything to the contrary contained herein, the Consultant shall indemnify and hold harmless the Owner and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting solely from the Consultant's performance or failure to perform its obligations under this Agreement and/or caused solely by any negligent act or omission of the Consultant, anyone directly or indirectly employed by the Consultant or anyone for whose acts the Consultant may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article. The parties agree that this indemnification clause is an "evidence of Indebtedness" for purpose of N.C. Gen. Stat. § 6-21.2. The parties also specifically acknowledge that the Owner is a public body and it is the intent of the parties that the Owner no incur any expenses when the Engineer is solely responsible for the claims.
- 1.17.2 Notwithstanding anything to the contrary contained herein, the Owner shall indemnify and hold harmless the Consultant and its agents and employees from and against all claims, damages, losses and expenses arising out of or caused solely by any negligent act or omission of the

Owner. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

- 1.18 OWNER DESIGNEE: The parties acknowledge that the Owner has authorized the Superintendent or designee to enter into service contracts involving expenditures of up to \$100,000. The parties further acknowledge that the Owner may perform all or part of its obligations pursuant to this Agreement through the Superintendent or designee.

## **ARTICLE 2**

### **PROPERTY INFORMATION**

- 2.1 The following information shall be provided by the Owner as part of any IPPA issued during the term of this Agreement:
- 2.1.1 Legal Description;
- 2.1.2 Common Description; and/or
- 2.1.3 Property lines and means of access.
- 2.2 The Consultant shall contact the appropriate person(s) prior to accessing the site.

## **ARTICLE 3**

### **INDIVIDUAL PROJECT INFORMATION**

- 3.1 The following information, if required, shall be provided by the Consultant as part of any IPPA issued during the term of this Agreement:
- 3.1.1 Preliminary Investigation and Report
- Prior to commencing building design, a preliminary analysis is required. Project information is limited to:
- A site plan showing building locations being considered, suggested locations of a minimum number of boring, and the minimum depth of each boring.
  - A general description of the building type being considered, provided as an attachment hereto and identified in Article 9.
- 3.1.2 Design Investigation and Report
- A site plan showing property lines, means of access to the site, proposed outline and location of the building(s).
  - Information regarding existing structures which may be affected by the proposed construction.

## **ARTICLE 4**

### **SAMPLING AND TESTING**

- 4.1 The Consultant shall propose a benchmark to be used as reference for ground elevations.
- 4.2 BORINGS:

- 4.2.1 The location and depth of the borings proposed by the Consultant shall be shown on a sketch identified in subparagraph 3.1.1 accompanying this Agreement and listed in Article 9. If the Consultant finds it necessary to change the location or depth of any of these proposed borings, the Owner's Representative shall be notified and a new location or depth agreed upon between the Owner's Representative and the Consultant.
- 4.2.2 If unusual conditions are encountered, including but not limited to unanticipated materials which cannot be penetrated by standard sampling equipment, the Consultant shall immediately consult with the Owner's Representative. The Consultant shall take measures as required to obtain the necessary information, subject to the Owner's Representative's approval.
- 4.2.3 The Consultant shall advise the Owner's Representative as to any further exploration and testing required to obtain information that the Consultant requires for a professional interpretation of subsurface conditions at the building site and shall perform such additional work as authorized by the Owner. The extent of exploration undertaken shall be consistent with the scope of the project indicated by the information given above and any drawings attached hereto. Sampling operations for both disturbed and undisturbed samples shall be in accordance with recommended American Society for Testing and Materials (ASTM) Standards and other procedures, and as necessary to produce the information required for the Report(s).
- 4.3 DRILLING AND SAMPLING METHODS:
- 4.3.1 Unless otherwise stipulated, drilling and sampling will be performed in accordance with current applicable ASTM Standards and other standards, including but not limited to ASTM Standards D1586, D1587, and D2113. Samples of soil shall be taken at the ground surface, at two feet below existing grade and at each identifiable change in condition, but not further apart than five feet in each of the borings unless otherwise specified on the boring drawing(s). Where clayey cohesive soils are encountered, thin-walled tube samples shall be taken of representative strata. Split-spoon samples shall be placed in sealed jars labeled with the following information: (1) boring numbers, (2) sample number, (3) sample depth, (4) blows per increment required to drive sample as per applicable standards, (5) date, (6) Project name, (7) Sampling Technician's name.
- 4.3.2 Rock cores shall be not less than 1 3/8 inches in diameter, and shall be placed in core boxes properly labeled as indicated above.
- 4.3.3 The samples shall be preserved and field logs prepared either by a Consultant or by an experienced Soil Technician acting under the supervision of a Consultant.
- 4.3.4 The Consultant shall notify the Owner's Representative before drilling equipment is removed from the site and advise the Owner's Representative as to the field description of soil conditions encountered. The Consultant shall perform such additional borings or other exploration as may be authorized by the Owner.

## **ARTICLE 5**

### **FIELD AND LABORATORY REPORTS**

- 5.1 FORMAT:
- 5.1.1 All segments of the reports covering the investigations and analysis shall be made on white paper, 8 1/2 X 11 inches suitable for photocopying and bound in booklet form. If larger drawings are absolutely necessary, they shall be folded and bound into the booklet. Written reports and analysis shall be on Consultant's letterhead. Each drawing shall carry a title block which contains the Project name and the Consultant's name and address, the date of the subsurface investigation, the date of the drawings, the initials of the person in charge of the crew making the investigation, the initials of the drafter, and the initials of the Professional Engineer who is the responsible checker.

- 5.2 REPORTS:
- 5.2.1 All data required to be recorded to the ASTM Standards or other standard test methods employed shall be obtained, recorded in the field and referenced to boring numbers; soil shall be classified in the field logs in accordance with current applicable ASTM Standards and other standards, including but not limited to ASTM Standard D2488, but the classification for final logs shall be based on the field information, plus results of tests plus further inspection of samples in the laboratory by the Consultant preparing the reports.
- 5.2.2 Include with the report a chart illustrating the soil classification criteria and the terminology and symbols used on the boring logs.
- 5.2.3 Identify the ASTM Standards or other recognized standard sampling and test methods utilized.
- 5.2.4 Provide a plot plan giving dimensioned locations of test borings.
- 5.2.5 Provide vertical sections for each boring plotted and graphically presented showing number of borings, sampling method used, date of start and finish, surface elevations, description of soil and thickness of each layer, depth to loss or gain of drilling fluid, hydraulic pressure required or number of blows per foot (N value) and, where applicable, depth to wet cave-in, depth to artesian head, groundwater elevation and time when water reading was made (repeat observation after 24 hours) and presence of gases. Note the location of strata containing organic materials, wet materials or inconsistencies that might affect engineering conclusions.
- 5.2.6 Describe the existing surface conditions and summarize the subsurface conditions found to be present.
- 5.2.7 Provide a profile and/or topographic map of rock or other bearing stratum.
- 5.2.8 Analyze the probable variations in elevation and movements of subsurface water due to seasonal influences.
- 5.2.9 Report all laboratory determinations of soil properties.
- 5.3 DISPOSITION OF SAMPLES: After all laboratory tests and the relevant reports have been completed, samples may be discarded by the Consultant.

## **ARTICLE 6**

### **FOUNDATION ENGINEERING EVALUATION AND RECOMMENDATIONS**

- 6.1 The Consultant shall analyze the information developed by investigation or otherwise available to the Consultant, including those aspects of the subsurface conditions which may affect design and construction of proposed structures, and shall consult with the Owner's Representative and the Consultant on the design and engineering requirements of the Project. Based on such analysis and consultation, the Consultant shall submit a professional evaluation and recommendations for the necessary areas of consideration, including but not limited to the following:
- 6.1.1 Foundation support of the structure and slabs, including soil bearing pressures, bearing elevations, foundation design recommendation and anticipated settlement.
- 6.1.2 Anticipation of, and management of, groundwater for design of structures and pavements.
- 6.1.3 Lateral earth pressures for design of walls below grade, including backfill, compaction and subdrainage, and their requirements.
- 6.1.4 Soil material and compaction requirements for site fill, construction backfill, and for the support of structures and pavements.
- 6.1.5 Pavement design.

- 6.1.6 Design criteria for temporary excavation and temporary protection such as excavation sheeting, underpinning and temporary dewatering systems.
- 6.1.7 Stability of slopes.
- 6.1.8 Seismic activity.
- 6.1.9 Frost penetration depth and effect.
- 6.1.10 Analysis of the effect of weather and/or construction equipment on soil during construction.
- 6.1.11 Analysis of soils to ascertain presence of potentially expansive, deleterious, chemically active or corrosive materials or conditions, or presence of gas.
- 6.1.12 Evaluation of depth of material requiring rock excavation methods for removal.

## **ARTICLE 7**

### **CONSTRUCTION SERVICES**

- 7.1 Services to be provided during various contractor operations, if any, shall be as described in separate IPPAs to be attached as an addendum to this Agreement.
- 7.2 Field Representation:
  - 7.2.1 The presence of the Consultant or its subcontractor's field personnel, either full-time or part-time, may be for the purpose of providing project administration, assessment, observation and/or field testing of specific aspects of the project as authorized by Owner. The presence of the Consultant does not relieve the contractor of its responsibilities for performing the work in accordance with the plans and specifications.
  - 7.2.2 The services of the Consultant do not include general supervision or direction of the means, methods or actual work of contractors not retained by the Consultant unless the IPPA states that any or all of those services are included.
  - 7.2.3 The Consultant will not be responsible for jobsite safety or security other than for the Consultant's employees and subcontractors. The Consultant does not have the duty or right to stop the work of other entities or individuals.

## **ARTICLE 8**

### **ADDITIONAL REQUIREMENTS**

- 8.1 This Agreement and its Exhibits, Attachments and any IPPAs represent the entire and integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant.
- 8.2 This Agreement shall be governed by the laws of the State of North Carolina.
- 8.3 If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 8.4 Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.

- 8.5 The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.
- 8.6 For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.
- 8.7 This Agreement may be executed in any number of counterparts but all of which together will constitute one and the same agreement. The Parties agree that for contract sums not exceeding \$10,000,000, scanned, faxed, and/or electronically transmitted copies of this Agreement will have the same validity and force as an original, and that scanned, faxed, or electronic signatures shall be deemed original signatures for this Agreement and given the same legal effect as original signatures, each of which shall be deemed an original, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, which shall be sufficient evidence by any one thereof.
- 8.8 This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns, trustees and personal representatives of the Owner, as well as the permitted assigns and trustees of the Consultant.
- 8.9 The Consultant shall not assign, subcontract, sublet or transfer its interest in this Agreement without the written consent of the Owner, except that the Consultant may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval of the Owner.
- 8.10 If (1), the Owner abandons an IPPA that has been incorporated into this Agreement, or an IPPA is stopped for more than six (6) months due to actions taken by the Owner, or under an order of any court of other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable through no act or fault of the Consultant or its agents or employees, or (2), the Owner has failed to substantially perform in accordance with the provisions of this Agreement due to no fault of the Consultant and such nonperformance continues without cure for a period of thirty (30) days after the Owner receives from the Consultant a written notice of such nonperformance (including a detailed explanation of the actions of the Owner required for cure), the Consultant may, upon fifteen (15) days additional written notice to the Owner, terminate the IPPA, without prejudice to any right or remedy otherwise available to the Owner and without terminating or otherwise affecting any other portion of this Agreement, and recover from the Owner payment for all services performed to the date of the notice terminating that portion of this Agreement.
- 8.11 Upon the appointment of a receiver for the Consultant, or if the Consultant makes a general assignment for the benefit of creditors, the Owner may terminate this Agreement, without prejudice to any right or remedy otherwise available to the Owner, upon giving three (3) days written notice to the Consultant. If an order for relief is entered under the bankruptcy code with respect to the Consultant, the Owner may terminate this Agreement by giving three (3) working days written notice to the Consultant unless the Consultant or the trustee: (1), promptly cures all breaches; (2), provides adequate assurances of future performance; (3), compensates the Owner for actual pecuniary loss resulting from such breaches; and (4), assumes the obligations of the Consultant within the statutory time limits.
- 8.12 If the Consultant refuses or fails, except in cases for which extension of time is provided, to supply sufficient properly skilled staff or proper materials, or disregards laws, ordinances, rules, regulations or orders of any public authority jurisdiction, or otherwise violates or breaches any term or provision of this Agreement, then the Owner may, without prejudice to any right or remedy otherwise available to the Owner, and after giving the Consultant written notice, terminate this Agreement.
- 8.13 Upon termination of this Agreement by the Owner under paragraph 8.11 or 8.12 it shall be entitled to furnish or have furnished the Services to be performed hereunder by the Consultant by whatever method the Owner may deem expedient. Also, in such cases, the Consultant

shall not be entitled to receive any further payment until completion of the Work; and the total compensation to the Consultant under this Agreement shall be the amount which is equitable under the circumstances. If the Owner and the Consultant are unable to agree on the amount to be paid under the foregoing sentence, the Owner shall fix an amount, if any, which it deems appropriate in consideration of all of the circumstances surrounding such termination, and shall make payment accordingly.

- 8.14 The Owner may, upon thirty (30) days written notice to the Consultant terminate this Agreement, in whole or in part, at any time for the convenience of the Owner, without prejudice to any right or remedy otherwise available to the Owner. Upon receipt of such notice, the Consultant shall immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of the Owner, the Consultant's sole and exclusive right and remedy is to be paid for all work performed and to receive equitable adjustment for all work performed through the date of termination. The Consultant shall not be entitled to be paid any amount as profit for unperformed services or consideration for the termination of convenience by the Owner.
- 8.15 Should the Owner terminate this agreement as provided for by 8.11, 8.12, or 8.14, the Owner will acquire such drawings, including the ownership and use of all drawings, specifications, documents and materials relating to the Project prepared by or in the possession of the Consultant. The Consultant will turn over to the Owner in a timely manner and in good unaltered condition all original drawings, specifications, documents and materials.
- 8.16 The payment of any sums by the Owner shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Consultant.
- 8.19 Except as otherwise set forth in this Agreement, the Consultant and the Owner shall not be liable to each other for any delays in the performance of their respective obligations and responsibilities under this Agreement which arise from causes beyond their control and without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, atmospheric condition of unusual severity, war, state or local government acting in its sovereign capacity, and strikes. Owner shall not be liable to the Consultant for acts or failures to act by the Contractor or the Owner's consultants.
- 8.20 Whenever renderings, photographs of renderings, photographs of models, photographs, drawings, announcements, or other illustration or information of the Project are released for public information, advertisement or publicity, appropriate and proper credit for architectural and other services shall be given to the Consultant and Owner's Representative respectively.

## **ARTICLE 9**

### **ATTACHMENTS TO MASTER**

- 9.1 Consultant's rate schedule as referenced in Paragraph 1.3 as Exhibit A.
- 9.2 Consultant's Insurance Certificate(s) as referenced in Paragraph 1.5.

## ARTICLE 10

## DELIVERY OF AGREEMENT

Upon execution and receipt by both parties, this document and all attachments listed in Articles 1 and 9 shall form the Agreement between the Owner and the Consultant.

In witness whereof, each individual executing this agreement acknowledges that he/she/it is authorized to execute this agreement and further acknowledges the execution of this agreement the day and year first written above.

**OWNER: WAKE COUNTY BOARD OF EDUCATION**

By: \_\_\_\_\_ (Seal)  
(name) Chair

Attest: \_\_\_\_\_ (Seal)  
(name) Secretary

This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act. G.S. 115C-441(a).

Finance Officer

Date

**CONSULTANT:**

(Type name of PA or PC)

By: \_\_\_\_\_

(Print Name)

(Corporate Title)

North Carolina \_\_\_\_\_ County \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_ County,  
North Carolina, do hereby certify that \_\_\_\_\_,  
(name)

\_\_\_\_\_ of \_\_\_\_\_, personally  
(corporate title) (name of corporation)  
appeared before me this day and acknowledged that he as  
\_\_\_\_\_ being authorized to execute contracts on behalf  
(corporate title)  
of and to otherwise bind \_\_\_\_\_ to the obligations  
(name of corporation)

and responsibilities in the foregoing instrument, executed the foregoing on behalf of the corporation.

Date: \_\_\_\_\_ (Official Seal)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_