

MASTER MECHANICAL ENGINEERING SERVICES AGREEMENT

BETWEEN

Wake County Board of Education

hereinafter referred to as the Owner

AND

(name)

hereinafter referred to as the Engineer

For multiple projects started between July 1, 20[] and June 30, 20[]

MASTER MECHANICAL ENGINEERING SERVICES AGREEMENT

AGREEMENT

made this ____ day of ____ in the year of Two Thousand ____

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

and the Engineer: **(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 Engineer 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 Engineer shall not provide any services or any work without an IPPA. The execution of this Agreement does not guarantee that any IPPAs or work will be authorized by the Owner.
- 1.2 **TIME:** The work authorized by the IPPA shall be completed and delivered to the Owner as stated in the IPPA. In the event that circumstances beyond the Engineer's control force a delay that prohibits or may prohibit the Engineer's compliance with this Paragraph, the Engineer shall inform the Owner immediately. The Owner shall evaluate the circumstances presented by the Engineer to the Owner and shall inform the Engineer of any time extension authorized.
- 1.3 **COMPENSATION:** The Engineer 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 Engineer services (including the furnishing of all materials, apparatus, labor and any required insurance). Exhibit A shall specify the hourly rate schedule for any services that may be utilized under this Agreement. The IPPA shall specify the design consulting services required for the Individual Project and shall state the maximum compensation authorized for the work specified in the IPPA. The Engineer 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 Engineer 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 Engineer any compensation or any work. The Engineer 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 work shall be directed to the Owner at the following address:

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

1.4.2 Payment shall be made within forty-five (45) days of the successful completion of the work and the receipt of an acceptable invoice from the Engineer.

1.5 INSURANCE:

The Engineer 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 Engineer'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 (2) omissions for which the Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Professional Liability and Worker's Compensation) required under this agreement shall include an endorsement naming 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 Engineer 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 referenced above.

1.6 PROTECTION OF PROPERTY: The Engineer shall contact the Owner for information regarding the site and 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 Engineer's entry, including, but not limited to, repair of lawns and plantings, removal of all superfluous stakes or other items which might prove dangerous to children, and removal of brush cut by the Engineer.

1.7 QUALIFICATIONS: All work shall be performed by qualified personnel under the supervision of a North Carolina Registered Professional Engineer, and the documents submitted shall bear the Engineer's seal and certification.

1.8 USE OF DRAWINGS: It is understood that the Owner, or his representatives and/or agents, may reproduce the drawings without modifications and distribute the prints without incurring obligation for additional compensation to the Engineer. One reproducible of all work products shall be provided to the Owner for this purpose.

- 1.9 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.
- 1.10 MISCELLANEOUS: The Engineer 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).
- 1.10.1 APPLICABLE WAKE COUNTY BOARD OF EDUCATION POLICIES. The Engineer 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 Engineer related policies can be viewed at <https://www.wcpss.net/Page/45862> and are incorporated into this Agreement by reference.
- 1.10.2 The Engineer shall comply with the Owner's site or school building access procedures when working on any existing school campus.
- 1.11 APPLICABLE LAWS: This Agreement and the relationship of the parties shall be governed by the laws of the state of North Carolina.
- 1.11.1 Engineer shall comply with all applicable laws and regulations in providing services under this Agreement. Engineer shall not employ any individuals to provide services to the Owner who are not authorized by federal law to work in the United States. Engineer 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. Engineer 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. Engineer 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.
- 1.12 LUNSFORD ACT/CRIMINAL BACKGROUND CHECKS: The Engineer 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 Engineer 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 Engineer'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 Engineer 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 Engineer 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 Engineer 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 Engineer further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. The

Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer 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.

- 1.13 ANTI-NEPOTISM: Engineer 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 Engineer 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, Engineer 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 Engineer.
- 1.14 RESTRICTED COMPANIES LISTS: Engineer represents that as of the date of this Agreement, Engineer is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Engineer also represents that as of the date of this Agreement, Engineer 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.
- 1.15 SALES AND USE TAX: Engineer 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.
- 1.16 INDEMNIFICATION:
- 1.16.1 Notwithstanding anything to the contrary contained herein, the Engineer 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 Engineer 's performance or failure to perform its obligations under this Agreement and/or caused solely by any negligent act or omission of the Engineer, anyone directly or indirectly employed by the Engineer or anyone for whose acts the Engineer 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 not incur any expenses when the Engineer is solely responsible for the claims.
- 1.16.2 Notwithstanding anything to the contrary contained herein, the Owner shall indemnify and hold harmless the Engineer 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.

- 1.17 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 DEFINITIONS

The following words and phrases where appearing in initial capitalization, shall for the purposes of this Agreement have the following meanings:

- 2.1 PROJECT: The individual school Project identified in the IPPA.
- 2.2 SERVICES: The Services to be performed by the Engineer under this Agreement shall consist of the Basic Services described in Article 3 and any Additional Services under Article 4.
- 2.3 CONSTRUCTION CONTRACT DOCUMENTS: The Construction Contract Documents shall consist of the plans and specifications prepared by the Engineer, and any addenda and change orders thereto, and the Owner-Contractor Agreement, all of which shall be compatible and consistent with this Agreement.
- 2.4 CONTRACTOR: The Contractor is the person or entity which enters into an agreement with the Owner to perform the construction of or any construction on the Individual Project, including, without limitation, the providing of labor, materials, and equipment incorporated or to be incorporated into the Individual Project. The term "Contractor" means the Contractor or its authorized representative, but excludes the Owner's Representative and the Engineer.
- 2.5 PROGRAM OF REQUIREMENTS: The Program of Requirements or "Program" is the detailed written summary of the requirements of the facility which sets forth the Owner's design objectives, constraints and criteria, including space requirements and relationships, quality levels, flexibility and expandability, special equipment and systems and site requirements, as described in the IPPA.
- 2.6 MILESTONE SCHEDULE: The Milestone Schedule is the description and definition of the phasing, sequencing and timing of the major Individual Project activities for design, construction procurement, construction and occupancy as described in the IPPA.
- 2.7 DESIGN PHASE CHANGE ORDER: A Design Phase Change Order is the form of documentation from the Owner approving and authorizing a modification to the Program, Budget, Milestone Schedule, or previously approved Design Phase documents.

ARTICLE 3 BASIC SERVICES

- 3.1 SCOPE OF SERVICES:
- 3.1.1 The Basic Services to be provided by the Engineer shall be performed in the phases described hereinafter and shall include all services customarily furnished by an engineer and its consultants in accordance with generally accepted engineering practices consistent with the

terms of this Agreement, and specifically identified and described in an IPPA executed pursuant to this Agreement.

3.1.2 This Agreement and any IPPAs describe the Engineer's Basic Services. The Basic Services will generally be described in three phases in each IPPA (Design, Construction, and Final Completion of Design). These phases may be divided to facilitate bidding of separate trade contracts or phased construction activities. The Owner shall have the right to determine early, late and other separate contract awards and may modify the Milestone Schedule to change the number and times of issue of various contract document packages at no additional compensation to the Engineer.

3.1.3 It is the responsibility of the Engineer to ensure that the Individual Project Construction Documents require that no asbestos-containing materials are to be incorporated in the Project.

3.2 ENGINEER'S PROFESSIONAL RESPONSIBILITY AND STANDARD OF CARE:

3.2.1 By execution of this Agreement, the Engineer warrants that (a) it is an experienced and duly registered firm or individual having the ability and skill necessary to perform all the Services required of it under this Agreement in connection with the design and construction of a project having the scope and complexity of the Individual Projects contemplated herein; (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 the design and construction of the Project (such laws, rules and regulations including, but not limited to, all local ordinances, requirements of building codes of city, county, state and federal authorities which are applicable to the Project, local sanitary laws and rules and regulations, and all orders and interpretations by governing public authorities of such ordinances, requirements, codes, laws, rules and regulations in effect at the time of commencement of services on the Project), and that all drawings, specifications and other documents prepared by the Engineer shall be prepared in accordance with and shall accurately meet, reflect and incorporate all such laws, rules and regulations.

3.2.2 The Engineer hereby represents and agrees that the drawings, specifications and other documents prepared by it pursuant to this Agreement shall be complete and functional, except as to any deficiencies which are due to causes beyond the control of the Engineer, and that the Individual Project, if constructed in accordance with the drawings, specifications and other documents, shall be structurally sound and a complete and properly functioning facility in accordance with the terms of this Agreement.

3.2.3 The Engineer shall be responsible for any errors, inconsistencies or omissions in the drawings, specifications, and other documents. The Engineer will correct at no additional cost to the Owner any and all errors and omissions in the drawings, specifications and other documents prepared by the Engineer. The Engineer further agrees, at no additional cost, to render assistance to the Owner in resolving problems relating to the design or specified materials.

3.2.4 It is the responsibility of the Engineer to make certain that, at the time the Individual Project is bid, all drawings, specifications and other documents are in accordance with applicable laws, statutes, building codes and regulations and that appropriate reviews and approvals are requested and obtained from federal, state and local governments.

3.2.5 It shall be the responsibility of the Engineer throughout the period of performance under this Agreement to exercise the abilities, skills and care customarily used by Engineers 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.

3.3 INDIVIDUAL PROJECT REQUIREMENTS:

3.3.1 Each IPPA shall represent a separate and distinct construction project ("Individual Project"). Attached to each IPPA and made a part of this Agreement is the Design, Construction and Equipment Budget, a component of which is the Individual Project Construction Budget. The Individual Project Construction Budget shall be defined as the total cost of constructing the

Individual Project identified in the IPPA. A component of the Individual Project Construction Budget is the Construction Contract Award Price, hereinafter referred to as CCAP. The Engineer shall prepare drawings, specifications and other documents necessary so that the construction contract bid from a responsive, responsible bidding contractor, acceptable to the Owner, will be within the CCAP.

3.3.1.1 During the Design Phase of each Individual Project the Engineer shall prepare such estimates as it deems necessary, at no additional cost to the Owner, to assure itself that the estimated Individual Project cost is within the CCAP and shall supply such data, information or estimates as the Owner may require to substantiate the Engineer's contention that the Individual Project cost is within the CCAP.

3.3.1.2 With each Design Phase submittal of the Engineer to the Owner, the Engineer shall make the following statement in writing:

"The drawings, specifications, and other documents submitted herewith, in my/our professional opinion, fulfill the Program of Requirements. Further, in my/our professional opinion, the above mentioned documents submitted herewith have been prepared in accordance with the Engineering Services Agreement."

With each Design Phase submittal of the Engineer to the Owner and with his certification of the Final Payment to the contractor, the Engineer shall make the following statement in writing:

"No asbestos containing building materials have been specified and to the best of my/our knowledge and belief none have been incorporated into this Project."

3.3.2 Incorporated herein and made a part of this Agreement by reference as part of the IPPA is the Program of Requirements which defines the physical and environmental parameters for each Individual Project and establishes the design objectives and criteria. No deviations from the Program of Requirements shall be allowed without written approval for change, in the form of a Design Phase Change Order executed by the Owner and Engineer.

3.3.3 Incorporated herein and made a part of this Agreement by reference as part of the IPPA is the Milestone Schedule for each Individual Project which defines the sequence and timing of the design and construction activities. The Milestone Schedule is the schedule to be adhered to by the Engineer. No deviation from the Milestone Schedule shall be allowed without written approval for a change in the Milestone Schedule, in the form of a Design Phase Change Order executed by the Owner and Engineer. Should the Owner determine that the Engineer is behind schedule, the Engineer shall expedite and accelerate its efforts, including additional manpower and/or overtime, to maintain the approved design schedule at no additional cost to the Owner.

3.3.4 Incorporated herein and made a part of this Agreement by reference is the most recent version of the Wake County Public School System Design Guidelines (Design Guidelines), or the relevant portions thereof, which establish the technical objectives and parameters for the Project. The Engineer shall comply with the requirements of the Design Guidelines in performing its services pursuant to this Agreement.

3.4 PROJECT CONFERENCES:

3.4.1 Throughout all phases of the Individual Project, the Engineer and its consultants shall meet periodically with the Owner when reasonably requested. Participants shall be as determined by the Owner.

3.4.2 The Engineer shall be responsible for scheduling and attending any meetings necessary to properly coordinate the design effort including, without limitation, meetings with governing agencies, code officials and applicable utilities.

3.4.3 The Engineer shall be responsible for preparing accurate and complete minutes of all Individual Project conferences and distributing same to all participants.

3.5 SERVING AS WITNESS:

- 3.5.1 The Engineer shall provide testimony in public hearings, arbitration proceedings, and legal proceedings, and such testimony shall be provided without additional fee or charge to the Owner unless said testimony is requested by the Owner and consists of expert testimony not related to this Project or Work.
- 3.6 CONSTRUCTION WARRANTY:
- 3.6.1 The Engineer and its consultants shall assist the Owner in resolution of warranty issues as may be required to determine responsibility for deficiencies.
- 3.6.2 The Engineer and its consultants shall conduct an inspection of the Individual Project one (1) month prior to warranty expiration and provide to the Owner a written report specifying any warranty deficiencies which may exist.

ARTICLE 4 ADDITIONAL SERVICES

If any of the following Additional Services are authorized in advance by the Owner in writing, the Engineer shall furnish or obtain from others the authorized services. If authorized in advance, in writing, by the Owner, the Engineer shall be paid for these additional services by the Owner pursuant to the IPPA to the extent they exceed the obligations of the Engineer under this Agreement and the IPPA.

- 4.1 Providing fully detailed presentation models or presentation renderings.
- 4.2 Providing financial feasibility or other special studies.
- 4.3 Providing planning surveys or alternative site evaluations.
- 4.4 Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Individual Project other than general planning and Master Planning for future work as indicated by the Program of Requirements.
- 4.5 Making major revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given by the Owner or are due to causes beyond the control and without the fault and negligence of the Engineer or its consultants or agents.
- 4.6 Preparing supporting data and other services in connection with an Owner-initiated change order if the Basic Compensation is not commensurate with the services required of the Engineer.
- 4.7 Providing operating and maintenance manuals, training personnel for operation and maintenance, and consultation during operations other than initial start-up.
- 4.8 Providing soils sampling, classification and analysis; however, analysis of existing soils information and soils analysis during the Design Phase and recommendations needed during the Construction Phase of the Individual Project are not considered additional services.
- 4.9 Providing services of interior furnishings not included in the design contract.
- 4.10 Providing professional services made necessary by the default of a Contractor or by major defects in the Work of the Contractor in the performance of the Construction Contract.
- 4.11 Providing surveying services such as platting; mapping; subdivision agreements or recording subdivision plats.
- 4.12 Providing additional or extended services during construction made necessary by (a) defective work of the Contractor; (b) prolongation of the Construction Contract time by more than 90 days, provided the prolongation is not due to the fault or negligence of the Engineer, its employees, consultants or agents and (c) default under the Construction Contract due to delinquency or insolvency.

- 4.13 Providing extensive assistance in the initial start-up and test operations of equipment or systems which is beyond the scope of that normally required to insure proper operation in accordance with the design and specifications.
- 4.14 Providing additional services and costs necessitated by out-of-town travel required by the Engineer and approved by the Owner other than visits to the Individual Project and other than for travel required to accomplish the Basic Services.
- 4.15 Preparing supporting data and other services in connection with an owner-initiated change order to the extent that the change in the Basic Compensation resulting from the adjusted Contract Sum is not commensurate with the services required of the Engineer.
- 4.16 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing professional services of the type set forth in Basic Design Services as may be required in connection with the replacement of such Work.
- 4.17 Providing services after payment by the Owner of the Final Payment other than services called for in the Basic Services.
- 4.18 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted Engineerural practices consistent with the terms of this Agreement.

ARTICLE 5

TERMINATION OF AGREEMENT

- 5.1 If (a) the Owner abandons an Individual Project or an Individual Project is stopped for six (6) months, due to actions taken by the Owner, or under an order of any court or 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 Engineer or its agents or employees, or (b) the Owner has failed to substantially perform in accordance with the provisions of this Agreement due to no fault of the Engineer and such non-performance continues without cure for a period of thirty (30) days after the Owner receives from the Engineer a written notice of such non-performance (including a detailed explanation of the actions of the Owner required for cure), the Engineer may, upon fifteen (15) days' additional written notice to the Owner, terminate this Agreement, without prejudice to any right or remedy otherwise available to the Owner, and recover from the Owner payment for all services performed to the date of the notice terminating this Agreement.
- 5.2 Upon the appointment of a receiver for the Engineer, or if the Engineer 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 Engineer. If an order for relief is entered under the bankruptcy code with respect to the Engineer, the Owner may terminate this Agreement by giving three (3) working days written notice to the Engineer unless the Engineer or the trustee: (a) promptly cures all breaches; (b) provides adequate assurances of future performance; (c) compensates the Owner for actual pecuniary loss resulting from such breaches; and (d) assumes the obligations of the Engineer within the statutory time limits.
- 5.3 If the Engineer 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 Engineer seven (7) days written notice, terminate this Agreement.

- 5.4 Upon termination of this Agreement by the Owner under paragraph 5.2 and 5.3 it shall be entitled to furnish or have furnished the Services to be performed hereunder by the Engineer by whatever method the Owner may deem expedient. Also, in such cases, the Engineer shall not be entitled to receive any further payment until completion of the Work; and the total compensation to the Engineer under this Agreement shall be the amount which is equitable under the circumstances. If the Owner and the Engineer 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.
- 5.5 The Owner may, upon thirty (30) days' written notice to the Engineer 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 Engineer shall immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of the Owner, the Engineer'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 Engineer shall not be entitled to be paid any amount as profit for unperformed services or consideration for the termination of convenience by the Owner.
- 5.6 Should the Owner terminate this agreement as provided for under this Article, the Owner will acquire such drawings, including the ownership and use of all drawings, specifications, documents and materials relating to the Individual Project prepared by or in the possession of the Engineer. The Engineer will turn over to the Owner in a timely manner and in good unaltered condition all original drawings, specifications, documents, materials, and computer files.
- 5.7 The payment of any sums by the Owner under this Article 5 shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Engineer.

ARTICLE 6

OWNERSHIP OF DOCUMENTS/CONFIDENTIAL INFORMATION

- 6.1 Drawings and Specifications as instruments of service are and shall remain the joint property of the Engineer and the Owner whether the Individual Project for which they are made is built or not. Said documents and design concept are not to be used by the Engineer on other projects. The Owner shall retain reproducible copies of Drawings and Specifications for information and reference and use in connection with the Owner's use and occupancy of the Individual Project and for the Owner's future requirements, including without limitation any alteration or expansion in any manner the Owner deems appropriate without additional compensation of fee to the Engineer.
- 6.2 In order for the Engineer to fulfill this Agreement effectively, it may be necessary or desirable for the Owner to disclose to the Engineer confidential and proprietary information and trade secrets pertaining to the Owner's past, present and future activities. The Engineer hereby agrees to treat any and all information gained by it as a result of the Services performed hereunder as strictly confidential. The Engineer further agrees that it will not disclose to anyone outside of the authorized Project team (1) Owner's trade secrets during the period of this Agreement or thereafter or (2) Owner's confidential and proprietary information during the period of this Agreement or thereafter.

ARTICLE 7

ADDITIONAL REQUIREMENTS

- 7.1 This Agreement and its Exhibits, Attachments and any IPPAs represent the entire and integrated agreement between the Owner and the Engineer and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Engineer.
- 7.2 This Agreement shall be governed by the laws of the State of North Carolina.
- 7.3 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.
- 7.4 Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.
- 7.5 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.
- 7.6 For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.
- 7.7 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original 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, and the counterparts shall constitute one and the same instrument, which shall be sufficient evidence by any one thereof.
- 7.8 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 Engineer.
- 7.9 The Engineer shall not assign, subcontract, sublet or transfer its interest in this Agreement without the written consent of the Owner, except that the Engineer may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval of the Owner.
- 7.10 Except as otherwise set forth in this Agreement, the Engineer 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 Engineer for acts or failures to act by the Contractor or the Owner's consultants.
- 7.11 Whenever renderings, photographs of renderings, photographs of models, photographs, drawings, announcements, or other illustration or information of the Individual Project are released for public information, advertisement or publicity, appropriate and proper credit for Engineerural and other services shall be given to the Engineer and Owner respectively.

ARTICLE 8

ATTACHMENTS TO MASTER

- 8.1 Engineer's rate schedule referenced in Paragraph 1.3 as exhibit A.

8.2 Insurance Certificate(s) required by Paragraph 1.5

My commission expires: _____