

**MASTER WETLAND DELINEATION AND/OR ENVIRONMENTAL CONSULTING
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 WETLAND DELINEATION AND/OR ENVIRONMENTAL CONSULTING 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 Proposal Agreements.

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 IPPAs or work will be authorized by the Owner.
- 1.2 TIME: The work specified in this Agreement and in any IPPA shall be completed according to the schedule outlined in the IPPA. Time is of the essence. In the event that circumstances beyond the Consultant's control force a delay that prohibits or may prohibit the Consultant's compliance with this Paragraph, the Consultant shall inform the Owner immediately. The Owner shall evaluate the circumstances presented by the Consultant to the Owner and shall inform the Consultant of any time extension authorized.
- 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 rate schedule for environmental consulting services that may be utilized under this Agreement. The IPPA shall specify the environmental consulting 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 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 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 (2) 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 Claim

- 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 Professional Liability and Workers' 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 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 referenced above.

- 1.6 PROTECTION OF PROPERTY: The Consultant 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 Consultant's entry, including, but not limited to, repair of lawns and plantings, removal of all construction equipment and materials or other items which might prove dangerous to children, and removal of trash by the Consultant to a properly licensed disposal site.

- 1.7 QUALIFICATIONS: All work shall be performed by qualified personnel under the supervision of a North Carolina Licensed or Registered Professional Consultant, and the document(s) submitted shall bear the Consultant's seal and certification to that effect.

- 1.7.1 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 in connection with the design and construction of a project having the scope and complexity of the Project 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 Consultant shall be prepared in accordance with and shall accurately meet, reflect and incorporate all such laws, rules and regulations.

- 1.7.2 The Consultant 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 Consultant, 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.
- 1.7.3 The Consultant shall be responsible for any errors, inconsistencies or omissions in the drawings, specifications, and other documents. The Consultant 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 Consultant. The Consultant further agrees, at no additional cost, to render assistance to the Owner in resolving problems relating to the design or specified materials.
- 1.7.4 It is the responsibility of the Consultant 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.
- 1.7.5 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.
- 1.8 **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 in connection with the use or disposition of the property without incurring obligation for additional compensation to the Consultant. 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, 20__, through June 30, 20__. 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, 20__, through June 30, 20__.
- 1.10 **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).
- 1.10.1 **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.
- 1.10.2 The Consultant 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.
- 1.11.2 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. The 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. The 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. The 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.

- 1.12 LUNS福德 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.
- 1.13 ANTI-NEPOTISM: Unless disclosed to the School System in writing prior to the Board’s approval and execution of the Contract, 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. Unless disclosed prior to the execution of the Contract or formally waived by the Wake County Board of Education at a Board meeting, the existence of a family relationship covered by this Agreement is grounds for immediate termination by Owner without further financial liability to Consultant.

- 1.14 **CONTRACTOR'S REPRESENTATIONS:** Consultant represents that as of the date of this Contract, 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 Contract, 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. Consultant is duly qualified to do business in North Carolina. If Consultant is a business entity that is not registered in North Carolina, prior to beginning the services described by this Contract, Consultant shall either (i) obtain a certificate of authority from the Secretary of State for North Carolina, pursuant to N. C. Gen. Stat. § 55-15-03, or (ii) provide a letter from an attorney indicating that the attorney has reviewed N. C. Gen. Stat. § 55-15-01 and determined that Consultant is not required to obtain a certificate of authority pursuant to N. C. Gen. Stat. § 55-15-01(b).
- 1.15 **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.
- 1.16 **INDEMNIFICATION:**
- 1.16.2 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 not incur any expenses when the Consultant is solely responsible for the claims.
- 1.16.3 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.
- 1.17 **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

SCOPE OF SERVICES

- 2.1 The Consultant shall, in performing services under this Agreement, exercise the highest degree of care and perform such services in an expert fashion.
- 2.2 The services to be performed are generally described, but are not limited to those set forth in this Agreement, any applicable IPPA, and any additional services as may be directed by the Owner.
- 2.3 In addition to the services described in the IPPA, the Consultant shall perform the following services as required: (1.) Acquire and review existing topographic maps, National Wetlands Inventory maps, National Cooperative Soil Survey (NCSS) soil surveys and other existing information necessary for determining the potential locations of streams and wetlands within the project boundaries. (2.) Conduct onsite investigations (i.e., examine and document required soil, hydrology and vegetation characteristics) of all streams and wetlands using methods set forth in the United States Army Corp of Engineers (USACE) Wetland Delineation Manual, North Carolina Division of Water Quality (NCDWQ) Identification Methods for the Origins of Intermittent and Perennial Streams, and/or other relevant and appropriate publications. (3.) Prepare and submit a Wetland Delineation Package to USACE and Owner and a Stream Buffer Determination Package to NCDWQ and Owner. (4.) Submit a report to Owner that includes the findings of the studies, a map of the estimated wetland areas, streams and ponds, along with a narrative discussion of each delineated wetland, stream and stream buffer, including Cowardin classifications and summaries of key soil, vegetation and hydrology characteristics used in making wetland boundary determinations and applicable riparian buffer subjectivity determination. (5.) Flag wetland and stream boundaries in the field with sequential alphanumeric labels. (6.) Locate flagging with a Global Positioning System (GPS) for use in preparing a preliminary map of jurisdictional wetlands and buffered streams. (7.) Provide GPS coordinates to project surveyor for field surveying of streams and wetlands as required by NCDWQ and USACE. (8.) Coordinate site visits with NCDWQ and USACE as necessary to obtain Jurisdictional Determination of wetlands and concurrence with stream locations and buffer subjectivity. (9.) Deliver to owner map of identified features (wetlands, streams and stream buffers) in digital format compatible with AutoCAD and ArcInfo.
- 2.4 Environmental Site Assessments: Furnish the necessary personnel, materials, services, equipment, facilities, and otherwise do all things necessary for and incident to the performance of the work specified in this Scope of Work in a manner consistent with accepted professional standards.
- 2.5 Phase I Environmental Site Assessment (also referred to as an Appropriate Inquiry): Conduct appropriate inquiry into the previous ownership and uses of a property in an effort to identify potential liability and risk associated with environmental and public health considerations concerning a property. Address the potential contamination by hazardous substances, evaluate whether readily-available evidence indicates whether hazardous materials may be located on or under the property surface, and attempt to determine if existing conditions may violate known, applicable environmental regulations. Review commonly known information about the property and investigate by obvious inspection, including but not limited to interviews with property owners and tenants; review of site history, including but not limited to real property title records, tax records, aerial photography, city directories, and Sanborn maps; review of the available regulatory database searches for onsite and offsite environmental impacts within the ASTM recommended distances; review of topographic maps and soil surveys for existing and previous site conditions and development; comprehensive site visit to evaluate potential onsite and offsite environmental conditions which may impact the site; and limited asbestos and/or lead based paint testing within onsite existing structures, if necessary. The Consultant shall provide a written report of the findings. A draft report will be provided for review prior to issuance of a final document. The Consultant's recommendations will be discussed prior to publication.
- 2.6 Phase II Assessment: If necessitated by Phase I findings, Consultant shall prepare a Phase II Environmental Site Assessment examining the sites under consideration for the proposed action. The Phase II Assessment will be a continuance of the investigation conducted during the Phase I Environmental Site Assessment. Information reviewed for the Phase II shall include some or all of the following items, as well as other sources of information as the Consultant

deems necessary for the successful completion of the study: (a) Sampling of soil from representative locations throughout the entire site delineated area, or other areas as specified by the scope of work, to determine the existence of any significant contamination from past or present circumstances and activities; (b) Sampling of suspect building materials for such contaminants as asbestos, lead, radon, and other materials; (c) Installing groundwater monitoring wells and collecting and analyzing groundwater samples; (d) Monitoring ambient air quality; (e) vapor intrusion evaluations; (f) Sampling and identifying potentially hazardous wastes stored on-site; (g) Options for abatement of any and all contaminated materials on the site in full compliance with existing State and Federal regulations. The Consultant shall provide a written report of the findings. A draft report will be provided for review prior to issuance of a final document. The Consultant's recommendations will be discussed prior to publication.

- 2.7 The Consultant shall maintain such supplies, equipment, and employees as are necessary to provide the services required under this Agreement and the IPPA.
- 2.8 The services provided by the Consultant to the Owner shall not in any way infringe on the rights of third parties.
- 2.9 The Consultant understands that consistent with all applicable laws, rules and regulations, the Owner shall have the right to modify the services required under this Agreement.
- 2.10 The Consultant shall be informed about all federal, state, and local laws, rules, regulations, and ordinances applicable to the services required and work performed under this Agreement and shall perform all services in compliance with all such federal, state, and local laws, rules, regulations, and ordinances.

ARTICLE 3

ADDITIONAL REQUIREMENTS

- 3.1 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.
- 3.2 This Agreement shall be governed by the laws of the State of North Carolina.
- 3.3 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.
- 3.4 Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.
- 3.5 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.
- 3.6 For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.
- 3.7 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 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.

- 3.8 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.
- 3.9 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.
- 3.10 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 non-performance continues without cure for a period of thirty (30) days after the Owner receives from the Consultant a written notice of such non-performance (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 IPPA.
- 3.11 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 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.
- 3.12 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 any or all IPPAs under this Agreement.
- 3.13 Upon termination of this Agreement by the Owner under paragraph 3.11 or 3.12 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.
- 3.14 The Owner may, upon thirty 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.

- 3.15 Should the Owner terminate this agreement as provided for by 3.11, 3.12, or 3.14, 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.
- 3.16 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.
- 3.19 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.

ARTICLE 4

ATTACHMENTS

- 5.1 Consultant's rate schedule referenced in Paragraph 1.3.
- 5.2 Sex Offender Check Certification required by Paragraph 1.12
- 5.3 Insurance Certificate(s) required by Paragraph 1.5

ARTICLE 5
DELIVERY OF AGREEMENT

Upon execution and receipt by both parties, this document and all attachments listed in Article 6 shall form the Agreement between the Owner and the Consultant. Attachments listed in Article 5 shall be added as Individual Consultant's requirements are identified, and upon acceptance by both parties, shall become part of this Agreement.

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)

Lindsay Mahaffey

Chair

Attest: _____ (Seal)

Catty Q. Moore

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)

(corporate title)

of _____, personally appeared before me this day and acknowledged that

(name of corporation)

he as _____ being authorized to execute contracts on behalf of and to otherwise

(corporate title)

bind _____ to the obligations and responsibilities in the foregoing instrument,

(name of corporation)

executed the foregoing on behalf of the corporation.

Date: _____

Notary Public

My commission expires: _____

(Official Seal)