

REQUEST FOR QUALIFICATIONS
PROFESSIONAL ENGINEERING SERVICES
FOR
WESTERN INTAKE PARTNERSHIP REGIONAL WATER
TREATMENT FACILITY PRELIMINARY ENGINEERING



CITY OF
DURHAM

DEPARTMENT OF WATER MANAGEMENT
NORTH CAROLINA

April 2021

REQUEST FOR QUALIFICATIONS

Professional Engineering Services for

Western Intake Partnership Regional Water Treatment Facility Preliminary Engineering

April 2021

I. INTRODUCTION

The City of Durham, Department of Water Management (Department) is soliciting Statements of Qualifications (SOQs) from consultants to provide professional engineering services for the Western Intake Partnership, for preliminary engineering of a Regional Water Treatment Facility.

Background

The Western Intake Partnership (WIP), consisting of four Jordan Lake Water Supply allocation holders (collectively, “Partners”) – the City of Durham, Orange Water and Sewer Authority (OWASA), Chatham County and the Town of Pittsboro - has initiated a program to access their Jordan Lake water supply storage allocations through a water supply intake on the west side of Jordan Lake, a water treatment facility on a site near the lake, and finished water pipelines to each of the Partners’ distribution systems. These water supply facilities are needed to support the Partners’ anticipated future growth. The Partners have contracted with HDR Engineering, Inc. of the Carolinas to provide program manager support.

The work completed by the WIP to date includes the *Jordan Lake Partnership Western Intake Feasibility Study* (Hazen and Sawyer, 2014) and the *Jordan Lake Western Intake Partners Economic Feasibility Study* (Raftelis Financial Consulting, 2018). Copies of these documents can be requested from the WIP Program Manager, Jeff Adkins, at jeff.adkins@hdrinc.com.

The *2014 Western Intake Feasibility Study* established regional Jordan Lake water supply alternatives at a conceptual level to assist the WIP in determining its preferred alternative to construct a water supply intake in the portion of Jordan Lake near Vista Point recreational area, a raw water pump station at the lake, a regional water treatment facility on nearby property owned by OWASA, new raw water transmission infrastructure between the raw water pump station and the WTF, and new finished water transmission infrastructure from the WTF to each WIP’s water distribution system. The initial facilities would be sized to meet 2040 maximum day demands, which were estimated in the *2014 Western Intake Feasibility Study* to be 33 mgd; ultimate maximum day demands were estimated to be 54 mgd. The *2018 Western Intake Partners Economic Feasibility Study* recommended the WIP develop a plan to have the new facilities online by 2031. Figure 1 illustrates the location of the proposed WTF, at the intersection of Seaforth Road and North Pea Ridge Road south of US Highway 64 in eastern Chatham County.

The WIP has determined that four Preliminary Projects will be undertaken by the Partnership beginning in 2021, to further define the required facilities and the ongoing Partnership. The projects are:

- Water Intake and Transmission Infrastructure Preliminary Engineering
- Regional Water Treatment Facility Preliminary Engineering
- Environmental Permitting
- WIP Partnership Governance

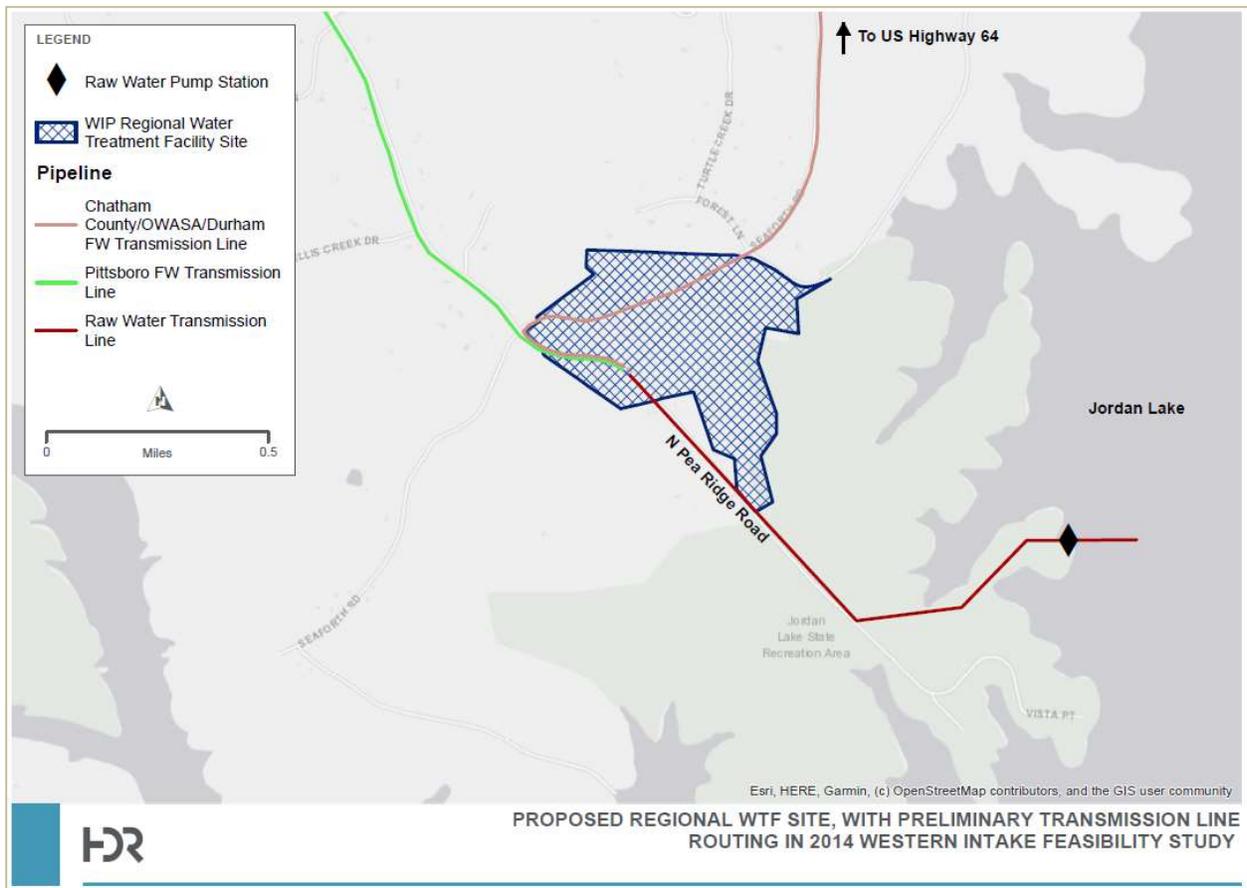


Figure 1

The City of Durham serves as the Lead Agency for the WIP, and in that capacity enters into necessary contracts in support of the WIP, including this contract for professional engineering services for WIP Regional Water Treatment Facility Preliminary Engineering.

The activities and management of the WIP are guided by the Management Team. The Management Team consists of a representative from each WIP member. The Management Team will advise the Lead Agency on the selection of the Engineer for this project.

II. SCOPE OF SERVICES

The Scope of Services will include Preliminary Engineering to define the basis for design of a regional water treatment facility (RWTF) for the WIP's Jordan Lake water supply, with the goal of increasing the water supply capacity for all the WIP members.

The contract for the selected consultant may consist of the following tasks. These tasks will be the basis for applying the City's Equal Business Opportunity Program (EBOP) policies and Underutilized Business Enterprise (UBE) goals.

1. Collect and review available data, water quality, drawings, and studies relevant to the Project.
2. In collaboration with the WIP Management Team, define the design criteria and design standards to be applied to the RWTF facilities and infrastructure. Review the initial and ultimate RWTF treatment capacity and update as necessary. Design criteria shall

consider both average and poor water quality conditions anticipated at the proposed intake location.

3. Identify all applicable federal, state, and local project permitting requirements.
4. Perform field investigations which may be necessary to define the project, including topographic land survey, geotechnical investigations, and preliminary desktop analysis of potential stream/wetland impacts. Formal stream and wetland delineations will be performed by others.
5. Review water quality sampling and analysis at the proposed intake sites at the proposed intake depth conducted by other program consultants to determine seasonal water quality variations and identify and evaluate water supply treatment options.
6. Prepare a technical document incorporating the following:
 - a. Raw water quality and treatability study based on anticipated water quality and regulatory goals. Raw water quality sampling to be performed by others. Coordinate with the *Water Intake and Transmission Infrastructure Preliminary Engineering* consultant regarding recommendations for provisions at the Raw Water Pump Station to improve raw water quality as it is conveyed to the RWTF.
 - b. Analysis of WIP finished water quality goals and chemical stability to maintain compatibility with blended systems, in coordination with the *Water Intake and Transmission Infrastructure Preliminary Engineering* consultant.
 - c. Identify and evaluate potential technologies capable of meeting established water quality and regulatory goals and conduct an initial desktop technology screening analysis to identify viable process trains for subsequent bench/pilot scale analysis.
 - d. Perform preliminary bench scale and/or pilot treatability study to confirm treatability and proof of concept.
 - e. Work with the WIP management team in a workshop setting to develop relevant master plan concepts, with the ultimate goal of narrowing these concepts down to up to three master plan concepts for detailed evaluation.
 - f. Develop a list of potential permitting and environmental issues associated with each alternative. A tabletop analysis will be used to assess potential environmental impacts associated with each alternative.
 - g. Develop a preliminary opinion of probable project capital and operating cost, completing a 20-year net present value analysis for each of the three master plan concepts and review with WIP representatives.
 - h. Define recommended treatment processes, technology selections, design criteria, and overall control strategy development.
7. Evaluate the impacts of permitting requirements on overall project implementation schedule and cost. Permit schedule drivers will be identified along with strategies for mitigating potential project delays associated with permitting issues.

8. Prepare a Preliminary Engineering Report (PER) for the RWTF, including internal and high service pumping and clearwell storage facilities, documenting the project evaluations, and defining the recommended facilities and infrastructure. The PER will incorporate the elements of the technical document and permitting requirements above, as well as:
 - a. Site development concept and hydraulic profile study for initial and ultimate plant design capacity for the recommended design concept.
 - b. Preliminary process and instrumentation diagrams (P&IDs) for the recommended design concept.
 - c. Opinion of probable project capital and operating cost for the recommended RWTF design concept including internal and finished water pumping and storage components, based on a 20-year life cycle. Use the AACE International cost estimate classification system.
 - d. Estimate of construction duration.
 - e. Coordinate with the *Water Intake and Transmission Infrastructure Preliminary Engineering* consultant to define capacities and service requirements for the high service pumping and clearwell storage facilities.
 - f. Address how both traditional design-bid-build and alternative project delivery approaches would affect the project, including impacts to project schedule and budget.
9. Use ENVISION or similar environmental stewardship and sustainability framework at key milestones in the PER.
10. Coordinate with the WIP program manager and other program consultants (environmental permitting, water treatment facility and governance), including preliminary constructability review and value engineering review by others. Participate in public meetings relating to the program's regulatory environmental review process.

The consultant will be selected on all tasks as outlined above. The baseline scope of services will not include services for RWTF final design, but the City, acting on behalf of the WIP, may elect to amend the Agreement for final design services. If the WIP elects alternative delivery of the RWTF, selection of a consultant will be made by separate solicitation at the conclusion of the Preliminary Engineering phase.

EBOP policies and UBE goals now also apply to contract amendments. Equity and Inclusion (EI) goals will need to be achieved for the original contract AND for each subsequent amendment. Goals are not additive and must individually be met with each new contract or amendment.

III. REQUEST FOR QUALIFICATIONS SUBMITTAL PROCEDURES

A. Contact Person for Questions

All questions related to this RFQ are to be submitted in writing by Thursday, May 27, 2021 to the following contact person.

Jeff Adkins, PE
WIP Program Manager
HDR
555 Fayetteville Street, Suite 900
Raleigh, North Carolina 27601
P: (919) 232-6639
jeff.adkins@hdrinc.com

The final addendum, including responses to questions, is anticipated to be issued June 2, 2021.

B. RFQ Schedule

The following timeline contains the anticipated dates of major milestones related to this RFQ:

Advertisement	April 28, 2021
Pre-Submittal Conference	May 19, 2021 at 10:00 AM (to be held virtually as videoconference)
SOQ Due Date	June 9, 2021 at 3:00 PM
SOQ Evaluation	June 2021

If, based on the SOQs submitted, the Department decides to conduct presentations then the short-listed consultants will be notified.

C. Pre-Submittal Conference

Consultants that are interested in submitting an SOQ are required to attend a pre-submittal conference on May 19, 2021; contact Jeff Adkins, WIP Program Manager by May 18, 2021 to register for the videoconference and receive the call information. Attendees should be familiar with this RFQ. The meeting will include an overview of the project, review of RFQ submittal, and Underutilized Business Enterprise (UBE) requirements.

A site visit will not be held, but available information about the project locations will be provided upon request to Jeff Adkins, WIP Program Manager.

D. Deadline for Submittals

SOQs delivered no later than 3:00 PM on June 9, 2021 to 555 Fayetteville Street, Suite 900, Raleigh, NC 27601 will be considered. Address the sealed envelope as follows:

Western Intake Partnership Regional Water Treatment Facility Preliminary Engineering
Jeff Adkins, PE
WIP Program Manager
HDR
555 Fayetteville Street, Suite 900
Raleigh, North Carolina 27601

E. Number of Submittals and Cover Letter

Consultants should submit one (1) digital copy in PDF format on a flash drive and fourteen (14) copies of their SOQ. The SOQ should contain a maximum one-page cover letter, signed by a principal of the proposing firm, indicating his or her title and that he or she has authority to submit the proposed qualifications. The cover letter should contain the following statements:

The undersigned has the authority to submit this Statement of Qualifications on behalf of _____ in response to the Request for Qualifications, dated April 2021 of the City of Durham, and, if applicable, addenda numbers _____. This Statement of Qualifications is not an offer, and the consultant retains the right to refuse to enter into a contract with the City for this project.

The consultant is not submitting any trade secrets to the City in connection with this proposal or the contract; if the contract is awarded to the consultant, the consultant will not submit any trade secrets to the City in connection with this proposal or the contract. The consultant acknowledges that the City will rely on the preceding sentence.

F. Prohibited Contact

Consultants are prohibited from contacting any staff member of the City of Durham, Chatham County, OWASA, Town of Pittsboro or program manager HDR regarding this proposal other than the contact person listed above or as otherwise authorized by this RFQ. All questions or requests for clarification of the project scope shall be submitted in writing to the contact person listed above. All questions regarding Equity & Inclusion Department matters shall be submitted to the Equity & Inclusion Department directly, with the contact person copied, and at the address and contact provided in the Equity & Inclusion documentation.

G. Updates and Revisions to RFQ

If you have supplied the Contact Person with your email, updates to this RFQ (“addenda”) will be sent to you in that manner. This RFQ and addendums are normally posted on the Western Intake Partnership website (www.westernintakepartnership.org) or City of Durham website, on the Purchasing Division’s webpage. Check these webpages to ensure that you have received all addenda.

IV. STATEMENT OF QUALIFICATIONS FORMAT

The submitted proposal shall not exceed twenty pages in length (11-point Arial font minimum except for figures – *strictly enforced*, printed one side only, or ten pages printed on both sides), excluding cover, cover letter, resumes, UBE forms, non-collusion statement, title sheets, dividers, etc. All pages in the proposal must be 8-1/2" x 11" with the exception of one page that can be no larger than 11" x 17" for maps/plans only printed single sided.

The proposal shall provide the following information and be in the format listed below.

A. Project Approach. The consultant shall present the means and methods they propose to use to gather information, evaluate, design, and make recommendations for the completion of this project.

B. Project Team. List and state the qualifications of the key individuals who will have responsibility for this project, including sub-consultants. Persons having primary responsibility for this project should be designated. Include all team members’ office

locations, education, background, work experience, and credentials that specifically relate to the RFQ. Identify backup resources who may be considered for the project team in case key team members retire or leave consultant's employment during the project. Provide a brief summary of current and future workload and availability for all proposed team members. Include a project organization chart.

C. Experience and References. This shall include the team's project experience with similar projects in the past ten (10) years, for preliminary/final design of water treatment facilities 20 mgd or larger, and experience with capital projects involving multiple utility partners. The project descriptions shall include, at a minimum, key elements of the project that relate to the specific objectives of this RFQ, client contact information (phone and email), project duration, project's current status, project's adherence to schedule, control of costs, and the roles and responsibilities of members of the proposed team on the representative project.

D. Anticipated Schedule. The proposer shall provide a realistic anticipated timeline for completion.

E. Project Considerations and Risks. Identify potential concerns or risks which may interfere with successful, on-schedule completion of the project, and how consultant's project approach addresses these concerns/risks.

F. Equal Business Opportunity Program (EBOP). The completed Professional Services Forms as specified in the EBOP portions of this RFQ. These forms are not included in the 20-page maximum.

G. Non-Collusion. This RFQ constitutes an invitation to propose. Include and sign the following with your submittal:

I, _____ affirm that I have not engaged in collusion with any City employee(s), other person, corporations or firms relating to this proposal. I understand collusion is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

Signature: _____

V. EVALUATION CRITERIA

Selection of the consultant will be based on the following:

- General approach for carrying out the scope of work
- Proposed schedule
- Qualifications of the proposed project team
- Demonstration of past performance on similar projects, including ability to meet schedules
- Availability to perform work
- Office location(s) for key team members
- Level of UBE participation with good faith effort
- Contractor Workforce Diversity Questionnaire
- Best interest of the City

The evaluation criteria are intended to be used to make a recommendation to the City Manager or City Council who will award the contract, but who is not bound to use these criteria or to award

to the consultant on the basis of the recommendation. Further, the City reserves the right to vary from this procedure as it determines to be in the City's best interest.

VI. LICENSURE

The City may reject proposals from any person, firm, or corporation that does not comply with State required licensure for Engineering, Architecture, Land Surveying, or other relevant disciplines.

VII. CONTRACT

The City anticipates that the conclusion of the RFQ process will be a contract between the City and the successful consultant under which the successful consultant will provide the services generally described in this RFQ. It is the City's intention to use the contract that is attached as Exhibit A, modified and filled in to reflect the RFQ and the proposal. If a consultant objects to any of the contract, it should state the objections in its proposal.

VIII. OWNERSHIP OF WORK PRODUCTS

The City shall have exclusive ownership of all intellectual property rights in all designs, plans and specifications, documents and other work product prepared by, for, or under the direction of the selected consultant pursuant to any contract under this RFQ (collectively, the "Intellectual Property"), including without limitation the right to copy, use, disclose, distribute, and make derivations of the Intellectual Property for any purpose or to assign such rights to any third party. The Intellectual Property shall be prepared in the City's name and shall be the sole and exclusive property of the City, whether or not the work contemplated therein is performed. The City will grant the consultant a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform the contract.

IX. EQUAL BUSINESS OPPORTUNITY PROGRAM

It is the policy of the City to provide equal opportunities for City contracting for underutilized firms owned by minorities and women doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct present effects of past discrimination and to resolve complaints of discrimination. This policy applies to all professional services categories.

The design goals for this project are 8% M/UBE and 6% W/UBE. In accordance with the Ordinance, all proposers are required to provide information requested in the Professional Services Forms package included with this request. Proposals that do not contain the appropriate, completed Professional Services Forms may be deemed non-responsive and ineligible for consideration. The UBE Participation Documentation, Contractor Workforce Diversity Questionnaire, and the Letter of Intent to Perform as a Sub-consultant documents are required of all proposers. The Request to Change UBE Participation and "UBE Goals Not Met/Documentation of Good Faith Efforts" forms are not applicable at this time.

The Department of Equity & Inclusion is responsible for the Equal Business Opportunity Program. All questions about Professional Services Forms should be referred to Deborah Giles or other department staff at (919) 560- 4180.

X. DISCRETION OF THE CITY

A. The City of Durham reserves the right to reject any or all proposals.

- B. NOTWITHSTANDING anything to the contrary in this document or in any addendums to this document, unless the contrary provision refers specifically to this provision, the City reserves the right (i) to negotiate changes of any nature with any consultant with respect to any term, condition, or provision in this document and/or in any proposals, whether or not something is stated to be mandatory and whether or not it is said that a proposal will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for some or all of the work with one or more consultants that do not submit proposals. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City in its discretion. This subparagraph B applies to the entire RFQ, including the UBE portions.
- C. Where the City asks or requires consultants to do stated things, such as that a proposal should follow a stated format or that the consultant should do stated things in seeking the contract, the City may reject a proposal as non-compliant because it does not comply with those requests. The City may, in its discretion, waive non-compliance. This subsection (C) does not limit subsections (A) and (B).
- D. Once a contract is signed, the parties to the contract may enforce the contract according to its terms as allowed by applicable law.

XI. CANDIDATE TO BEAR EXPENSE; NO CLAIMS AGAINST CITY

No consultant will have any claims or rights against the City arising out of the participation by a consultant in the proposal process. No consultant will have any claims or rights against the City for the City's failure to award a contract to it or for awarding a contract to another consultant, regardless of whether the other consultant participated in the RFQ process or did not submit a proposal that complied with the RFQ. A notice of award will not constitute acceptance by the City; the City's only method of acceptance is the City's execution of a formal contract in accordance with law.

XII. STATE TREASURER'S LISTS REGARDING IRAN AND BOYCOTT OF ISRAEL

If the value of the contract is \$1,000 or more, the following applies unless the consultant otherwise states in its proposal: the consultant affirms (by submitting a proposal) that (1) its name does not appear on the list of companies that are engaged in a boycott of Israel developed by the N. C. State Treasurer under N.C.G.S. 147 86.81(a)(1) or on a list created by the Treasurer pursuant to N.C.G.S. 147 86.58 as a company engaging in investment activities in Iran, and (2) it has no reason to expect that its name will appear on either of those lists. Take notice that a contract between a company named on either list and the City may be void.

XIII. NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

A person with a disability may receive an auxiliary aid or service to effectively participate in city government activities by contacting the ADA Coordinator, voice (919) 560-4197, fax 560-4196, TTY (919) 560-1200, or ADA@durhamnc.gov, as soon as possible but no later than 48 hours before the event or deadline date.

Aviso bajo el Acto de Americanos Discapacitados – Una persona con una discapacidad puede recibir asistencia o servicio auxiliar para participar efectivamente en actividades del gobierno de la ciudad con ponerse en contacto con el Coordinador de ADA, buzón de voz (919) 560-4197, fax (919) 560-4196, TTY (919) 560-1200, o ADA@durhamnc.gov, lo más antes posible pero no menos de 48 horas antes del evento o fecha indicada.

XIV. CITY VALUES REGARDING TREATMENT OF EMPLOYEES OF CONTRACTORS

A. Statement of City EEO Policy

1. Do not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
2. Take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. This action includes employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
3. State, in solicitations or advertisement for employees, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
4. Include this Statement of City EEO Policy in every purchase order for goods to be used in performing City contracts and in every subcontract related to City contracts.

- B. Livable Wage:** The City of Durham desires that consultants doing business with the City pay their workers a livable wage rate while working on City contracts. The livable wage rate is \$16.25 per hour through June 30, 2021.

Exhibit A

Modified EJCDC Owner-Engineer Contract

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

AGREEMENT
~~BETWEEN OWNER AND ENGINEER~~
~~FOR PROFESSIONAL SERVICES~~
Agreement to [] between the City of Durham and []

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between
the City of Durham, a North Carolina municipal corporation (“Owner” or “City”) _____ and
_____ (“Engineer”).

The title of this Agreement is stated at the top of page 1, above. Engineer is a _____

*[In the space above, indicate the type of entity, for instance: a corporation organized and existing under the laws of [name of State];
a professional corporation organized and existing under the laws of [name of State];
a professional association organized and existing under the laws of [name of State];
a limited partnership organized under the laws of [name of State]
a limited liability partnership organized and existing under the laws of [name of State];
a sole proprietorship;
or a general partnership].*

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
_____ (“Project”).

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows: _____

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement, except to the extent (i) that Owner may indicate that the requirements, programs, instructions, reports, data, or other information is not

necessarily accurate or complete, or (ii) that an engineer acting reasonably and in accordance with applicable professional standards would question, doubt, or not rely thereon. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items, such as stated in Paragraph 6.03.

- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer's services;
 2. the presence at the Site of any Constituent of Concern; or
 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, or (c) the performance of any Constructor, ~~or (d) Owner's performance of its responsibilities under this Agreement.~~

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably, but nevertheless, the total compensation shall be limited by any applicable provision of this Agreement that set a ceiling on compensation.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, ~~as its sole remedy,~~ to the recovery of direct applicable damages as provided under law and pursuant to the terms of this Agreement, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt subject to the terms of Paragraph 4.02.B.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within ~~30~~60 days after receipt of Engineer's invoice without providing in writing the specific basis for disputed portions of the invoice, then:
 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said ~~thirtieth~~sixtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all undisputed amounts due for services, expenses, and other related charges. ~~Owner waives any and all claims against Engineer for any such suspension.~~
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01. Failure to withhold a payment does not constitute a waiver of any of the Owner's claims or defenses with respect to the services for which that payment is made.
- D. ~~*[Intentionally deleted]Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.~~

ARTICLE 5 – OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not

guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement. If Exhibit F is not used, or if a Construction Cost limit is not otherwise specified, it is agreed that a Construction Cost limit is not established.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances, on similar projects, whether such projects can be found locally, regionally or nationally at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. The Engineer warrants that accuracy of Engineer's representations made to Owner as to Engineer's qualifications and experience during the process in which the Owner selected the Engineer. The Engineer represents that it is registered, licensed, and authorized to practice engineering in North Carolina.
- B. *Technical Accuracy:* Engineer shall be responsible for the technical accuracy of its services and documents resulting therefrom, and Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information. Without limiting the foregoing, it is agreed that the Owner's approvals of documents and other items are not waivers or releases of the Engineer's duty to provide the documents and other items in accordance with this Agreement and in accordance with applicable professional standards.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner. Notwithstanding the foregoing, Engineer shall serve as Owner's prime professional for the Project.

- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
1. Engineer and Owner shall comply with applicable Laws and Regulations. Without limiting the foregoing, it is agreed that Engineer shall comply with applicable provisions of N.C. General Statutes Chapter 133, Article 1.
 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition ~~2002 Edition~~), or any newer version selected by the Owner, supplemented by the Owner's supplementary conditions, as modified by the Owner from time to time. The construction contract will be the EJCDC contract form issued in conjunction with the General Conditions, as that contract form has been modified by the Owner from time to time prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and

Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants, whether directly, or through advice and consultation given to Owner.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- ~~A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Engineer hereby assigns to~~

Owner, without reservation, all copyrights in all Project-related Documents and other expression created by Engineer, referred to as "Instruments of Service". Included in the Instruments of Service are the Drawings and Construction Contract Documents. Owner's obligation to pay Engineer is expressly conditions upon Engineer obtaining a valid written comprehensive assignment of copyrights from its Consultants in terms identical to those that obligated Engineer to Owner as expressed in this subparagraph, which copyrights Engineer, in turn, hereby assigns to Owner. Owner, in return hereby grants Engineer and its Consultants a revocable, nonexclusive license to reproduce the documents for purposes related directly to Engineer's performance of its obligations under this Agreement, for Engineer's archival records, and for Engineer's reproduction of drawings and photographs in Engineer's marketing materials. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Agreement by Engineer or the accused commission by Engineer of a tort or a crime affecting Owner or the Project or upon termination of this Agreement. This nonexclusive license is granted to Engineer alone and shall not be assigned by Engineer to any other person or entity, except that the non-exclusive license granted in this Agreement to Engineer for purposes of the Engineer's performance hereunder may be sub-licensed to Engineer's Consultants (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon an Engineer's assignment of this nonexclusive license to another or its attempt to do so.

- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. ~~Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties. To the extent that liability arises from misuse of the Instruments of Service by Owner or another engineer or architect, Engineer shall not be responsible for that misuse. If Owner uses the Instruments of Services for purposes including additions to and modifications of the Project, and for other projects, Owner, to the extent authorized by law, shall indemnify Engineer for losses, including reasonable attorneys' fees, suffered by Engineer as a result~~

of the use of the design and these documents for such other purposes. If these documents are used for other purposes, Owner shall see that they are modified (a) to indicate that Engineer did not prepare them for such other purposes and is not responsible for their use in connection with such other purposes and (b) to delete Engineer's name and seal from the documents (where permitted or required by law).

- D. ~~*[Intentionally deleted]* If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.~~

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. ~~*[Intentionally deleted]* Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.~~
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be ~~listed~~ named as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. ~~Owner and~~ Engineer shall each deliver to the ~~other~~ Owner certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter as required by Owner during the life of the Agreement.

- E. ~~[Intentionally deleted]~~All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:

- 1) upon seven days written notice stating specifically how if Engineer believes Owner demands that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice stating specifically how if the Engineer's services for the Project are being delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, neither the obligations to provide further services nor this Agreement will not terminate under Paragraph 6.06.B.1.a or Paragraph 6.06.B.1.b if the party receiving such notice begins, within seven days of receipt of such notice, to cure the matters pointed out in the notice correct its substantial failure to perform and proceeds diligently to cure the matters such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure matters cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner or at a later time specified in the notice and payment. Without limiting any party's right to terminate for breach, the parties agree that the Owner may, without cause, and in its discretion, terminate this Agreement for convenience by giving Engineer written notice that refers to this subparagraph. Termination for Convenience (TFC) shall be effective at the time and in the fashion indicated in the notice. (a) Obligations. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or contractual performance and representations survives, and the indemnification shall remain in force. (b) Payment. The Owner shall pay Engineer an equitable amount for the costs and charges that accrue because of Owner's decisions with respect to the subcontracts but excluding profit for Engineer. Within 20 days after TFC, the City shall pay Engineer one hundred dollars (\$100.00) as a TFC fee and shall pay Engineer for all services performed, consistent with the terms of the Agreement, except to the extent previously paid for. Services shall be paid for in accordance with the method (% completion of lump sum, hourly fees, etc.) to be used for payment had the services been completed except to the extent it would be inequitable to either party, and if service was to be paid for on a lump-sum basis, Owner shall pay the part of the lump sum that reflects the percentage of completion attained for that service. Engineer shall not be entitled to any payment because of TFC except as stated in this subparagraph, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.
- C. *Effective Date of Termination:* The terminating Either party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and

uncompleted tasks, and to assemble Project materials in orderly files. Any termination under this paragraph 6.06.B.1 shall occur automatically upon the passage of the requisite time period unless the cure provisions of 6.06.B.1.c, if applicable, are complied with and the terminating party has received notice of that compliance. In case of any termination, Engineer shall (1) cooperate with the Owner in Owner's efforts to complete the Project, (2) provide information requested by the Owner in connection with completion of the Project, (3) provide a reproducible copy of all Drawings, Specifications and other documents, even if incomplete, prepared by Engineer up to the date of termination, and (4) if requested by the Owner, provide a reproducible copy of all Drawings, Specifications and other documents to describe the constructed Work as of the date of termination. Services provided after termination shall be compensated as Additional Services.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses (if applicable) incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as ~~reassignment of personnel~~, direct costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services if established and as set forth in Exhibit C, less the amount that the Engineer would have saved had it acted reasonably, and excluding overhead, profit, damages, or other economic loss.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the ~~state in which the Project is located~~ State of North Carolina.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the

contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site. Engineer represents to Owner that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Owner exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. Unless otherwise negotiated by the parties and expressly included in the Engineer's scope of services, it is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for

consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.

- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 ~~Indemnification and Mutual Waiver~~

- A. ~~Indemnification by Engineer: To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."~~

- 1. In general. The terms of subparagraph (3) (Standard Indemnification Provision) below shall apply to the Contractor, subject to subparagraphs (4) through (11), where applicable
- 2. Definitions. These definitions apply to this Paragraph 6.11.A unless otherwise stated.
 - a. Contractor – Each party to this Agreement except the City of Durham.
 - b. Construction agreement -- any promise or agreement in, or in connection with, a contract or agreement relative to the design, planning, construction, alteration, repair, or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition, and excavating connected therewith.
 - c. Defend –In this Paragraph 6.11.A except in subparagraph (c), defend means to pay for or furnish counsel at the expense of the Contractor to defend any of the Indemnitees against claims alleged or brought against any of the Indemnitees by a third party alleged or brought in any court or other tribunal, including forms of alternative dispute resolution required by law or contract, before the court or tribunal has reached a final determination of fault.

- d. Derivative parties -- with respect to a party, any of that party's subcontractors, agents, employees, or other persons or entities for which the party may be liable or responsible as a result of any statutory, tort, or contractual duty.
 - e. Design professional -- a person or entity who is licensed under and provides professional services regulated by Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.
 - f. Design professional agreement -- any promise or agreement in, or in connection with, a contract or agreement with a design professional to provide design professional services.
 - g. Design professional services -- a service or work performed by a design professional for which licensure is required under Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.
 - h. Fault – a breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violations of applicable statutes or regulations.
 - i. Indemnitees -- City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.
 - j. Subcontractor – any person or entity, of any tier, providing labor or material through the Contractor for use on the project at issue in the applicable construction agreement or design professional agreement.
3. Standard Indemnification Provision. (i) The Contractor shall defend, indemnify, and hold harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of the Contractor or its derivative parties. In performing its duties under this subsection “3,” the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (ii) “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses. Included without limitation within “Charges” are (1) interest and reasonable attorney’s fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Agreement. By appropriate litigation, each Indemnitee, severally, shall have the right to enforce this Paragraph 6.11.A (titled “Indemnification”) directly against the Contractor, but not against the City of Durham.
 4. Restriction regarding Indemnitees’ Negligence. This Agreement shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.
 5. Restriction regarding Fault in Construction Agreements and Design Professional Agreements. If this Agreement is a construction agreement or design professional

agreement, nothing in this Agreement requires the Contractor to indemnify or hold harmless Indemnitees or any other person or entity against losses, damages, or expenses unless the fault of the Contractor or its derivative parties is a proximate cause of the loss, damage, or expense indemnified.

6. Restriction regarding Negligence of Design Professionals. Nothing in this Agreement requires the Contractor, provided that it is a design professional, to defend Indemnitees or any other person or entity against liability or claims for damages, or expenses, including attorney's fees, proximately caused or allegedly caused by the professional negligence, in whole or in part, of the Contractor, the City, or their derivative parties, whether the claim is alleged or brought in tort or contract.
 7. Liability When at Fault. The parties intend that nothing in this Agreement shall be construed to exclude from any indemnity or hold harmless provisions enforceable under subparagraph (4) (Restriction regarding Indemnitees' Negligence) and subparagraph (5) (Restriction regarding Fault in Construction Agreements and Design Professional Agreements) any attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the City to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of the City by law or by contract, if the fault of the Contractor or its derivative parties is a proximate cause of the attorney's fees, litigation or arbitration expenses, or court costs to be indemnified. Every provision in this Agreement that violates the parties' intent expressed in the preceding sentence shall be construed and revised to the extent that it is lawful in order to make the provision conform with such intent.
 8. Insurance Contracts and Bonds. This Paragraph 6.11.A does not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer; and this Paragraph 6.11.A does not apply to lien or bond claims asserted under Chapter 44A of the N.C. General Statutes.
 9. Other Provisions. Every provision in this Agreement that violates subparagraph (4) (Restriction regarding Indemnitees' Negligence), subparagraph (5) (Restriction regarding Fault in Construction Agreements and Design Professional Agreements), or subparagraph (6) (Restriction Regarding Negligence of Design Professionals) shall be construed and revised to the extent that it is lawful in order to make the provision conform with those subparagraphs.
 10. Survival. This Paragraph 6.11.A shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this Agreement.
 11. Compliance with Law. This Paragraph 6.11.A shall be applied to the maximum extent allowed by law but it shall be construed and limited as necessary to comply with N.C.G.S. § 22B-1. This Paragraph 6.11.A is not to be construed in favor or against any party as the drafter. The preceding sentence is not intended to imply or direct how the remainder of this Paragraph 6.11.A or of this Agreement is to be construed.
- B. ~~[Intentionally deleted] Indemnification by Owner: Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and~~

Consultants as required by Laws and Regulations ~~and to the extent (if any) required in Exhibit I, "Limitations of Liability."~~

- C. ~~[Intentionally deleted] Environmental Indemnification: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.~~
- D. ~~[Intentionally deleted] No Defense Obligation: The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.~~
- E. ~~[Intentionally deleted] Percentage Share of Negligence: To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.~~
- F. ~~[Intentionally deleted] Mutual Waiver: To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.~~

6.12 Records Retention

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. The records shall be kept in such form and detail as will clearly identify all relevant charges and costs and the bases thereof, except to the extent Owner's representative and Engineer's representative concur otherwise in writing. Said concurrence is valid without an amendment to this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 Miscellaneous Provisions

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be

effective upon the date of receipt. The address can be changed from time to time by giving notice pursuant to this Agreement.

- B. *Survival*: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability*: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. ~~*[Intentionally deleted] Accrual of Claims*: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.~~

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 - 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 - 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.

6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as Basic Services ~~an Additional Service~~ and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and

clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner

furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*:

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit. *[Not used. Intentionally deleted]*
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability. *[Not used. Intentionally deleted]*
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

[NOTE TO USER: If an exhibit is not to be included in the specific agreement, indicate "not used " after that exhibit in the list above.]

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments may take ~~should be based whenever possible on~~ the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 *City of Durham Provisions*

- A. Choice of Law and Forum; Service of Process. (i) This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina and not the United Nations Convention on Contracts for the International Sale of Goods. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. The preceding two sentences do not apply to actions to enforce a judgment entered in actions heard pursuant to this subsection (i). (ii) If the Engineer is an artificial person (for instance, the Engineer is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Engineer to be served or to accept service of process in any State of the United States. The Engineer hereby appoints as one of those agents the person it designates to receive notice pursuant to subparagraph 8.03.A (Designated Representatives). If the Engineer fails to appoint a person to receive such notice or the

person cannot be served using reasonable diligence, the Engineer appoints the Durham City Clerk as Agent for Service of Process. Without excluding any other method of service authorized by law, the Engineer agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Engineer shall instruct each Agent for Service of Process that when the agent receives the process, summons, or complaint, the agent shall promptly send it to the Engineer using a means for giving notice under this Agreement, provided that when the City Clerk is the agent, the City shall issue such instructions. This subsection (ii) does not apply while the Engineer maintains a registered agent in North Carolina by filing with the office of the N. C. Secretary of State and that registered agent can be found with due diligence at the registered office.

- B. Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.
- C. Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.
- D. Prompt Payment to Subcontractors.
 - 1. Within 7 days of receipt by Engineer of each payment from the Owner under this Agreement, the Engineer shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after Engineer's receipt of payment from Owner under this Agreement, the Engineer shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subparagraph (1) directly against the Engineer, but not against the City of Durham.
 - 2. If the Owner's Designated Representative determines that it is appropriate to enforce subparagraph (1) in this manner, the Owner may withhold from progress or final payments to the Engineer the sums estimated by the Owner's Designated Representative to be (a) the amount of interest due to the Subcontractor under subparagraph (1), and/or (b) the amounts past-due under subparagraph (1) to the Subcontractor but not exceeding 5% of the payment(s) due from the Owner to the Engineer. This subparagraph (2) does not limit any other rights to withhold payments that the Owner may have.
 - 3. Nothing in this Paragraph 8.05.D (titled "Prompt Payment to Subcontractors") shall prevent the Engineer at the time of invoicing, application, and certification to the Owner from withholding invoicing, application, and certification to the Owner for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Engineer or another

subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

4. The Owner's Designated Representative may require, as a prerequisite to making progress or final payments, that the Engineer provide statements from any Subcontractors designated by the Owner's Designated Representative regarding the status of their accounts with the Engineer. The statements shall be in such format as the Owner's Designated Representative reasonably requires, including notarization if so specified.

- E. EBOP. The Engineer shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Engineer to comply with that article shall be a material breach of contract which may result in the rescission or termination of this Agreement and/or other appropriate remedies in accordance with the provisions of that article, this Agreement, and State law. The Participation Plan submitted in accordance with that article is binding on the Engineer. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Engineer's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

- F. Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section," "section," "Paragraph," or "paragraph" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) The word "Holiday" means legal holiday observed by the City of Durham pursuant to City Code section 42-16 or any successor provision. (10) A definition in this contract will not apply to the extent the context requires otherwise.

- G. Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral,

expressed or implied, between the parties, other than as set forth or referenced in this contract.

- H. Special Provisions. The Engineer is subject to the special provisions contained in of Exhibit J.
- I. American with Disabilities Act (ADA) Compliance Verification – if any of the Work requires compliance with Chapter 11 of the NC State Building Code (2018 edition, as amended and updated), applicable North Carolina Accessibility Codes, and/or 2009 ANSI 117.1 (as amended or updated), the Engineer shall ensure that such Work is completed in compliance with such ADA requirements. After completion of the Work and after Engineer conducts an independent, onsite evaluation, the Engineer shall provide the City with a written certification, sealed by the Engineer, stating that the Work complies with the approved plans and applicable ADA codes and requirements. Engineer shall confer with the City Inspections Department regarding the appropriate form of the written certification.
- J. E-Verify Requirements. (1) If this Agreement is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (a) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (b) the words "contractor," "contractor's subcontractors," and "comply" as used in this subparagraph (a) shall have the meanings intended by NCGS 143-129(j); and (c) the City is relying on this subparagraph (1) in entering into this contract. (2) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.
- K. City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

8.06 Addresses for Notices. Designated Representatives

Address for Owner's receipt of notices:

ATTN: []

[]

101 City Hall Plaza

Durham, NC 27701

Designated Representative (Paragraph 8.03.A):

[]

Title: []

Phone Number: []

E-Mail Address: []

Address for Engineer's receipt of notices:

[]

Designated Representative (Paragraph 8.03.A):

[]

Title: []

Phone Number: []

E-Mail Address: []

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

CITY OF DURHAM

ATTEST:

By: _____

Preaudit Certification, if necessary:

signature for Engineer:

acknowledgment for Engineer:

This is **EXHIBIT A**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Engineer's Services

Article 1 of the Agreement is supplemented to include the provisions of this Exhibit following agreement of the parties. The Engineer's detailed deliverables and tasks for the Project are outline as part of Attachment A-1, which is attached and incorporated herein. The performance of the services outlined in Attachment A-1 shall be consistent with the requirements and obligations of this Exhibit. In the event of any conflict or inconsistency between this Exhibit A and Attachment A-1, this Exhibit A shall be controlling.

[Instructions: City staff to provide "Attachment A-1" as part of negotiations with Engineer on the Project particular services to be provided].

If a reasonable reading of this Agreement is that a service is to be provided as a Basic Service, the listing of a similar service in this Agreement is not intended to limit the performance of that service as a Basic Service. Without limiting the Owner's other rights and remedies, it is agreed that services that are needed because of the failure of the Engineer to comply with this Agreement or with its duties to the Owner shall be performed or provided by the Engineer without charge. Where the Agreement states that a service will be done or goods will be provided, it will be construed to require the Engineer to do the service or provide the goods, unless the context requires otherwise.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions: [] **[List the specific potential solutions here.]**
 - b. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.
 - c. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [] **[insert specific number]** alternative solutions

Exhibit A – Engineer's Services

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potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.

2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.
4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.
6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.
8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.

Exhibit A – Engineer's Services

12. Use ASCE 38, “Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data” as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
 13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
 14. Perform or provide the following other Study and Report Phase tasks or deliverables: [] **[List any such tasks or deliverables here.]**
 15. Furnish [] review copies of the Report and any other Study and Report Phase deliverables to Owner within [] days of the Effective Date and review it with Owner. Within [] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 16. Revise the Report and any other Study and Report Phase deliverables in response to Owner’s comments, as appropriate, and furnish [] copies of the revised Report and any other Study and Report Phase deliverables to the Owner within [] days of receipt of Owner’s comments.
- B. Engineer’s services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 Preliminary Design Phase

- A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer’s compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer’s services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner’s instructions.
 3. Provide necessary field surveys and topographic and utility mapping for Engineer’s design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice

Exhibit A – Engineer’s Services

from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.

4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

[Note to User: Some owners prefer to handle the preparation of bidding (procurement) and construction contract documents with little or no involvement by the Engineer (other than with respect to Engineer's preparation or furnishing of the Drawings, Specifications, and other design and technical documents), relying either on Owner's in-house staff and legal counsel for such services, or on third-parties such as a construction manager. When such is the case, the task item above, and related items in the Final Design Phase (Paragraph A1.03 below) and in Exhibit B, Owner's Responsibilities, should be modified to fit the requirements of the specific project.]

9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
[] ***[List any such tasks or deliverables here.]***
10. Furnish [] review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within [] days of authorization to proceed with this phase, and review them

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with Owner. Within [] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.

11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner [] copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within [] days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
 1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
 6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.

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7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
 9. Perform or provide the following other Final Design Phase tasks or deliverables: [] **[List any such tasks or deliverables here.]**
 10. Furnish for review by Owner, its legal counsel, and other advisors, [] copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within [] days of authorization to proceed with the Final Design Phase, and review them with Owner. Within [] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit [] final copies of such documents to Owner within [] days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is []. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

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A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.
 5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
 7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
 9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: [] ***[List any such tasks or deliverables here.]***
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

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A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (~~2013 Edition~~ 2002 Edition), prepared by the Engineers Joint Contract Documents Committee, or any newer version selected by the Owner, supplemented by the Owner's supplementary conditions, as modified by the Owner from time to time. The construction contract will be the EJCDC contract form issued in conjunction with the General Conditions, as that contract form has been modified by the Owner from time to time, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D. ***[If Engineer will not be providing the services of an RPR, then delete this Paragraph 2 by inserting the word "DELETED" after the paragraph title, and do not include Exhibit D as part of the Agreement.]***
 3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
 4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
 5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
 6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction

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Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary based on Engineer's exercise of professional judgment, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. However, those visits shall be made at least [] unless the Owner otherwise agrees. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, will determine if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents, and will endeavor to guard the Owner against defects and deficiencies in the Work. ~~and~~ Engineer shall keep Owner informed in writing of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or

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safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents but shall promptly send all such Field Orders to the Owner's representative.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.

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17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents and for the purpose of determining that if the Work is performed as shown by the submittals, it will be in compliance with the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted. The Engineer shall determine what aspects of the Work shall be the subject of submittals, and shall not knowingly permit such aspects to proceed in the absence of approved submittals.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
19. *Inspections and Tests:*
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. When it is reasonable to do so, Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

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- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
 - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion.

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Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables: [] **[List any such tasks or deliverables here.]**
 25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
 26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
 27. *Time for Performance.* The Engineer shall perform all of Engineer's tasks in the Construction Phase within a reasonable time, considering, among other relevant factors, the Contractor's Contract Time, schedules that the Engineer has indicated as acceptable, and the time that is appropriate for the tasks to be done to the level of professional skill and care that are required.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
 1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the

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need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.

2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
[] ***[List any such tasks or deliverables here.]***
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.

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5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.

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13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F or other provisions of this Agreement.
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of ~~all Addenda and~~ any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
- ~~17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.~~
18. Supplementing Record Drawings with information regarding ~~the completed Project, Site, and immediately adjacent areas~~ adjacent to the Site obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
- ~~21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).~~
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
- ~~25. Overtime work requiring higher than regular rates.~~
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under ~~this Agreement~~ Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

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27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Required Additional Services ~~Not Requiring Owner's Written Authorization~~

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer shall be required to ~~need not request or obtain specific~~ advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 3. ~~Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.~~
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
 5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
 6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
 7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.

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8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

Exhibit A – Engineer's Services

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ATTACHMENT A-1
(Detailed Deliverables and Tasks)

Exhibit A – Engineer’s Services

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This is **EXHIBIT B**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.

Exhibit B – Owner's Responsibilities

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2. Zoning, deed, and other land use restrictions.
 3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for ~~safe~~ access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement. Nothing in this Agreement is intended to require Engineer to go onto public or private property in an unsafe manner or when it is unsafe to do so.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.

Exhibit B – Owner's Responsibilities

- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.

Exhibit B – Owner's Responsibilities

- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: [] *[List any other Owner responsibilities here.]*

Exhibit B – Owner's Responsibilities

This is **EXHIBIT C**, consisting of [] pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated [].

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1-2: Basic Services – Lump Sum & Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment and Standard Hourly Rates

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. A total Lump Sum amount of \$[] and/or a total not-to-exceed (NTE) amount of \$[] based on the following estimated distribution of compensation, where the NTE amount is equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants’ charges, if any:

[Instructions to city staff: if not all designated phases are used, or some new ones are added, strike through unused phases and insert (with underline) any new or additional phases, tasks or deliverables to be provided on a Lump Sum or NTE amount basis. Use NTE amounts only when phase, task or deliverable is not easily defined or not clearly quantifiable by the parties.]

	<u>LUMP SUM</u>	[or]	<u>NTE AMOUNT</u>
a. Study and Report Phase	\$[]		\$[]
b. Preliminary Design Phase	\$[]		\$[]
c. Final Design Phase	\$[]		\$[]
d. Bidding and Negotiating Phase	\$[]		\$[]
e. Construction Phase	\$[]		\$[]
f. Post-Construction Phase	\$[]		\$[]
g. _____	\$[]		\$[]

LUMP SUM & NTE SUBTOTALS \$[] \$[]

SUBTOTAL FOR RPR SERVICE, IF ANY: \$[]

GRAND TOTAL COMPENSATION FOR BASIC SERVICES: \$[]

2. Engineer-Owner's representative may alter the distribution of compensation between Lump Sum individual phases or between NTE individual phases noted under Paragraph C2.01.A.1 herein to be consistent with services actually rendered, but such altering of distribution of compensation shall not exceed the Subtotal Lump Sum or Subtotal NTE amounts, respectively, unless approved in a written amendment executed writing by the Owner and Engineer.
 3. The Lump Sum amount includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges. The NTE amount for Engineer's services includes all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultants' charges.
 4. ~~In addition to the Lump Sum, Engineer is NOT also entitled to reimbursement of expenses from Owner for the Lump Sum phases following Reimbursable Expenses (see Appendix 1 for rates or charges): [] [List any such expenses here, or indicate "None." If "None" then the reference to Appendix 1 may be deleted.]~~
 5. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period. The amounts billed for Engineer's services for the NTE phases will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses, if allowed, and Engineer's Consultants' charges.
- B. Period of Service for Lump Sum Phases: The compensation amount stipulated for Lump Sum phases in this Compensation Packet BC-1-2 is conditioned on a period of service not exceeding [] months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted if Engineer provides Owner reasonable documentation showing Engineer, or Engineer's Consultants, have incurred additional costs or expenses directly related to the extension of Basic Services beyond the original period of service for the Lump Sum phases.
- C. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost. Records of Engineer's costs pertaining to Engineer's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. The records shall be kept in such form and detail as will clearly identify all relevant charges and costs and the bases thereof, except to the extent the Owner's representative and the Engineer's representative concur

otherwise in writing. Said concurrence is valid without an amendment to this Agreement. The Engineer shall maintain all such records and provide the Owner access to them, and the right to copy them at cost, until at least four years after Engineer's last request for payment under this Agreement.

C2.02 Reimbursable Expenses and Other Provisions Concerning NTE Phases and Payment

- A. The Standard Hourly Rates charged by Engineer for NTE phases constitute full and complete compensation for Engineer's services for the indicated NTE phases, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer's Consultants' charges. For NTE phases noted under Paragraph C2.01.A.1, Engineer's Standard Hourly Rates are attached to this Exhibit C as Appendix 2.
- B. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of []) to reflect equitable changes in the compensation payable to Engineer. **[If no adjustment is to be applied, insert "None".]**
- C. Engineer is entitled to reimbursement from Owner for NTE phases for the Reimbursable Expenses expressly identified and listed in Appendix 1, unless Owner indicates "None" in the following box: [] **[If "None" then the reference to Appendix 1 may be deleted.]**
- D. If Owner has agreed to reimburse Engineer for Reimbursable Expenses, the amounts payable to Engineer will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of []. **[If no factor is to be applied, insert "None".]**
- E. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of []. **[If no factor is to be applied, insert "None".]**
- F. Reimbursable Expenses and Engineer's Consultants' compensation, whether or not any applied factor is indicated, include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- G. Estimated Compensation Amounts for NTE Phases:
1. Engineer's estimate of the amounts for NTE phases that will become payable for the specified services are estimates of the compensation anticipated to deliver those specified services. Engineer is not entitled to any balance of the NTE phase amount if the specified services are delivered for less than the estimated NTE phase amount for that specified service. The Owner shall retain all portions of any NTE phase amount not required to deliver the specified service for that NTE phase.
 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the compensation amount for any particular NTE phase thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of NTE phase services remaining to be performed and

compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to negotiate appropriate compensation in excess of said estimated amount, or agree to negotiate a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations, Engineer shall not exceed the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services without express, written authorization from the Owner.

[Instructions to city staff: If RPR is not being used, delete both RFP-1 and RPR-2 packets. If RPR is being used, pick either RPR-1 or RPR-2 form and delete the one not used.]

**COMPENSATION PACKET RPR-1:
Resident Project Representative – Lump Sum**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 *Compensation for Resident Project Representative Basic Services – Lump Sum Method of Payment*

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative, if any, under Paragraph A1.05 of Exhibit A, the Lump Sum amount indicated under Paragraph C2.01.A.1 in the Exhibit C of Compensation Packet BC-1-2 of \$[]. The Lump Sum includes compensation for the Resident Project Representative's services. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, and expenses (other than any expressly allowed Reimbursable Expenses) related to the Resident Project Representative's Services.
2. *Reimbursable Expenses:* ~~In addition to the Lump Sum, Engineer is NOT also entitled to reimbursement of expenses from Owner for the following RPR Reimbursable Expenses (see Appendix 1 for rates or charges): [] [List any such expenses here, or indicate "None." If "None" then the reference to Appendix 1 may be deleted.]~~
3. *Resident Project Representative Schedule:* The Lump Sum amount referenced ~~set forth~~ in Paragraph C2.04.A.1 above is based on full-time RPR services on an eight-hour workday Monday through Friday over a [] day construction schedule. Modifications to the schedule shall entitle Engineer to an equitable adjustment of compensation for RPR services.

**COMPENSATION PACKET RPR-2:
Resident Project Representative – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. **Resident Project Representative Services:** For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be the amount indicated under Paragraph C2.01.A.1 in the Exhibit C of Compensation Packet BC-1-2 \$[] based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a [] day construction schedule.

B. Compensation for Reimbursable Expenses:

1. Engineer is entitled to reimbursement from Owner for those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are expressly identified and listed in Appendix 1 to this Exhibit C, which are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, unless Owner indicates "None" in the following box: [] [If "None" then the reference to Appendix 1 may be deleted.] Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
- ~~2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding related or other procurement documents, Construction Contract Documents, and similar Project related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.~~
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of []. **[If no factor is to be applied, insert "None".]**

**Exhibit C – Compensation Packet RPR-2: Resident Project Representative Services—
Standard Hourly Rates Method of Payment.**

4. The Reimbursable Expenses Schedule will be adjusted annually (as of []) to reflect equitable changes in the compensation payable to Engineer. **If no adjustment is to be applied, insert "None".**

C. *Other Provisions Concerning Payment Under this Paragraph C2.04:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of []. **If no factor is to be applied, insert "None".**
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's compensation, whether or not any applied factor is indicated factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
 - a. Engineer's estimate of the amounts that will become payable for specified services are ~~only~~ estimates of the compensation anticipated to deliver the RPR specified services. Engineer is not entitled to any balance of the indicated RPR compensation amount if the RPR services are delivered for less than the estimated RPR compensation amount. The Owner shall retain all portions of any indicated RPR compensation amount not required to deliver the specified RPR services for the Project for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to negotiate appropriate such compensation in excess of exceeding said estimated amount, or agree to negotiate a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations, ~~and~~ Engineer shall not exceed exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services without express, written authorization from the Owner, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost. Records of Engineer's costs pertaining to Engineer's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. The records shall be

Exhibit C – Compensation Packet RPR-2: Resident Project Representative Services—
Standard Hourly Rates Method of Payment.

kept in such form and detail as will clearly identify all relevant charges and costs and the bases thereof, except to the extent the Owner's representative and the Engineer's representative concur otherwise in writing. Said concurrence is valid without an amendment to this Agreement. The Engineer shall maintain all such records and provide the Owner access to them, and the right to copy them at cost, until at least four years after Engineer's last request for payment under this Agreement.

**COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
- B. *Compensation For Reimbursable Expenses:*
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
 2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
 3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of [].
 4. The Reimbursable Expenses Schedule will be adjusted annually (as of []) to reflect equitable changes in the compensation payable to Engineer.
- C. *Other Provisions Concerning Payment for Additional Services:*
1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of [].

**Exhibit C – Compensation Packet AS-1: Additional Services –
Standard Hourly Rates Method of Payment.**

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

8"x11" Copies/Impressions	\$ []/page
Copies of Drawings	\$ []/sq. ft.
Mileage (auto)	\$ []/mile
Air Transportation	at cost
CAD Charge	\$ []/hour
Laboratory Testing	at cost
Health and Safety Level D	\$ []/day
Health and Safety Level C	\$ []/day
Meals and Lodging	at cost

[Note to User: Customize this Schedule to reflect anticipated reimbursable expenses on this specific Project.]

Exhibit C – Appendix 1: Reimbursable Expenses Schedule.

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This is **Appendix 2 to EXHIBIT C**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [] .

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

Billing Class VIII	\$[]/hour
Billing Class VII	[]/hour
Billing Class VI	[]/hour
Billing Class V	[]/hour
Billing Class IV	[]/hour
Billing Class III	[]/hour
Billing Class II	[]/hour
Billing Class I	[]/hour
Non-administrative Support Staff	[]/hour

[Note to User: The categories above (Billing Classes VIII through I) are traditional hourly rate classes for engineering services, but the classes themselves do not currently have widely accepted or understood meanings or definitions. Many approaches are possible for establishing the hourly rates that will be charged. These include defining the categories (for example, "Billing Class VI—Assistant Project Manager"), or using the engineering firm's own professional classifications. If hourly rates are ascribed to specific individuals, the user should ensure that changes in professional personnel and rates are allowable over the Project's course.]

Exhibit C – Appendix 2: Standard Hourly Rates Schedule.

This is **EXHIBIT D**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

[Note to User: Delete this Exhibit D if Engineer will not be providing Resident Project Representative Services under Paragraph A1.05.A.2.]

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. ~~In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.~~
- C. The duties and responsibilities of the RPR are as follows:
 1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.

Exhibit D - Resident Project Representative.

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3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*

Exhibit D - Resident Project Representative.

- a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities,

Exhibit D - Resident Project Representative.

decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a

Exhibit D - Resident Project Representative.

Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
- 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
- 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
- 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
- 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
- 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 8. Authorize Owner to occupy the Project in whole or in part.

Exhibit D - Resident Project Representative.

This is **EXHIBIT E**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

[Notes to User

1. Exhibit A, Paragraph A1.05.A.25 of this Agreement indicates that in connection with recommending final payment of the Construction Contractor, the Engineer will also provide a notice to Owner and Contractor of the acceptability of the Work, subject to stated limitations. The form for that purpose, "Notice of Acceptability of Work," is attached on the following pages of this Exhibit E.

2. The Notice of Acceptability of Work should be served in compliance with the requirements for service of notice under the Construction Contract. See Paragraph 18.01, Giving Notice, of EJCDC C-700 (2013), Standard General Conditions of the Construction Contract.]

Exhibit E – Notice of Acceptability of Work.

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NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____

Owner

And To: _____

Contractor

From: _____

Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

Exhibit E – Notice of Acceptability of Work.

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2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

Exhibit E – Notice of Acceptability of Work.

[EXHIBIT F INTENTIONALLY DELETED]

This is ~~EXHIBIT F~~, consisting of [] pages, referred to in and part of the ~~Agreement between Owner and Engineer for Professional Services~~ dated [].

Construction Cost Limit

Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

F5.02 — *Designing to Construction Cost Limit*

- A. ~~Owner and Engineer hereby agree to a Construction Cost limit in the amount of \$[].~~
- B. ~~A bidding or negotiating contingency of [] percent will be added to any Construction Cost limit established.~~
- C. ~~The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then-established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.~~
- D. ~~Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit.~~
- E. ~~If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.~~
- F. ~~If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for~~

Exhibit F – Construction Cost Limit.

~~damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.~~

Exhibit F – Construction Cost Limit.

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This is **EXHIBIT G**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [] .

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By The Engineer shall maintain, on a primary basis and at is sole expense, at all times during the life of this Agreement the following applicable coverage's and limits. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Engineer is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Engineer under this Agreement:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
 - 1) Bodily injury, each accident: \$1,000,000
 - 2) Bodily injury by disease, each employee: \$1,000,000
 - 3) Bodily injury/disease, aggregate: \$1,000,000
- c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - 2) General Aggregate: \$2,000,000
- d. Excess or Umbrella Liability --
 - 1) Per Occurrence: \$1,000,000
 - 2) General Aggregate: \$1,000,000
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
\$1,000,000
- f. Professional Liability --
 - 1) Each Claim Made \$1,000,000
 - 2) Annual Aggregate \$1,000,000
- g. Other (specify): \$[]

Exhibit G – Insurance.

2. By Owner:

a. Workers' Compensation: _____ Statutory

b. Employer's Liability

1) Bodily injury, Each Accident _____ \$[_____]

2) Bodily injury by Disease, Each Employee _____ \$[_____]

3) Bodily injury/Disease, Aggregate _____ \$[_____]

c. General Liability

1) General Aggregate: _____ \$[_____]

2) Each Occurrence (Bodily Injury and Property Damage): \$[_____]

d. Excess Umbrella Liability

1) Per Occurrence: _____ \$[_____]

2) General Aggregate: _____ \$[_____]

e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

_____ \$[_____]

f. Other (specify): _____ \$[_____]

B. Additional Insureds:

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

Exhibit G – Insurance.

- a. [redacted]
Engineer
- b. [redacted]
Engineer's Consultant
- c. [redacted]
Engineer's Consultant
- d. [redacted]
[other]

- ~~2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.~~
- 3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

Exhibit G – Insurance.

This is **EXHIBIT H**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated []

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

[NOTE TO USER: Select one of the two alternatives provided.]

H6.08 *Dispute Resolution*

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by a mutually acceptable mediator. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.
1. Notwithstanding the provision of H6.08.A above, after the Owner has engaged a general contractor for construction work and during the construction administration phase of this Agreement only, the parties may avail themselves of the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11) and G.S. 143-128(f1).

Exhibit H - Dispute Resolution.

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[EXHIBIT I INTENTIONALLY DELETED]

This is **EXHIBIT I**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

[NOTE TO USER: Select one of the three alternatives listed below for I6.11. A.1]

~~1. *Engineer's Liability Limited to Stated Amount, or Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all injuries, claims, losses, expenses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project, Engineer's or its Consultants' services, or this Agreement, from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants, shall not exceed the total amount of \$[] or the total compensation received by Engineer under this Agreement, whichever is greater. Higher limits are available for an additional fee.~~

~~{or}~~

~~1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.~~

~~{or}~~

Exhibit I - Limitations on Liability.

1. ~~Engineer's Liability Limited to Amount of Insurance Proceeds:~~ Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by Laws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement. If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$[_____].

~~**[NOTE TO USER: If appropriate and desired, include 16.11.A.2 below as a supplement to Paragraph 6.11, which contains a mutual waiver of damages applicable to the benefit of both Owner and Engineer.]**~~

2. ~~Exclusion of Special, Incidental, Indirect, and Consequential Damages:~~ To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, including but not limited to:

~~**[NOTE TO USER: List here particular types of damages that may be of special concern because of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc.]**~~

~~**[NOTE TO USER: the above exclusion of consequential and other damages can be converted to a limitation on the amount of such damages, following the format of Paragraph 16.11.A.1 above, by providing that "Engineer's total liability for such damages shall not exceed \$_____."]**~~

Exhibit I - Limitations on Liability.

~~**[NOTE TO USER: Many professional service agreements contain mutual indemnifications. If the parties elect to provide a mutual counterpart to the indemnification of Owner by Engineer in Paragraph 6.11.A, then supplement Paragraph 6.11.B by including the following indemnification of Engineer by Owner as Paragraph 6.11.B.]**~~

~~A. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.~~

This is **EXHIBIT J**, consisting of [2] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [] .

Special Provisions

Paragraph(s) [8.05.H] of the Agreement is/are amended to include the following agreement(s) of the parties:

H.1. (Compensation for Engineer's Errors). Notwithstanding any other term of the Agreement to the contrary, if the Engineer creates plans or specifications containing an error that causes actual construction of a portion of Work that needs to be changed solely because of the Engineer's error, the Engineer shall pay the Owner all costs of correcting the error, including an amount to compensate the Owner for time spent by Owner's employees because of the error without regard to what other services those employees might have done for the Owner had the error not occurred.

A. (Unforeseen Conditions) An error shall not be grounds for payment under this Paragraph H.1 if the error occurred because of physical conditions were:

- (i) not in fact known to the Engineer,
- (ii) not in fact known to the Engineer's consultants,
- (iv) not readily apparent to the Engineer, and
- (v) not readily apparent to the Engineer's consultants.

B. (Cost of Employees' Time) The cost of the employees' time will be calculated as follows: the time spent by any salaried employee of the Owner because of the error shall be compensated at an hourly rate equal to the employee's gross salary (using standards to determine gross salary for federal income tax purposes) during the applicable fiscal year of the Owner divided by the number of hours worked by that employee for the Owner during that fiscal year.

3 (Limits on Double Payments) If this Paragraph H.1 is applied to compensate the Owner for an error, the Engineer shall not owe the Owner any other compensation to remove the erroneously built Work and replace it with correct Work. However, the payment of such compensation or the application of this Paragraph H.1 shall not affect liability for personal injury or damage to property. (In the preceding sentence, "damage to property" excludes the damage suffered by the Owner for the cost of replacing the erroneously installed Work for which this Paragraph provides compensation, but it includes all other general, special, consequential, or other kinds of damage resulting from the error.)

4 (Limit on Use of Payment against Engineer) A payment by the Engineer pursuant to this Paragraph H.1 shall be considered a compromise, and the City shall not introduce the fact of the payment in any legal action or proceeding except to the extent that compromises are admissible.

5 (Nonpayment Hereunder Not to Prevent Other Claims) If this Paragraph H.1 is not applied so as to compensate the Owner for an error, this Paragraph H.1 shall not be used to construe this

Exhibit J - Special Provisions.

Agreement so as to reduce any remedy that is available to the Owner because of that error. For example, to the extent an error is not compensated for because of the amount exceeds the insurance deductible, the Owner will not be deemed to have waived a claim therefor.

H.2 (Assignment of Subcontracts) All contracts between the Engineer and others to provide services on the Project, in which the services are expected to take more than one month to complete and the compensation is expected to exceed \$5,000, shall contain a provision allowing the Owner or a person designated by the Owner to assume the Engineer's rights under the contract so as to require continued performance according to the terms of the contract, provided, however, that neither the Owner nor the person designated by the Owner shall be liable for breaches or other events or occurrences that took place before it assumed the contract. The Engineer will demonstrate compliance with this Paragraph H.2 when requested by the Owner.

(end of Exhibit J)

This is **EXHIBIT K**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- ___ Additional Services to be performed by Engineer
- ___ Modifications to services of Engineer
- ___ Modifications to responsibilities of Owner
- ___ Modifications of payment to Engineer
- ___ Modifications to time(s) for rendering services
- ___ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

Exhibit K – Amendment to Owner-Engineer Agreement.

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The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

By: _____
Print
name: _____

By: _____
Print
name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

Exhibit B

Professional Services Forms



EQUITY & INCLUSION

CITY OF DURHAM

EQUAL BUSINESS OPPORTUNITY PROGRAM

PROFESSIONAL SERVICES FORMS

Updated 03/21



Policy Statement

It is the policy of the City to provide equal opportunities for City contracting to underutilized businesses owned by minorities and women doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct the present effects of past discrimination and to resolve complaints of discrimination.

Goals

To increase the dollar value of all City contracts for goods and services awarded to minority and women business enterprises, it is a desire of the City that the contractor will voluntarily undertake efforts to increase the participation of minority and women individuals at higher skill and responsibility levels within non-minority firms engaged in contracting and subcontracting with the City.

The Equity & Inclusion Director shall determine participation goals based upon the availability of minority and women business enterprises (MWBES) within the defined scope of contracting, and the goals established for the contracting category.

Equal Business Opportunity Program UBE Participation Documentation

If applicable information is not submitted with your proposal, your proposal may be deemed non-responsive.

UBE Participation Documentation must be used to document participation of an underutilized business enterprise (UBE) on Professional Services projects. All UBEs must be certified by the State of North Carolina as a historically underutilized business, the North Carolina Department of Transportation as a minority-owned or women-owned business or the U.S. Small Business Administration's 8(a) Business Development Program prior to the submission date. If a business listed has not been certified, the amount of participation will be reduced from the total utilization.

Letter of Intent to Perform as a Sub-consultant/Subcontractor must be completed for UBEs proposed to perform on a contract. This form must be submitted with the proposal.

Post Proposal Submission UBE Deviation

Post proposal submission UBE deviation participation documentation must be used to report any deviation from UBE participation either prior to or subsequent to startup of the project. The Equity & Inclusion Department must be notified if the proposed sub-consultant/subcontractor is unable to perform and for what reasons. Substitutions of sub-consultants/subcontractor, both prior to and after awarding of a contract, are subject to City approval.

UBE Goals Not Met/Documentation of Good Faith Efforts

It is the responsibility of consultants/contractors to make good faith efforts. Good Faith Efforts means the sum total of efforts by a particular business to provide equitable participation of minority-owned and women-owned individuals or businesses as sub-consultants/subcontractors.

Whenever contract alternatives, amendments or extra work orders are made individually or in the aggregate, which increase the total value of the original contract, the consultant must make a good faith effort to increase UBE participation such that the amounts subcontracted are consistent with the established goals.

SELECTION OF CONSULTANTS/CONTRACTORS FOR ARCHITECTURAL/ENGINEERING AND OTHER PROFESSIONAL SERVICES

Goal

The purpose is to provide underutilized business enterprises owned by minorities and women with equal opportunities for participation on City of Durham contracts.

Definition of the Scope of the Selection Policy

The Equity & Inclusion Director shall determine UBE participation goals for each contracting category to be awarded by the City. Goals for each project or contract will be based upon the availability of underutilized business enterprises(UBE's) within the defined scope of work, delineated into percentages of the total value of the work.

The City of Durham will consider a formal certification of the State of North Carolina's Historically Underutilized Businesses (HUB) Office, North Carolina Department of Transportation (N.C. DOT) minority and women businesses and the United States Small Business Administration (U.S. SBA) 8(a) Development Program as meeting the requirements of the Equal Business Opportunity Program, provided there is evidence that the firm is currently certified by one of the stated entities.

Underutilized Business Proposal Requirements

The prime consultant/contractor shall submit a proposal in accordance with the City of Durham's request for Proposal. In addition, the prime consultant/contractor must submit all required Professional Services Forms.

Selection Committee for Professional Services

A selection committee shall be established and may be composed of the following: City Manager or a designated representative of this office; Director of Finance or a designated representative of this office; department head responsible for the project; City Engineer if engineering services are involved; the Equity & Inclusion Director or designee and Purchasing Manager or designee. Other representatives shall be called upon as needed based on their areas of expertise.

The committee shall screen the proposals based on the following criteria:

1. Firms; interest in the project;
2. Current work in progress by firm;
3. Past experience with similar projects;
4. General proposal for carrying out the required work;
5. Designation of key personnel who will handle the project, with resume for each;
6. Proposed associate consultants/contractors, UBE subconsultants;
7. Indication of capability for handling project;
8. Familiarity with the project;
9. Fees that have been charged for recent comparable projects;
10. References;
11. UBE Participation; and
12. Documentation of Good Faith efforts should UBE participation requirements not be met.

After ranking the firms presenting proposals based on the above criteria, interviews will be conducted by

the selection committee with the top ranked firms (3-5). The contracting department will make the final recommendation, prepare contracts for review by the City Attorney, and prepare the recommendation for the City Council including the following:

1. Description and scope of the project;
2. Recommended firm;
3. Contract cost;
4. Time limits;
5. Basis for selection;
6. Source for funding;
7. Equal Business Opportunity Ordinance compliance; and
8. Recommendation that the contract be approved by the City Council.

Contract Award

A provision must be written in each contract with an architect or engineer requiring them to work with Equity & Inclusion Department in creating and identifying separate work.

Project Evaluation

An evaluation shall be made of each contract after its completion to be used in consideration of future professional services contracts. The evaluation shall cover appropriate items from the check list for ranking applicants. A copy of the evaluation shall be given to the consultant, and any comment he/she cares to make shall be included in the files.

**PARTICIPATION DOCUMENTATION
(TO BE COMPLETED BY PRIME CONSULTANT/CONTRACTOR ONLY)**

**Names of all firms
Project (including
prime and
subconsultants/sub
- contractors)**

Location

**UBE
Firm
Yes/No**

**Nature
of
Participation**

**% of Project
Work**

		Yes () No ()		
		Yes () No ()		
		Yes () No ()		
		Yes () No ()		
		Yes () No ()		
		Yes () No ()		
		Yes () No ()		

TOTAL _____

Name - Authorized Officer of Prime Consultant/Contractor Firm (Print/Type)

Signature - Authorized Officer of Prime Consultant/Contractor Firm

Date

Letter of Intent to Perform as a Sub-Consultant

The undersigned intends to perform work in connection with the above project as a UBE:

Minority(African American, American Indian, Asian or Hispanic) Woman

The UBE status of the undersigned is certified if identified as HUB certified by the N.C Department of Administration HUB Office, minority or women certified by the N.C. Department of Transportation and 8(a) certified by the U.S. Small Business Administration.

The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed):

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<u>ITEMS</u>	<u>PROJECTED COMMENCEMENT DATE</u>	<u>PROJECTED COMPLETION DATE</u>

The consultant will subcontract _____% of the dollar value of this contract to UBE sub-consultant.

The undersigned will enter into a formal agreement in the amount of \$ _____ for the above work with you, conditioned upon your execution of a contract with the City of Durham.

Name _____ Title _____
 Company _____ Telephone _____
 Address _____
 Signature _____

REQUEST TO CHANGE UBE PARTICIPATION

Project: _____

Name of bidder or consultant: _____

Name and title of representative of bidder or consultant: _____

Address: _____ Zip Code: _____

Telephone No: _____ Fax Number: _____

Email address: _____

Total amount of original contract, before any change orders or amendments: _____

Total amount of the contract, including all approved change orders and amendments to date, but not counting the changes proposed in this form: _____

Dollar amount of changes proposed in this form: _____

The proposed change (*check one*) **increases** **decreases** the dollar amount of the bidder's/consultant's contract with the City.

Does the proposed change decrease the UBE participation? (*check one*) **yes** **no**

If the answer is **yes**, complete the following:

BOX A. For the subcontract proposed to be changed (increased, reduced, or eliminated): Name of sub-consultant _____

Goods and services to be provided before the proposed change: _____

Is it proposed to eliminate this subcontract? **yes** **no**

If the subcontract is to be increased or reduced, describe the nature of the change (*such as adding \$5,000 in environmental work and deleting \$7,000 in architectural*): _____

Dollar amount of this subcontract before this proposed change: _____

Dollar amount of this subcontract after this proposed change: _____

This subcontractor is (check one):

- 1. Minority-owned UBE
- 2. Women-Owned UBE
- 3. Not a UBE

BOX B. Proposed subcontracts other than the subcontract described in Box A above (continued)

Name of sub-consultant for the new work: _____

Goods and Services to be provided by this proposed subcontract: _____

Dollar amount proposed of this proposed subcontract: This sub-consultant is:

- 1. Minority-owned UBE
- 2. Women-Owned UBE
- 3. Not a UBE

Add additional sheets as necessary.

UBE GOALS NOT HAVING BEEN MET. The following information must be presented by the consultant concerning good faith efforts taken.

It is the responsibility of consultants to make good faith efforts. Any act or omission by the City shall not relieve them of this responsibility. For future efforts, it shall be comprised of such efforts which are proposed to allow equitable participation of socially and economically disadvantaged employees and sub-consultants/subcontractors. The City Manager shall apply the following criteria, with due consideration of the quality, quantity, intensity and timeliness of efforts of consultants/contractors, in determining good faith efforts to engage UBEs along with other criteria that the City Manager deems proper:

Name of Bidder: _____

If you find it helpful, feel free to attach pages to explain your answers. How many pages is your firm attaching to this questionnaire? _____ questionnaire.)

(Don't count the 2 pages of this

If a yes or no answer is not appropriate, please explain the facts. All of the answers to these questions relate only to the time before your firm submitted its bid or proposal to the City. In other words, actions that your firm took after it submitted the bid or proposal to the City cannot be mentioned or used in any answers.

1. SOLICITING UBEs.

- (a) Did your firm solicit, through all reasonable and available means, the interest of all UBEs in the list provided by the City in the scope of work of the contract? **yes** **no**

In such soliciting, did your firm advertise? **yes** **no** Are you attaching copies to this questionnaire, indicating the dates and names of newspaper or other publication for each ad if that information is not already on the ads? **yes** **no**

- (b) In such soliciting, did your firm send written (including electronic) notices or letters? Are you attaching one or more sample notices or letters? **yes** **no**

- (c) Did your firm attend the pre-bid conference? **yes** **no**

- (d) Did your firm provide interested UBEs with timely, adequate information about the plans, specifications, and requirements of the contract? **yes** **no**

- (e) Did your firm follow up with UBEs that showed interest? **yes** **no**

- (f) With reference to the UBEs that your firm notified of the type of work to be subcontracted, did your firm tell them:

(i) the specific work your firm was considering for subcontracting? **yes** **no**

(ii) that their interest in the contract is being solicited? **yes** **no**

(iii) how to obtain and inspect the applicable plans and specifications and descriptions of items to be purchased? **yes** **no**

2. BREAKING DOWN THE WORK.

(a) Did your firm select portions of the work to be performed by UBEs in order to increase the likelihood that the goals would be reached? **yes** **no**

(b) If **yes**, please describe the portions selected. **ANSWER:**

3. NEGOTIATION. In your answers to 3, you may omit information regarding UBEs for which you are providing a Letter of Intent.

(a) What are the names, addresses, and telephone numbers of UBEs that you contacted? **ANSWER:**

(b) Describe the information that you provided to the UBEs regarding the plans and specifications for the work selected for potential subcontracting. **ANSWER:**

(c) Why could your firm not reach agreements with the UBEs that your firm made contact with? Be specific. **ANSWER:**

4. ASSISTANCE TO UBEs ON BONDING, CREDIT, AND INSURANCE.

(a) Did your firm or the City require any subcontractors to have bonds, lines of credit, or insurance? **yes** **no** (Note: In most projects, the City has no such requirement for *subcontractors*.)

(b) If the answer to (a) is **yes**, did your firm make efforts to assist UBEs to obtain bonds, lines of credit, or insurance? **yes** **no** If **yes**, describe your firm's efforts. **ANSWER:**

(c) Did your firm provide alternatives to bonding or insurance for potential subcontractors? **yes** **no** If **yes**, describe. **ANSWER:**

5. GOODS AND SERVICES. What efforts did your firm make to help interested UBEs to obtain goods or services relevant to the proposed subcontracting work? **ANSWER:**

6. USING OTHER SERVICES.

(a) Did your firm use the services of the City to help solicit UBEs for the work? **yes** **no**
Please explain. **ANSWER:**

(b) Did your firm use the services of available minority/women community organizations, minority and women contractors' groups, government-sponsored minority/women business assistance agencies, and other appropriate organizations to help solicit UBEs for the work? **yes** **no**
Please explain. **ANSWER:**

Contractor Workforce Diversity Questionnaire

A diverse workforce refers to the similarities and differences among employees in terms of age, cultural background, physical abilities and disabilities, race, religion, gender, and sexual orientation. A diverse workforce results in greater productivity, engagement and innovation among the employees of a business. The workforce of the City of Durham is diverse and directly benefits from diversity in hiring practices of the contractors that do business in the City of Durham. The City of Durham is committed to the promotion of a diverse workforce within its own workforce and the workforce of contractors that perform work for, or deliver goods or services to, the City.

The information requested in this questionnaire is intended to encourage the candidate, which is defined as the person, firm or corporation interested in contracting with the City, to engage in diverse workforce hiring practices as in the best interest of the City and the greater Durham community. The following questions focus on your efforts to recruit and maintain a diverse workforce and to provide your business with resources and recommendations on how to create and maintain a diverse workforce.

1. Do the management and professional positions within your business include women and minorities?

_____ Yes _____ No

If yes, please provide number(s) and positions:

Number of Women _____
Position title: _____

Number of Minorities _____
Position title: _____

2. Please respond to the following efforts you make to create and maintain a more diverse workforce:

- (a) When you recruit for employees, do you only recruit by word-of-mouth?

_____ Yes _____ No

[Note: Reliance on word-of-mouth recruiting alone is unlikely to result in a diverse workforce.]

Contractor Workforce Diversity Questionnaire

(b) Do you focus any recruitment efforts in the local Durham area?

_____ Yes _____ No

If, yes, please provide examples how you focus recruitment to the local Durham area:

(c) Do you utilize any women/minority-focused LinkedIn groups and/or other professional or non-professional women/minority groups?

_____ Yes _____ No

If, yes, please provide examples: _____

(d) Do you regularly recruit from HBCUs (Historically Black Colleges and Universities) and/or other minority-focused colleges and universities?

_____ Yes _____ No

If, yes, please provide names of the schools: _____

(e) Do you attend minority-focused career fairs?

_____ Yes _____ No

If, yes, please provide names of examples: _____

Contractor Workforce Diversity Questionnaire

(f) Do you participate in Durham youth internship programs?

_____ Yes _____ No

If, yes, please provide names of examples: _____

3. Please list the efforts your company makes to promote or create a more diverse workforce that may not be listed above under question No. 2.

4. Do you believe your business, including all employees, has a diverse workforce?

_____ Yes _____ No

Enter the total number of employees that work for your business _____.

Please provide the reasons why you believe **you have**, or **do not have**, a diverse workforce:

5. How would you characterize the nature of the majority of your workforce:

(a) Professional and skilled (includes technicians and clerical) workers:

_____ Yes _____ No

(b) Mostly unskilled workers and laborers:

_____ Yes _____ No

Contractor Workforce Diversity Questionnaire

Part B – Employee Diversity Breakdown for the Consolidated Company

Employment Category	Total Employees	Total Males	Total Females	M-----a-----l-----e-----s					F-----e-----m-----a-----l-----e-----s				
				White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manger													
Professional													
Labor													
Clerical													
Totals													

Resources –The City of Durham advertises job postings to a variety of sources in its own pursuit of a diverse workforce. The following resources are sources used by the City of Durham and others and are being provided to assist you in your recruitment of a more diverse workforce.

Category	Organization	Website
Professionals	American Women’s Society of Certified Public Accountants	www.awscpa.org
Professionals	Accounting & Financial Women’s Alliance	www.afwa.org
Professional/ Technical	Society of Women Engineers	www.societyofwomenengineers.swe.org
Professionals	American Business Women’s Assoc.	www.abwa.org
Professionals	Association for Women in Science	www.awis.org
Professionals	Women in Engineering	www.womeng.org
Professionals	Women in Technology	www.womenintechnology.org
Professionals	Women in I.T	www.womeninit.org
Professionals	URISA	www.urisa.org
Professionals	Women in GIS	www.womeningis.org
Professionals	Supporting Women in Geography & GIS	www.swiggis-austin.org
Professionals	Women’s Transportation Seminar	www.wtsinternational.org
Professionals	Society of Asian Scientists and Engineers	https://www.saseconnect.org/

Contractor Workforce Diversity Questionnaire

Professionals	National Organization of Minority Architects	https://www.noma.net/professional/north-carolina
Professionals	North Carolina Society of Hispanic Professionals	https://www.thencshp.org
Professionals	Association of Asian American Architects & Engineers	https://www.aaaesc.org
Professionals	Minority Professionals Network	http://www.minorityprofessionalnetwork.com
Gen. Construction	National Association of Black Women in Construction	https://nabwic.org
Chamber of Commerce	Carolinas Asian American Chamber of Commerce	https://caacc.com
Skilled Craft	Hispanic Arborist Assoc.	www.hispanicarboristassociation.com
Skilled Craft	Electrical Workers Minority Caucus	www.ibew-ewmc.org
Skilled Craft	Women in Manufacturing	www.womeninmanufacturing.org
Skilled Craft	Rainbow PUSH Automotive Project	www.automotiveproject.org
Skilled Craft	Women in Automotive	www.womeminautomotive.org
Service/Maintenance	Conf. of Minority Transportation Officials	www.comto.org
Service/Maintenance	Coalition of Labor Union Women	www.cluw.org
Service/Maintenance	National Assoc. of Women in Construction	www.nawic.org
Protect and Serve	National Assoc. of Latino Firefighters	www.nahf.org
Protect and Serve	Int. Assoc. of Black Firefighters	www.iabpf.org
Protect and Serve	Int. Assoc. of Women in Fire & Emergency Services	www.i-women.org
Protect and Serve	National Assoc. of Women Law Enforcement Officers	www.nawlee.org
Protect and Serve	National Latino Law Enforcement Org.	www.nlleo.com
Protect and Serve	National Coalition of Latino Officers	www.latino-officers.org
Protect and Serve	Asian American Law Enforcement Assoc.	www.asianamericanlawenforemenassociation.org

Exhibit C

UBE Listing

UBE Listing Western Intake Partnership Regional Water Treatment Facility

Company Name	Contact Name	Address	City, State	Zip	Phone	Email	Hub Certification
A1 Consulting Group, Inc.	Goel, Vinnie	117 International Drive	Morrisville, NC	27560	919-469-4800	vgoel@a1cons.com	AA
Accelerate Engineering, PLLC	Teng, Zhaolong	875 Walnut Street, Suite 316	Cary, NC	27511	919-263-5678	Gavin.Teng@AccelerateEng.com	AA
BBFoster Consulting, PC	Foster, Ph.D., PE, Bellandra	2618-A Battleground Avenue	Greensboro, NC, NC	27408	336-355-7897	bbf@bbfosterconsulting.com	B
BREE & ASSOCIATES, INC.	Lancaster, PE, Robert	3434 Edwards Mill Road	Raleigh, NC	27612	919-469-3330	bree@breeassociates.com	B
CH ENGINEERING, PLLC	Chambliss, Maha	3220 Glen Royal Road	Raleigh, NC	27617	919-788-0224	mchambliss@ch-engr.com	W
Cooper and Associates Surveyors, P.A.	Jewell, Colleen	P.O. Box 3444	Cary, NC	27519	919-469-1760	surveys@coopersurveyors.com	W
CriTek Engineering Group, P.C.	Crite, Dawayne	1 Centerview Drive	Greensboro, NC	27407	336-348-1889	info@critekgroup.com	B
Engineered Designs, Inc.	Scoggins, Ginger	1151 SE Cary Parkway	Cary, NC	27518	919-851-8481	gscoggins@engineereddesigns.com	W
Falcon Engineering	Robertson, Margaret	1210 Trinity Road	Cary, NC	27513	919-871-0800	mmansfield@falconengineers.com	W
FROEHLING & ROBERTSON INC	Schaefer, Daniel	310 Hubert Street	Raleigh, NC	27603	919-828-3441	dschaefer@fandr.com	AI
Gardner & McDaniel, PA	Easterling, Susan	P.O. Box 51967	Durham, NC	27717	919-489-0926	susan@gmengrs.com	W
JC Waller & Associates, PC	Waller, Juhann	7-L Dundas Circle	Greensboro, NC	27407	336-697-2637	jwaller@jcwaller.com	B
John Davenport Engineering	Buchanan, Robin	305 W 4th Street	Winston-Salem, NC	27101	336-744-1636	rbuchanan@davenportworld.com	B
Kennerly Engineering & Design	Kennerly, Nikole	12133 N NC Hwy 150	Winston-Salem, NC	27127	336-775-2118	nikole.kennerly@kennerlyengineering.com	W
Mekuria Engineering, Inc.	Mekuria, Belayneh	P O Box - 10505	Raleigh, NC	27605	919-539-6070	Bmekuria@nc.rr.com	B
Ross Linden Engineers PC	Ross, Laura	709 W. Jones Street	Raleigh, NC	27603	919-832-5680	info@rosslinden.com	W
Roystel Engineering	Royster, Lynette	PO Box 97604	Raleigh, NC	27624	919-946-6214	lynette@roystelengineering.com	B
SAMR	Rasheed, Anwar	PO Box 41195	Greensboro, NC	27404	336-558-7700	arasheed@samrba.com	B
SEPI Engineering&Construction	Macdonell, James	1 Glenwood Avenue	Raleigh, NC	27603	919-747-5833	jmacdonell@sepiengineering.com	W
STEWART ENGINEERING INC	Southerland, Denise	223 S. West Street	Raleigh, NC	27603	919-380-8750	dsoutherland@stewartinc.com	HA
Threadcraft Engineering, Inc.	Threadcraft, Joseph	1021 Hadley Meadows Drive	Raleigh, NC	27603	919-600-8399	joseph@tei-engineers.com	B
Three Oaks Engineering	Young, Suzanne	324 Blackwell Street	Durham, NC	27701	919-423-9413	suzanne.young@threeoaksengineering.com	W
TM Engineering, Inc.	Mallik, Ashley	103 Hiawatha Court	Cary, NC	27513	919-468-2545	ashleym@tmengineering.org	AA
Triangle Aerial Surveys, LLP	Bolivar, Irene	7718 Six Fork Road	Raleigh, NC	27615	919-880-2426	admin@triaerial.com	W
Trimat Materials Testing, Inc.	Regimand, Simine	PO box 13944, 1 Triangle Drive	Durham, NC	27709	919-532-2211	cbacchi@trimattesting.com	AA
Westcott, Small & Associates,	Small, Tori	125 South Elm Street	Greensboro, NC	27401	336-310-1481	tsmall@wsaaeng.com	W
Wetherill Engineering, Inc	Wetherill, Eddie	1223 Jones Franklin Road	Raleigh, NC	27606	919-851-8077	ewetherill@wetherilleng.com	W