

AGREEMENT FOR PROFESSIONAL SERVICES
FOR
[ARCHITECTURAL / ENGINEERING / LANDSCAPE ARCHITECTURAL]

This Agreement, made as of the ____ day of _____, 20____, by and between the County of Wake (hereinafter, the "Owner") and _____, a professional [architectural] [engineering] [landscape architectural] firm with a partner or principal registered in North Carolina as a licensed [architect] [engineer] [landscape architect] and with offices in North Carolina (hereinafter, the "Designer").

WITNESSETH:

That the Owner and Designer, for the consideration herein named, do hereby agree as follows:

ARTICLE 1

1.1 Scope of Work

1.1.1 This Agreement is for professional [architectural] [engineering] [landscape architectural] services to be rendered by Designer to Owner with respect to a project known as _____ (hereinafter, the "Project"). The Project is located in Wake County, North Carolina. It is described more particularly in Attachment A.

1.1.2 By its execution of this Agreement, the Designer represents and agrees that it is qualified and fully capable to perform and provide the professional [architectural] [engineering] [landscape architectural] services and other services required or necessary under this Agreement in a fully competent, professional and timely manner, and that its Consultants are also fully capable and qualified to perform and provide the services that they will provide hereunder.

1.1.3 Time is of the essence of this Agreement.

1.1.4 The services to be performed under this Agreement consist of Basic Services, as described and designated in Article 4 hereof and in Attachment B to this Agreement, and such Additional Services as are designated in Article 5 of this Agreement or as may from time-to-time be

agreed upon by the Owner and Designer by Amendment or Addendum to this Agreement. Compensation to the Designer for Basic Services under this Agreement shall be as set forth herein, and compensation for Additional Services shall be as set forth herein or in any Amendment or Addendum providing for them. All services performed by the Designer not identified as Additional Services in Article 5 or in a written Amendment or Agreement entered into by the Owner and the Designer and providing for additional compensation for such additional services relating to the Project shall be deemed to be Basic Services which are provided without additional compensation.

ARTICLE 2

2.1 Definitions

- 2.1.1 Additional Services - See Section 1.1.4 and Article 5.
- 2.1.2 Basic Services - See Article 4 and Attachment B.
- 2.1.3 Certificate of Final Completion - See the General Conditions of Wake County's Standard Construction Agreement with contractors.
- 2.1.4 Compensation for Basic Services - See Section 7.1 and 7.2.
- 2.1.5 Consultants - See Section 3.3.1 and Attachment E.
- 2.1.6 County Board of Commissioners - The Board of Commissioners of Wake County.
- 2.1.7 County Manager - The employee of Wake County bearing that title.
- 2.1.8 Director, Facilities Design & Construction - See Section 8.1.3. The Director, Facilities Design & Construction is the employee of Wake County bearing that title.
- 2.1.9 Milestone Dates - See Attachment D.
- 2.1.10 Project - All phases of the Project as described in Attachments A and B including but not limited to the schematic design, design development, construction document, bidding and contract award, construction and post-construction phases.
- 2.1.11 Reimbursable Expenses - See Section 7.5.
- 2.1.12 Total Project Cost - See Section 4.2.1

ARTICLE 3
RESPONSIBILITIES OF THE DESIGNER

3.1 Services to be Provided

3.1.1 The Designer shall provide the Owner with all [architectural and engineering] [engineering] [landscape architectural] services required to satisfactorily complete all phases of the Project within the time limitations set forth herein and in accordance with the highest professional standards. Such services may include:

[Select the appropriate services]

- Architectural programming
- Master planning
- Space planning
- Evaluation and analysis of the site or sites
- Architectural design
- Civil engineering
- Structural engineering
- Mechanical engineering
- Electrical engineering
- Landscape and irrigation system design
- Interior design
- Signage and graphics design
- Construction inspection
- Construction contract administration
- All other services customarily furnished by a Designer and it's Consultants with respect to projects and activities similar to the Project.

All services of the Designer shall be provided in accordance with the terms and conditions of this Agreement.

3.2. Standard of Care

3.2.1 The Designer and its Consultants shall exercise reasonable care and diligence in performing their services under this Agreement in accordance with generally accepted standards for

[architectural and engineering] [engineering] [landscape architectural] practice in the community which is the situs of the project and in accordance with federal, state and local laws and regulations applicable to the performance of these services. The Designer shall serve as a representative of the Owner in accordance with the terms and conditions of this Agreement to guard the Owner against defects and deficiencies in the Work.

3.2.2 The Designer shall be responsible for all errors or omissions, in the drawings, specifications, and other documents prepared by the Designer or its Consultants. It shall be the responsibility of the Designer throughout the period of performance under this Agreement to use reasonable professional care and judgment to guard the Owner against defects and deficiencies in the Work.

3.2.3 The Designer shall correct at no additional cost to the Owner any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts in the drawings, specifications and other documents prepared by the Designer or its Consultants.

3.2.4 The Designer shall assure that all drawings, specifications and other documents prepared by the Designer or its Consultants hereunder are in accordance with applicable laws, statutes, building codes and regulations and that all necessary or appropriate applications for approvals are submitted to federal, state and local governments or agencies in a timely manner so as not to delay the design or construction activities of the Project.

3.2.5 The Designer and its Consultants shall perform all services in a timely manner in accordance with all schedules for the Project or required under the Agreement and in accordance with the Construction Register, as provided in the General Conditions of the Owner's contracts with the Contractors for the Project.

3.2.6 The Designer shall reimburse the Owner, as stipulated in 3.2.6.A and 3.2.6.B for costs, damages and expenses, including attorney's fees, incurred by the Owner when such costs, damages and expenses are the result of any error, omission or delay of the Designer or its Consultants.

A. To the extent that the cost to the Owner for all errors, premium value of omissions or delays of the Designer is less than one-half of one percent (0.5%) of the Total Project Cost identified in [Attachment C], the Designer shall not be liable to the Owner for such costs.

B. If the aggregate cost to the Owner for such errors, premium value of omissions or delays of the Designer amounts to more than one-half of one percent (0.5%) of the Total Project

Cost identified in [\[Attachment C\]](#), the Designer shall reimburse the Owner for all such costs in excess of said one-half of one percent (0.5%).

3.3 Designer's Consultants

3.3.1 The Designer's Consultants for the project, along with their key project personnel, are listed in [\[Attachment E\]](#) to this Agreement. No changes in the consultants or key personnel indicated shall be permitted except with the prior written consent of the Owner.

3.3.2 All of the Designer's contracts with its Consultants shall be in writing and shall expressly provide that if this Agreement is terminated for any reason, the Owner may, at its sole option, take the assignment of the Consultants' contract with the Designer, that such assignment shall automatically take place upon notification in writing by the Owner to the Consultants and the Consultants shall continue to be bound by the contract after such assignment. A copy of each contract between the Designer and a Consultant shall be furnished to the Owner within seven (7) days of its execution.

ARTICLE 4

BASIC SERVICES

4.1 Basic Services

4.1.1 The Designer shall perform as Basic Services that work and services described herein and in Attachment B to this Agreement.

4.1.2 The Basic Services will be performed by the Designer in the phases described in [\[Attachment B\]](#).

4.1.3 The Owner shall have the right and option to require the Designer to prepare [\[four\]](#) [\[eight\]](#) separate bid packages with no additional compensation due the Designer. Such bid packages, at the Owner's option, may include:

- A. Demolition and preliminary site work
- B. General work, plumbing, mechanical, electrical, fire protection
- C. Landscaping and irrigation
- D. Signage
- E. Furniture

4.2 Project Cost Estimates

4.2.1 At the times designated herein, the Designer shall develop an estimate of the total cost of the Project (the "Total Project Cost"), including Designer's fees, costs of the construction, costs of equipment, furnishings, furniture and signage, permit fees and appropriate contingencies. These costs shall be prepared and submitted to the Owner substantially in the format shown in Attachment C to this Agreement, with supporting documents listing quantities, unit price, labor rates, man-hour estimates, overhead and profit.

4.2.2 These Total Project Cost estimates shall be prepared by a qualified cost estimating Consultant to the Designer who is acceptable to the Owner.

4.2.3 Total Project Cost estimates shall be prepared at three points in the production of the Designer's work:

- A. At completion of schematic design;
- B. At completion of design development; and
- C. At completion of 80% of the construction documents.

4.2.4 When the first of these estimates of Total Project Cost has been approved in writing by the Owner, it shall be used by the Owner as a basis for appropriating funds specifically for the Project. Once this Total Project Cost has been so approved by the Owner, the Designer shall be obligated, without additional compensation, to adjust the design of the Project to assure that it remains within the approved Total Project Cost.

4.2.5 Should bidding or negotiation with contractors produce prices which, when added to the other elements of the approved Total Project Cost, produce a cost that is in excess of the approved Total Project Cost, the Designer shall participate with the Owner in rebidding, renegotiation and design adjustments to the extent such are necessary to obtain prices within the approved Total Project Cost. All activity of the Designer with respect to these matters shall constitute Basic Services and shall be performed by the Designer without additional compensation.

4.3 Project Conferences

4.3.1 For the duration of the development of the Project, the Designer and its Consultants shall meet periodically with the Owner. The minimum regularly scheduled meetings which the Designer shall be required to attend are listed below:

- Initial orientation meeting

- Progress meetings during pre-design and design phases will be held every other week.
- Pre-Bid conferences
- Bid openings
- Pre-construction conferences
- Construction progress meetings every other week
- Additional meetings as required to properly fulfill the requirements of this Agreement.

4.4 Construction Administration

4.4.1 As part of Basic Services, the Designer shall provide all of the administrative services described in the Owner's contracts with the Contractors for the Project.

ARTICLE 5

ADDITIONAL SERVICES

5.1 Additional Services to be provided by the Designer or its Consultants pursuant to this Agreement are:

5.1.1 Providing fully detailed presentation models or professional artist's renderings.

5.1.2 Making major revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given by the Owner or are due to causes beyond the control and without the fault or negligence of the Designer.

5.1.3 Preparing supporting data and other services in connection with a significant Owner-initiated change order, but only if Designer can demonstrate that such services cause a direct increase in Designer's cost of rendering its Basic Services hereunder.

5.1.4 Preparing to serve or serving as an expert witness for the Owner in connection with arbitration or legal proceedings unless the subject matter of the proceedings includes matters arising out of or related to the Designer's or Consultant's performance of service with respect to the Project; however, preparing to serve or serving as a fact witness for the Owner in such proceedings or rendering testimony necessary to secure governmental approval of zoning or land use clearances for the Project shall not constitute an Additional Service.

5.1.5 Providing professional services made necessary by the default of a Contractor.

5.1.6 Providing additional or extended services during the Construction Phase made necessary by (a) defective work of the contractor(s); (b) prolongation of more than sixty (60) days, provided the prolongation is not due to the fault or negligence of the Designer, its employees, consultants or agents; or (c) default under the construction contract due to delinquency or insolvency.

5.1.7 Providing additional services and costs necessitated by special out-of-town travel required by the Designer and approved in advance in writing by the Owner, other than visits to the Project and other than travel reasonably required to fully accomplish the Basic Services.

5.1.8 Attending special public hearings for the Project, other than those listed herein, which are called by the County Board of Commissioners.

ARTICLE 6

DURATION OF DESIGNER'S SERVICES

6.1 Scheduling of Services

6.1.1 Attachment D to this Agreement is the Key Milestone Listing which defines the sequence and timing of the design and construction activities. The Designer and its Consultants shall schedule and perform their activities so as to meet the Milestone Dates shown. No deviation by the Designer or his Consultants from the Key Milestone Listing shall be allowed without prior written approval by the Owner.

6.1.2 The Designer's schedule for the performance of its activities and the activities of its Consultants shall be reduced to writing and submitted to the Owner for review and approval. The Designer shall also prepare and submit to the Owner for review and approval a schedule of all known items of information, approvals or decisions to be furnished or made by the Owner, including the dates by which the Owner shall have all information necessary from the Designer with respect to that item, approval or decision and the date by which the item of information, approval or decision should be communicated to the Designer. The Owner shall always have a reasonable time within which to provide such item of information, approval or decision and shall not have any responsibility for any delay occurring by reason of the Owner's being unable, through no fault of the Owner, to supply such item of information, approval or decision.

6.1.3 Should the Owner determine that the Designer is behind schedule, it may require the Designer to expedite and accelerate its efforts, including providing additional manpower and/or overtime, as necessary, to perform its services in accordance with the Key Milestone Listing at no additional cost to the Owner.

6.1.4 The commencement date for the Designer's Basic Services shall be the date of delivery to the Designer from the Owner of a fully executed original of this Agreement.

6.2 Adjustments to the Schedule

6.2.1 If the Designer's work on the Project is or will be delayed for more than sixty (60) days through no fault of the Designer, or if the Owner increases or decreases the scope or size of the Project by ten percent (10%) of currently estimated Total Project Cost, the Designer shall give prompt written notice to the Owner. Provided that such notice has been given, the Designer may request in writing an adjustment in the Key Milestone Listing dates, which shall be granted by the Owner to the extent reasonable.

ARTICLE 7

DESIGNER'S COMPENSATION

7.1 Compensation for Basic Services

7.1.1 Compensation for Basic Services shall include all compensation due the Designer from the Owner for all services under this Agreement except for Additional Services and Reimbursable Expenses.

7.2 Breakdown of Compensation for Basic Services

Compensation for Basic Services consists of the following compensation for the following separate categories of services:

7.2.1 Schematic Design Phase. Lump sum fee of _____.

7.2.2 Design Development Phase. Lump sum fee of _____.

7.2.3 Construction Document Phase. Lump sum fee of _____.

7.2.4 Bidding and Contract Award. Lump sum fee of _____.

7.2.5 Construction Phase. Lump sum fee of _____.

7.2.6 Post Construction Phase. Lump sum fee of _____.

7.2.7 Additional Basic Services _____.

A. Programming. Lump sum fee of _____.

B. Master Planning. Lump sum fee of _____.

C. Signage. Lump sum fee of _____.

D. Furniture. Lump sum fee of _____.

7.3 Payment for Basic Services Rendered

7.3.1 Payment to the Designer for Basic Services shall become due and payable monthly in proportion to satisfactory services performed and work accomplished. Payments will be made monthly by the Owner within 30 calendar days of receipt of an invoice which is in form and substance acceptable to the Owner. In the event the Owner finds any part or parts of all or any portion of an invoice presented by the Designer not to be acceptable, it shall identify to the Designer the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. No deductions shall be made from the Designer's fees for basic services except in accordance with this Agreement or to reimburse the Owner for costs or expenses incurred or anticipated to be incurred for which the Designer is liable.

7.3.2 If the Owner increases or decreases the scope of the Project by ten percent (10%) or more of the currently estimated Total Project Cost, the compensation for Basic Services shall be equitably adjusted.

7.4 Compensation for Additional Services

7.4.1 With respect to Additional Services performed by the Designer in accordance with Article 5 or any Addendum or Amendment to this Agreement, the Designer shall be compensated at the hourly rates shown in Attachment F to this Agreement, unless the Owner and the Designer otherwise agree in writing.

7.5 Reimbursable Expenses

7.5.1 Reimbursable expenses are in addition to the fees for Basic Services and Additional Services, and are for the following expenditures to the extent reasonable and actually incurred by the Designer, his employees, or his consultants with respect to the Project:

7.5.2 Actual expenditures for postage, reproductions, photography, and long distance telephone charges directly attributable to this Project.

7.5.3 The actual cost of reproduction of plans and specifications excluding documents for exclusive use by the Designer.

7.5.4 Neither the Designer nor its Consultants shall be entitled to any mark-up on actual expenses which are incurred.

7.6 Accounting Records

7.6.1 Accounting records of the Designer's compensation for Additional Services and Reimbursable Expenses pertaining to the Project shall be maintained by the Designer and its Consultants in accordance with generally accepted accounting practices and shall be available for inspection by the Owner or the Owner's representatives at mutually convenient times for a period of three (3) years after issuance of the Certificate of Final Completion for the Project.

ARTICLE 8

RESPONSIBILITIES OF THE OWNER

8.1 Cooperation and Coordination

8.1.1 The Owner shall meet with the Designer as necessary at mutually convenient times to provide information necessary to enable the Designer to develop a detailed written analysis and complete needs summary of the Project.

8.1.2 The Owner shall examine documents submitted by the Designer and shall make reasonable efforts to render decisions pertaining thereto no later than the dates specified in the schedule for such decisions described in Article 6.1.2.

8.1.3 The Director of Facilities Design and Construction shall be the Owner's Construction Projects Administrator and shall act in the Owner's behalf and as its representative with respect to the Project and shall have the authority to render decisions and approve changes in the scope of the Project within guidelines established by the County Manager and the County Board of Commissioners and shall be available during working hours as often as may be reasonably required to render decisions and to furnish information.

8.2 Surveys and Testing

8.2.1 The Owner shall furnish the Designer with a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees, and other pertinent information reasonably requested by the Designer including that concerning available service and utility lines, both public and private, above and below grade, including inverts.

8.2.2 The Owner shall provide the services of a geotechnical engineer or other consultant, when such services are reasonably deemed necessary by the Designer as shown on the Designer's schedule described in Article 6.1.2, to provide reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations for determining subsoil, air and water conditions, all together with reports and appropriate professional recommendations thereof.

8.2.3 All services, data, information, surveys and reports required of the Owner pursuant to this Article 8, shall be furnished at the Owner's expense and, absent any negligence or failure to follow professional standards on the part of Designer, the Designer shall be entitled to rely upon the accuracy and completeness of such services, data, information, surveys and reports.

8.3 Permits and Approvals

8.3.1 The Owner shall secure and pay for all necessary permits, licenses, approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities. The Designer shall provide the Owner with a schedule of all required approvals and of the dates by which application for such approvals must be made in order to avoid any risk of delay to the Project, prepare necessary application forms, present documents requiring approval by the Owner and submit documents with the Owner's approval to the appropriate approval agency.

ARTICLE 9

INSURANCE

9.1 General Requirements

9.1.1 The Designer shall purchase and maintain and shall cause each of its Consultants to purchase and maintain during the period of performance of this Agreement and for five years after issuance of a Certificate of Final Completion of the Project insurance for protection from claims under workers' or workmen's compensation acts; Commercial General Liability Insurance (including broad form contractual liability and complete operations, explosions, collapse, and underground hazards coverage) covering claims arising out of or relating to bodily injury, including bodily injury, sickness, disease or death of any of the Designer's or Consultants' employees or any other person and to real and personal property including loss of use resulting thereof; Commercial Automobile Liability Insurance, including hired and non-owned vehicles, if any, covering personal injury or death, and property damage; and Professional Liability Insurance, covering personal injury, bodily injury and property damage and claims arising out of or related to the performance under this Agreement by the Designer or its agents, Consultants and employees.

9.1.2 The minimum insurance ratings for any company insuring the Designer shall be Best's A-. Should the ratings of any insurance carrier insuring the Designer fall below the minimum rating, the County may, at its option, require the Designer to purchase insurance from a company whose rating meets the minimum standard.

9.2 Limits of Coverage

9.2.1 Minimum limits of insurance coverage shall be as follows:

INSURANCE DESCRIPTION	MINIMUM REQUIRED COVERAGE
· Worker's Compensation Coverage B - Employers Liability	Limits for Coverage A - Statutory State of N.C. \$500,000 each accident and policy limit and disease each employee
· Commercial General Liability	\$1,000,000 Each Occurrence \$2,000,000 Aggregate
· Commercial Automobile Liability Combined Single Limit	\$1,000,000
· Professional Liability	\$1,000,000 each claim \$2,000,000 Aggregate

9.2.2 . If any coverage is on a claims-made basis, Provider agrees to maintain a retroactive date prior to or equal to the effective date of this Agreement and to purchase and maintain Supplemental Extended Reporting Period or 'tail coverage' with a minimum reporting period of not less than three (3) years if the policy expires or is cancelled or non-renewed. If coverage is replaced, the new policy must include full prior acts coverage or a retroactive date to cover the effective dates of this Agreement. Provider shall provide a Certificate of Insurance annually to Wake County indicating any claims made coverage and respective retroactive date. The duty to provide extended coverage as set forth herein survives the effective dates of this Agreement.

9.3 Proof of Coverage

9.3.1 Evidence of such insurance shall be furnished to the Owner. Copies or originals of correspondence, certificates or other items pertaining to insurance shall be sent to: Wake County Finance Department, Wake County Justice Center, Suite 2900, PO Box 550, Raleigh, NC 27602. Upon cancellation, non-renewal or reduction, the Consultant shall procure substitute insurance so as to assure the Owner that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

9.4 Indemnity

9.4.1 The Designer agrees to indemnify and hold harmless the Owner from all loss, liability, claims or expense, including attorney's fees, arising out of or related to the Project and arising from bodily injury including death or property damage to any person or persons caused in whole or in part by the negligence or misconduct of the Designer except to the extent same are caused by the negligence or willful misconduct of the Owner. It is the intent of this provision to require the Designer to indemnify the Owner to the fullest extent permitted under North Carolina law.

9.5 Owner's Insurance Option

9.5.1 At any time during the performance of this Agreement, the Owner may, at its sole option, provide for itself, for the Designer and for its Consultants any or all of the insurance coverage required under the Article.

9.5.2 If the Owner elects to provide such coverage it shall notify the Designer in writing and provide to the Designer such certificate or certificates of coverage as may be applicable.

9.5.3 If the Owner elects to provide such cover it shall be entitled to pro rata reduction in the fees for Basic Services equal to the cost of providing such coverage to the Designer and its Consultants.

ARTICLE 10

AMENDMENTS TO THE AGREEMENT

10.1 Changes in the Designer's Basic Services

10.1.1 Changes in the Basic Services and entitlement to additional compensation or a change in duration of this Agreement shall be made by a written Amendment to this Agreement executed by the Owner and the Designer. The Designer shall proceed to perform the Services required by the Amendment only after receiving a fully executed Amendment from the Owner or a written notice from the Owner directing the Designer to proceed, whichever is earlier.

10.2 Owner Changes

10.2.1 The Owner may, without invalidating this Agreement, make written changes in the Designer's Basic Services or Additional Services of this Agreement by preparing and executing an Amendment to the Agreement. Within three (3) days of receipt of such an Amendment, the Designer shall notify the Owner in writing of any change contained therein that the Designer believes significantly increases or decreases the Designer's services with respect to the Project and request an adjustment in compensation with respect thereto. If the Amendment significantly increases or decreases the Designer's services, the Designer's compensation may be equitably adjusted.

ARTICLE 11

TERMINATION AND SUSPENSION

11.1 Termination for Convenience of the Owner

11.1.2 This Agreement may be terminated without cause by the Owner and for its convenience upon seven (7) days written notice to the Designer.

11.2 Other Termination

11.2.1 After seven (7) days written notice to the other party of its material breach of the Agreement, this Agreement may be terminated by the noticing party, provided that the other party has not taken all reasonable actions to remedy the breach.

11.3 Compensation After Termination

11.3.1 In the event of termination for the convenience of the Owner, the Designer shall be paid that portion of its fees and expenses that it has earned to the date of termination, plus five percent (5%) of its compensation for Basic Services earned to date or of its unearned compensation for Basic Services, whichever is less, less any costs or expenses incurred or anticipated to be unearned by the Owner due to errors or omissions of the Designer.

11.3.2 In the event of termination by reason of a material breach of the Agreement by the Owner, the Designer shall be entitled to the same compensation as it would have received had the Owner terminated the Agreement for convenience, and the Designer expressly agrees that said compensation is fair and appropriate as liquidated damages for any and all costs and damages it might incur as a result of such termination.

11.3.3 In the event of termination by reason of a material breach of the Agreement by the Designer, the Designer shall be paid that portion of its fees and expenses that it has earned to the date of termination, less any costs or expenses incurred or anticipated to be incurred by the Owner due to errors or omissions of the Designer or by reason of the Designer's breach of this Agreement.

11.3.4 Should this Agreement be terminated, the Designer as provided under this Article 11, the Owner shall be granted, at no additional cost, ownership of all documents, drawings, and electronic data bases relating to the Project, including the ownership and use of all drawings, specifications, documents and materials relating to the Project prepared by or in the possession of the Designer. The Designer shall turn over to the Owner within seven (7) days and in good unaltered condition reproduces of all original drawings, specifications, documents, electronic data bases and materials. In the event of such termination, and should the Owner use such drawings for completion of the Project, the Owner shall be

responsible for any cost, expense, damage or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by the Owner, its Contractor(s), agents or employees in connection with Owner's use of such drawings, plans, specifications, renderings, models and other work provided as part of Basic Services and Additional Services. The Designer specifically agrees to incorporate the provisions of this paragraph in all contracts for the services of Designer's Consultants. The Owner agrees that the Designer may retain one set of drawings for its records.

11.3.5 Should this Agreement be terminated, the Owner shall, nevertheless, have the right to require the Designer and/or its Consultants to perform such additional effort as may be necessary to providing professionally certified and sealed drawings and to delivering to the Owner such certified and sealed drawings with respect to any phase or item of the project, for which effort the Designer shall be compensated in accordance with this Agreement.

11.4 Suspension

11.4.1 The Owner may order the Designer in writing to suspend, delay or interrupt all or any part of its Services on the Project for the convenience of Owner.

11.4.2 In the event the Designer believes that any suspension, delay or interruption of any or all of the Work on the Project, may require an extension of the duration of Basic Services or an increase in the level of staffing by Designer, it shall so notify the Owner and propose an amendment of the Key Milestone Listing for consideration of the Owner. Such amendment or extension shall be effective only upon the written approval of the Owner, which will not be withheld unreasonably. In the event the duration of Basic Services is extended or shortened or the level of staffing by the Designer is increased or decreased, the Designer's compensation for Basic Services may be equitably adjusted.

11.4.3 A suspension, delay or interruption of the Project shall not terminate this Agreement; provided, however, that if such suspension, delay or interruption causes a suspension of the Designer's services for a period exceeding ninety (90) days, the Designer's compensation for Basic Services may be equitably adjusted.

11.5 Waiver

11.5.1 The payment of any sums by the Owner under this Agreement or the failure of the Owner to require compliance by the Designer with any provisions of this Agreement or the waiver by the

Owner of any breach of this Agreement shall not constitute a waiver of any claim for damages by the Owner for any breach of this Agreement or a waiver of any other required compliance with this Agreement by the Designer.

ARTICLE 12

ADDITIONAL PROVISIONS

12.1 Confidentiality

12.1.1 The Designer and its Consultants shall use their best efforts not to disclose or permit the disclosure of any confidential information relating to the Project, except to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this Agreement.

12.2 Limitation and Assignment

12.2.1 The Owner and the Designer each bind themselves, their successors, assigns and legal representatives to the terms of this Agreement. Neither the Owner nor the Designer shall assign or transfer its interest in this Agreement without the written consent of the other.

12.3 Governing Law

12.3.1 This Agreement and the duties, responsibilities, obligations and rights of respective parties hereunder shall be governed by the laws of the State of North Carolina.

12.4 Dispute Resolution

12.4.1 Any and all suits or actions to enforce, interpret or seek damages with respect to any provision of, or the performance or non-performance of, this Agreement shall be brought in the General Court of Justice of North Carolina sitting in Wake County, North Carolina, and it is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or actions.

12.5 Extent of Agreement

12.5.1 This Agreement represents the entire and integrated agreement between the Owner and the Designer and supersedes all prior negotiations, representations or agreements, either written or oral.

This Agreement may be amended only by written instrument signed by both the Owner and the Designer.

12.6 Severability

12.6.1 If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.

12.7 Ownership of Documents

12.7.1 All designs, drawings, specifications, design calculations, notes and other works developed in the performance of this contract shall become the property of the Owner and may be used on any other project without additional compensation to the Designer. The use of the documents by the Owner or by any person or entity for any purpose other than the Project as set forth in this Agreement shall be at the full risk of the Owner or such person or entity.

12.8 List of Attachments

12.8.1 The following Attachments are incorporated herein and made a part of this Agreement by reference:

- Attachment A - Description of the Project
- Attachment B - Description of Basic Services
- Attachment C - Format of Total Project Cost Estimates
- Attachment D - Key Milestone Listing
- Attachment E - Consultants and Key Personnel
- Attachment F - Hourly Rates Schedule

12.9 E-Verify

To ensure compliance with the E-Verify requirements of the General Statutes of North Carolina, all contractors, including any subcontractors employed by the contractor(s), by submitting a bid, proposal or any other response, or by providing any material, equipment, supplies, services, etc, attest and affirm that they are aware and in full compliance with N.C.G.S. Chapter 64, Article 2 (N.C.G.S. 64-26(a)) relating to the E-Verify requirements.

12.10 Relationship of Parties

Provider is an independent contractor of the County. Provider represents that it has or will secure, at its own expense, all personnel required in performing the services under this

Agreement. Such personnel shall not be employees of or have any contractual relationship with the County. All personnel engaged in work under this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform such services. It is further agreed that the Provider will obey all State and Federal statutes, rules and regulations that are applicable to provisions of the services called herein. Neither Provider nor any employee of the Provider shall be deemed an officer, employee or agent of the County.

12.11 No Waiver of Sovereign Immunity

Wake County and the Provider agree that nothing in this Agreement shall be construed to mandate purchase of insurance by Wake County pursuant to N.C.G.S. 153A-435; or to be inconsistent with Wake County's "Resolution Regarding Limited Waiver of Sovereign Immunity" enacted October 6, 2003; or to in any other way waive Wake County's defense of sovereign or governmental immunity from any cause of action alleged or brought against Wake County for any reason if otherwise available as a matter of law.

12.12 Non-Appropriation

Provider recognized that Wake County is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate.

In the event that public funds are not available and not appropriated to purchase the services specified in this Agreement, then this Agreement shall automatically expire without penalty to Wake County and without the thirty (7) day notice requirement set forth in Article 11.

In the event of a legal change in Wake County's statutory authority, mandate, and mandated functions which adversely affects Wake County's authority to continue its obligations under this Agreement, then this Agreement shall automatically expire without penalty to Wake County and without the thirty (7) day notice requirement set forth in Article 11.

12.13 Iran Divestment and Divestment from Companies Boycotting Israel

By signing this agreement; accepting this contract/purchase order; or submitting any bid, proposal, etc., vendors and contractors certify that as of the date of execution, receipt, or submission they are not listed on the Final Divestment List created by the NC Office of State Treasurer pursuant to NCGS 147 Article 6E, Iran Divestment Act, Iran Divestment Act Certification. Vendors and contractors shall not utilize any subcontractor that is identified on the

Final Divestment List.

Any organization defined under NCGS 147-86.80(2), Divestment from Companies Boycotting Israel, shall not engage in business totaling more than \$1,000 with any company/business, etc. that boycotts Israel. A list of companies that boycott Israel is maintained by the NC Office of State Treasurer, pursuant to NCGS 147-86.81(a)(1). Any company listed as boycotting Israel is not eligible to do business with any State agency or political subdivision of the State.

12.14 Anti-Discrimination

In consideration of signing this Agreement, the Parties hereby agree not to discriminate in any manner on the basis of race, natural hair or hairstyles, ethnicity, creed, color, sex, pregnancy, marital or familial status, sexual orientation, gender identity or expression, national origin or ancestry, marital or familial status, pregnancy, National Guard or veteran status, religious belief or non-belief, age, or disability with reference to the subject matter of this Contract. The Parties agree to comply with the provisions and intent of Wake County Ordinance SL 2017-4. This anti-discrimination provision shall be binding on the successors and assigns of the Parties with reference to the subject matter of this Contract.

By signing this agreement; accepting this contract/purchase order; or submitting any bid, proposal, etc., IN WITNESS WHEREOF, the parties, by and through their authorized agents, have hereunder set their hands and seal, all as of the day and year first above written.

DESIGNER

ATTEST:

By: _____

By: _____

Title: _____

Title: _____

COUNTY OF WAKE

ATTEST:

By: _____

County Manager or Designee

By: _____

Clerk to the Board

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Officer

This instrument has been reviewed by Wake County Facilities, Design & Construction.

Mark Forestieri
Director, Facilities Design & Construction

The person responsible for monitoring the contract performance requirements is _____.

_____ Department Head Initials