

## **AGREEMENT FOR PROFESSIONAL SERVICES**

### **FOR**

#### **Solid Waste Engineering Services**

This Agreement, made as of the \_\_\_\_\_, by and between the County of Wake (hereinafter, the "Owner") and \_\_\_\_\_, a professional engineering firm with a partner or principal registered in North Carolina as a licensed Engineer 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 services to be rendered by Designer to Owner with respect to a project known as Solid Waste Engineering (hereinafter, the "Project"). The Project is located in Wake County, North Carolina.

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 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 D.
- 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 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.
- 2.1.10 Reimbursable Expenses - See Section 7.5.
- 2.1.11 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 engineering services required to satisfactorily complete all phases of the Project within the time limitations set forth herein and in accordance with the standard of care set forth in Section 3.2. Such services may include:

- Evaluating and analysis of the site(s)
- Cost Estimating
- Schematic Design
- Design Development
- Obtaining Permits and approvals
- Civil engineering
- Structural engineering
- Preparation of Construction Documents
- Bidding and bid documents
- Construction inspection
- Construction contract administration
- Project close out assistance and documentation
- 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 engineering 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 use all reasonable efforts to 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 Schedule, as defined 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 error, omission or delay of the Designer or its Consultants.

A. To the extent that the cost to the Owner for 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 future amendments, 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 future amendments, 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 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 [\[Attachment B\]](#).

#### **4.2 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, 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:

- At completion of schematic design;
- At completion of design development; and
- 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. The Designer's responsibilities during construction are described in Article 10 of the General Conditions of the Contract of Construction.

### **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 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.

6.1.2 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.

6.1.3 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 will be determine through an Amendment to this Master Agreement dependent on the scope of services for each future project. Each project will be addressed separately under an Amendment

that outlines the details of the project, the basic services listed in Attachment B, the requested compensation, and proposed schedule. Compensation request shall be broken out as noted below:

- 7.2.1 Preliminary Study Phase
- 7.2.2 Design Development Phase
- 7.2.3 Construction Documents Phase
- 7.2.4 Bidding and Contract Award
- 7.2.5 Construction Phase
- 7.2.6 Construction Quality Assurance and Inspection Services
- 7.2.7 Post Construction Phase
- 7.2.8 Additional Basic Services

### 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 E 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, and photography 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.

7.5.5 Auto, milage, telephone charges, computer, meals and travel are not considered a reimbursable expense.

## 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, when such services are reasonably deemed necessary by the Designer, 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 the standard



of care 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	Limits for Coverage A - Statutory State of N.C. Coverage B - Employers Liability \$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 against liability for damages arising out of bodily injury including death, or property damage, to any person or persons only to the extent that the fault of the Designer or its derivative parties is a proximate cause of the loss, damage, or expense to be indemnified. This obligation to indemnify includes the obligation to pay any attorney's fees, litigation expenses, or court costs actually incurred by Owner to the extent that the fault of the Designer or its derivative parties is a proximate cause of the fees, expenses, or cost to be indemnified. It is the intent of this provision to require the Designer to indemnify the Owner to the fullest extent permitted by North Carolina law. The language and definitions in this section shall be construed consistent with N.C.G.S. 22B-1 et seq. as it may be amended.

### 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**

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**

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**

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.

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.

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.

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.

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

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.

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.

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

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

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. This provision shall not prohibit disclosure when required by law, court order or subpoena from a court or government entity. In such situation the Designer shall give the Owner seven (7) days' notice before the disclosure.

#### 12.2 Limitation and Assignment

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

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

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

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

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

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

The following Attachments will be further defined and become part of the agreement, thought future amendments, as work is requested by Wake County Solid Waste Division:

- Attachment A - Description of the Project, TBD in future Amendments
- Attachment B - Description of Basic Services
- Attachment C - Format of Total Project Cost Estimates, TBD in future Amendments

- Attachment D - Consultants and Key Personnel
- Attachment E - Hourly Rates Schedule
- Attachment F – General Conditions of Construction, Article 10

#### 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 seven (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 Federal Funds

If the source of funds for this contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable): Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland “Anti-Kickback” Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.323); and Record Retention Requirements (2 CFR § 200.334).

#### 12.15 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.

Sample

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.

ATTEST:

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

Name:

Title:

Date: \_\_\_\_\_

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

Name:

Date: \_\_\_\_\_

SEAL

COUNTY OF WAKE

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

Name:

Wake County Manager or Designee

Date: \_\_\_\_\_

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

Name:

Wake County Department Director

Date: \_\_\_\_\_

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

\_\_\_\_\_  
Wake County Finance Officer

The person responsible for monitoring the contract performance requirements is .

Department Head Initials: \_\_\_\_\_



**ATTACHMENT B  
TO AGREEMENT FOR PROFESSIONAL SERVICES  
FOR  
SOLID WASTE ENGINEERING  
  
SCOPE OF BASIC SERVICES**

**A. PRELIMINARY STUDY PHASE**

The Designer shall prepare the Preliminary Study, if needed. The Preliminary Study shall consist of the following:

1. Scope Meetings

The Designer shall meet with the Owner to determine and develop the exact scope of the project that has been planned.

2. Preliminary Engineering Memorandum

The Designer shall prepare a summary memorandum with a map or schematic plan of the project area that details the scope of each project, potential design and construction challenges, and a preliminary cost estimate. The memorandum shall be submitted to the Owner for review and approval. The Designer shall secure written approval from the Owner before proceeding to the Design Development Phase.

**B. DESIGN DEVELOPMENT PHASE**

The Designer shall prepare from the approved Preliminary Studies, for approval by the Owner, the Design Development Documents which shall include site plans, elevations, perspective drawings, other appropriate drawings, and outline specifications as are necessary to fix and illustrate the size and character of the entire Project as to kinds of materials, type of structural, mechanical and electrical systems and such other work as may be required. The submittal must include, but not necessarily be limited to the following:

1. Call for a location of all underground utilities which cannot be readily established by survey. This task may include, but not limited to: water mains and services, sewer services, underground primary and secondary electrical distribution, CATV, gas and telephone.
2. Complete topographic surveys of the project areas.
3. Prepare preliminary site plans showing topographic information, horizontal and vertical control points, general elements of drainage and sedimentation control, utility requirements, landscaping, and proposed layout.
4. Provide preliminary research of existing easements and right-of-way in the project area.
5. Prepare preliminary specifications describing the work.

6. A complete tabulation of Total Project Cost with detailed cost estimates for construction shall be submitted.
7. Copies of the Design Development plans shall be submitted to the Owner for review. The Designer shall secure written approval from the Owner before proceeding to the Construction Document Phase.

**C. CONSTRUCTION DOCUMENT PHASE**

1. Upon approval of the Design Development Submittal, the Designer shall prepare final working drawings and specifications setting forth the work in detail and prescribing work to be done, including materials; workmanship; site work; utility connections and services; bidding information; proposal, contract and bond forms; general and supplementary general conditions for the contract; and any and all other information required for receiving of bids for the Project. Copies of complete construction documents shall be furnished for review to the Owner.
2. Upon receipt of the review from the Owner, the Designer shall make recommended changes based on the review. The Designer shall furnish final copies to the Owner and obtain written approval prior to issuance of documents to Contractors for pricing.
3. Specifications shall be prepared for review purposes and shall be sub-divided into sections similar to Construction Specifications Institute standards. Specifications must be written using the Designer's standard edition and be clearly legible. Review sets shall be complete with all forms and documents. Submit on 8-1/2" x 11" paper, securely side bound and print double sided.
4. General Conditions of the Contract will be furnished to the Designer by the Owner for use as a guideline in preparing Supplemental General Conditions for the Project.
5. Supplemental General Conditions shall be prepared by the Designer and shall include, but not be limited to, the following:
  - a. Specific definitions, peculiar to the Project.
  - b. Time of completion and liquidated damages. Liquidated damages shall be reasonably estimated to be actual loss to the Owner due to failure of the Contractors to complete the Project on time.
  - c. Deletions from and additions to the Project General Conditions.
  - d. Any special requirements of governmental agencies having jurisdiction over the Project.
  - e. Applicable safety regulations.
  - f. Wake County Minority Business Enterprise requirements and forms, if required.
  - g. Insurance requirements approved by Owner's Risk Manager.

- h. Any other condition peculiar to the Project.
- 6. Field and laboratory testing of compacted soils, concrete, and asphalt shall be identified in construction contracts. All such tests shall be conducted by a qualified independent laboratory in accordance with ASTM specifications in a contract with and paid for directly by the Owner. The testing laboratory utilized and the Contract for his services shall be approved by the Owner. Additional tests resulting from failure of initial tests to meet specification requirements shall be reimbursed to the Owner by the Contractor.
- 7. Subsurface investigation, where conditions are unknown or questionable, shall be conducted by a qualified testing laboratory, coordinated by the Designer and paid for directly by the Owner. The testing laboratory utilized and the Contract for his services shall be approved and executed by the Owner. Reports of tests shall be bound with specifications.
- 8. The date for receipt of bids shall be established by the Designer in consultation with the Owner. Generally, a period of four weeks will be required between publication of the Notice to Bidders and the receipt of bids. Advertisement costs shall be paid directly to the advertising firm by the Owner.
- 9. The Designer shall file all required documents for the approval of governmental authorities having jurisdiction over the Project prior to issuing bidding documents to Contractors, provide the Owner with a list of any permit fees to be paid by the Owner, and provide the Owner with written approval from all such authorities. All permit fees for document approvals shall be paid either directly to the appropriate agency by the Owner or as a reimbursable expense to the Designer, with the exception of construction permit fees which shall be paid by the appropriate construction contractor(s).
- 10. The Construction Documents shall require that vendors, suppliers and contractors develop and submit operation and maintenance manuals in a form acceptable to the Owner. Instructional and training sessions shall be required to properly train the Owner's maintenance personnel. The Owner's Standard Project Closeout specifications shall be included in bidding documents.
- 11. Prepare and submit permits and assist Owner with securing approval of the plans and specifications from the applicable Towns, the North Carolina Department of Environment and Natural Resources, North Carolina Department of Transportation and other regulatory agencies as may be required for construction of the improvements.
- 12. A complete tabulation shall be furnished showing the breakdown of Total Project Cost with attached detailed estimates for construction.

**D. BIDDING AND CONTRACT AWARD**

- 1. Assist the Owner in the advertising for bids.
- 2. Following issuing bid documents to the Owner, bidders and plan rooms, the Designer shall

obtain and evaluate proposals from Contractors in strict compliance with applicable North Carolina General Statutes.

3. The Designer shall prepare such clarifications and addenda to the bidding documents as may be required. The Designer shall provide such clarifications and addenda to the Owner, all persons or entities that are issued bidding documents.
4. The Designer shall schedule and conduct a pre-bid conference with prospective bidders to review the Project requirements. The Designer shall provide knowledgeable representatives, including representatives of its consultants, to participate in this conference to explain and clarify bidding documents. Within two working days after the pre-bid conference, the Designer shall deliver to all recipients of bidding documents an Addendum to document any changes(s) to the Construction Documents resulting from pre-bid conferences.
5. The Designer shall review all proposals received, prepare and detailed tabulation of the same and make written recommendations to the Owner relative to acceptance/rejection of proposals and award of the Contract to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for performance of the contract(s).

#### **E. CONSTRUCTION PHASE**

1. The Construction Phase will commence with the award of the Contract(s) for Construction and, together with the Designer's obligation to provide Basic Construction Phase Services under this Contract, will terminate when final payment to the Contractor is due.
2. Upon award of contract(s), the Designer will prepare the Contract Documents for execution by the Contractor(s) and the Owner.
3. The Owner and Designer will establish a Project Control Manual with procedures in accordance with County standards that shall be followed for review and processing of all shop drawings, catalog submissions, Project reports, change proposals, test reports, maintenance manuals, and other necessary documentation.
4. The Designer shall serve as a representative of the Owner as prescribed in this Contract and within the limits and conditions of this Contract, to guard the Owner against defects and deficiencies in the work. The Designer shall exercise reasonable care and diligence in assuring that the Contractors comply with the Contract Documents.
5. The Designer shall review and approve, for conformance with the design concept, any necessary shop and working drawings furnished by contractors. Furnish the Owner with a complete set of shop drawings upon completion of construction.
6. The Designer shall interpret the intent of the drawings and specifications to protect the Owner against defects and deficiencies in construction on the part of the contractors. The Engineer will not, however, guarantee the performance by any contractor.
7. Should errors, omission, discrepancies, ambiguities, mistakes or conflicts be discovered in the

Contract Documents, the Designer shall prepare and submit to the Owner, and Contractor(s) within a maximum of four (4) working days such amendments or supplementary documents associated with change proposal documentation and provide consultation as may be required.

8. The Designer shall not permit variations from the Construction Documents unless and until change orders have been approved by the Owner.
9. The Designer shall establish baselines for locating the main components to be constructed. However, the Contractor will be responsible for providing any day-to-day construction staking that may be required.
10. The Designer shall provide general engineering review of the work of the contractors as construction progresses and hold progress conferences to ascertain that the Contractor is conforming to the design concept and construction schedule.
11. The Designer shall cooperate and work closely with the Owner and appropriate regulatory agencies during construction.
12. The Designer shall review the Contractor's application for progress and final payment, and when acceptable, submit same to the Owner for payment. The issuance of a Certificate for payment shall constitute a representation by the Designer to the Owner, based on the Designer's observations at the site and on the data comprising the Contractor's Application for Payment, that the work has progressed to the point indicated; that, to the best of the Designer's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents and the Contractor is entitled to payment in the amount certified.
13. The Designer shall, as necessary, promptly prepare Change Order documentation complete with narrative description and justification for each item, so as to not delay the work of the Contractors.
14. The Designer shall schedule, conduct and document pre-construction conferences and regular meetings, to be held at the Project site throughout the entire construction period. The Designer shall chair the meetings, prepare and distribute to the Owner and all others in attendance a report of the pertinent and salient matters considered and conclusions reached at each of these meetings, together with such matters relating to the Project progress.
15. The Designer shall create and maintain a written project directory including names and phone numbers of key personnel.
16. When the Owner and Designer agree that the work or portions of the work are substantially complete, the Designer and its consultants shall inspect the work or portions of the work and prepare and submit to the Owner and Contractor(s) punch lists of the work of the Contractor(s) which is not in conformance with the Contract Documents. The Designer shall issue a Certificate of Substantial Completion at such time that the work is determined to be substantially complete as defined in the Contract Documents. When incomplete, defective or deficient work has been remedied, the Designer will inspect the work and advise Owner in writing that all work has been satisfactorily completed. The Designer will then issue a final letter certifying the completion with respect to the work or portion of the work involved.

17. The Designer shall assemble, and review for completeness, written guarantees, affidavits, manuals of instruction for operation, and other required closing papers of the Contractors and forward them in organized three-ring binders to the Owner.
18. Upon completion of the Project and prior to issuing Final Certificates for Payment, the Designer shall compute the total time for completion as allowed in the Contract, plus any time extensions granted and determine the number of days, if any, in excess of the contract construction time for which the Contractor(s) appear liable for liquidated damages. Notify the affected Contractor(s) of any proposed assessments of liquidated damages, and allow the Contractor(s) time to respond thereto. Subsequently, prepare recommendation to the Owner as to the amount of liquidated damages, if any, to be assessed and the portion of such assessment attributed to each of the prime Contractor(s).
19. Upon correction of the deficiency reports (punch lists), and acceptance of all other close-out submittals and certificates of a Contractor, the Designer shall approve a final application for final payment for the Contractor(s) and forward it to the Owner.

**F. CONSTRUCTION QUALITY ASSURANCE AND INSPECTION**

1. The Designer shall review and verify compliance of all required field testing with the Contract Documents for the Project
2. The Designer will provide periodic inspection of the work as appropriate to the state of construction. The Designer will make visits to the job site to observe the progress of the work and consult with the Owner and the Designer's Observer.
3. Conduct observation of work activities as may be necessary to monitor progress of work and observe in detail the quality of work. The extent to which the work is proceeding in accordance with the construction documents and in accordance with the applicable laws, statutes, ordinances, codes, regulations, orders and decrees applicable to the project.
4. The Designer shall observe materials and finished workmanship, check all layouts of work, keep the necessary or required records of inspection.
5. Observation reports will be submitted to the Owner on a regular basis.

**G. POST CONSTRUCTION PHASE**

1. The Post Construction Phase shall commence upon the issuance of the Certificate of Substantial Completion and, except for the warranty inspection, shall end when the Project has been fully completed, closed out and accepted by the Owner.
2. Upon completion of the Project, the Designer shall revise the construction drawings from Contractors' field as-built Drawings and the Designer's construction phase records to conform to the Project as finally constructed, and shall deliver to the Owner reproducible record drawings

along with an electronic data base containing record drawing data in accordance with Wake County CAD Guidelines.

3. The Designer and its consultants shall conduct an inspection of the Project thirty (30) working days prior to warranty expiration and provide the Owner and Contractor(s) with a written report identifying all defective and deficient work covered by the Project warranty. The written deficiency report shall be sent to all parties by Certified Mail within four (4) working days after the date of the Warranty Inspection.
4. Upon completion, and as applicable, prepare a Construction Certificate Report, certifying the work was installed in accordance with the construction drawings and specifications.

Sample