

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 standard of care set forth in section

3.2. 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 observations
- Construction contract administration
- All other services customarily furnished by a Designer and its 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 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 [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. The Designer's responsibilities during construction are described in Article 10 of the General Conditions of the Contract for 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 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. Future work assignments captured in an Amendment will have separate commencement dates.

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.

6.2.2 If the Project is delayed through no fault of the Design Consultant, all specific dates noted in the Milestone Schedule that are affected by the delay will be adjusted by the number of calendar days of the delay. Notwithstanding the above, the Design Consultant shall proactively identify and evaluate all circumstances which could adversely affect the timely completion of the Basic Services, and especially those related to regulatory waivers, exemptions, variances, or easements or right-of-way, which must be obtained from any Authority Having Jurisdiction ("AHJ"), administrative committee, body or agency in order to successfully complete the design and permitting, while minimizing risks to the Owner. The Design Consultant shall promptly notify the Owner in writing of any such circumstances.

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

7.2.1 The Designer's compensation for Basic Services shall be negotiated between the Designer and Owner based on mutually agreed scope of work for each work assignment. The compensation due the Designer shall be stipulated in each amendment to this Agreement.

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 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 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, Designer 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. Designer 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 Designer 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. 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

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. This 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.

12.3 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
- Attachment G - 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

Designer is an independent contractor of the County. Designer 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 Designer will obey all State and Federal statutes, rules and regulations that are applicable to provisions of the services called herein. Neither Designer nor any employee of the Designer shall be deemed an officer, employee or agent of the County.

12.11 No Waiver of Sovereign Immunity

Wake County and the Designer 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

Designer 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 seven (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, 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 Title III, Section 34. 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: _____

Sample

COUNTY OF WAKE

By: _____

County Manager or Designee

Name: _____

Date: _____

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

By: _____

Name: _____

Date: _____

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

Sample

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**

SCOPE OF BASIC SERVICES

A. PRE-DESIGN PHASE

1. Architectural Program (To be prepared for _____ square foot building [and expansion to _____ square feet])

The Designer shall interview users of the proposed facility and other designated County agencies to ascertain the Owner's requirements. This will be accomplished by interviews with representatives of various departments of the County who will be involved in the project. These departments will include _____, _____, General Services, Information Services and Facilities Design & Construction. [In addition, the Designer shall participate in an initial public meeting at the _____ to obtain local citizen input into the planning of the facility.] The program document will consist of, but not be limited to the following:

- a. Detailed description of the services rendered from the facility, identification of all user groups and how they inter-relate with each other and with customers.
- b. Description of how the various spaces within the building will be used.
- c. Determine Federal, State and local codes, regulations and standards that are applicable to the project.
- d. Identify present and future space needs.
- e. Group and tabulate all space requirements, including application of factors for circulation and building support systems; assure work place standards are consistent with other County facilities and any Federal or State mandated space standards.
- f. Identify adjacency and proximity requirements within each service and staff area.
- g. Identify special furniture, furnishings, shelving, equipment and signage requirements.
- h. Identify specific privacy and acoustic requirements.
- i. Identify voice, data and other automation requirements.
- j. Other information relevant to facility programming.

2. Site Development Alternatives

The Designer shall perform a detailed analysis of the designated site. This analysis shall include, as a minimum, the following:

- a. Physiographic Analysis
 - (1) Elevation Study to determine general character of site, including slope analysis and site inspections to review actual field conditions.
 - (2) Analyze various development strategies to accommodate topography.
- b. Geotechnical Analysis
 - (1) Analysis of subsurface investigation report previously prepared for the Owner by a geotechnical engineer.
 - (2) Develop design options taking geotechnical findings into account.
- c. Surface Hydrology
 - (1) Delineate surface drainage patterns, watershed areas and analyze the effect on proposed development.
- d. Infrastructure Analysis
 - (1) Analyze existing utilities (underground and overhead) and identify potential opportunities or limitations to development of the Project. (e.g. electric, gas, water, sewer (municipal or well), CATV, telecommunication and fiber optics)
 - (2) Coordinate and review alternatives with Owner to determine design feasibility.
 - (3) Identify any potential difficulties and cost considerations for connection to existing utilities (on-site and off-site). (e.g. 3 phase power, CATV and gas)
- e. Programmatic Constraints
 - (1) Evaluate the effect of programming issues as they relate to use of the site.
 - (2) Address any concerns with compatibility with existing and proposed surrounding land use.

f. Permits and Approvals

- (1) Identify required permits and approvals of governmental agencies having jurisdiction over the Project and assess any difficulties or scheduling conflicts in obtaining approvals to develop the Project. (e.g. special use permit, DOI, NCDNR, DOT, Corps. of engineers and municipality ordinance)

g. Cost Estimates

- (1) Develop estimates of probable site development cost for the various development alternatives.

h. Summary Report

- (1) Prepare detailed summary document addressing all findings and recommendations for development of the site.

B. SCHEMATIC DESIGN PHASE

Upon written authorization from the Owner to proceed and, based on the approved Architectural Program (Program), the Designer shall prepare Schematic Design. Schematic design shall be prepared for [] containing [] square feet and [] parking spaces. The Designer shall prepare drawings and other documents illustrating alternative approaches to design and construction of the Project. [Add any other pertinent specifics about the project]

1. Architectural Schematic Design

The Designer shall prepare initial physical representations responding to the Program, including simplified site and building plans, vertical sections, elevations, sketches, preliminary interior and exterior building material selections, approximate dimensions and calculations of gross areas. Format for room data sheets for all spaces shall be developed which identify all facility needs (such as, voice, data, electrical, casework, etc.).

2. Fixed Equipment

The Designer shall identify equipment or casework to be built-in and make provisions in the schematic design studies.

3. Civil Design Concepts

The Designer shall develop initial solutions for on-site grading, pedestrian and vehicular access, utility systems and drainage systems which are developed in sufficient detail to permit coordination with building and landscape design and for preparation of cost estimates. Building orientation shall be studied to make the facility most energy efficient.

4. Structural Design Concepts

The Designer shall develop initial basic structural design concepts to determine the structural system appropriate for the Project and for preparation of cost estimates.

5. Mechanical Design Concepts

The Designer shall develop initial basic mechanical design concepts to determine automated building, heating, ventilating, air conditioning, humidity control and plumbing requirements, equipment and systems. Detailed computer studies shall be made to determine the most energy efficient systems.

6. Electrical Design Concepts

The Designer shall develop initial basic electrical design concepts to determine the specific power service and distribution requirements, considering energy consumption, day lighting options and lighting control systems. This initial concept shall identify voice, data, electronic security, audio/video and fire alarm system requirements. Detailed computer studies shall be made to determine the most energy efficient systems.

7. Signage Design Concepts

The Designer shall develop and coordinate with the Owner the interior and exterior signage concepts for the Project in sufficient detail to develop cost estimates.

8. Furniture and Furnishings Concepts

The Designer shall develop and coordinate preliminary furniture, furnishings and shelving concepts for purposes of establishing quality of products and cost estimates.

9. Schematic Phase Documents

The Designer shall prepare and submit to the Owner for approval a Schematic Design Phase submittal which includes appropriate drawings and a written report which includes the following: a) site plans for the Project, b) schematic drawings of all floor plans, c) simplified elevations indicating the fundamentals of the architectural concept, d) estimates of Total Project Cost, e) a narrative of key design factors considered, f) descriptions of proposed engineering systems and architectural materials proposed, g) description of energy analysis made and how architectural and mechanical systems are being evaluated to achieve maximum energy consumption in accordance with County's "Guidelines for Design and Construction of Energy Efficient County Facilities."

10. Schematic Submittal Document Content

To be considered acceptable for final Schematic Design Phase review, the Designer's submittal shall contain, as a minimum, the following:

a. Civil:

Site Plan with buildings properly oriented to achieve maximum energy conservation; Overall grading concept plan; Major site development such as streets, driveways, paving, planting areas, outside support buildings, paved parking lots, on-site utilities, proposed off-site utility improvements proposed.

b. Architectural:

- Single-line drawings showing entire layout of the building, identifying the various areas and their relationships.
- Gross and net area calculations tabulated in a format which shows a comparison to the space needs identified in the Program.
- Preliminary perspective sketches.
- Two perspective drawings.
- Preliminary building cross sections, typical exterior wall section, elevations indicating location and size of fenestration, and overall thermal transfer value for exterior wall envelope.
- Identification of major proposed interior and exterior finishes.

c. Structural:

- Structural systems layout with overall dimensions and floor elevations. Identification of structural system.
- Identification of foundation requirements (fill requirements, pilings, spread footings, etc.).

d. Mechanical:

- Block heating, ventilating and cooling loads calculations including skin versus internal loading.
- A written report of the various HVAC systems that were considered along with justification for the system selected.
- Single-line drawings of all major mechanical equipment spaces, duct chases and pipe chases.
- Fully completed submittals required in Section 1 of Wake County's Guidelines for Design and Construction of Energy Efficient Facilities.

e. Electrical:

- Preliminary light fixture schedule showing types and general areas in which fixtures are to be used.
- Major electrical equipment roughly scheduled indicating size and capacity.
- Preliminary one-line electrical distribution diagrams with indications of final location of electrical, telecommunications and CATV service entry, switchboards, motor control centers, panels and transformers.

f. Furniture, Furnishings and Equipment:

Preliminary listing of furniture, furnishings, shelving and equipment required for the Project.

g. Permits and Approvals:

Listing of all governmental and regulatory agency approvals, permits and fees required for the Project.

h. Narrative describing all life cycle cost and energy consumption analyses performed to comply with the County's "Guidelines for Design and Construction of Energy Efficient County Facilities."

i. Detailed cost estimate prepared by Cost Consultant.

j. Code information.

11. Owner Approval

The Designer shall make a formal presentation to the Board of County Commissioners and/or other public forums as may be required of the proposed Schematic Design for the Project. [The Designer shall also present the approved Schematic Design at a public meeting (forum & location).] These presentations will be made after the Owner's key staff and the Designer have completed their review. The presentation shall include [Color perspective(s), rendered site plan and floor plan.] [Insert any other specific presentation requirements]

Once the Owner has officially approved the Schematic Design submittal and accompanying Total Project Cost no unauthorized deviations will be made by the Designer.

C. DESIGN DEVELOPMENT PHASE

The Designer shall prepare from the approved Schematic Design Studies, for approval by the Owner, the Design Development Documents which shall include site and floor 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. Code summary (building & zoning)
2. Site plans showing topographic information, horizontal and vertical control points, general elements of drainage and sedimentation control, utility requirements, landscaping, irrigation and other site data furnished on the previous submittal.
3. Preliminary specifications describing all systems and materials.
4. Scaled architectural floor plans, reflected ceiling plan, roof plan, cross-sections at appropriate points to show room heights, at least four (4) different elevations.
5. Signage and graphics drawings, details and message schedules.
6. Layout drawings of furniture and shelving with outline specifications, color boards and catalogue cut sheets.
7. Room finish schedule showing the type material of the floors, walls and ceilings. Include color boards depicting proposed colors and materials.
8. Scaled drawing of proposed casework and other built-in items.
9. Door and window schedules.
10. Structural drawings to include the following: boring logs from the subsurface investigation report; the allowable soil bearing pressure and loads used in the design; a foundation plan showing the basic elements of the foundation with details to delineate the size, type, and probable depth of special foundation, i.e. pilings or caissons; typical floor framing plans showing size, spacing and type of principal members; a roof framing plan; and the location of shear walls and/or bracing with details as necessary to describe the method of lateral load resistance.
11. Scaled mechanical drawings showing basic equipment layout and location of heating, ventilating and air conditioning systems. Provide schematics of control systems and narrative of control system logic. Computer generated life cycle cost and energy consumption analyses shall be undertaken, completed and submitted to the Owner.
12. Drawings showing general development of the plumbing system including fixture schedule and catalogue cut sheets on fixtures proposed.

13. Electrical drawings showing basic equipment and location of electrical system power distribution components including primary service circuits, transformers, main switch gear, motor control centers, power and branch circuit panels. A single line diagram of the power distribution system fixture schedule and catalogue cut sheets on fixtures proposed.
14. Single line drawings shall be submitted showing the basic elements of the fire alarm, smoke detection, telecommunications, CATV, data cabling, emergency lighting, paging and all other applicable systems.
15. A complete tabulation of Total Project Cost with detailed cost estimates for construction shall be submitted.
16. Basic design calculations leading to the utilization of systems shown on the drawings or described in the outline specifications.
17. Fully completed submittals required in Section 1 of Wake County's Guidelines for Design and Construction of Energy Efficient Facilities.
18. Copies of the Design Development shall be submitted to the Owner for review. The Designer shall secure written approval from the Owner before proceeding to the Construction Document Phase.

D. CONSTRUCTION DOCUMENT PHASE

1. Upon approval of the Design Development Submittal, the Designer shall prepare working drawings and specifications setting forth the work in detail and prescribing work to be done, including materials; workmanship; finishes; mechanical and electrical systems; special equipment; site work; landscaping; 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. A complete tabulation shall be furnished showing the breakdown of Total Project Cost with attached detailed estimates for major categories, including construction, equipment, furniture and signage.
3. Upon receipt of the review from the Owner, the Designer shall conform the construction documents to the review. The Designer shall furnish final copies to the Owner and obtain written approval prior to issuance of documents to Contractors for pricing.
4. Specifications shall be prepared for review purposes and shall be sub-divided into sections similar to Construction Specifications Institute standards. Specifications must be typewritten using the latest edition of the MasterSpec or SpecText system 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.

5. 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.
6. 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. Description of alternate bids.
 - f. Definition of Project Expeditor.
 - g. List of drawings.
 - h. Applicable safety regulations.
 - i. Wake County Minority Business Enterprise requirements and forms.
 - j. Insurance requirements approved by Owner's Risk Manager.
 - k. Any other condition peculiar to the Project.
7. In every contract where special excavations and/or foundations are anticipated, the Designer shall include an estimated bid quantity of the material(s) involved in the specifications as part of the base bid. The Designer shall consult with the Owner on preparation and allowance descriptions appropriate for the particular project.
8. Field and laboratory testing of compacted soils, concrete, masonry materials, asphalt, structural steel, and welding 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.
9. 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.

10. 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.
11. 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).
12. 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.
13. The Owner has developed Guideline Specifications for Designers on Capital Projects for selected items of work. These guidelines shall guide the Designers in formatting and preparing those sections of the project specifications.
14. The Designer shall provide the completed submittals required in Section 1 of Wake County's Guidelines for Design and Construction of Energy Efficient Facilities.

E. BIDDING AND CONTRACT AWARD

1. Following the issued 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.
2. 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 and all persons or entities that have been issued bidding documents.
3. The Designer shall schedule and conduct pre-bid conferences with prospective bidders to review the Project requirements. The Designer shall provide knowledgeable representatives, including representatives of its consultants, to participate in these conferences 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.

4. The Designer shall review all proposals received 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).

F. 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. 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.
3. 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.
4. The Designer shall promptly prepare Change Order documentation complete with narrative description and justification for each item, so as to not delay the work of the Contractors.
5. The Designer shall provide the Owner and Contractor(s), within a maximum of four (4) working days, interpretations of the requirements of the Contract Documents. The Designer shall make all interpretations consistent with the intent of the Contract Documents.
6. 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.
7. The Designer and its consultants (including, but not limited to, the structural, mechanical and electrical disciplines) shall make such visits to the Project site as may be necessary to monitor the progress and observe in detail the quality of work and to determine if the work is proceeding in accordance with the Contract Documents and in accordance with applicable laws, statutes, ordinance, codes, regulations, orders and decrees applicable to the Project.

The Designer shall exercise reasonable care and diligence equivalent to that used by other N.C. Design Professionals on projects of similar complexity in discovering and reporting promptly to the Contractor(s) or any Subcontractor(s), or any of their respective agents or employees, or any other person performing work on the Project. However, nothing in this paragraph shall be construed to relieve the Contractor(s) of its/their responsibility for performing the Work in accordance with the Contract Documents and correcting any and all defects or deficiencies in the Work whether or not they are detected and reported by the Designer.

On the basis of the Designer's observations and site visits, the Designer and its consultants shall immediately make an oral report and make written reports regarding any deficiency to Owner and take the appropriate steps to guard the Owner against defects and deficiencies in the work of the Contractor(s) or any other party performing work on the Project. If the Designer observes any work that does not conform to the Contract Documents, the Designer shall issue a written report within four (4) working days of all such inspections and site visits to the Owner and Contractor(s). The Owner's approval, acceptance, use of or payment for all or any part of the Designer's Basic Services hereunder or of the Project itself shall in no way alter or diminish the Designer's obligations or Owner's rights hereunder.

8. Inspection visits of the Designer shall be not less than weekly. Each engineering discipline shall make visits not less than weekly during the course of Work applicable to its discipline. The engineering disciplines shall prepare and submit a written report on each visit, submitted to the Designer and Owner within four (4) working days of the visit. The Designer shall render written field reports relating to all visits and inspections made to the Project within four (4) working days to the Owner. The Designer shall make as many observations and site visits as may be required to fulfill its obligations to the Owner.
9. The Designer shall schedule, conduct and document pre-construction conferences and regular meetings, to be held at the Project site every other week throughout the entire construction period. Attendance at the meetings is to be by authoritative home office and Project representatives of each prime Contractor. 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 weekly meetings, together with such matters relating to the Project progress.
10. The Designer shall create and maintain a typewritten project directory including names and phone numbers of key personnel.
11. Review and verify compliance of all required field testing with the Contract Documents for the Project.
12. Process shop drawings and all other submittals, provide details and interpretations, process materials lists and other data with sufficient dispatch to preclude delaying the progress of construction.
13. The Designer shall not permit variations from the Construction Documents unless and until change orders have been approved by the Owner.
14. The Designer shall determine the amounts owed to the Contractor based upon observation of the work and evaluations of the Contractors' Applications for Payment, and shall issue Certificates for Payment in such amounts, as provided in the Contract Documents. The issuance of a Certificate for payment shall constitute a representation by the Designer to the Owner, based on the Designer's observations and inspections 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.

15. 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) punchlists 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.
16. The Designer shall assist in obtaining governing agency occupancy approval if any exceptions arise related to the design or specified materials.
17. The Designer shall observe and review test data of the initial start-up testing, adjusting and balancing of equipment and building systems to make sure that all equipment and systems are properly installed and functioning in accordance with the Contract Documents.
18. 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.
19. 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).
20. 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.

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 on 3 mil Black Line Mylar 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. The Post-occupancy Reporting Form included in Section 1 of Wake County's Guidelines for Design and Construction of Energy Efficient County Facilities shall be submitted to the Owner on the date of the Warranty Inspection.

Sample