

Agreement to Prepare Facility Master Plan
between the City of Durham and
Heery International, P.C.

(Project No. 10653)
(Heery Project No. 1228300)

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

~~STANDARD FORM OF AGREEMENT~~
~~BETWEEN OWNER AND ENGINEER~~
FOR
~~PROFESSIONAL SERVICES~~

Prepared by
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE
and

Issued and Published Jointly By
PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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AMERICAN CONSULTING ENGINEERS COUNCIL

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AMERICAN SOCIETY OF CIVIL ENGINEERS

~~This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition). For guidance on the completion and use of this Agreement, see EJCDC Users Guide, No. 1910-50.~~

EJCDC No. 1910-1 (1996 Edition)

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~~STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
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PROFESSIONAL SERVICES~~

THIS IS AN AGREEMENT effective as of May 20, 2013 (“Effective Date”) between the City of Durham, a North Carolina municipal corporation (“OWNER” or “Owner”) and Heery International, P.C. (“ENGINEER” or “Engineer”). The title of this Agreement is stated at the top of page 1 , above. ENGINEER is a

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

OWNER intends to create a facilities master plan for the Department of Water Management’s Mist Lake facility (“Project”).

OWNER and ENGINEER in consideration of their mutual covenants as set forth herein agree as follows:

This Agreement is a total of _____ pages, being _____ pages in the main part of the Agreement and _____ pages of Exhibits.

ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

A. ENGINEER shall provide the Basic and Additional Services set forth herein and in Exhibit A.

B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A.

C. ~~If authorized by OWNER, ENGINEER shall furnish Resident Project Representative(s) with duties, responsibilities and limitations of authority as set forth in Exhibit D.~~

Owner authorizes does not authorize
Engineer to furnish Resident Project Representative(s) with duties, responsibilities and limitations of authority as set forth in Exhibit D.

ARTICLE 2 - OWNER’S RESPONSIBILITIES

2.01 General

A. OWNER shall have the responsibilities set forth herein and in Exhibit B.

ARTICLE 3 - TIMES FOR RENDERING SERVICES

3.01 General

A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment but nevertheless, the total compensation shall be limited by any applicable provisions in this Agreement that set a ceiling on compensation. If OWNER has requested changes in the scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

3.02 Suspension

A. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.

B. The Owner may suspend the Engineer's services in whole or in part. If ENGINEER's services are delayed or suspended in whole or in part by OWNER, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 4 - PAYMENTS TO ENGINEER

4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

A. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Exhibit A, Part 1, as set forth in Exhibit C.

B. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Exhibit A, Part 2, as set forth in Exhibit C.

C. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01.A and 4.01.B, OWNER shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth in Exhibit C.

4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit C.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of one per cent (1.0%) per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. Failure to withhold a payment does not constitute a waiver of any of the Owner's claims or defenses with respect to the services for which that payment is made.

D. *Payments Upon Termination.*

1. In the event of any termination under paragraph 6.06, ENGINEER will be entitled to invoice OWNER and will be paid in accordance with Exhibit C for all services performed or furnished and all Reimbursable

Expenses (if applicable) incurred through the effective date of termination.

2. In the event of termination by OWNER for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C, but the amount that the Engineer would have saved had it acted reasonably shall be subtracted.

E. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. ~~To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, copies of such records will be made available to OWNER at cost.~~ The records shall be kept in such form and detail as will clearly identify all relevant charges and costs and the bases thereof, except to the extent the Owner's representative and the Engineer's representative concur otherwise in writing. Said concurrence is valid without an amendment to this Agreement. The Engineer shall maintain all such records and provide the Owner access to them, and the right to copy them at cost, until at least four years after Engineer's last request for payment under this Agreement.

~~F. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on ENGINEER's services or other costs in connection with this Project or compensation therefor, such new taxes, fees, or costs shall be invoiced to and paid by OWNER as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.~~

ARTICLE 5 - OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best *City of Durham Engineering agreement version 1111806RW*

judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in Exhibit B.

5.02 Designing to Construction Cost Limit

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

5.03 Opinions of Total Project Costs

A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services. The Engineer warrants the accuracy of Engineer's representations made to Owner as to Engineer's qualifications and experience during the process in which the Owner selected the Engineer. The Engineer represents that it is registered, licensed, and authorized to practice engineering in North Carolina.

B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in OWNER-furnished information. Without limiting the

foregoing, it is agreed that the Owner's approvals of documents and other items are not waivers or releases of the Engineer's duty to provide the documents and other items in accordance with this Agreement and in accordance with applicable professional standards.

C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

D. ENGINEER and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation. Without limiting the foregoing, it is agreed that the Engineer shall comply with applicable provisions of N. C. General Statutes Chapter 133, Article 1.

E. OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement, except to the extent (i) that OWNER may indicate that the requirements, programs, instructions, reports, data, or other information is not necessarily accurate or complete, or (ii) that an engineer acting reasonably and in accordance with applicable professional standards would question, doubt, or not rely thereon. ENGINEER may use such requirements, reports, data, and information in performing or furnishing services under this Agreement. This paragraph is subject to paragraph 6.04.

F. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ENGINEER.

G. Prior to the commencement of the Construction Phase, OWNER shall notify ENGINEER of any variations from the language indicated in Exhibit E, "Notice of Acceptability of Work," or of any other notice or certification that ENGINEER will be requested to provide to OWNER or third parties in connection with the Project. OWNER and
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ENGINEER shall reach agreement on the terms of any such requested notice or certification, and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notices or certifications requested.

H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER's signing any such certification.

I. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

J. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

K. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of ENGINEER.

L. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, ~~1996~~ 1990 Edition) ~~unless both parties mutually agree to use other General Conditions as specifically referenced in Exhibit J or any newer version selected by the Owner, supplemented by the Owner's Supplementary Conditions, as modified by the Owner from time to time.~~ The construction contract will be the EJCDC contract form issued in conjunction with the General Conditions, as that contract form has been modified by the Owner from time to time.

6.02 Authorized Project Representatives

A. Contemporaneous with the execution of this Agreement, ENGINEER and OWNER shall designate specific individuals to act as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

6.03 Design without Construction Phase Services

A. Should OWNER provide Construction Phase services with either OWNER's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding as outlined in Exhibit A.

B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by OWNER, then OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.

6.04 Use of Documents

A. All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

B. Copies of OWNER-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER pursuant to Exhibit B. Files in electronic media format of text, data, graphics, or of other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for
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convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall ~~not be responsible to~~ maintain documents stored in electronic media format for a period of 3 years after acceptance by OWNER.

E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. ENGINEER shall not prohibit any such reuse or modification without even if it lacks written verification or adaptation by ENGINEER; as appropriate for the specific purpose intended, but such reuse or modification will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting ~~therefrom~~ from such reuse by OWNER on extensions of the Project or on any other project. To reduce the likelihood that anyone will make claims against ENGINEER arising out of such reuse, OWNER may modify Documents involved in such reuse by either (a) indicating that ENGINEER did not prepare them for such reuse and is not responsible for their reuse or (b) unless prohibited by applicable Law and Regulations, deleting ENGINEER's name from them.

G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

H. Any verification by ENGINEER or adaptation by ENGINEER of the Documents for extensions of the Project or for any other project will

entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

6.05 Insurance

A. ENGINEER shall procure and maintain insurance as set forth in Exhibit G, "Insurance."

~~B. Reserved. OWNER shall procure and maintain insurance as set forth in Exhibit G, "Insurance." OWNER shall cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by OWNER which are applicable to the Project.~~

C. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be ~~listed~~ named as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project

D. ~~OWNER and~~ ENGINEER shall ~~each~~ deliver to the ~~other~~ Owner certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of ENGINEER's services and at renewals thereafter during the life of the Agreement.

E. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

F. At any time, OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by OWNER, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by OWNER, and Exhibit G will be supplemented to incorporate these requirements.

6.06 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. *For cause,*

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a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By ENGINEER:

1) upon seven days written notice stating specifically how if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed professional; or

2) upon seven days written notice stating that if the ENGINEER's services for the Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control.

3) ENGINEER shall have no liability to OWNER on account of such termination.

c. Notwithstanding the foregoing, neither the obligation to provide further services nor this Agreement will not terminate pursuant to "a" or "b" of this subparagraph as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct cure the matters pointed out in the notice its failure to perform and proceeds diligently to cure the matters such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure matters cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. *For convenience,*

a. By OWNER effective upon the receipt of notice by ENGINEER or at a later time specified in the notice.

B. ~~The terminating~~ Either party under paragraphs 6.06.A.1 ~~or 6.06.A.2~~ may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to

complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Any termination under this paragraph 6.06 shall occur automatically upon the passage of the requisite time period unless the cure provisions of 6.06(A)(1)(c), if applicable, are complied with and the terminating party has received notice of that compliance.

In case of any termination, the Engineer shall (a) cooperate with the Owner in Owner's efforts to complete the Project, (b) provide information requested by the Owner in connection with completion of the Project, (c) provide a reproducible copy of all Drawings, Specifications and other documents, even if incomplete, prepared by the Engineer up to the date of termination, and (d) if requested by the Owner, provide a reproducible copy of all Drawings, Specifications and other documents to describe the constructed Work as of the date of termination. Services provided after termination shall be compensated as Contingent Additional Services."

6.07 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.08 Successors, Assigns, and Beneficiaries

A. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 6.08.B the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any
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duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph 6.08.C shall appear in the Contract Documents.

6.09 Dispute Resolution

A. OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under Exhibit H or other provisions of this Agreement, or under law. In the absence of such an agreement, the parties may exercise their rights under law.

B. If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure is set forth in Exhibit H, "Dispute Resolution."

6.10 Hazardous Environmental Condition

A. OWNER represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist. ~~ENGINEER represents to OWNER that to the best of its knowledge a Hazardous Environmental Condition does not exist.~~

B. OWNER has disclosed to the best of its knowledge to ENGINEER, ~~and ENGINEER has disclosed to the best of its knowledge to OWNER,~~ the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project

affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants or provides a warranty from a third party that the Hazardous Environmental Condition has been abated, remediated, or removed-Site is in full compliance with applicable Laws and Regulations.

E. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an “arranger,” “operator,” “generator,” or “transporter” of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER’s activities under this Agreement.

F. If ENGINEER’s services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER’s terminating this Agreement for cause on 30 days notice.

6.11 Allocation of Risks

A. Indemnification

1. (a) Indemnification for Charges Arising from Professional Services. To the maximum extent allowed by law, ENGINEER shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of ENGINEER’s performance of Professional Services under this Contract, but only to the extent such Charges are caused by the Professional Negligence of ENGINEER or its subconsultants or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection (a), ENGINEER shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to OWNER.

(b) Indemnification for Charges Not Arising from Professional Services. To the maximum extent allowed by law, ENGINEER shall defend, indemnify, and save harmless Indemnitees from and against all other Charges (not covered in subsection (a)) that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of ENGINEER or subconsultants or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection (b), ENGINEER

shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to OWNER.

(c) Definitions. As used in subsections “a” and “b” above and “d” below -- “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys’ fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). “Indemnitees” means OWNER and its officers, officials, independent contractors, agents, and employees, excluding ENGINEER. “Professional Services” means the performance of a particular, discrete act, which is required by North Carolina state law to be performed by an engineer, architect, landscape architect, or land surveyor licensed by the State of North Carolina. “Professional Negligence” means failure of ENGINEER to comply with the applicable standard of care to render Professional Services. That standard shall meet or exceed a national standard, unless a higher standard of care is applicable in the Durham community or similar communities.

(d) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of OWNER that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(e) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of ENGINEER under this contract.

(f) Limitations of ENGINEER’s Obligation. Subsections “a” and “b” above shall not require ENGINEER to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER’s officers, directors, partners, and employees from and against any and

all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.

2. Reserved. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and OWNER's consultants with respect to this Agreement or the Project.

3. Reserved. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, and all other negligent entities and individuals.

4. In addition to the indemnity provided under paragraph 6.11.A.2 of this Agreement, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER's Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 6.11.A.4. shall obligate OWNER to indemnify any individual or entity from and against the consequences of that

individual's or entity's own negligence or willful misconduct.

5. (Reserved) The indemnification provision of paragraph 6.11.A.1 is subject to and limited as follows: by the provisions agreed to by OWNER and ENGINEER in Exhibit I, "Allocation of Risks," if any. The total liability of Engineer and Engineer's officers, directors, partners, and employees for all claims, losses, costs, and damages for (a) Engineer's breach of this Agreement, or (b) Engineer's breach of the applicable duty of care owed to the Owner with respect to services performed or required to be performed pursuant to this Agreement shall not exceed one million dollars. If Engineer breaches its obligations under this Agreement to provide insurance, the preceding sentence shall not limit damages payable by Engineer for breach of those obligations.

6.12 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt. The address can be changed from time to time by giving notice pursuant to this Agreement.

6.13 Survival

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.14 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.15 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.16 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 7 - DEFINITIONS

7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.

2. *Additional Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 2 of this Agreement.

3. *Agreement*--This document, consisting of the main body of this Agreement, together with the Exhibits. “Standard Form of Agreement between OWNER and ENGINEER for Professional Services,” including those Exhibits listed in Article 8 hereof.

4. *Application for Payment*--The form acceptable to ENGINEER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

6. *Basic Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 1, of this Agreement.

7. *Bid*--The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

8. *Bidding Documents*--The advertisement or invitation to Bid, instructions to

bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

9. *Change Order*--A document ~~recommended by ENGINEER, which that is~~ signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.

10. *Construction Agreement*--The written instrument which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the Work.

11. *Construction Contract*--The entire and integrated written agreement between the OWNER and Contractor concerning the Work.

12. *Construction Cost*--The cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

13. *Contract Documents*--Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *Contract Price*--The moneys payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

15. *Contract Times*--The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

16. *Contractor*--An individual or entity with whom OWNER enters into a Construction Agreement.

17. *Correction Period*--The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

18. *Defective*--An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.

19. *Documents*--Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to OWNER pursuant to this Agreement.

20. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

21. *Effective Date of the Construction Agreement*--The date indicated in the Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is

signed and delivered by the last of the two parties to sign and deliver.

22. *Effective Date of the Agreement*--The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

23. *ENGINEER's Consultants*--Individuals or entities having a contract with ENGINEER to furnish services with respect to this Project as ENGINEER's independent professional associates, consultants, subcontractors, or vendors. The term ENGINEER includes ENGINEER's Consultants.

24. *Field Order*--A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

25. *General Conditions*--That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

26. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

27. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

28. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

29. PCB's--Polychlorinated biphenyls.

30. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and

oil mixed with other non-Hazardous Waste and crude oils.

31. *Radioactive Materials*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

32. *Record Drawings*--The Drawings as issued for construction on which the ENGINEER, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.

33. *Reimbursable Expenses*--The expenses incurred directly by ENGINEER in connection with the performing or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit C.

34. *Resident Project Representative*--The authorized representative of ENGINEER, if any, assigned to assist ENGINEER at the Site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are as set forth in Exhibit D.

35. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

36. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to ENGINEER to illustrate some portion of the Work.

37. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for use of Contractor.

38. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

39. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

40. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements the General Conditions.

41. *Total Project Costs*--The sum of the Construction Cost, allowances for contingencies, the total costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement.

42. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.

43. *Work Change Directive*--A written directive to Contractor issued on or after the Effective Date of the Construction Agreement and signed by OWNER upon recommendation of the ENGINEER, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the

change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

44. *Written Amendment*--A written amendment of the Contract Documents signed by OWNER and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

8.01 Total Agreement

A. This Agreement (~~defined in paragraph 7.01) consisting of pages 1 to 15 inclusive, together with the Exhibits identified above~~) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

8.02 City of Durham Provisions

A. **Choice of Law and Forum.** This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

B. **Performance of Government Functions.** Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

C. **City Policy.** THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

City of Durham Engineering agreement version 1111806RW

D. **Equal Employment Opportunity (EEO) Provisions.** During the performance of this Contract the Engineer agrees as follows: (1) The Engineer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Engineer shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Engineer shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Engineer shall in all solicitations or advertisement for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Engineer shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Engineer's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this Agreement, in whole or in part, and the City may declare the Engineer ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Engineer shall include these EEO provisions in every purchase order for goods to be used in performing this Agreement and in every subcontract related to this Agreement so that these EEO provisions will be binding upon such subcontractors and vendors.

E. **Small Disadvantaged Business Enterprises (SDBE).** The Engineer shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Engineer to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Engineer. For purposes of this part E, in the following quoted sentences, the "Contractor" means the "Engineer." Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall

notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies.” It is stipulated and agreed that those two quoted sentences apply only to the Engineer’s alleged violations of its obligations under Article III of Chapter 18 and not to the Engineer’s alleged violations of other obligations.

from any Subcontractors designated by the Owner’s Designated Representative regarding the status of their accounts with the Engineer. The statements shall be in such format as the Owner’s Designated Representative reasonably requires, including notarization if so specified.

F. Prompt Payment to Subcontractors.

(a) Within 7 days of receipt by the Engineer of each payment from the Owner under this Agreement, the Engineer shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after Engineer’s receipt of payment from the Owner under this Agreement, the Engineer shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Engineer, but not against the City of Durham.

(b) If the Owner’s Designated Representative determines that it is appropriate to enforce subsection (a) in this manner, the Owner may withhold from progress or final payments to the Engineer the sums estimated by the Owner’s Designated Representative to be

- (i) the amount of interest due to the Subcontractor under subsection (a), and/or
- (ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the Owner to the Engineer.

This subsection (b) does not limit any other rights to withhold payments that the Owner may have.

(c) Nothing in this section (titled “Prompt Payment to Subcontractors”) shall prevent the Engineer at the time of invoicing, application, and certification to the Owner from withholding invoicing, application, and certification to the Owner for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Engineer or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Owner’s Designated Representative may require, as a prerequisite to making progress or final payments, that the Engineer provide statements
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8.03 Addresses for Notice.

The OWNER's address for giving notices is:

ATTN: City Manager
101 City Hall Plaza
Durham, NC 27701

OWNER's Designated Representative (per paragraph 6.02.A): Rachelle Rhodes, P.E.

Phone Number: 919.560.4381 x35273
Fax Number: 919.560.4479
E-Mail Address: Rachelle.Rhodes@DurhamNC.gov

The ENGINEER's address for giving notices is:

Glenn Jardine
Heery International, P.C.
999 Peachtree Street, NE
Atlanta, GA 30309

Title of ENGINEER's Designated Representative (per paragraph 6.02.A): John T. "Clay" Clayton, AIA

Phone Number: 919.755.6800
Fax Number: 919.838.6757
E-Mail Address: jclayton@heery.com

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 3.

CITY OF DURHAM

ATTEST:

By: _____

Preaudit Certification, if necessary:

signature for Engineer:

HEERY INTERNATIONAL, P.C.

By:


Glenn Jardine, Senior Vice President

acknowledgment for Engineer:

By:

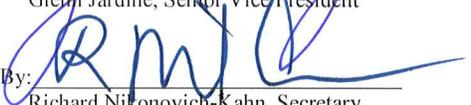

Richard Nikonovich-Kahn, Secretary

Exhibit A
Department of Water Management Mist Lake Facility Master Plan
City of Durham, North Carolina
(Project No. 10653)
(Heery Project No. 1228300)

Scope of Work

Introduction

The City owns and operates the Department of Water Management Offices at 1600 Mist Lake Drive in Durham, NC. The 20- acre facility currently houses the Department's Administration, Plant Engineering & Maintenance, Regulatory Compliance and Utility Engineering divisions. Through this project, the City intends to develop final recommendations for modifying and expanding the facilities to accommodate potential growth over the next 20 years as well as the more immediate relocation of the Water & Sewer Maintenance division from their current location at the Public Works Operation Center (PWOC). Four alternatives will be considered, including on and off site options.

The following is a detailed outline of the technical approach to developing a Master Plan for state-of-the-art facilities that will support current and future operations of the Water Management Department. The approach is divided into tasks with each task being described with the work elements to be accomplished, the deliverables, and items to be provided by the City.

The scope of services is divided into the following tasks:

- Task 1: Data/Information Gathering & Review**
- Task 2: Existing Site & Facility Condition Review**
- Task 3: Space Needs Assessment**
- Task 4: Master Planning**
- Task 5: Final Reporting**
- Task 6: Additional Services**

The team members that will be involved in each task or subtask are shown in parenthesis with the lead member listed first.

The Team includes:

- Heery** **Heery International, P.C.** (Prime, Project Management, Programming, Scheduling, Master Planning, Cost Estimating)
- PB** **Parsons Brinckerhoff** (Operations, Programming, Shop Equipment, Civil)
- EDI*** **Engineered Design Incorporated** (Mechanical, Electrical, Fire Protection and Plumbing Engineering)
- G&M** **Gardner and McDaniel** (Structural Engineering)
- Turner *** **Turner Land Surveying, PLLC** (land surveying)

(*) = MWBE team member

A list of data/information requested is included as Attachment A.

Task 1: Data/Information Gathering & Review

Task 1.1 Management, Meetings and Coordination (Heery, PB)

- Task 1.1.1 Conduct a project kick-off meeting with the Team and key City staff who will participate in the project. The purpose of the meeting will be to:
- a. Establish clear lines of communication.
 - b. Review the scope of work and project schedule.
 - c. Clearly define project goals and objectives.
 - d. Identify the staff to be involved in the interview process.
 - e. Review and revise the Data / Information List (Attachment B).
- Task 1.1.2 Develop and maintain a project schedule listing all tasks and parties involved in the project with estimated start and completion dates. The schedule will be updated on a monthly basis.
- Task 1.1.3 Schedule and coordinate bi-weekly project status meetings including:
- a. Identifying appropriate participants for each meeting.
 - b. Developing (with appropriate City input) and distributing agenda prior to meetings.
 - c. Developing and distributing minutes for each meeting.
- Task 1.1.4 Prepare and submit monthly progress reports. Each report shall include an updated schedule, summary of tasks in progress and completed, and projected tasks to be accomplished in the next month. Meeting minutes and other documents developed during the reporting period will be included in the report as an appendix.
- Task 1.1.5 Coordinate with various groups responsible for reviewing the Master Plan at specific stages.

Task 1.2 Data / Information Gathering & Review (Heery, PB)

- Task 1.2.1 Assemble and review copies of previous studies and/or reports pertinent to the Department of Water Management (DMW) and Water & Sewer Maintenance (WSM) Facilities Master Plan.
- Task 1.2.2 Assemble available drawings of each DMW and WSM site and facility.
- Task 1.2.3 Assemble and review current operations plans for each existing DMW and WSM site.
- Task 1.2.4 Review current and projected staffing plans and labor agreements(s).
- Task 1.2.5 Tour all existing DMW and WSM facilities to fully understand their function and capabilities.
- Task 1.2.6 Field measure each facility at the Mist Lake site and prepare Autocad documents of the existing floor plans.
- Task 1.2.7 Review lists of current vehicles and equipment, its current location and projected future need due to growth.
- Task 1.2.8 Review current and projected use of alternative fuels.

Task 1.2.9 Review and document permitting requirements – City of Durham Building Permit, Department of Environment and Natural Resources' (DENR) Erosion and Sediment Control Approval, DENR Stormwater Management Permit, etc.

Task 1

Consultant Deliverables

- D 1.1.1 Project Schedule
- D 1.1.2 Meeting Agendas
- D 1.1.3 Meeting Minutes
- D 1.1.4 Monthly Progress Reports (including updated project schedule)
- D 1.1.5 AutoCad drawings of each existing facility at the Mist Lake site based on field surveys by Consultant's staff
- D 1.1.6 Summary of permitting requirements

Task 1

Items to be provided by the City of Durham

- C 1.1.1 Active participation in Kick Off Meeting
- C 1.1.2 Review and comments to Consultants within 3 weeks of submission of deliverables
- C 1.1.3 Copies of previous studies and reports
- C 1.1.4 Drawings/surveys of existing sites and facilities
- C 1.1.5 Current operations plans
- C 1.1.6 Current and projected staffing plans and labor agreement(s)
- C 1.1.7 List of current and projected vehicles and equipment (including current location)
- C 1.1.8 Access during regular business hours to all facilities and spaces at the Mist Lake site and the Public Works Operations Center (PWOC).

Task 1

Assumptions

- A 1.1.1 Seven (7) hard copies and one .pdf of each deliverable will be submitted.
- A 1.1.2 The Team can rely on the accuracy of any geotechnical investigation, site survey, and any other information provided by the City
- A 1.1.3 The following meetings are included in the scope of the work; additional meetings will be treated as additional services:
 - Project kick-off meeting 1 meetings/4 team members
 - Tour of existing DMW & WSM with Project Kick Off meeting
 - Bi-weekly project status meetings 12 meetings/1 or 2 members
 - Deliverable Review Meeting 1 meeting/2 team members

Task 2: Existing Site & Facility Condition Review (Mist Lake facilities only)

Task 2.1

Facilities and Operations (Heery, PB, EDI, G&M)

- Task 2.1.1 Tour existing facilities and talk with City staff responsible for operations at each site, building systems, and building maintenance.

- Task 2.1.2 Review of existing plans and specifications for facilities.
- Task 2.1.3 Review the size, condition, expansion and demolition capability, and efficiency of each facility.
- Task 2.1.4 Prepare area take-off of each space in the facilities based on the drawings prepared by the Consultant.
- Task 2.1.5 Identify the probable life span of the following existing building systems: exterior building skin, interior finishes, mechanical, electrical, plumbing, fire protection.
- Task 2.1.6 Evaluate compliance of existing facilities with applicable building codes including ADA. Determine a wind rating for each existing facility. (The site would be used for emergency operations and the building's ability to withstand a heavy storm/wind storm is important).
- Task 2.1.7 Inventory existing shop equipment and identify items (at both PWOC and Mist Lake facilities) that should be reused in the Master Plan.
- Task 2.1.8 Document current on-site traffic flow and workflow throughout the facility.
- Task 2.1.9 Review available new technologies that may improve the operational efficiency or effectiveness of the building systems.
- Task 2.1.10 Photographically document existing conditions along with a narrative of the conditions.
- Task 2.1.11 Prepare draft condition report and submit for the City's review and comment.
- Task 2.1.12 Final condition report to be included in the final Master Plan report.

Task 2.2 Survey (Turner)

- Task 2.2.1 Survey if required – See Task 6.

Task 2 Consultant Deliverables

- D 2.1.1 Draft Condition Report including:
 - a. Evaluation of Mist Lake site
 - b. Existing building (Mist Lake site only) systems capacity and efficiency review
 - c. Existing shop equipment inventory (Both Mist Lake and PWOC)

Task 2 Items to be provided by the City of Durham

- C 2.1.1 Review and comments of draft deliverables within 3 weeks of their submission.
- C 2.1.2 Access during regular business hours to all facilities and spaces at the Mist Lake site.

Task 2 Assumptions

- A 2.1.1 Seven (7) hard copies and one .pdf of each deliverable will be submitted.
- A 2.1.2 The existing conditions assessment is a visual assessment and does not include testing of building systems or components. The assessment will include all systems that can be easily viewed

without the use of equipment other than a 6-foot ladder. This visual inspection is to give a general overview of the existing conditions and is not guaranteed to identify each and every deficiency in the existing facilities.

- A 2.1.3 The existing conditions survey does not include inspection for asbestos or other hazardous materials. It is assumed that the City's lead and asbestos evaluation performed prior to the purchase of the facility in 1992/93 will sufficiently identify any hazardous materials that exist. If this proves to not be the case, further investigation will be treated as an additional service. No allowance for this work has been specifically included in the fee.
- A 2.1.4 The existing conditions survey does not include roof inspection. It is presumed that the City can provide a report on the expected life span of the roof. If this is not available, it can be added to the scope.
- A 2.1.5 The existing conditions survey will include a structural inspection to develop a wind rating for each existing facility at the Mist Lake site.
- A 2.1.6 The following meetings are included in the scope of the work; additional meetings will be treated as additional services:
 - Condition Assessment 2 days/5 team members
 - Deliverable Review Meeting 1 meeting/2 team members

Task 3: Space Needs Assessment

Task 3.1 Operational Requirements (PB, Heery)

- Task 3.1.1 Develop a questionnaire to be completed by the City staff prior to the interviews.
- Task 3.1.2 Assist in identifying the staff to be involved in the interview process. The Team respects the time of City staff and will work closely with the City's Project Manager to identify specific areas to be discussed and the appropriate staff to address each area. A detailed schedule of interviews will be developed with the City's Project Manager to make the best use of City staff time in the interviews.
- Task 3.1.3 Workshop #1 (Programming): Interview key City staff personnel to determine functional requirements and operational characteristics for the functions to be located at the Mist Lake facility. The workshop is anticipated to be conducted over the course of a four to five day period. The workshop will start with a kick-off meeting with key staff that will be involved in the interviews. The purpose of the kick-off meeting will be to confirm project goals and the objectives of the workshop. Interviews will be conducted with the City staff appropriate for the specific areas being discussed. These interviews are critical to the success of the Master Plan, as they provide essential input to understanding operational requirements, identifying space requirements, development of criteria, and ultimately development of a Master Plan that will meet the City's current and future needs. Examples of topics to be addressed during the interviews include:
- a. Review requirements for offices, crew spaces, meeting rooms, training rooms, shops, material storage, and other functions to be on-site.
 - b. Review vendor contracted activities and requirements.
 - c. Review vehicle interior and exterior cleaning requirements, if any on-site.
 - d. Review existing preventive maintenance program.
 - e. Review existing inventory control policies, procedures, and techniques to determine parts storage requirements. This will include a review of various storage systems available for parts storage.
 - f. Review facility maintenance requirements that may affect material selection, plumbing, electrical, heating, ventilation, and air conditioning.
 - g. Review site and building security requirements.
- Task 3.1.4 Review relationships between functional areas.
- Task 3.1.5 Review fleet and equipment size, mix, and projected growth.

Task 3.2 Review of Similar Facilities (PB, Heery)

- Task 3.2.1 Coordinate a two-day field trip with the City staff to visit similar facilities and identify characteristics to be included in the new facility. These visits will help establish a common frame of reference for the City and the Team. Possibilities include:
- Chapel Hill, NC – Town Operations Center
 - Virginia Beach, VA – School Plant Maintenance Facility
 - Eugene, OR – Eugene Electric and Water Board Operation Center

Task 3.3 Space Program (PB, Heery)

- Task 3.3.1 Based on the interviews conducted during Task 3.1.3, and comparison with the City's existing Space Planning Standards (Stacey Poston) a detailed space program will be developed which will:
- a. Identify functional areas to be located at the facility.
 - b. Identify space (square foot) requirements for all administrative, maintenance and operations functions in the project including, offices mechanic areas, crew areas, shops, parts storage, warehousing, mechanical and electrical support space.
 - c. Identify parking requirements for City, employee, visitor and delivery vehicles.

Task 3.4 Draft Criteria Document (Heery, PB, EDI)

- Task 3.4.1 Prepare Draft Criteria Document to include space program and criteria resulting from programming interviews and on-site observations. The Criteria Document will include information on staffing levels, current and projected operations, and a narrative of daily operations, site requirements, and specific requirements for each functional area. The Criteria Document will also identify preliminary functional requirements for building systems including architectural, structural, mechanical, electrical, and plumbing such as:
- a. Clearance requirements (doors, aisle widths, overhead) throughout the project.
 - b. Floor, wall, and ceiling finishes.
 - c. Functional areas and equipment items within each area to be included on an emergency power system.
 - d. Lighting levels and type of lighting for all exterior areas and each functional area.
 - e. Lubrication and compressed air system requirements.
 - f. Ventilation requirements for each functional area including offices, maintenance shops, and storage areas.
 - g. Drainage requirements for floor wash down, waste fluids, and spill containment.
 - h. Minimum design temperatures for heating and cooling for each functional area.

- Task 3.4.2 Establish functional area relationships both between areas and between workstations within areas. Primary considerations to be industrial work flow, supervision, and safety. Diagrams showing these relationships will be included in the Criteria Document.

- Task 3.4.3 Identify major maintenance equipment items to be located in each functional area.
- Task 3.4.4 Assemble data on vehicles to be maintained and/or domiciled at the Mist Lake site.
- Task 3.4.5 Prepare detailed layouts of each shop, office, storage facility including required plumbing, electrical, etc.
- Task 3.4.6 Submit draft Criteria Document for the City's review and approval. The document will be finalized and presented in the Final Report.

Task 3.5 Shop Equipment (PB)

- Task 3.5.1 Develop Preliminary Shop Equipment List based on the draft Criteria Document. Equipment shall be listed by functional area and include a description, new or existing, price, and quantity for each equipment item. The Preliminary Equipment List will be reviewed with the City at the Master Planning workshop in Task 4.

Task 3.6 Preliminary Project Cost Model/Schedule (Heery)

- Task 3.6.1 Based on the space program and criteria document, develop a preliminary project cost model using a building component format that establishes budget dollar amounts for each building component category.
- Task 3.6.2 Review the cost estimate with the City and adjust the space program as necessary to meet the budget established by the City
- Task 3.6.3 Develop a preliminary critical path schedule for implementing the Master Plan.

Task 3 Consultant Deliverables

- D 3.1.1 Draft Criteria Document
- D 3.1.2 Preliminary Shop Equipment List
- D 3.1.3 Preliminary Project Cost Model

Task 3 Items to be provided by the City of Durham

- C 3.1.1 List of City staff that are to receive and respond to the programming questionnaire.
- C 3.1.2 Respond to the questionnaire within 3 weeks of its delivery.
- C 3.1.3 City of Durham Space Planning Standards
- C 3.1.4 Actively participate in Workshop #1 interviews at dates and times to be coordinated with the City's Project Manager.
- C 3.1.5 Review and comments of draft deliverables within 3 weeks of their submission.

Task 3 Assumptions

- A 3.1.1 Seven (7) hard copies and one .pdf of each deliverable will be submitted.
- A 3.1.2 The following meetings are included in the scope of the work; additional meetings will be treated as additional services:

Tour similar facilities	2 days/3 team members
Workshop #1	5 days/5 team members
Deliverable Review Meeting	1 meeting/2 team members
Cost Model Review	1 meeting/1 team member

Task 4: Master Planning

Task 4.1 Master Plan Workshop (Heery, PB)

- Task 4.1.1 Identify 4 potential alternatives to meet the requirements established in Tasks 2 and 3.
- Task 4.1.2 Workshop #2 (Master Planning). Conduct a four to five day on-site Master Planning workshop, working directly with the City to develop alternatives for site configuration and general building layout. During this on-site process, alternatives will be reviewed by the user staff. The Team will work closely with the City's Project Manager to schedule reviews based on availability of appropriate City staff. It is anticipated that the Team will work most closely with department leaders with input from their Management needed on a more limited basis. Based on review comments, selected alternatives will be refined and presented for review. A final review meeting will result in the Master Plan selected for further development.
- Task 4.1.3 Site layouts will be developed with emphasis on:
- a. Circulation patterns for vehicles, equipment, materials and personnel that will provide the most efficient, cost effective, and safest maintenance operation.
 - b. Ingress and egress routes that maximize safety and security and minimize vehicular and pedestrian conflict on and off the site
 - c. Site area relationships including mechanic and crew facilities, vehicle wash and maintenance facilities, vehicle parking, bad order (or down vehicle) parking, employee and visitor parking, and shipping and receiving.
- Task 4.1.4 Facility layouts will emphasize:
- a. Circulation patterns for vehicles (City, Staff, Vendor, Citizen), equipment, materials and personnel and their relation to site circulation patterns.
 - b. Functional area relationships both between the various areas and between workstations within each area including administrative staff, filing, meeting and training spaces, etc.
 - c. Efficient industrial workflow, supervision, and safety

Task 4.2 Update Preliminary Project Cost Model/Schedule (Heery, PB)

- Task 4.2.1 Based on the selected Master Plan, the preliminary project cost model will be updated
- Task 4.2.2 Based on the selected Master Plan, the preliminary project schedule will be updated
- Task 4.2.3 Submit the cost model & schedule for the City's review and comment

Task 4.3 Update Shop Equipment (PB, Heery)

Task 4.3.1 Update the Preliminary Shop Equipment List based on the Master Plan.

Task 4.3.2 Update the cost model for shop equipment

Task 4.4 Preliminary Construction Workaround Plan (Heery, PB)

Task 4.4.1 Existing operations at the project site must continue throughout construction. Therefore, the Team will develop a preliminary Workaround Plan for the selected Master Plan to show how the facility could remain operational during each stage of construction. The Workaround Plan will include drawings (site and/or facility) and a narrative description to be reviewed by the client and subsequently updated as the design progresses. Critical areas for workaround planning are:

- a. Site Access: Address the requirements for unobstructed access twenty four hours a day for City vehicles, delivery trucks, and employees. Access should be completely separate from the contractor's site entrance
- b. Contractor Lay Down Area: Identify a portion of the site that can be used by the contractor as a marshaling area for personnel, equipment, and supplies. Adequate space may not be available on site and the contractor may be forced to obtain space off-site
- c. Site Traffic and Parking: Minimize conflict between contractor and City personnel by delineating pathways
- d. Building Access: Identify areas of buildings and times available to contractor
- e. Discipline Integration: Coordinate civil, structural, architectural, mechanical, electrical and plumbing design elements so that all systems are available in areas which are to be kept operation in each phase.

Task 4 Consultant Deliverables

D 4.1.1 Alternative Site and Facility Concepts

D 4.1.2 Master Plan Drawings

D 4.1.3 Updated Preliminary Project Cost Model

D 4.1.4 Updated Preliminary Shop Equipment List and Cost Model

D 4.1.5 Preliminary Workaround Plan

Task 4 Items to be provided by the City of Durham

C 4.1.1 Actively participate in Workshop #2 (Master Planning) at dates and times to be coordinated with the City's Project Manager.

C 4.1.2 Provide furnished work space at the Mist Lake Facility for the Team to use throughout the Workshop Week.

Task 5: Final Reporting

Task 5.1 Facility Master Plan (Heery, PB)

- Task 5.1.1 Prepare a draft Facility Master Plan Report that documents the findings and recommendations.
- Task 5.1.2 Submit the draft Final Report for City review and comment.
- Task 5.1.3 Review comments on the draft report and meet with the City staff to discuss comments as necessary.
- Task 5.1.4 Finalize the Master Plan Report addressing the comments received from the review of the draft report
- Task 5.1.5 Submit the Master Plan Report for approval.

Task 5 Consultant Deliverables

- D 5.1.1 Draft Facility Master Plan Report
- D 5.1.2 Final Facility Master Plan Report

Task 5 Items to be provided by the City of Durham

- C 5.1.1 Review and comments of draft deliverables within 3 weeks of their submission.

Task 5 Assumptions

- A 5.1.1 Seven (7) hard copies and one .pdf of each deliverable will be submitted.
- A 5.1.2 The following meetings are included in the scope of the work; additional meetings will be treated as additional services:
 - Review Draft Meeting 1 meeting/2 team members
 - Final Review Meeting 1 meeting/4 team members

Task 6: Additional Services Allowances

Task 6.1 Geotechnical Investigation (Heery/TBD)

Task 6.1.1 If authorized by City, Heery prepares location for soil borings and requests proposals from consultants on a time and materials basis.

Task 6.1.2 If authorized by the City, Consultant investigates and provides report on a time and materials basis.

Task 6.2 Topographic Surveys (Turner)

Task 6.2.1 If authorized by the City, Turner prepares survey showing boundaries, structures, topography, water features (lakes, ponds, streams), flood plain, utilities (overhead and underground), easements, right-of-ways, roadways, drives, and paved areas on a time and materials basis of Parcel 2 and Parcel 3 identified on the Mist Lake survey provided by the City.

Task 6.2.2 If authorized by the City, Turner prepares topographic survey showing boundaries, structures, topography, water features (lakes, ponds, streams), flood plain, utilities (overhead and underground), easements, right-of-ways, roadways, drives, and paved areas on a time and materials basis of offsite parcels identified for possible expansion of the Mist Lake facility.

Task 6.3 Miscellaneous Services (TBD)

Task 6.3.1 If authorized by the City, Team undertakes miscellaneous additional services on a time and materials basis

Task 6 Consultant Deliverables

D 6.1.1 Soils Report

D 6.2.1 Site Survey(s)

Task 6 Items to be provided by the City of Durham

C 6.1.1 Review of proposals and authorization to proceed with Additional Services within the time frame noted on the proposal.

Task 6 Assumptions

A 6.1.1 The scope and fee includes Additional Services as allowances as noted. No services will be rendered for Additional Services without the written approval of the City. If the cost of the Additional Services exceeds the available allowance, the City will issue an additive change order increasing the contract amount. The City will issue a deductive change order decreasing the contract amount reflective of any unused allowances at the conclusion of the project.

Attachment A
(to Exhibit A)

Data /Information Request List

- A-1 Any previously completed site surveys of the Mist Lake site.
- A-2 Any previously completed design or construction documents of the existing facilities.
- A-3 Any previously completed studies for the Mist Lake or WSM facilities.
- A-4 Any previously completed geotechnical testing reports for the Mist Lake site.
- A-5 Any previously completed hazardous materials reports for the Mist Lake facilities.
- A-6 Current operations plans.
- A-7 Current and projected staffing plans and labor agreement(s).
- A-8 List of current and projected vehicles and equipment (including current location).
- A-9 Departmental personnel directory and organizational chart.

City of Durham
Mist Lake Master Plan Study

Preliminary Schedule

	Task Duration (Calendar Days)	Overall Duration (Calendar Days)
Council Approval	1	

Notice to Proceed	2	
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Task 1

Task 1.1.1/1.2.5 Kickoff & Tour DMW & WSM	1	NTP+ 1 day
Task 1.2.1/1.2.4/1.2.7/1.2.8/1.2.9 Document Gathering & Review	7	NTP+ 8 days
Task 1.2.6 Field Measurement	7	NTP+ 15 days

Task 2

Task 2.1.1-2.1.11 Condition Assessment, Inventory, Prepare Draft Report	14	NTP+ 29 days
Task C 2.1.1 City Review of Task 2 Draft Deliverables	21	NTP+ 50 days
Task 2.1.12 Revise Draft based on City's Comments	7	NTP+ 57 days

Task 3

Task 3.1.1/3.1.2 Develop Questionnaire & Identify Staff to be Interviewed	7	NTP+ 64 days
Task 3.1.3 Workshop 1	7	NTP+ 71 days
Task 3.1.4/3.1.5/3.3.1 Develop Space Program	7	NTP+ 78 days
Task 3.2.1 Field Trip - Visit Similar Facilities	2	
Task 3.4/3.5/3.6 Prepare Draft Criteria Document	14	NTP+ 92 days
Task C 3.1.5 City Review of Task 3 Draft Deliverables	21	NTP+ 113 days

Task 4

Task 4.1.1 Identify 4 Alternatives, Prepare for Workshop	7	NTP+ 120 days
Task 4.1.2 Workshop 2 Master Planning	7	NTP+ 127 days
Task 4.2/4.3/4.4 Update Cost Model, Schedule, Develop Workaround Plan	7	NTP+ 134 days

Task 5

Task 5.1.1 Prepare Draft Master Plan Report	14	NTP+ 148 days
Task C 5.1.1 City Review of Task 5 Deliverables	21	NTP+ 169 days
Task 5.1.2 Revise and Publish Master Plan Report	14	NTP+ 183 days

Task 6 (which represents additional services) is not included in the schedule. Each additional service will be approved by the City prior to its commencement. That approval will include any schedule modifications that the additional services may generate.



City of Durham
Mist Lake Master Plan Study

Fee Proposal

Task	Description	Proposed Fee	
Task 1	Data/Information Gathering & Review	\$	57,129.08
1.1	Management Meetings & Coordination	\$	41,022.87
1.2	Data/Information Gathering & Review	\$	16,106.20
Task 2	Existing Site & Facility Condition Review	\$	46,486.84
2.1	Facilities and Operations	\$	46,486.84
Task 3	Space Needs Assessment	\$	99,948.55
3.1	Operational Requirements/Workshop 1	\$	40,646.97
3.2	Review of Similar Facilities	\$	11,285.15
3.3	Space Program	\$	6,547.26
3.4	Draft Criteria Document	\$	23,268.30
3.5	Shop Equipment	\$	4,466.25
3.6	Preliminary Cost Model/Schedule	\$	13,734.63
Task 4	Master Planning	\$	76,224.17
4.1	Master Plan/Workshop 2	\$	69,195.79
4.2	Update Preliminary Cost Model/Schedule	\$	1,975.01
4.3	Update Shop Equipment	\$	936.36
4.4	Workaround Plan	\$	4,117.01
Task 5	Final Reporting	\$	25,534.89
5.1	Master Plan Report	\$	25,534.89
Task 6	Additional Services Allowance	\$	51,500.00
Fee Total		\$	356,823.52

Subcontracting Amounts

Parsons Brinckerhoff	\$	152,159.62	42.64%
EDI - WBE	\$	17,480.00	4.26%
Gardner & McDaniel - SLBE	\$	7,820.00	1.91%
Additional Service - Turner Surveying - WBE	\$	14,000.00	3.41%
Additional Services - Geotechnical -Consultant TBD		TBD	TBD

(for use with 1910-1, 1996 Edition)

This is EXHIBIT B, consisting of 3 pages, part of the Agreement between Owner and Engineer for Professional Services dated May 20, 2013.

Owner's Responsibilities

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

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

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.

B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope

or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services or in the work of any Contractor.

E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement. Nothing in this Agreement is intended to require ENGINEER to go onto public or private property in an unsafe manner or when it is unsafe to do so.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Provide, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
4. Placement and payment for advertisement for Bids in appropriate publications.

J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.

K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others for Owner so that Engineer may make the necessary calculations to develop and periodically adjust Engineer's opinion of Total Project Costs.

L. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

M. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the

activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

N. Attend the pre-bid conferences, bid openings, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.

O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.

P. Provide inspection or monitoring services by an individual or entity other than Engineer (and disclose the identity of such individual or entity to Engineer) as Owner determines necessary to verify:

1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.
2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

Q. Provide Engineer with the findings and reports generated by the entities providing services pursuant to paragraphs B2.01.O and P.

R. Perform or provide the following additional services: TBD

(for use with 1910-1, 1996 Edition)

This is EXHIBIT C, consisting of 4 pages, part of the Agreement between Owner and Engineer for Professional Services dated May 20, 2013.

Payments to Engineer for Services and Reimbursable Expenses

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 -- PAYMENTS TO THE Engineer

C4.01 For Basic Services Having A Determined Scope --
Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, ~~except for services of Engineer's Resident Project Representative and Post-Construction Phase services, if any, as follows:~~

1. A Lump Sum amount of \$ 356,823.52 based on the following assumed distribution of compensation:

Task 1	Data/Information Gathering & Review	\$ 57,129.07
Task 2	Existing Site & Facility Condition Review	\$ 46,486.84
Task 3	Space Needs Assessment	\$ 99,948.55
Task 4	Master Planning	\$ 76,224.17
Task 5	Final Reporting	\$ 25,534.89
Task 6	Additional Services Allowance	\$ 51,500.00

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's reasonable estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

5. The Lump Sum is conditioned on Contract Times to complete the Work not exceeding 184 days ~~months~~. Should the Contract Times to complete the Work be extended beyond this period, the total compensation to Engineer shall be appropriately adjusted as the parties may agree

by an amendment to this contract. Except to the extent provided in an amendment, the Owner shall not be obligated to pay any compensation greater than the Lump Sum.

~~6. If more prime contracts are awarded for Work designed or specified by Engineer for this Project than identified in Exhibit A, the Engineer shall be compensated an additional amount equal to \$ _____ for all Basic Services for each prime contract added.~~

C4.02 For Basic Services Having An Undetermined Scope -- Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services having an undetermined scope as follows:

~~1. Resident Project Representative Services. For services of Engineer's Resident Project Representative, if any, under paragraph A1.05A.2.a of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$ _____ based upon Contract Times as set forth in paragraph C4.01.~~

~~2. Post-Construction Phase Services. For Post-Construction Phase services under paragraph A1.06 of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$ _____.~~

C4.03 For Additional Services

A. Owner shall pay Engineer for Additional Services as follows:

1. General. For services of Engineer's employees engaged directly on the Project pursuant to paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under paragraph A2.01.A.20, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.

2. Serving as a Witness. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration, or other legal or administrative proceeding under paragraph A2.01.A.20, at the rate of \$ 1,600 per day or any portion thereof (but compensation for time spent in preparing to testify in any such litigation, arbitration, or proceeding will be on the basis provided in paragraph C4.03.A.1). Compensation for Engineer's Consultants for such services will be on the basis provided in paragraph C4.06.

C4.04 For Reimbursable Expenses

A. When not included in compensation for Basic Services under paragraph C4.01, Owner shall pay Engineer for Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.

B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities;

subsistence and transportation of Resident Project Representative and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.

C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a Factor of 1.15 (15%).

D. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer.

E. This part E applies does not apply. The amounts that might be charged as Reimbursable Expenses are included in compensation for Basic Services, so there is no separate charge for Reimbursable Expenses incurred while performing Basic Services.

C4.05 Standard Hourly Rates

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

B. The Standard Hourly Rates will be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer.

C4.06 For Engineer's Consultant's Charges

A. Whenever compensation to Engineer herein is stated to include charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a Factor of 1.15 (15%).

C4.07 Factors

A. The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C4.08 Other Provisions Concerning Payment

A. Progress Payments. The portion of the amounts billed for Engineer's services which are related to the services identified in paragraphs C4.02 and C4.03, will be during the billing period based on the cumulative hours charged to the Project by each class of Engineer's employees times the Standard Hourly Rate for each class plus Reimbursable Expenses and Engineer's Consultant's charges, if any.

~~B. Extended Contract Times. Should the Contract Times to complete the Work be extended beyond the period identified in paragraph C4.01, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.~~

C. Estimated Compensation Amounts

1. Engineer's estimate of the amounts that will become payable for Basic Services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the

remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall be paid for all services rendered hereunder only if the parties execute a written agreement to that effect.

This is Appendix 1 to EXHIBIT C, consisting of 1 page, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated May 20, 2013.

Reimbursable Expenses Schedule

— Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

— FAX —	\$ _____/page
— 8"x11" Copies/Impression —	_____/page
— Blue Print Copies —	_____/sq. ft.
— Reproducible Copies (Mylar) —	_____/sq. ft.
— Reproducible Copies (Paper) —	_____/sq. ft.
— Mileage (auto) —	_____/mile
— Field Truck Daily Charge —	_____/day
— Mileage (Field Truck) —	_____/mile
— Field Survey Equipment —	_____/day
— Confined Space Equipment —	_____/day plus expenses
— Resident — Project — Representative Equipment	_____/month
— Computer CPU Charge —	_____/hour
— Personal Computer Charge —	_____/hour
— CAD Charge —	_____/hour
— CAE Terminal Charge —	_____/hour
— VCR and Monitor Charge —	_____/day, \$ _____/week, or \$ _____/month
— Video Camcorder —	_____/day, plus \$ _____/tape
— Electrical Meters Charge —	_____/week, or \$ _____/month
— Flow Meter Charge —	_____/week, or \$ _____/month
— Rain Gauge —	_____/week, or \$ _____/month
— Sampler Charge —	_____/week, or \$ _____/month
— Dissolved Oxygen Tester Charge —	_____/week
— Fluorometer —	_____/week
— Laboratory Pilot Testing Charge —	_____/week, or \$ _____/month
— Soil Gas Kit —	_____/day
— Submersible Pump —	_____/day
— Water Level Meter —	_____/day, or \$ _____/month
— Soil Sampling —	_____/sample
— Groundwater Sampling —	_____/sample
— Health and Safety Level D —	_____/day
— Health and Safety Level C —	_____/day
— Electronic Media Charge —	_____/hour
— Long Distance Phone Calls —	at cost
— Meals and Lodging —	at cost

This is Appendix 2 to EXHIBIT C, consisting of 1 page, and part of the Agreement between Owner and Engineer for Professional Services dated May 20, 2013.

Standard Hourly Rates Schedule

Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services performed on the date of the Agreement are, in dollars per hour:

Heery	Senior Project Manager	185.00
Heery	Senior Facility Planner	125.00
Heery	Scheduler	140.00
Parsons Brinckerhoff	Senior Facilities Planner	275.00
Parsons Brinckerhoff	Facility Planner	150.00
Parsons Brinckerhoff	Junior Facility Planner	100.00
EDI	Professional Engineer	125.00
EDI	Engineering Designer	95.00
EDI	Engineer in Training	80.00
Gardner & McDaniel	Professional Engineer	150.00
	Support Staff	80.00

EXHIBIT D
ARTICLE 14 DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF AUTHORITY
OF RESIDENT PROJECT REPRESENTATIVE
Exhibit D is not applicable

EXHIBIT E
NOTICE OF ACCEPTABILITY OF WORK
Exhibit E is not applicable

EXHIBIT F
ARTICLE 15 Construction Cost Limit
Exhibit F is not applicable

EXHIBIT G
ARTICLE 16 Insurance

16.1 *Insurance*

A. The Contractor shall maintain insurance not less than the following:

Commercial General Liability, covering

- premises/operations
- products/completed operations
- broad form property damage
- explosion, collapse, and underground hazards if the hazards exist in the performance of this contract
- contractual liability
- independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year

Automobile Liability Insurance, covering

- owned, hired, or borrowed vehicles
- employee vehicles, if used in performance of this contract
- combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year

Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners partners, officers, and relatives (who work on this contract)
- employers' liability, any limit.

Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina
- companies with Best rating of A or better.

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:

City of Durham, North Carolina
Attention: Finance Director
101 City Hall Plaza
Durham, NC 27701

- both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

2. By Owner: none

(end of Exhibit G)

EXHIBIT H
ARTICLE 17 Dispute Resolution
Exhibit H is not applicable

EXHIBIT I
Allocation of Risks
Exhibit I is not applicable

EXHIBIT J
Special Provisions
Exhibit J is not applicable

EXHIBIT K
Accessibility Letter of Compliance
Exhibit K is not applicable

(end of Exhibits)