**CITY OF DURHAM, NORTH CAROLINA**
**MASTER AGREEMENT FOR WATER MANAGEMENT ON-CALL SERVICES**
**BETWEEN THE CITY AND MCKIM & CREED, INC.**

THIS AGREEMENT (hereafter, "Master Agreement" or "Agreement") is made the 4th day of August, 2014 by and between the City of Durham, Durham County, North Carolina (hereinafter called "City") and McKim & Creed Inc. for itself and its successors and assigns (hereinafter called "Consultant").

**PROFESSIONAL SERVICES**

WHEREAS, City desires to engage Consultant to provide Professional On-Call EngineeringServices related to the design and permitting of dams, reservoirs, water and wastewater treatment facilities, water distribution systems, wastewater collection systems and organizational and financial consulting (hereafter "Professional Engineering Services") as set forth herein and in accordance with Supplemental Agreements (hereafter "Services"); and

WHEREAS, Consultant has the experience, staff, and resources to perform such Services;

NOW, THEREFORE, City and Consultant, in consideration of their mutual covenants, herein agree as follows:

## SECTION I. EMPLOYMENT OF CONSULTANT

A. Consultant shall perform on-call Professional Engineering Services as set forth in this Agreement and a Supplemental Agreement (hereafter "Supplemental Agreement"). The Supplemental Agreement is made a part of this Agreement as if fully set forth herein. City shall pay Consultant for the performance of Services in the manner set forth herein and in the Supplemental Agreement.

B. Requests for services made by the City to Consultant are contingent upon execution of a Supplemental Agreement and the sufficiency of funding. No services shall commence on a particular project until a Supplemental Agreement has been executed by both parties, and City has notified Consultant to proceed as set forth in Section IV below.

## SECTION II. CONTENT AND EXECUTION OF SUPPLEMENTAL AGREEMENT

A. Services to be provided shall be set forth in a Supplemental Agreement, and amendments to that Agreement. The Supplemental Agreement may also include additional terms and conditions regarding payment and other matters necessary for the execution of particular projects. Supplemental Agreements shall not vary the terms of this Agreement, except where this Agreement authorizes such variance, and shall be interpreted consistently with this Agreement. If there is a conflict between this Agreement and Supplemental Agreements, this Agreement shall control.

B. Supplemental Agreements, and amendments to such Agreements, where payment for the Supplemental Agreement, as amended, does not exceed $100,000 may be negotiated and executed by the City Manager or his/her delegate consistent with the authority delegated by the Durham City Council. Certain modifications to the Supplemental Agreements may also be made by the City of

Durham's Department of Water Management Director (hereafter "Director") or his designee as described in Section IIIB below. It is necessary to give the Director the authority to make minor modifications to Supplemental Agreements because of manner in which projects change as the work is progressively completed, and the need for flexibility as a project unfolds. Changes falling outside of the aforementioned areas shall require formal amendment to the Supplemental Agreement and shall be entered into and executed by the City Manager or his/her delegate as described above. Supplemental Agreements exceeding $100,000 shall require Council authorization.

## SECTION III RESPONSIBILITIES OF CONSULTANT AND CITY

### A. CONSULTANT'S RESPONSIBILITIES

1. Reporting/Coordination. Consultant shall provide progress reports in a format acceptable to the City at intervals established in the Supplemental Agreement. At any time, upon request, the City shall be entitled to information regarding the status of the project. Consultant is responsible for coordinating its work with the City in such a manner so as to meet project deadlines.

2. Delays/Extensions. If delays to the completion date for the project or for tasks within the project that have individual deadlines result from circumstances that could not reasonably be foreseen by Consultant and which are beyond the reasonable control of the Consultant, one or more extensions of time may be granted, upon written request documenting the reasons for the request. The Director may, in his/her discretion, which shall be reasonably exercised, is authorized to grant such request if such request falls within the parameters set forth in Section IIIB below.

3. Responsibility for Services Performed. Consultant shall maintain an adequate professional staff within the State of North Carolina to render Services to the City. Consultant may use subcontractors to provide Services only if such subcontractors and the services to be performed are identified in either the Master Agreement or a Supplemental Agreement. Otherwise all services described in the Supplemental Agreement shall be rendered by Consultant's employees. Consultant is responsible for the professional quality, technical accuracy, and timely completion and submission of all Services performed under this Agreement and Supplemental Agreements, and for the performance and payment of all subcontractors.

4. Professional Certifications/Endorsements. All final plans, documents, reports, studies, and other data or materials prepared by the Consultant will bear the endorsement of a person employed by Consultant or its approved subcontractors who shall be duly registered in the appropriate professional category for the work performed.

5. Ownership of Work Product. All plans, maps, documents, reports, studies, and/or other data and materials prepared or obtained under this Agreement and Supplemental Agreements (hereafter "work product") shall be considered works made for hire and shall become the property of the City without restriction or limitation on their use. Such work product shall be made available, upon request, to the City at any time during the term of this Agreement and Supplemental Agreements.

6. Retention of Records. Consultant shall maintain all books, documents, and papers pertaining to Services performed under this Agreement, and accounting records, and other records of costs incurred in performance of this Agreement and Supplemental Agreements and shall make them available to the City upon request during the period of this Agreement and for three years after final payment is made. Records of costs incurred include the Consultant's general accounting records and the Project records, together with supporting documents and records of the Consultant and all subcontractors-performing work on the Project, and all other records of the Consultant and subcontractors considered necessary by the City for a proper audit of project costs.

7. Meetings. Consultant shall meet with City representatives at mutually agreed upon times upon the City's request. Such meetings shall be held at locations designated by the City.

8. SDBE Utilization. Consultant shall provide to the Director a SDBE utilization report on an annual basis or at mutually agreed upon timeframe upon the City's request.

## B. CITY'S RESPONSIBILITIES

1. Director Authority. The Director is authorized to take actions on behalf of the City with respect to performance of this Agreement and Supplemental Agreements. His/her instructions, requests, and decisions on behalf of the City, where documented in writing, and not inconsistent with this Agreement or Supplemental Agreements shall be binding. This authorization does not give the Director the authority to enter into Supplemental Agreements or amendments to the Agreement or Supplemental Agreements, other than as described in this Agreement. The Director may authorize and execute the following changes, if such are agreed to in writing by both parties: change the amount of payment for particular subtasks, if such changes do not alter the rate of compensation of Consultant or its subordinates, or increase the total compensation required for completion of the project as provided for in the Supplemental Agreement, or reduce the amount of work being performed by Consultant; refine or redistribute services where there is no change in the general amount, scope, or nature of the work to be performed on a project; and extend time for a project or portion thereof if the final completion date for the project is not extended by more than 25% of the time originally allotted for the project.

2. City Information. City shall provide existing data, plans, reports, and other information in possession of or under control of the City, which are necessary for Consultant's Performance of Services and shall assist Consultant in obtaining other necessary information from City's files.

3. Notice of Inadequate Performance. City shall give prompt written notice to the Consultant if the City observes or otherwise becomes aware of any fault or defect in Consultant's conformance to this Agreement. Failure to give such notice shall not constitute a waiver of the City's right to require compliance with this Agreement or Supplemental Agreements.

## SECTION IV. PERIOD OF SERVICE

A. DURATION

This Master Agreement shall authorize Supplemental Agreements to be executed for a three (3) year period from the date of execution of this Agreement. Any Supplemental Agreement executed within three years of execution of this Master Agreement shall be binding for the time period set forth therein, and this Agreement and such Supplemental Agreement, and amendments to such Agreements, shall be binding for the time period set forth in the Supplemental Agreement. Any Supplemental Agreement executed within this three year period may be amended for additional scope, fee or time after the three year period has expired.

B. NOTICE TO PROCEED

Services shall commence upon execution of Supplemental Agreements describing the specific project and Services to be performed. The Director or his/her designee will issue a written Notice to Proceed following execution of such Supplemental Agreement(s). Consultant will not commence Services until such notice is received.

## SECTION V. COMPENSATION

A. GENERAL PROVISIONS/HOURLY RATE SCHEDULE

The terms of payment for Services provided by Consultant shall be set forth in each Supplemental Agreement. Such Agreement may provide for compensation in accordance with an hourly rate schedule, or a set fee for Services, paid one time or in periodic payments, or a combination of these methods of compensation.

Unless otherwise provided in the Supplemental Agreement, Consultant shall obtain, and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform Services under this Agreement. In addition to hourly rates or the set fee payment set forth in the Supplemental Agreement, City shall pay Consultant for expenses and costs only when reimbursement for such items is specifically provided for in a Supplemental Agreement. The City shall not be obligated to pay any expenses and costs not specifically identified in a Supplemental Agreement.

B. INVOICES/COSTS

1. Frequency/Detail

Invoices for all compensation owed in accordance with the Supplemental Agreement, including but not limited to hourly fees, lump sum payments, periodic payments, and all specifically identified, reimbursable costs and expenses shall be submitted to the City on a monthly basis, or on such other schedule as may be provided in the Supplemental Agreement. Invoices shall provide sufficient detail to process the invoice for payment and for a proper pre-audit and postaudit thereof in accordance with City standards. If Consultant has performed Services for which payment is not yet due, as, for example, when there is a limitation on the amount of periodic payments, or when compensation is not due until a particular task is completed, Consultant shall invoice the City only for those amounts owed under the provisions of the Supplemental Agreement, and shall show Services performed for which compensation is not yet owed separately from the amounts currently due.

2. Receipts

If a Supplemental Agreement specifically allows for basic incidental project expenses to be billed without receipts, these expenses may include but are not limited to local mileage, local and long distance telephone calls, fax expenses, photocopies, and other routine expenses normally sustained in the performance of engineering and planning work. If such expenses are specifically allowed, Consultant may include, without receipts, an amount equal to 6.5% of labor costs as an allocation for these expenses, without providing receipts for the expenses. A percentage amount for basic incidental project expenses shall not be allowed if compensation is through a set fee, whether paid at one time or in periodic payments. A Supplemental Agreement may also specifically allow for payment of unusual, non-routine direct expenses. In order to be eligible for reimbursement, such expenses must be identified in the Supplemental Agreement. Such expenses may include but not be limited to, mileage for travel to sites outside of a 75 mile radius of Durham (but not including mileage to and from Consultant's place of business to Durham), rental cars, permit fees, lodging, and meals. Where such expenses are eligible for reimbursement, the Consultant shall collect and maintain receipts for said expenses and furnish such receipts to the City with the periodic invoices submitted for Services. Reimbursement shall be provided per City guidelines. Travel, lodging, and meal costs shall be governed by City guidelines and restrictions regarding reimbursable costs for City employees.

3. Additional Guidelines Regarding Determination of Costs.

Where reimbursement for costs is specifically allowed in the Supplemental Agreement, but the determination of such costs is not provided for in this Agreement or such Supplemental Agreement, or in the event of a dispute regarding costs not governed by this Agreement, the provisions of State law, City regulations or guidelines shall apply, with the limitation that the more restrictive of those regulations or guidelines will govern in case of inconsistency.

4. Disputed Items

In the event that Consultant's invoices and receipts are submitted in compliance with the requirements of this Agreement, if the City disputes any items in any invoices submitted by Consultant City shall notify the Consultant within 60 days of receipt of any disputed item and request clarification and/or remedial action. If objections are not raised within 60 days of receipt of the invoice, the City's objections shall be waived, and the invoice shall be deemed due and owing. After this point, Consultant may include the disputed item(s) in its regular, periodic invoices or on a special invoice for the disputed item only.

B. PAYMENT

Within approximately 30 days of City receiving Consultant's invoice, City shall pay Consultant for undisputed amounts within the invoice, unless the invoice does not properly reflect the amounts owed in accordance with limitations contained in a Supplemental Agreement.

C. AUDIT OF RECORDS

The Consultant agrees to maintain all information pertaining to billing for Services performed under this Agreement for three years after final payment has been made.

## SECTION VI SDBE REQUIREMENTS

A. EEO.

POLICY STATEMENT. 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.

Consultant agrees as follows: (1) Consultant 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. Consultant 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. Consultant shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) Consultant shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, 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) Consultant 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 Consultant's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare Consultant ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, Consultant shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

B. SDBE.

The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunity Program), as amended from time to time. The failure of the Contractor to comply with that chapter shall be a material breach of Agreement 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 Contractor. Section 18-59(f) of that chapter 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 Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

## SECTION VII. INSURANCE COVERAGE AND INDEMNIFICATION

A. GENERAL INSURANCE REQUIREMENTS
Department of Water Management On Call Design Engineer-- High Risk

Workers' Compensation. CONSULTANT shall have and maintain, during the period of this Agreement and Supplemental Agreements, Worker's Compensation and Employer's Liability Insurance with a company or companies authorized to do business in the State of North Carolina, for the protection of CONSULTANT's employees, as required by law of any employer. Waiver of subrogation in favor of the City of Durham.

Vehicle Liability. CONSULTANT shall also provide and maintain in full force and effect during the time of this Agreement and Supplemental Agreements, insurance covering the operation of automobiles and other vehicles in a company authorized to do business in North Carolina and satisfactory to CITY, protecting CONSULTANT and CITY against liability from damages because of injuries, including death, suffered by any person or persons other than employees of CONSULTANT, and liability or damages to property, arising from or growing out of CONSULTANT's operations in connection with the performance of this Agreement and Supplemental Agreements. Such insurance shall covered owned, non-owned, and hired vehicles and shall provide combined single limits of not less than One Million Dollars ($1,000,000) per accident. The City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate.

Commercial General Liability. CONSULTANT shall maintain commercial general liability insurance covering premises/operations, products/completed operations, broad form property damage, contractual liability, independent contractors (if any), and XCU coverage (explosion, collapse, and underground) if any apply to the work of this contract. Coverage shall be maintained with an insurance company authorized to do business in North Carolina and satisfactory to CITY. Such insurance shall provide, at a minimum, combined single limits of $3,000,000. The City of Durham, North Carolina, it officers, employees, and elected officials shall be named as additional insured. The additional insured coverage must be evidenced by either an original of the endorsement to effect the coverage, or, if blanket coverage is provided, then the agent shall indicate the form number in the proper section of the certificate of insurance.

Professional Liability Insurance

CONSULTANT shall also provide and maintain Professional Liability Insurance coverage to protect CITY from liability arising out of the performance of professional services, if any, under this Agreement and Supplemental Agreements. Such coverage shall be in the sum of not less than Three Million Dollars ($3,000,000). Prior written approval of the CITY shall be required if CONSULTANT maintains a deductible greater than $10,000.

B. GENERAL INSURANCE REQUIREMENTS
Department of Water Management On Call Design Engineer-- Low Risk

1. General Insurance Requirements

Workers' Compensation. CONSULTANT shall have and maintain, during the period of this Agreement and Supplemental Agreements, Worker's Compensation and Employer's Liability Insurance with a company or companies authorized to do business in the State of North Carolina, for the protection of CONSULTANT's employees, as required by law of any employer. Waiver of subrogation in favor of the City od Durham.

Vehicle Liability. CONSULTANT shall also provide and maintain in full force and effect during the time of this Agreement and Supplemental Agreements, insurance covering the operation of automobiles and other vehicles in a company authorized to do business in North Carolina and satisfactory to CITY, protecting CONSULTANT and CITY against liability from damages because of injuries, including death, suffered by any person or persons other than employees of CONSULTANT, and liability or damages to property, arising from or growing out of CONSULTANT's operations in connection with the performance of this Agreement and Supplemental Agreements. Such insurance shall covered owned, non-owned, and hired vehicles and shall provide combined single limits of not less than One Million Dollars ($1,000,000) per accident. The City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate.

Commercial General Liability. CONSULTANT shall maintain commercial general liability insurance covering premises/operations, products/completed operations, broad form property damage, contractual liability, independent contractors (if any), and XCU coverage (explosion, collapse, and underground) if any apply to the work of this contract. Coverage shall be maintained with an insurance company authorized to do business in North Carolina and satisfactory to CITY. Such insurance shall provide, at a minimum, combined single limits of $1,000,000. The City of Durham, North Carolina, it officers, employees, and elected officials shall be named as additional insured. The additional insured coverage must be evidenced by either an original of the endorsement to effect the coverage, or, if blanket coverage is provided, then the agent shall indicate the form number in the proper section of the certificate of insurance.

2. Professional Liability Insurance

CONSULTANT shall also provide and maintain Professional Liability Insurance coverage to protect CITY from liability arising out of the performance of professional services, if any, under this Agreement and Supplemental Agreements. Such coverage shall be in the sum of not less than One Million Dollars ($1,000,000). Prior written approval of the CITY shall be required if CONSULTANT maintains a deductible greater than $10,000.

C. INDEMNIFICATION

(a) Indemnification for Charges Arising from Professional Services. To the maximum extent allowed by law, Consultant shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of Consultant's performance of Professional Services under this Contract, but only to the extent such Charges are caused by the Professional Negligence of Consultant or its subcontractors 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), Consultant shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(b) Indemnification for Charges Not Arising from Professional Services. To the maximum extent

allowed by law, Consultant 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 Consultant or subcontractors 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), Consultant shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(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 City and its officers, officials, independent contractors, agents, and employees, excluding Consultant. "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 Consultant 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 City 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 Consultant under this contract.

(f) Limitations of Consultant's Obligation. Subsections "a" and "b" above shall not require Consultant 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.

## SECTION VIII. GENERAL PROVISIONS

### A. REUSE OF DOCUMENTS

Reuse by City of products and deliverables (final drawings, plans, calculations, specifications, studies, electronic data and information, software programs, etc.) furnished by Consultant is allowed. However, if such use is not for the specific project or uses described in the Supplemental Agreement, and if Consultant does not furnish a written verification that the products and deliverables can be reused for the City's other purposes, or does not adapt them for such purposes, then reuse is at the City's sole risk and without liability or legal exposure to the Consultant.

### B. CHOICE OF LAW AND FORUM

This contract shall be deemed made in Durham County, North Carolina. This contract 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 contract shall be the North Carolina General Court of

Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section. This subsection (B) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

C. SUCCESSORS AND ASSIGNS

City and Consultant, respectively, bind themselves, their partners, successors, assigns, and legal representatives to this Agreement. Neither City nor Consultant shall assign, delegate, or transfer any interest in or duties arising out of this Agreement without the written consent of the other.

D. MODIFICATIONS; ENTIRE AGREEMENT

No modification to this Agreement, or any attachments hereto, or to any Supplemental Agreement, shall have any force or affect unless the change is reduced to writing, dated, and made part of this Agreement. Except where this Agreement authorizes changes to be made by the Director (or designee), the execution of any changes on behalf of the City must be signed by the City Manager or a deputy or Assistant City Manager. This Agreement contains the entire Agreement between the parties pertaining to the general provisions of employment of the Consultant. There are no promises, conditions, inducements, warranties, or written or oral understandings, express or implied, between the parties, other than as specifically set forth or referenced in this Agreement.

E. NOTICES

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed to Consultant at the name and address stated herein, and to City at the name and address stated below:

For the City:

Donald F. Greeley, PE, PLS
Director, Department of Water Management
101 City Hall Plaza
Durham, NC 27701
Fax number: 919-560-4561
Email: Don.Greeley@durhamnc.gov

For Consultant:

Bryan F. Blake, PE
Vice President
McKim & Creed, Inc.
Venture IV Building, Suite 500
1730 Varsity Drive
Raleigh, NC 27606
Fax Number: 919-233-8031
Email: bblake@mckimcreed.com

F. DISPUTES

If both parties agree, Claims by the City or Consultant arising out of this Agreement or Supplemental Agreements may be submitted to mediation in accordance with the the dispute resolution process adopted by the State Building Commission pursuant to G. S. 143-135.26(11) and G. S. 143-128(F1) as a precondition to initiating litigation concerning the dispute. The amount of $15,000 or more must be at issue before a party may require the other party to participate in the dispute resolution process. The costs of the dispute resolution process shall be divided between the parties to the dispute with at least one-third of the cost to be paid by the City, if multiple parties are involved and the City is a party to the dispute.

G. DISCLOSURE/PUBLICITY

The Consultant shall make no statements, or press or publicity releases concerning this Agreement or Supplemental Agreements or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement or Supplemental Agreements during the period of the Agreement, without first notifying the City and securing its consent in writing. The Consultant also agrees that it shall not publish, copyright, or patent any of the data furnished in compliance with this Agreement or Supplemental Agreements, it being understood that such data or information is the property of the City.

H. WAIVER

No action or failure to act by the City shall constitute a waiver of any of the City's rights or remedies arising out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

I. NO THIRD PARTY RIGHTS

This Agreement is intended for the benefit of the City and the Consultant and not for any other person.

J. SEVERABILITY

If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

K. PERFORMANCE OF GOVERNMENT FUNCTIONS

Nothing contained in this contract 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.

L. ASSIGNMENT, SUCCESSORS AND ASSIGNS.

Without the City's written consent, the Consultant shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Consultant and all assignees shall be subject to all of the City's

defenses and shall be liable for all of the Consultant's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Consultant the right to assign, it is agreed that the duties of the Consultant that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

M. COMPLIANCE WITH LAW

In performing all of the Work, the Consultant shall comply with all applicable law.

N. E-VERIFY COMPLIANCE

For purposes of this E-Verfiy Compliance provision, the Consultant shall be referred to as "contractor". The contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). In this E-Verify Compliance section, "contractor," "its subcontractors," and "comply" shall have the meanings intended by NCGS 160A-20.1(b). The City is relying on this section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

## SECTION IX. CRITERIA FOR INACTIVE STATUS OR REMOVAL FROM ON-CALL LIST

The criteria outlined below will be used to place a firm on inactive status or remove the Consultant from the "On-Call" List.

1. If McKim & Creed Inc. (Consultant) loses technical expertise and does not replace that expertise within two (2) months, then the Consultant will be put on inactive status. Replacement of technical expertise will require written City approval to allow the firm to be reinstated on the "On-Call" List.

2. If McKim & Creed Inc. (Consultant) declines a specific project assignment two (2) consecutive times, then the Consultant will be put on inactive status. A written request from the inactive firm, providing appropriate justification, will be required to seek reinstatement on the "On-Call" List. Written City approval will be required to allow the firm to be reinstated on the "On-Call" List.

Consultant may be removed from the "On-Call" List for any of the following reasons as determined by the City:

1. Loss of Technical Expertise - If the Consultant loses their technical expertise and has not replaced that expertise within three (3) months.
2. Declining work - If the Consultant is put on inactive status two (2) times for declining specific project assignments.
3. Responsiveness and accessibility of the Project Manager - If a Project Manager or his/her designee is nonresponsive and inaccessible for more than seven (7) working days
4. Poor quality control - If the Consultant exhibits poor quality control.
5. Poor work product and/or deliverables – If the Consultant produces poor work product and/or deliverables.
6. Late work milestone performance and/or late deliverables - If the Consultant performs work milestones late and/or delivers late work product or deliverables (only due to their fault).

## SECTION X. TERMINATION OF AGREEMENT

A. DEFAULT

This Agreement or Supplemental Agreements may be terminated in whole or in part in writing by either party at any time for breach or default; provided that no termination for default may be affected unless the other party is given a ten (10) working day cure period after written notice of intent to terminate is delivered by Certified Mail, Return Receipt Requested to the party allegedly in default.

B. TERMINATION FOR CONVENIENCE OF CITY

The City may terminate this Agreement or Supplemental Agreements in whole or in part in writing, delivered by Certified Mail, Return Receipt Requested at any time the interest of the City requires such termination.

If the Agreement or any Supplemental Agreement is terminated for convenience before performance is completed, the Consultant shall immediately discontinue all services, unless notice from the City directs otherwise. City shall pay Consultant for the work performed to the date of receipt of notice of termination. The City shall pay Consultant the lesser of either Consultant's substantiated labor and costs, or the percentage of the contract price corresponding to the percentage of the total work that has been completed under the Supplemental Agreement.

C. DELIVERY OF DOCUMENTS AFTER TERMINATION

Upon any termination, Consultant shall deliver or otherwise make available to City all documents, data, drawings, specifications, reports, estimates, summaries, and such other information and materials that have been created, in whole or in part, or accumulated by Consultant in performing this Agreement or Supplemental Agreements.

D. CITY MAY COMPLETE WORK

Upon termination City may complete the services in any way that the City, in its discretion, determines is appropriate, including but not limited to using City personnel, or contracting with outside parties. Completion of such work shall not waive any of City's rights and remedies.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

CITY OF DURHAM

_____ By:_____

Pre-Audit Certificate

MCKIM & CREED, INC.

ATTEST:

Brenda L Paquin

Brenda Paquin, Assistant Secretary

By: Bryan F. Blake

Bryan F. Blake, Vice President

(SEAL)

McKIM & CREED, INC. CORPORATE SEAL NORTH CAROLINA 1965

State of North Carolina ACKNOWLEDGMENT BY CORPORATION

County of Lee

I, a notary public in and for the aforesaid county and state, certify that Brenda L. Paquin personally appeared before me this day and stated that he or she is Assistant Secretary of McKim & Creed Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing contract or agreement with the City of Durham was signed in its name by its Vice President, whose name is Bryan F. Blake, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the 24th day of June, 2014.

My commission expires:
9-29-15

Karen H. Mattingly
Notary Public

KAREN H. MATTINGLY NOTARY PUBLIC LEE COUNTY, NC