

Agreement for Professional Engineering Services to Develop a Reclaimed Water System Master Plan

Between the City of Durham and CDM Smith Inc.

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 Laws and Regulations.

**~~SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES~~**

Prepared by



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

~~This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other.~~

SPECIAL NOTE ON USE OF THIS FORM

This abbreviated Agreement form is intended for use only for professional services of limited scope and complexity. It does not address the full range of issues of importance on most projects. In most cases, Owner and Engineer will be better served by the Standard Form of Agreement Between Owner and Engineer for Professional Services (EJCDC E-500, 2008 Edition), or one of the several special purpose EJCDC professional services agreement forms.

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**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of May 4, 2015 ("Effective Date") between the **City of Durham**, a North Carolina municipal corporation ("Owner" or "City") and **CDM Smith Inc.** ("Engineer"). The title of this Agreement is stated at the top of Page 1, above. Engineer is a corporation organized under the laws of the State of Massachusetts and authorized to do business in the State 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's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: Development of a Reclaimed Water Master Plan ("Project").

Engineer's Services under this Agreement are generally identified as follows:
See the attached Exhibit A, titled "Reclaimed Water System Master Plan -- Scope of Services"

[Describe scope of services, or refer to an attachment. See Exhibit A, EJCDC E-500, for an example of a full scope of engineering services.]

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. ~~If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish~~ Owner: authorizes does not authorize Engineer to furnish services in addition to those set forth above. If Owner authorizes such additional services, Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: See Exhibit A [Here insert any specific completion date, or the time for completion in days, weeks, or months from the Effective Date].
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding _____ months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be

appropriately adjusted but nevertheless, the total compensation shall be limited by any applicable provisions in this Agreement that sets a ceiling on compensation.

2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. 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, then the amounts due Engineer will be increased at the rate of 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. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
1. For cause,
 - 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 Agreement's terms through no fault of the terminating party. ~~Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.~~
 - b. By Engineer:
 - 1) upon seven days written notice stating specifically how Engineer believes if Owner is demanding demands that Engineer 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 for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, neither the obligations to provide further services nor this Agreement will not terminate as a result of a substantial failure under pursuant to Paragraph 3.01.A.1.a or 3.01.A.1.b if the party receiving such notice begins, within seven days of receipt of such notice, to ~~correct~~ cure the matters pointe out in the notice ~~its substantial failure to perform~~ and proceeds diligently to cure the matter such failure within no more than 30 days of receipt of notice; 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, by Owner effective upon Engineer's receipt of written notice from Owner or at a later time specified in the notice.
- B. Either The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer 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.
 - C. In the event of any termination under this Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive ~~full~~ payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.
 - D. Any termination under this Paragraph 3.01 shall occur automatically upon the passage of the requisite time period unless the cure provisions of 3.01.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 additional services."

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the 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, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. 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.

5.01 *General Considerations*

- 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 the subject 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. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards. 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 not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by and construed in accordance with the law of the state North Carolina ~~or jurisdiction in which the Project is located~~. 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 paragraph shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this paragraph.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and subconsultants) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. 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 (EJCDC C-700, 2002 or 2007 Edition) unless the parties agree otherwise.

- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) Engineer shall not prohibit any such use or reuse, or any modification of the documents, without even if it lacks written verification, completion, 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 its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents 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 without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. ~~Reserved. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.~~
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If 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: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants or provides warranty from a third party that the Hazardous Environmental Condition has been abated or removed. Site is in full compliance with applicable Laws and Regulations.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the Owner and

Engineer may agree to mediation—dispute shall be mediated. If mediation is used and is unsuccessful, then the parties may exercise their rights at law. If, however, such dispute arises after the Owner has engaged a general contractor for construction work and during the construction administration phase of this Agreement, if any, the Owner and Engineer may avail themselves of the dispute resolution process adopted by the State Building Commission pursuant to G.S. § 143-128(f1).

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), 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.

7.01 *Basis of Payment—Lump Sum [Strike through unused Sections 7.01]*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer a total maximum amount of \$307,000 [insert maximum possible contract amount including Lump Sum plus not-to-exceed allowances, if any] as follows:

- 1. A Lump Sum amount of \$255,000 based on the following distribution:

<u>Number</u>	<u>Phase or Task</u>	<u>Payment Amount</u>	<u>Percentage of Total</u>
<u>Task 1</u>	<u>Kickoff Workshop, Data Collection, and Meetings</u>	<u>\$ 18,400</u>	<u>7%</u>
<u>Task 2</u>	<u>Identify Potential Reclaimed Water Use Opportunities</u>	<u>\$ 42,400</u>	<u>17%</u>
<u>Task 3</u>	<u>Estimate Reclaimed Water Demand Usage Patterns</u>	<u>\$ 29,300</u>	<u>11%</u>
<u>Task 4</u>	<u>Evaluate Reclaimed Water Strategies</u>	<u>\$ 61,800</u>	<u>24%</u>
<u>Task5</u>	<u>Cost benefit Analysis</u>	<u>\$ 37,000</u>	<u>15%</u>
<u>Task 6</u>	<u>Regulatory Implications</u>	<u>\$ 10,900</u>	<u>4%</u>
<u>Task 7</u>	<u>Program Implementation Recommendations</u>	<u>\$ 24,800</u>	<u>10%</u>
<u>Task 8</u>	<u>Draft and Final Reports</u>	<u>\$ 30,400</u>	<u>12%</u>
<u>_____</u>	<u>_____</u>	<u>\$ _____</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>	<u>\$ _____</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>	<u>\$ _____</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>	<u>\$ _____</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>	<u>\$ _____</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>	<u>\$ _____</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>	<u>\$ _____</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>	<u>\$ _____</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>	<u>\$ _____</u>	<u>_____</u>
<u>TOTAL</u>		<u>\$ 255,000</u>	<u>100%</u>

2. For Engineer's services to be provided on a time and materials, not-to-exceed amount, the maximum payment amount is \$ 52,000 based upon the following distribution:

<u>Number</u>	<u>TASK DESCRIPTION</u>	<u>Time and Materials (Not to Exceed) Amount</u>
<u>Subtask 3.5</u>	<u>Customer Metering Allowance</u>	<u>\$ 27,000</u>
<u>Subtask 7.4</u>	<u>Public Information Allowance</u>	<u>\$ 25,000</u>
<u>_____</u>	<u>_____</u>	<u>\$ _____</u>
<u>TOTAL MAXIMUM NOT-TO-EXCEED AMOUNT</u>		<u>\$52,000</u>

- B. The 7.0.1.A.1 portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.
- C. The 7.01.A.2 portion of the not-to-exceed compensation amount shall be 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 according to the Engineer's Standard Hourly Rates attached as Appendix 1.

~~for~~

~~7.01—Basis of Payment—Hourly Rates Plus Reimbursable Expenses~~

- A. ~~Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:~~
- ~~1. 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 consultants' charges, if any.~~
 - ~~2. Engineer's Standard Hourly Rates are attached as Appendix 1.~~
 - ~~3. The total compensation for services and reimbursable expenses is estimated to be \$_____.~~

~~for~~

~~7.01—Basis of Payment—Percentage of Construction Cost~~

~~A.—Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:~~

- ~~1.—An amount equal to _____ percent of the cost to construct the work designed or specified by the Engineer (“Construction Cost”). This amount includes compensation for Engineer’s Services and services of Engineer’s consultants, if any. The percentage of Construction Costs noted herein accounts for labor, overhead, profit, and reimbursable expenses.~~
- ~~2.—As a basis for payment to Engineer, Construction Cost will be based on one or more of the following determinations with precedence in the order listed:
 - ~~a.—For work designed or specified by Engineer and incorporated in the completed Project, the actual final cost of the work performed by Contractor.~~
 - ~~b.—For work designed or specified by Engineer but not constructed, the lowest bona fide bid received from a qualified bidder for such work; or, if the work is not bid, the lowest bona fide negotiated proposal or contractor’s estimate for such work.~~
 - ~~c.—For work designed or specified but not constructed, upon which no bid, proposal, or estimate is received, Engineer’s most recent opinion of probable Construction Cost.~~~~

~~B.—The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.~~

{or}

~~7.01—Basis of Payment—Direct Labor Costs Times Factor, Plus Reimbursables~~

~~A.—Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:~~

- ~~1.—An amount equal to Engineer’s Direct Labor Costs times a factor of _____ for services of Engineer’s employees engaged on the Project, plus reimbursable expenses, and Engineer’s consultants’ charges, if any.~~
- ~~2.—The total compensation for services and reimbursable expenses is estimated to be \$_____.~~

~~7.02 Additional Services: For additional services of Engineer’s employees engaged directly on the Project and for which Owner is given prior written authorization, Owner shall pay Engineer 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; plus reimbursable expenses and Engineer’s consultants’ charges, if any. Engineer's standard hourly rates are attached as Appendix 1.~~

~~8.01 City of Durham Provisions:~~

- A. 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.
- B. 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.
- C. 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 Agreement which may result in the rescission or termination of this Agreement 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 paragraph, in the following quoted sentences, the “Contractor” means the “Engineer” and “Contract” means “Agreement”. 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.
- D. Prompt Payment to Subcontractors.
1. 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 (1) directly against the Engineer, but not against the City of Durham.
 2. If the Owner’s Designated Representative determines that it is appropriate to enforce subsection (1) 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
 - a. the amount of interest due to the Subcontractor under subsection (1), and/or
 - b. the amounts past-due under subsection (1) to the Subcontractor but not exceeding 5% of the payment(s) due from the Owner to the Engineer.

This subsection (2) does not limit any other rights to withhold payments that the Owner may have.

3. 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 the initial percentage retained by the Owner.
4. The Owner’s Designated Representative may require, as a prerequisite to making progress or final payments, that the Engineer provide statements 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.

E. *ADA Compliance Verification.* The Engineer shall comply with the requirements of the Durham City-County Inspections Department relating to the issuance of an accessibility letter of compliance pursuant to Appendix 2.

F. *Indemnification*

1. *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 Agreement, 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 (1), Engineer shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to Owner.
2. *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 (1)) that arise in any manner from, in connection with, or out of this Agreement 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 (2) , Engineer shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to Owner.
3. *Definitions.* As used in subsections “1” and “2” above and “4” 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.

4. 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 Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

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

6. Limitations of Engineer's Obligation. Subsections "1" and "2" 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.

G. Insurance Requirements. Engineer shall procure and maintain insurance as set forth in Exhibit B, "Insurance Requirements".

8.02 Address for Notice:

The Owner's address for giving notice is:

ATTN: Lori Montgomery, PE
Department of Water Management
101 City Hall Plaza
Durham, NC 27701

The Engineer's Address for giving notice is:

5400 Glenwood Avenue, Suite 400
Raleigh, NC 27612

Owner's Designated Representative:

Lori Montgomery, PE
Phone Number: 919-560-4381 ext. 35272
Fax Number: _____

Title of Engineer's Designated Representative:

Kevin Irby
Phone Number: 919-781-5370
Fax Number: 919-781-5730

Email Address:
Lori.Montgomery@DurhamNC.gov

Email Address: irbykc@cdmsmith.com

Attachments: Appendix 1, Engineer's Standard Hourly Rates [*Exclude Appendix 1, Engineer's Standard Hourly Rates, only if hourly rates are not to be used for either basic compensation (Paragraph 7.01) or additional services (Paragraph 7.02)*]
[Itemize any other attachments that will be part of the Agreement].

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

By: _____

Title: _____

Date Signed: _____

~~Address for giving notices:~~

ENGINEER:

By: _____

Title: _____

Date Signed: _____

~~Engineer License or Firm's Certificate~~

Number: _____

State of: _____

~~Address for giving notices:~~

ATTEST:

CITY OF DURHAM

By: _____

Preaudit Certification, if necessary:

signature for Engineer:

CDM Smith Inc.

By: _____ (SEAL)

Title of officer: _____

[The following officers may sign for the corporation: chairperson; president; chief executive officer; vice-president; assistant vice-president; treasurer; or chief financial officer.]

acknowledgment for Engineer:

State of _____

ACKNOWLEDGMENT BY CORPORATION

County of _____

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day and stated that he or she is (strike through the inapplicable:) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of

[City staff – Insert the name of the Contractor here.], a corporation, and that by authority duly given and as the act of the corporation, he or she signed, under seal, the foregoing contract or agreement with the City of Durham. This the _____ day of _____, 20_____.

My commission expires:

Notary Public

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated May 4, 2015.

Engineer's Standard Hourly Rates

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 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.
2. The Standard Hourly Rates apply only as specified in Paragraphs 7.01 and 7.02, and are subject to annual review and adjustment.

B. *Schedule of Hourly Rates:*

Hourly rates for services performed on or after the Effective Date are:

	<u>Title</u>	
Billing Class IX	<u>Senior Associate</u>	\$ <u>220</u> /hour
Billing Class VIII	<u>Staff Manager</u>	\$ <u>NA</u> /hour
Billing Class VII	<u>Professional VI</u>	\$ <u>NA</u> /hour
Billing Class VI	<u>Professional V</u>	\$ <u>NA</u> /hour
Billing Class V	<u>Professional IV</u>	\$ <u>175</u> /hour
Billing Class IV	<u>Professional III</u>	\$ <u>165</u> /hour
Billing Class III	<u>Professional II</u>	\$ <u>127</u> /hour
Billing Class II	<u>Technician II</u>	\$ <u>115</u> /hour
Billing Class I	<u>Technician I</u>	\$ <u>90</u> /hour
Support Staff	_____	\$ <u>85</u> /hour



Appendix 2

Accessibility Letter of Compliance

Chapter 11, NC State Building Code, 2012
ICC/ANSI A117.1-2009



January 1, 2012

The Durham City-County Inspections Department requires independent verification of all accessible **site** elements and requirements, per the above referenced codes, for all projects which include site plans, within the city and county of Durham, North Carolina.

Chapter 2, section 201 of the 2009 ICC/ANSI A117.1 Standard and Commentary also states that . . . “compliance with the ADA should be verified independently.” This is important as the North Carolina Accessibility Code is NOT deemed compliant with the ADA standards.

To meet these requirements, each project must have a professional architect, surveyor, or engineer make an onsite evaluation of the project when completed, and verify compliance with the approved plans and the above codes, or simply, the North Carolina Accessibility Codes, then provide a sealed letter to this department confirming such.

Any discrepancies noted during the professional’s evaluation would need to be addressed to the contractor/owner/builder, and corrected, prior to a return visit by that professional to confirm corrections have been adequately made to achieve full compliance.

This on site evaluation should include, but not be limited too, slope and cross slope on accessible routes and accessible parking areas, ramps, travel distance, intermediate landings where appropriate, and access to required entrance(s) and other site elements.

A detailed analysis or description of the evaluation process is not necessary. A simple statement reflecting that the site evaluation has found the “as placed” or “as built” components to be in compliance with the applicable codes and the approved site plan. Please avoid terms such as “I think”, “I believe” or “I feel”. The evaluation should reveal to project to be in compliance or not.

Thank you for your assistance in this matter.

David Coward,
Chief Building Inspector