

ENGINEERING CONSULTANT SERVICES AGREEMENT

BETWEEN

Durham Public Schools Board of Education

hereinafter referred to as the Owner

AND

F1

hereinafter referred to as the Engineer

For the F2 Project

ENGINEERING CONSULTANT AGREEMENT

This AGREEMENT made this F3 day of F4, 2019 between Durham Public Schools Board of Education, located at 511 Cleveland Street, Durham, NC 27702 (hereinafter, "Owner"), and F6, located at F7 (hereinafter, the "Engineer"). The Agreement is for Professional Services to be provided as authorized by the Owner and as outlined in the Proposal and Scope of Services attached to this Agreement as Exhibit A.

ARTICLE 1

TERMS AND CONDITIONS

1.1 WORK: The Engineer shall perform the services outlined on the attached Exhibit A as authorized by the Owner and in accordance with the terms and conditions of this Agreement. The Engineer agrees that all plans, drawing, specifications, designs and surveys in draft or final form are the property of the Owner, who may demand possession of them at anytime from Engineer and receive the same within three business days of demand.

1.2 TIME: The parties acknowledge that this Project is time sensitive and must be completed in its entirety no later than the time shown in Exhibit A. The parties further agree that the Engineer's Scope of Work will proceed and be executed in accordance with the proposed Timeline attached to this agreement as Exhibit A.

In the event that circumstances beyond the Engineer's control force a delay that prohibits or may prohibit the Engineer's compliance with the schedule, the Engineer shall inform the Owner immediately.

1.3 COMPENSATION: The Engineer shall be compensated in accordance with the fee schedule included in Exhibit A to this Agreement and this Paragraph. The fee described in Exhibit A shall cover the cost of the engineering services (including the furnishing of all materials, apparatus, labor and any required insurance). Attached as Exhibit B is an hourly rate schedule for any services to be provided by the hour and any additional services that may be authorized under this Agreement. The Engineer shall not be compensated for any work or services performed without specific authorization from Owner.

1.4 BILLING AND PAYMENT:

1.4.1 Billing for the work shall be directed to the Owner at the following address:

Superintendent
Durham Public Schools
F8

1.4.2 Payment shall be made within thirty (30) days of receipt of an acceptable invoice from the Engineer.

1.5 INSURANCE:

The Engineer shall purchase and maintain insurance for protection from claims under workers' or workmen's compensation acts; claims resulting from negligent acts or omissions for damages because of bodily injury, including personal injury, sickness, disease or death of any of the Engineer's employees or any other person; claims for damages because of injury to or destruction of personal property including loss of use resulting therefrom; and claims arising out

of the performance of this Agreement and caused by negligent acts or omissions for which the Engineer is legally liable. Minimum limits of coverage shall be:

Insurance Description Required Coverage	Minimum
a. Workers' Compensation Statutory	
b. Public Liability Combined Limit	
Bodily Injury: Each Person 1,000,000.00	\$
Bodily Injury: Each Accident 1,000,000.00	\$
Property Damage: Each Accident 1,000,000.00	\$
c. Automobile Liability & Property Damage Combined Limit	
Bodily Injury: Each Person 1,000,000.00	\$
Bodily Injury: Each Accident 1,000,000.00	\$
Property Damage: Each Accident 1,000,000.00	\$
d. Professional Liability: 1,000,000.00	\$

- 1.5.1 Evidence of such insurance shall be attached hereto, and the Owner shall receive thirty (30) days prior written notice of any cancellation, nonrenewal or reduction of coverage of any of the policies. Upon notice of such cancellation, nonrenewal or reduction, the Engineer shall procure substitute insurance so as to assure the Owner that the minimum limits of coverage are maintained continuously throughout the period of this Agreement.
- 1.5.2 The Engineer shall deliver to the Owner a Certificate of Insurance for its Professional Liability coverage annually, so long as it is required to maintain such coverage under paragraph 1.5.4.
- 1.5.3 All insurance policies (with the exception of Professional and Public Liability and Worker's Compensation) required under this agreement shall name the Owner as an additional insured for the insurance and shall contain a waiver of subrogation against the Owner.
- 1.5.4 The Engineer shall maintain in force during the performance of this Agreement and for one year after final completion of the Project, the Professional Liability insurance coverage referenced above.
- 1.6 QUALIFICATIONS: All work shall be performed by qualified personnel under the supervision of a North Carolina Licensed Engineer, and the documents submitted shall bear the Engineer's seal and certification.
- 1.7 USE OF DRAWINGS: It is understood that the Owner, or his representatives and/or agents, may reproduce the drawings without modifications and distribute the prints without incurring obligation for additional compensation to the Engineer. One reproducible of all work products shall be provided to the Owner for this purpose.

ARTICLE 2

BASIC SERVICES

2.1 Scope of Services.

- 2.1.1 The Basic Services to be provided by the Engineer shall be as described in Exhibit A and shall include all services customarily furnished by an engineer and its consultants in accordance with generally accepted engineering practices consistent with the terms of this Agreement.
- 2.1.2 It is the responsibility of the Engineer to ensure that the Project's Construction Documents require that no asbestos-containing materials are to be incorporated in the Project.

2.2 Engineer's Professional Responsibility and Standard of Care.

- 2.2.1 By execution of this Agreement, the Engineer warrants that (a) it is an experienced and duly licensed firm or individual having the ability and skill necessary to perform all the Services required of it under this Agreement in connection with the design and construction of a project having the scope and complexity of the Project contemplated herein; (b) it has the capabilities and resources necessary to perform its obligations hereunder; and (c) it is familiar with all current laws, rules and regulations which are applicable to the design and construction of the Project (such laws, rules and regulations including, but not limited to, all local ordinances, requirements of building codes of city, county, state and federal authorities which are applicable to the Project, local sanitary laws and rules and regulations, and all orders and interpretations by governing public authorities of such ordinances, requirements, codes, laws, rules and regulations in effect at the time of commencement of services on the Project), and that all drawings, specifications and other documents prepared by the Engineer shall be prepared in accordance with and shall accurately meet, reflect and incorporate all such laws, rules and regulations.
- 2.2.2 The Engineer hereby represents and agrees that the drawings, specifications and other documents prepared by it pursuant to this Agreement shall be complete and functional, except as to any deficiencies which are due to causes beyond the control of the Engineer.
- 2.2.3 The Engineer shall be responsible for any errors, inconsistencies or omissions in the drawings, specifications, other documents or other Basic Services. In addition, the Engineer will correct at no additional cost to the Owner any and all errors and omissions in the drawings, specifications and other documents prepared by the Engineer. The Engineer further agrees, at no additional cost, to render assistance to the Owner in resolving problems relating to the design or specified materials.
- 2.2.4 It shall be the responsibility of the Engineer throughout the period of performance under this Agreement to exercise the abilities, skills and care customarily used by Engineers of the training and background needed to perform the Services required under this Agreement who practice in the Research Triangle, NC area or similar communities.
- 2.2.5 Throughout all phases of the Project, the Engineer and its consultants shall meet periodically with the Owner when reasonably requested. Participants shall be as determined by the Owner.
- 2.2.6 With each Design Phase submittal of the Engineer to the Owner, the Engineer shall make the following statement in writing:

"The drawings, specifications, and other documents submitted herewith, in my/our professional opinion, fulfill the Scope of Work and are in accordance with the requirements of all regulation agencies."

- 2.2.7 The Engineer agrees that it shall use best efforts to coordinate and cooperate with the Durham Public Schools in execution of the project.

ARTICLE 3

ADDITIONAL SERVICES

- 3.1 If any Additional Services are authorized in advance by the Owner in writing, the Engineer shall furnish or obtain from others the authorized services. If authorized in advance, in writing, by the Owner, the Engineer shall be paid for these additional services by the Owner pursuant to the hourly rate schedule that shall be established. The Engineer shall not be entitled to compensation for any additional services that are not authorized in advance by the Owner in writing.

ARTICLE 4

TERMINATION OF AGREEMENT

- 4.1 If (a) the Owner abandons the Project, or (b) the Owner has failed to substantially perform in accordance with the provisions of this Agreement due to no fault of the Engineer and such non-performance continues without cure for a period of thirty (30) days after the Owner receives from the Engineer a written notice of such non-performance, the Engineer may, upon fifteen (15) days' additional written notice to the Owner, terminate this Agreement, without prejudice to any right or remedy otherwise available to the Owner, and recover from the Owner payment for all services performed to the date of the notice terminating this Agreement.
- 4.2 If the Engineer refuses or fails, except in cases for which extension of time is provided, to supply sufficient properly skilled staff or proper materials, or disregards laws, ordinances, rules, regulations or orders of any public authority jurisdiction, or otherwise violates or breaches any term or provision of this Agreement, then the Owner may, without prejudice to any right or remedy otherwise available to the Owner, and after giving the Engineer seven (7) days written notice, terminate this Agreement.
- 4.3 Upon termination of this Agreement by the Owner under paragraph 4.2 it shall be entitled to furnish or have furnished the Services to be performed hereunder by the Engineer by whatever method the Owner may deem expedient. Also, in such cases, the Engineer shall not be entitled to receive any further payment until completion of the Work; and the total compensation to the Engineer under this Agreement shall be the amount which is equitable under the circumstances. If the Owner and the Engineer are unable to agree on the amount to be paid under the foregoing sentence, the Owner shall fix an amount, if any, which it deems appropriate in consideration of all of the circumstances surrounding such termination, and shall make payment accordingly.
- 4.4 The Owner may, upon thirty (30) days' written notice to the Engineer terminate this Agreement, in whole or in part, at any time for the convenience of the Owner, without prejudice to any right or remedy otherwise available to the Owner. Upon receipt of such notice, the Engineer shall immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of the Owner, the Engineer's sole and exclusive right and remedy is to be paid for all work performed and to receive equitable adjustment for all work performed through the date of termination. The Engineer shall not be entitled to be paid any amount as profit for unperformed services or consideration for the termination of convenience by the Owner.
- 4.5 Should the Owner terminate this agreement as provided for under this Article, the Owner will acquire such drawings, including the ownership and use of all drawings, specifications, documents and materials relating to the Individual Project prepared by or in the possession of the Engineer. The Engineer will turn over to the Owner in a timely manner and in good unaltered condition all original drawings, specifications, documents, materials, and computer files.

- 4.6 The payment of any sums by the Owner under this Article 4 shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Engineer.

ARTICLE 5

OWNERSHIP OF DOCUMENTS/CONFIDENTIAL INFORMATION

- 5.1 Drawings and Specifications as instruments of service are and shall remain the joint property of the Engineer and the Owner whether the Project for which they are made is built or not. The Owner shall retain reproducible copies of Drawings and Specifications for information and reference and use in connection with the Owner's use and occupancy of the Project and for the Owner's future requirements of the Project's facilities including without limitation any alteration or expansion in any manner the Owner deems appropriate without additional compensation of fee to the Engineer.
- 5.2 In order for the Engineer to fulfil this Agreement effectively, it may be necessary or desirable for the Owner to disclose to the Engineer confidential and proprietary information and trade secrets pertaining to the Owner's past, present and future activities. The Engineer hereby agrees to treat any and all information gained by it as a result of the Services performed hereunder as strictly confidential. The Engineer further agrees that it will not disclose to anyone outside of the authorized Project team (1) Owner's trade secrets during the period of this Agreement or thereafter or (2) Owner's confidential and proprietary information during the period of this Agreement or thereafter.

ARTICLE 6

ADDITIONAL REQUIREMENTS

- 6.1 The Engineer shall not assign, subcontract, sublet or transfer its interest in this Agreement without the written consent of the Owner, except that the Engineer may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval of the Owner.
- 6.2 Notwithstanding anything to the contrary contained herein, the Engineer shall indemnify and hold harmless the Owner and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising solely out of or resulting from the Engineer's performance or failure to perform its obligations under this Agreement or caused by any negligent act or omission of the Engineer, anyone directly or indirectly employed by the Engineer or anyone for whose acts the Engineer may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article. The parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N. C. Gen. Stat. § 6-21.2. Notwithstanding anything to the contrary contained herein, the Owner shall indemnify and hold harmless the Engineer and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising solely out of or resulting from (i) the Owner's performance or failure to perform its obligations under this Agreement and (ii) any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of personal property including the loss of use resulting therefrom and caused solely by any negligent act or omission of the Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.
- 6.3 Except as otherwise set forth in this Agreement, the Engineer and the Owner shall not be liable to each other for any delays in the performance of their respective obligations and responsibilities under this Agreement which arise from causes beyond their control and without

their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, atmospheric condition of unusual severity, war, state or local government acting in its sovereign capacity, and strikes. Owner shall not be liable to the Engineer for acts or failures to act by the Contractor or the Owner's consultants.

- 6.4 Lunsford Act/Criminal Background Checks. Engineer also acknowledges that G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. Engineer shall conduct or arrange to have conducted, at its own expense, sexual offender registry checks on each of its owners, employees, agents and subcontractors ("contractual personnel") who will engage in any service on or delivery of goods to School System property or at a School System sponsored event, except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at: (1) the administrative office or loading dock of a school; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites. The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the Registries"). For Engineer's convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>. Engineer shall provide certification on the Owner's Sexual Offender Registry Check Certification Form (Exhibit C) that the registry checks were conducted on each of its contractual personnel providing services or delivering goods under this Agreement prior to the commencement of such services or the delivery of such goods. Engineer shall conduct a current initial check of the registries (a check done more than 30 days prior to the date of this Agreement shall not satisfy this contractual obligation). In addition, Engineer agrees to conduct the registry checks and provide a supplemental certification form before any additional contractual personnel are used to deliver goods or provide services pursuant to this Agreement. Engineer further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. Engineer shall not assign any individual to deliver goods or provide services pursuant to this Agreement if said individual appears on any of the listed registries. Engineer agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents to the School System upon request. Engineer specifically acknowledges that the School System retains the right to audit these records to ensure compliance with this section at any time in the School System's sole discretion. Failure to comply with the terms of this provision shall be deemed a material breach of the Agreement. In addition, the School System may conduct additional criminal records checks at the School System's expense. If the School System exercises this right to conduct additional criminal records checks, Engineer agrees to provide within seven (7) days of request the full name, date of birth, state of residency for the past ten years, and any additional information requested by the School System for all contractual personnel who may deliver goods or perform services under this Agreement. Engineer further agrees that it has an ongoing obligation to provide the School System with the name of any new contractual personnel who may deliver goods or provide services under the Agreement. The School System reserves the right to prohibit any contractual personnel of Engineer from delivering goods or providing services under this Agreement if the School System determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others.
- 6.5 Relationship of Parties. Engineer shall be an independent contractor of the School System, and nothing herein shall be construed as creating a partnership or joint venture; nor shall any employee of Engineer be construed as an employee, agent, or principal of the School System.
- 6.6 Compliance with Applicable Laws. The Engineer shall comply with all applicable laws and regulations in providing services under this Agreement. In particular, the Engineer shall not employ any individuals to provide services to the Owner who are not authorized by federal law to

work in the United States. The Engineer represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times while providing services pursuant to this Agreement. The Engineer shall also ensure that any of its subcontractors (of any tier) will remain in compliance with these laws at all times while providing subcontracted services in connection with this Agreement. Engineer is responsible for providing affordable health care coverage to all of its full-time employees providing services to the School System. The definitions of "affordable coverage" and "full-time employee" are governed by the Affordable Care Act and accompanying IRS and Treasury Department regulations.

- 6.7 Applicable Durham Public Schools Board of Education Policies. Engineer acknowledges that the Durham Public Schools Board of Education has adopted policies governing conduct on all property owned by the Owner and agrees to abide by any and all relevant board policies while on the Owner's property. Engineer acknowledges that these policies are available online on the School System's website. In particular, Engineer acknowledges that it has received copies of or has access to (via the Durham Public School's website) and will abide by all applicable Durham Public Schools Board of Education policies, including but not limited to policies related to conduct on school property, weapons, drugs and alcohol, tobacco, and interactions with staff and students.
- 6.8 Restricted Companies List. Engineer represents that as of the date of this Agreement, Engineer is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Engineer also represents that as of the date of this Agreement, Engineer is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.
- 6.9 Anti-Nepotism. Engineer warrants that, to the best of its knowledge and in the exercise of due diligence, none of its corporate officers, directors, or trustees and none of its employees who will directly provide services under this Agreement are immediate family members of any member of the School System or of any principal or central office staff administrator employed by the School System. For purposes of this provision, "immediate family" means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law relationships. Should Engineer become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Agreement, Engineer shall immediately disclose the family relationship in writing to the Superintendent of Schools. Unless formally waived by the School System, the existence of a family relationship covered by this Agreement is grounds for immediate termination by School System without further financial liability to Engineer.
- 6.10 This Agreement and its Exhibits represent the entire and integrated agreement between the Owner and the Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Engineer.
- 6.11 This Agreement shall be governed by the laws of the State of North Carolina.
- 6.12 If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 6.13 Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.

- 6.14 The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.
- 6.15 For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.
- 6.16 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, which shall be sufficient evidence by any one thereof.
- 6.17 This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns, trustees and personal representatives of the Owner, as well as the permitted assigns and trustees of the Engineer.

In witness whereof, each individual executing this agreement acknowledges that he/she/it is authorized to execute this agreement on behalf of his/her/its principle and further acknowledges the execution of this agreement the day and year first written above.

Dan Schnitzer, Director of Construction and Sustainability
F9

F10

Date

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

Paul LeSieur, Chief Finance Officer, Durham Public Schools
F11

F12

Date

Endorsement: F13
Project Manager
Durham Public Schools
Construction & Capital Planning

INSERT CONSULTANT / COMPANY NAME F14

By: _____

Name/Title: _____

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

I, a Notary Public in and for the aforesaid County and State, do hereby certify that _____ personally appeared before me this day and acknowledged that he/she is _____ of _____, a _____ (state of incorporation) corporation, duly authorized to do business in the state of North Carolina, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____, sealed with its corporate seal and attested by _____ as its Corporate Secretary.

Witness my hand and notarial seal this F15 day of F16, 20F17.

Notary Public

(SEAL/STAMP)

My commission expires: _____

Exhibit A – Proposal and Scope of Services

Exhibit B – Hourly Rates

Exhibit C

Sexual Offender Registry Check Certification Form

Check the appropriate box to indicate the type of check:

- ☐ Initial F18
- ☐ Supplemental F19
- ☐ Annual F20

I, F21 (insert name), F22 (insert title) of F23 (insert company name) hereby certify that I have performed all of the required sexual offender registry checks required under this Agreement for all contractual personnel (employees, agents, ownership personnel, or contractors) who may be used to deliver goods or provide services under this Agreement, including the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry. I further certify that none of the individuals listed below appears on any of the above-named registries and that I will not assign any individual to deliver goods or perform services under this Agreement if said individual appears on any of the sex offender registries. I agree to maintain all records and documents associated with these registry checks, and that I will provide such records and documents to the school system upon request. I specifically acknowledge that the school system retains the right to audit these records to ensure compliance with this section at any time in the school system's sole discretion. I acknowledge that I am required to perform these checks and provide this certification form before any work is performed under the Agreement (initial check), any time additional contractual personnel may perform work under the Agreement (supplemental check), and at each anniversary date of the Agreement (annual check).

Contractual Personnel Names

Job Title

- | | |
|----------|-------|
| 1. _____ | _____ |
| 2. _____ | _____ |
| 3. _____ | _____ |
| 4. _____ | _____ |
| 5. _____ | _____ |

(attach additional page(s) if needed)

I attest that the forgoing information is true and accurate to the best of my knowledge.

F24 (print name) _____ (signature)

F25 (title) _____ (date)