

AGREEMENT FOR DESIGN CONSULTANT SERVICES

This Agreement for Design Consultant Services is made, and entered into this the 6 day of February 2019, by and between the **COUNTY OF BUNCOMBE**, a political subdivision of the State of North Carolina, (hereinafter "OWNER"), and SKA Consulting Engineers, INC., (hereinafter "DESIGNER" or "DESIGN CONSULTANT"), whose principal place of business is: 64 Peachtree Road, Asheville, NC.

For Professional Services in connection with the Project known as:

Buncombe County Government

Three Building Exterior Repair-Buncombe County Courthouse, Administration Offices, Detention Center

The Owner and the Design Consultant hereby agree as set forth below:

1. ARTICLE 1 DEFINITIONS

The following words and phrases where appearing in initial capitalization, shall for the purposes of this Agreement have the following meanings:

- 1.1. Project. The Project shall be as described above.
- 1.2. Services. The Services to be performed by the Design Consultant under this Agreement shall consist of the Basic Services described in Article 3 and Article 7 and any other services in the Contractor Documents as part of the Basic Services, and include normal structural, mechanical and electrical architectural design services.
- 1.3. Construction Contract Documents. The Construction Contract Documents shall consist of the plans and specifications prepared by the Design Consultant, and any addenda and change orders thereto, and the Construction Contract between Owner and Contractor, all of which shall be compatible and consistent with this Agreement.
- 1.4. Construction Costs. The Construction Costs shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Design Consultant. The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Design Consultant, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction. Construction Costs do not include the compensation of the Design Consultant and its consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 6.
- 1.5. Contractor. The Contractor is the person or entity which enters into an agreement with the Owner to perform the construction of any or all of the Project, including, without limitation, the providing of labor, materials, and equipment incorporated or to be incorporated into the Project. The term "Contractor" means the Contractor or its authorized representative, but excludes the Owner's Representative and the Design Consultant.
- 1.6. Basic Services Compensation. Basic Services Compensation shall be the lump sum fee designated in Article 4 to be paid by the Owner to the Design Consultant in connection with the performance of the Basic Services by the Design Consultant.

2. ARTICLE 2 RELATIONSHIP OF THE PARTIES

- 2.1. Design Consultant Services. The Design Consultant shall provide professional engineering services for the Project in accordance with the terms and conditions of this Agreement and all applicable codes and laws. The Design Consultant's performance of services shall be as professional consultant to the Owner to carry out the activities of Project design and construction administration and to provide the technical documents and supervision to achieve the Owner's Project objectives.
- 2.2. Owner Representation. The Owner shall designate a Project Manager to serve as the Owner's Representative. The Owner's Representative has no design responsibilities of any nature. None of the activities of the Owner's Representative supplant or conflict with the design, budget or any other services and responsibilities customarily furnished by the Design Consultant or sub-consultants in accordance with generally accepted architectural/engineering practices except as otherwise modified by this Agreement. Instructions by the Owner to the Design Consultant relating to services performed by the Design Consultant will be issued or made by or through and in accordance with procedural, organizational, and documentation standards established by the Owner's Representative. Communications and submittals of the Design Consultant to the Owner and Contractor shall be in writing and issued or made in accord with similar procedural and documentation standards established by the Owner's Representative. The Owner's Representative shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Design Consultant and Contractor and to call periodic conferences to be attended by the Design Consultant, and his sub-consultants, throughout the term of this Agreement.
- 2.3. Other Consultants. The Owner may provide drawings, consultation, recommendations, suggestions, data and/or other information relating to the Project from other Consultants under separate contract with the Owner, including but not limited to: Surveyor, Utility Locating Service, Geo-technical Consultant, CMARs, and/or Materials Testing Consultant. The Design Consultant is responsible for the coordination of survey, existing utility location, geo-technical services, and/or material testing, including all coordination with surveyor, soils engineers, utility locating contractor, City and/or County officials, and CMARs, if any, required for Project.
- 2.4. Design Consultant Representation.
 - 2.4.1. The Design Consultant shall provide a list of all consultants (and sub-consultants if applicable) which the Design Consultant intends to utilize on the Project prior to commencing work on the Project. The list shall include such information on the qualifications of the consultants as may be requested by the Owner. The Owner will review the consultants proposed. The Design Consultant shall not retain a consultant to which the Owner has a reasonable objection. The Design Consultant shall use individuals or firms that are licensed and regularly engaged in the fields of expertise required for this Project.
 - 2.4.2. All agents and workers of the Design Consultant and its sub-consultants shall be prepared to provide identification at all times they are on the Owner's property including, at a minimum, the company name and telephone number and name. The County reserves the right to require identification badges that contain the information above.
 - 2.4.3. The Design Consultant shall receive, compile and report all M/WBE participation of all of its sub-consultants and vendors of this project in a format acceptable to Owner at the

commencement of design, and on a monthly basis, should any change from the preliminary submission occur.

- 2.5. Division of Responsibilities/Services. The Design Consultant understands and agrees that should the Owner's Representative or other consultant provide the Design Consultant with any estimating assistance, cost or time control recommendations or other consultation, recommendations or suggestions, any or all such activities on the part of the Owner's Representative, consultant, or any other representative of the Owner shall in no way relieve the Design Consultant of the responsibility of fulfilling its obligations and responsibilities under this Agreement.
- 2.6. Compliance with Laws. Design Consultant represents that it is in compliance with all applicable Federal, State, and local laws, regulations or orders, as amended or supplemented, including Chapter 64 Article 2 of the North Carolina General Statutes regarding the verification of work authorization. The implementation of this Contract shall be carried out in strict compliance with applicable Federal, State, or local laws.

3. ARTICLE 3 BASIC SERVICES

3.1. Scope of Services.

- 3.1.1. The Basic Services to be provided by the Design Consultant shall be performed in the phases described hereinafter which have as their objective design and construction administration of the Project. The Basic Services shall be performed in accordance with the standard of care set forth in this Agreement. The final product shall be suitable for the Owner's purposes, satisfy the Owner's requirements, comply with all applicable codes and laws, and be completed on a timely basis and within the approved budget.
- 3.1.2. The Design Consultant's services shall be performed as expeditiously as necessary for the orderly progress of the Work. The Design Consultant shall submit for the Owner's approval a schedule for the performance of the Design Consultant's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Design Consultant.
- 3.1.3. Upon authorization from the Owner to proceed, and based on the approved Design Narrative, the Design Fee, and Preliminary Programming, the Design Consultant shall prepare **Schematic Design Documents** consisting of drawings and other documents illustrating the design concept, scale and relationship of the Project components, for approval by the Owner.

3.2. **Design Development Phase.**

- 3.2.1. Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Design Consultant shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the project as to, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

- 3.2.2. The Design Consultant shall advise the Owner of any adjustments to the preliminary estimate of Construction Costs

3.3. Construction Document Phase.

- 3.3.1. Upon written authorization from the Owner to proceed, the Design Consultant shall prepare from the approved Design Documents, working drawings and Specifications setting forth in detail the requirements for the construction of the entire Project. The Design Consultant shall assist the owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.
- 3.3.2. The Design Consultant shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.
- 3.3.3. The Design Consultant shall be responsible for, and shall hold the Owner harmless for, any and all claims or damages due to the negligence of the Design Consultant or his employees in the preparation of the Construction Documents.

3.4. Permitting and Bidding/Negotiation.

- 3.4.1. The Design Consultant, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Costs, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.
- 3.4.2. The Design Consultant shall coordinate and document the reproduction, distribution and retrieval of the bidding documents. Further, the Design Consultant shall coordinate and document the collection and return of deposits or payments. In addition to the bidders, documents shall be issued to all required code authorities, contractors, plan room, services, and others, as the Owner designates.
- 3.4.3. *Intentionally left blank for numbering purposes.*
- 3.4.4. The Design Consultant shall request, expedite and submit all information necessary to obtain all necessary permits, licenses and approvals, required for the Project.
- 3.4.5. The Design Consultant shall prepare such clarifications and addenda to the bidding documents as may be required. The Design Consultant will provide these to the Owner for review prior to issuance to all holders of bid documents.
- 3.4.6. The Design Consultant will schedule and conduct a Pre-Bid Conference with prospective bidders to review the Project. The Design Consultant shall provide knowledgeable representatives, including representatives of its consultants, to participate in these conferences to explain and clarify Bidding Documents. Within two (2) days after the Pre-bid Conference the Design Consultant shall deliver to the Owner, if needed, a final Addendum.
- 3.4.7. The Design Consultant shall prepare a certified bid tabulation and recommendation to the Owner concerning the Contract Award.

- 3.4.8. If the estimated Construction Costs are exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall, i) give written approval of an increase in such fixed limit, ii) authorize rebidding or renegotiating of the project within a reasonable time, iii) abandon the Project and terminate in accordance with Article 12, OR iv) participate with the Design Consultant in such re-bidding, re-negotiation, and re-design, at no additional expense to the Owner, as may be necessary to obtain price(s) within the approved budget or price(s) acceptable to the Owner. All re-design must be approved by the Owner. The Design Consultant, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit, if established as a condition of this Agreement
- 3.4.9. Should the Design Consultant re-design or conduct re-bidding under its responsibilities set out in the preceding paragraph, its' Construction Phase and Post Construction Phase services shall be extended to take re-design/re-bid delays into account at no additional expense to the Owner.
- 3.4.10. The Design Consultant shall assist the Owner's Representative in the preparation of the Agreement(s) between Owner and Contractor(s) for the Owner's execution. The Owner's Representative will coordinate award(s) and Notice(s) to Proceed for the Owner.

3.5. Construction Phase.

- 3.5.1. The Construction Phase for each portion of the Project will commence with the award of the Construction Contract and will terminate when the Owner makes the Final Completion payment to the Contractor.
- 3.5.2. The Design Consultant shall consult with the Owner and participate in all decisions as to the acceptability of subcontractors and other persons and organizations proposed by the Contractor for various portions of the work.
- 3.5.3. The Design Consultant shall receive, compile, track and report all W/MBE participation of all contractors, sub-contractors and vendors of this project in a format acceptable to Owner. Reports will be made to the Owner on a monthly basis, utilizing a pay application cover sheet to be supplied and certified by the contractor (format to be provided by Owner).
- 3.5.4. The Design Consultant shall review and approve the Work performed by the Contractor(s) for conformance with Contract Documents.
- 3.5.5. The Design Consultant shall provide necessary Project drawings, in electronic format, to the electrical or data contractor for creation of data "as built" submittal and approval drawings, and to the general contractor for site layout/staking.
- 3.5.6. The Design Consultant shall conduct Pre-installation meetings to review the installation procedures prior to the placement of the work.
- 3.5.7. The Design Consultant shall, when requested by the Owner's Representative, prepare Change Order documentation.
- 3.5.8. The Design Consultant shall render to the Owner's Representative, within two (2) working days unless otherwise authorized by the Owner's Representative, interpretations of

requirements of the Contract Documents. The Design Consultant shall make all interpretations consistent with the intent of and reasonably inferable from the Contract Documents.

- 3.5.9. Should errors, omissions or conflicts in the specifications or other Contract Documents by the Design Consultant be discovered, the Design Consultant will prepare and submit to the Owner's Representative, within two (2) working days unless otherwise authorized by the Owner's Representative, such amendments or supplementary documents and provide consultation as may be required, for which the Design Consultant shall make no additional charges to the Owner.
- 3.5.10. The Owner's Representative shall be the point of contact for the Owner, except when the Owner shall direct otherwise. All instructions to the Contractor(s) shall be issued by the Design Consultant except when is directed otherwise by the Owner's Representative.
- 3.5.11. The Design Consultant will have access to the Work at all times. All site visits, observations and other activities by the Design Consultant shall be coordinated with the Owner's Representative and written report of such visits made promptly to the Owner's Representative.
- 3.5.12. The Design Consultant shall make such periodic visits to the Project sites as may be necessary to familiarize themselves generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of such on-site observations, the Design Consultant and its consultants shall take the appropriate steps to guard the Owner against defects and deficiencies in the Work of the Contractor. If the Design Consultant observes any work that does not conform to the Contract Documents, the Design Consultant shall immediately make an oral and written report of all such observations to the Owner's Representative. The Design Consultant shall not be required to make exhaustive or full-time on-site observations to check the quality or quantity of the Work, but shall make as many observations as may be reasonably required to fulfil their obligations to the Owner. The Design Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work.
- 3.5.13. The Design Consultant shall immediately notify the contractor and Owner in writing if the Project falls more than fourteen (14) days (or the number of days set by the County in the preconstruction meeting, which number shall be recorded in the minutes of said meeting) behind schedule. The Design Consultant shall immediately request a recovery plan from the contractor and make appropriate written recommendation to the Owner.
- 3.5.14. Based upon observations at the site and upon the Contractor's applications for payment, the Design Consultant shall determine the amount owing to the Contractor(s), pursuant to the terms of the Owner/Contractor Agreement, and shall issue Certificates for Payment to the Owner in such amounts. The Design Consultant's signing of a Certificate of Payment shall constitute a representation by the Design Consultant to the Owner, based upon the Design Consultant's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated, that to the best of the Design Consultant's knowledge, information and belief, the quality of the Work appears to be in accordance with the Contract Documents (subject to: an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; the results of any subsequent tests required by the Contract Documents; minor deviations from the Contract

Documents correctable prior to completion; and to any specific qualifications stated in the Certificate for Payment), and that the Contractor is entitled to payment in the amount certified. By signing a Certificate for Payment to the Owner, the Design Consultant shall not be deemed to represent that it has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Construction Contract Sum.

- 3.5.15. If, in accordance with its duty, the Design Consultant advises the Owner's Representative of non-conforming work as stated in subparagraph 3.5.12, the Design Consultant shall confirm the non-conformance in writing to the Owner's Representative within two (2) days of observation.
- 3.5.16. The Design Consultant and the Owner's Representative jointly shall have authority to condemn or reject Work on behalf of the Owner when in the Owner's Representative's or the Design Consultant's opinion the Work does not conform to the Contract Documents. Whenever in the Owner's Representative's or the Design Consultant's reasonable opinion it is considered necessary or advisable to insure the proper implementation of the intent of the Contract Documents, the Owner's Representative shall have the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract Documents whether or not such Work is fabricated, installed or completed.

3.6. Final Completion of Design Services.

- 3.6.1. When the Contractor notifies the Design Consultant that the Work is substantially complete, the Design Consultant and its consultants shall inspect the Work and prepare and submit to the Owner's Representative lists of the Work of the Contractor(s) which is not in conformance with the Contract Documents. The Design Consultant shall transmit such lists to the Contractor(s). The Owner may request that the Design Consultant inspect and prepare a list on any portion of the Work.
- 3.6.2. The Design Consultant shall receive, compile, and report all W/MBE participation of all contractors, sub-contractors and vendors of this project, utilizing a pay application cover sheet to be supplied and certified by the contractor (format to be provided by Owner).
- 3.6.3. The Design Consultant and its consultants shall conduct up to two (2) comprehensive Final Completion inspections at the request of the Owner. If more than two (2) Final Completion inspections are required, through no fault of the Design Consultant, the additional inspections shall be deemed additional services.
- 3.6.4. The Design Consultant shall obtain from the Contractor(s) drawings, prints, and other data necessary for the accurate preparation of the record drawings.
- 3.6.5. The Design Consultant shall make a recommendation in writing to the Owner regarding liquidated damages for each contractor, as may be applicable.
- 3.6.6. Upon correction of the deficiency reports and acceptance of all other close-out submittals and certificates of the Contractor, the Owner's Representative and the Design Consultant shall review and approve the Application for Final Payment and forward it to the Owner for execution. In addition, the Design Consultant shall certify in writing that the work

conforms to the Contract Documents. The Design Consultant shall issue AIA Substantial Completion Certificates for each Contractor.

3.7. Serving as Witness.

3.7.1. The Design Consultant shall provide testimony in public hearings, arbitration proceedings, and legal proceedings, and such testimony shall be provided without additional fee or charge to the Owner unless said testimony is requested by the Owner and consists of expert testimony not related to this Project or Work.

3.8. Construction Warranty.

3.8.1. The Design Consultant and its consultants shall assist the Owner in resolution of warranty issues as may be required to determine responsibility for deficiencies. The Design Consultant and its consultants shall conduct an inspection of the project one (1) month prior to warranty expiration and provide to the Owner a written report specifying any warranty deficiencies which may exist.

4. ARTICLE 4 COMPENSATION

4.1. Basic Services Compensation.

The Owner shall compensate the Design Consultant in accordance with the terms and conditions of this Agreement, including the following:

4.1.1. For the Basic Services of the Design Consultant, Basic Services Compensation shall be in the amount of \$246,245.00 (Refer to Exhibit A attached).

4.1.2. In the event the Owner requests changes to the Project or elects not to complete the work or any portion thereof, which would decrease the most recently approved CCAP, basic compensation due the Design Consultant, as to such deletion or decrease, shall be adjusted downwards for remaining services to be performed but not for services already performed to the date of receipt by the Design Consultant of the written requested change or notice of the intent not to complete part or all of the work, in accordance with the basic payment schedule set forth in Paragraph 4.2 hereof.

4.1.3. The Basic Services Compensation stated in Paragraph 4.1.1 includes all compensation and other payments due the Design Consultant (manpower, overhead, profit, direct costs, travel, copies, postage, telephone and facsimile service, etc.) in the performance of the Basic Services.

4.2. Payments to the Design Consultant.

Payments on account of the Design Consultant shall be made as follows:

4.2.1. Payments for Basic Services, including any design phase change orders, shall be made in proportion to services performed so that the compensation at the completion of each Phase shall equal the following percentages of the Basic Services Compensation. Payment shall be made upon presentation of the Design Consultant's statement of

services, fully supported by invoices, time cards, and certifications that all sub-consultants have been paid, and other documentation as requested by the Owner.

Schematic Design Phase	15%
Design Development Phase	20%
Construction Documents Phase	40%
Permitting and Bidding/Negotiation Phase	5%
<u>Construction Administration (to include Close Out Documents)</u>	<u>20%</u>
Final Completion of Design Services Phase	100%

4.2.2. No deductions shall be made from the Design Consultant's Basic Services Compensation on account of penalty, liquidated damages, retainage or other sums withheld from payments to Contractor.

4.2.3. Deductions may be made from the Design Consultant's Basic Services Compensation on account of errors and omissions in the drawings, specifications and other documents prepared by the Design Consultant or in the Design Consultant's performance of its obligations under this Agreement.

4.3. Additional Services Compensation.

4.3.1. With respect to any Additional Services, as described in Article 7 herein, performed by the Design Consultant hereunder, the Design Consultant and Owner shall negotiate an equitable adjustment to the Basic Services Compensation. However, if negotiations are not successful prior to the time the additional services are needed, the Owner may direct the Design Consultant to proceed with the Additional Services on a time spent basis with Additional Services Compensation to be computed as follows:

4.3.2. Principals' time at the fixed rate as stated in the proposal submitted by the designer and attached as Exhibit A.

4.3.3. Payments for Additional Services of the Design Consultant shall be made upon presentation of the Design Consultant's statement of services, fully supported by invoices, time cards, and other documentation as requested by the Owner.

4.4. Accounting Records.

4.4.1. Records of the Design Consultant with respect to Additional Services and payroll, and consultant and other expenses (including Reimbursable Expenses) pertaining to the Project, shall be kept according to generally accepted accounting principles and shall be available to the Owner or its authorized representative for inspection and copying at mutually convenient times.

5. ARTICLE 5 PERIOD OF SERVICE

5.1. Unless earlier terminated as provided in Article 12 hereof, this Agreement shall remain in force for a period which may reasonably be required for the Basic Services and Additional Services hereunder. However, the provisions of the Agreement relating to Professional Responsibility Construction Warranty; Professional Liability coverage; Indemnification; and Ownership of

Documents/Confidential Information shall remain in effect after termination of the other provisions of the Agreement.

- 5.2. Time is of the essence in this Agreement.

6. ARTICLE 6 OWNER'S RESPONSIBILITIES

- 6.1. The Owner shall provide full information regarding the requirements for the Project.
- 6.2. The Owner shall examine documents submitted by the Design Consultant and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Design Consultant's Services.
- 6.3. If required for this Project, the Owner shall furnish a certified land survey of the Project sites, giving as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines, both public and private, above and below grade, including inverts and depths. All associated work will be coordinated by Design Consultant as part of the Basic Services.
- 6.4. The Owner shall pay for the services of a soils engineer or other consultant, when such services are deemed necessary by the Design Consultant or Owner's Representative, to provide reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations for determining subsoil, air and water conditions, with appropriate professional interpretations thereof. All associated work will be coordinated by Design Consultant as part of the Basic Services.
- 6.5. All services, information, surveys and reports required of the Owner shall be furnished at the Owner's expense.
- 6.6. If the Owner so directs, the Owner shall pay for and the Design Consultant shall request, expedite, and obtain all necessary permits, licenses, approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

7. ARTICLE 7 ADDITIONAL SERVICES

- 7.1. If any of the following Additional Services are authorized in advance by the Owner in writing, the Design Consultant shall furnish or obtain from others the authorized Additional Services. If authorized in advance, in writing by the Owner, the Design Consultant shall be paid for these Additional Services by the Owner pursuant to Article 4.3, to the extent they exceed the Basic Services under this Agreement. Additional Services may include:
- 7.1.1. Providing fully detailed presentation models or presentation renderings, not included in Basic Services.
- 7.1.2. Providing financial feasibility or other special studies, not included in Basic Services.

Commercial General Liability. Insurance covering all operations performed by the Design Consultant with a minimum limit of \$1,000,000 per occurrence with a \$2,000,000 aggregate.

Professional Liability. Insurance covering the Design Consultant for acts, errors, or omissions in performance of the Agreement with a minimum limit of \$1,000,000 per claim for projects under \$15,000,000 and a minimum limit of \$2,000,000 per claim for projects over \$15,000,000.

Business Automobile Liability. Insurance covering all owned, non-owned, and hired vehicles used in performance of this Agreement. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21.

Umbrella/Excess Liability. If the underlying liability policy limits are less than those required, Design Consultant may provide an excess or umbrella policy to meet the required limits of insurance. The excess or umbrella policy shall extend coverage over the underlying professional liability policy. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

Additional Insurance Provisions.

If the Design Consultant maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the Design Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

The Design Consultant shall provide the County with certificates of insurance evidencing the above amounts. Buncombe County shall be named as additional insured under the commercial general liability and business automobile liability policy(s). Before commencing work and for any subsequent renewals, the Design Consultant shall furnish the County with certificates of insurance on an approved form.

Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the County, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina and in a form acceptable to the County.

Design Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Design Consultant shall ensure that Buncombe County are additional insured on insurance required from subcontractors.

The Design Consultant shall maintain in force during the performance of this contract and for six (6) years after final completion of the Project, the Professional Liability insurance coverage referenced above.

Waiver of Subrogation: Design Consultant hereby grants to County a waiver of any right to subrogation which any insurer of said Design Consultant may acquire against the County by virtue of payment of any loss under such insurance. Design Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

The limits of coverage under each insurance policy maintained by the Design Consultant shall not be interpreted as limiting the Design Consultant's liability and obligations under this Agreement.

- 9.2. Notwithstanding the foregoing, nothing contained in this Article 9, nor this Contract, shall be deemed to constitute a waiver of the sovereign immunity of the Owner, which immunity is hereby reserved by the Owner.

10. ARTICLE 10 INDEMNIFICATION

- 10.1. Notwithstanding anything to the contrary contained herein, the Design Consultant shall indemnify and hold harmless the Owner and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from (1) the Design Consultant's performance or failure to perform its obligations under this Agreement and (2) any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of personal and/or real property including the loss of use resulting wherefrom and caused by any negligent act or omission of the Design Consultant, anyone directly or indirectly employed by the Design Consultant or anyone for whose acts the Design Consultant 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.
- 10.2. Except as otherwise set forth in this Agreement, the Design Consultant 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, and strikes. Owner shall not be liable to the Design Consultant for acts or failures to act by the Contractor.

11. ARTICLE 11 DISPUTE RESOLUTION PROCEDURE

- 11.1. To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between the Owner and the Design Consultant, that any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the President of the Buncombe County Bar Association shall name a mediator to hear the matter. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. The costs of the process shall be divided equally between the parties to the dispute.
- 11.1.1. The mediation session shall be private and shall be held in Buncombe County, North Carolina or in another North Carolina County agreed upon by both parties. Mediation under this Article 11 shall not be the cause for a delay of the Project which is the focus of the dispute.
- 11.2. If, as a result of mediation, a voluntary settlement is reached and the parties to the dispute agree that such settlement shall be reduced to writing, the Mediator shall be deemed appointed and constituted an arbitrator for the sole purpose of signing the mediated settlement agreement. Such agreement shall be, and shall have the same force and effect as an arbitration award, and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction.

- 11.3. If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Buncombe and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this Article, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

12. ARTICLE 12 TERMINATION, SUSPENSION OR ABANDONMENT

- 12.1. If either party shall substantially fail to perform in accordance with the terms of this Agreement through no fault of the other party, the non-breaching party may terminate this Agreement by delivering seven (7) days' written notice of termination.
- 12.2. If the project is suspended by the Owner for more than thirty (30) consecutive days, the Design Consultant shall be compensated for services performed prior to notice of such suspension.
- 12.3. This Agreement may be terminated by the Owner upon not less than seven (7) days' written notice to the Design Consultant in the event that the project is permanently abandoned. If the Project is abandoned by the Owner for more than ninety (90) consecutive days, the Design Consultant may terminate this Agreement by giving written notice.
- 12.4. If the Owner fails to make payment when due the Design Consultant for services and expenses, the Design Consultant may, upon seven (7) days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Design Consultant within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Design Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.
- 12.5. In the event of termination not the fault of the Design Consultant, the Design Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due. This shall be the exclusive remedy for termination.
- 12.6. Owner shall have no liability to the Design Consultant for any delay or damage caused the Design Consultant due to suspension of the work, or due to any other delay, interruption, hindrance, or interference.
- 12.7. Should the Owner terminate this agreement for any reason under this Article, the Owner will acquire such drawings, including the ownership and use of all drawings, specifications, documents and materials relating to the Project prepared by or in the possession of the Design Consultant. The Design Consultant will turn over to the Owner in a timely manner and in good unaltered condition all original drawings, specifications, documents, materials, and computer files related to the project.

13. ARTICLE 13 SUCCESSORS/ASSIGNMENT

- 13.1. 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 Design Consultant.

- 13.2. The Design Consultant shall not assign, sublet or transfer its interest in this Agreement without the written consent of the Owner, except that the Design Consultant may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval of the Owner.

14. ARTICLE 14 OWNERSHIP OF DOCUMENTS/CONFIDENTIAL INFORMATION

- 14.1. The Drawings, Specifications and other documents prepared by the Design Consultant for this Project are for use solely with respect to this Project, the Owner shall be the owner of these documents and shall have all common law, statutory and other reserved rights, including the copyright. The Design Consultant's Drawings, Specifications or other documents shall not be used by the Owner or others on other projects, except by agreement in writing by the Design Consultant.
- 14.2. Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the project is not to be construed as publication in derogation of the Owner's reserved rights.

15. ARTICLE 15 ADDITIONAL PROVISIONS

- 15.1. Unless otherwise provided in this Agreement, the Design Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.
- 15.2. The Design Consultant shall not discriminate against any employee or applicant for employment because of age, gender, race, creed, national origin, or disability. The Design Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event the Design Consultant is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be canceled, terminated or suspended in whole or in part by Owner, and the Design Consultant may be declared ineligible for further Owner contracts.
- 15.3. The Design Consultant shall follow all applicable federal, state, and local laws.
- 15.4. The Owner and Design Consultant agree to endeavor to provide written notification and to negotiate in good faith prior to litigation concerning claims, disputes, and other matters in question arising out of or relating to this Agreement or the breach thereof.
- 15.5. The payment of any sums by the Owner shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Design Consultant.
- 15.6. This Agreement and its Exhibits and Attachments represent the entire and integrated agreement between the Owner and the Design Consultant and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Design Consultant.
- 15.7. This Agreement shall be governed by the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the County of Buncombe and the State of North Carolina.

- 15.8. 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.
- 15.9. Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.
- 15.10. 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.
- 15.11. For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.
- 15.12. 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.
- 15.13. **E-VERIFY.** As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR provides the services to the County utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the COUNTY.

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

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

Don Warn, Buncombe County Chief Financial Officer

DESIGN CONSULTANT:
SKA Consulting Engineers, INC

OWNER: COUNTY OF BUNCOMBE

By:_____

By:_____

Title:_____

Title:_____

Date:_____

Date:_____

ASHEVILLE, NC Office
64 Peachtree Road, Suite 30
Asheville, NC 28803-3153



t: 828 274 4440
f: 828 274 4488
www.skaeng.com

January 22, 2019

Buncombe County General Services
40 McCormick Place
Asheville, North Carolina 28801

Attention: Mr. Clint Shepherd
Director

Subject: Proposal for Engineering Services for
Buncombe County Courthouse –
Administration Offices, Detention Center
Exterior Façade Repairs
Asheville, North Carolina
(SKA Proposal No. 2019-212-006)

Dear Mr. Shepherd:

SKA Consulting Engineers, Inc. is pleased to submit this proposal for engineering services on the subject project. Our proposal is based on our communications with you and on our previous experience with these buildings.

OBJECTIVE:

The objective of the professional services to be furnished by SKA Consulting Engineers, Inc., hereinafter referred to as SKA, to Buncombe County General Services, hereinafter referred to as the Client, will be to design repairs for the existing façade of the subject buildings. The primary focus of the repairs will be in accordance with our previous condition assessments on the Courthouse and the Administration Offices. A visual condition assessment of the Detention Center will be completed from ground level and other access points that will afford viewing of the building. The visual condition assessment of the Detention Center is included in this proposal.

SCOPE OF SERVICES:

In order to achieve the proposed objective, the Scope of Services to be offered by SKA to the Client is as follows:

1. Visit the buildings, as needed, to verify existing conditions.

QUALITY. INTEGRITY. INNOVATION.

Structural Mechanical-Electrical-Plumbing-Fire Protection Building Solutions-Roofing-Waterproofing



2. Preparation of final contract drawings in sufficient detail as to define the construction work, as follows:
 - a. General Notes indicating material specification requirements, special construction procedures, construction notes, design loads and foundation design.
 - b. Structural contract drawings shall include a floor plan and details, as required, describing and quantifying the repairs to prospective contractors.
 - c. Structural drawings shall define all structural member sizes, dimensions, reinforcing sizes, lengths and schedules.
 - d. Details and sections, as required, to define the construction requirements.
 - e. Review of related shop drawings.
3. SKA will prepare specifications and contract documents to allow the project to be bid by qualified contractors.
4. SKA will attend a prebid conference to explain the extent of the work to prospective bidders.
5. SKA will evaluate the bids and will advise the Construction Manager retained by the Client on the disposition of the bids.
6. SKA will attend a preconstruction meeting with the construction manager, Client and the successful bidder to establish guidelines for the completion of the repairs.
7. SKA will attend monthly progress meetings, as required, during the course of the construction.
8. SKA will furnish up to one hundred (100) field visits during the construction to observe the work in progress. Should additional field visits be required, they will be billed on an hourly basis in accordance with our hourly billing rates in effect at the time the visits are completed.

*Mr. Clint Shepherd
Buncombe County General Services
Proposal for Engineering Services
Buncombe County Courthouse-
Administration Offices, Detention Center
Exterior Façade Repairs
Asheville, North Carolina
(SKA Proposal No. 2019-212-006)*

*January 22, 2019
Page 2 of 5*

**FURNISHED BY SKA:**

SKA will furnish the following:

1. The services of all professional and technical personnel required for the performance of the work described under SCOPE OF SERVICES outlined above.
2. An electronic copy of the repair documents and record drawings at the completion of the project.
3. Prebid and preconstruction meetings, progress meetings and field observation visits as indicated in the scope of work above.

FURNISHED BY CLIENT:

In order to assist SKA in the provision of professional services, the Client will furnish the following:

1. All information available regarding the original construction and any subsequent changes to the structure.

FEE AND PAYMENTS:

SKA proposes to furnish the services described under SCOPE OF SERVICES for a **Lump Sum Fee of Two Hundred Forty-Six Thousand Two Hundred Forty-Five Dollars (\$246,245.00)**. The SKA 2018 Charge and Billing Rates Schedule is attached.

EXCLUSIONS:

Additional service fees apply to changes in the scope of work or terms of this agreement and may include, but are not necessarily limited to, the following conditions:

1. Studies of the proposed changes to scope of work, whether they are accepted or not.
2. Alternate designs in addition to those that may be included in the scope of work.
3. Concealed or unknown conditions discovered after the date of agreement, which result in additional costs to SKA.

*Mr. Clint Shepherd
Buncombe County General Services
Proposal for Engineering Services
Buncombe County Courthouse-
Administration Offices, Detention Center
Exterior Façade Repairs
Asheville, North Carolina
(SKA Proposal No. 2019-212-006)*

*January 22, 2019
Page 3 of 5*



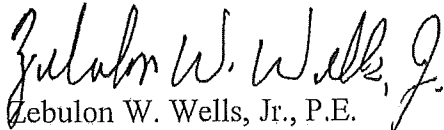
4. Resolution of contractor errors and non-compliant construction.
5. Changes after design work is complete for reasons beyond our control, including value engineering, code changes, etc.
6. Significant changes to the existing plans that would result in SKA being unable to utilize the existing design that has been completed to date.

This proposal constitutes the contract by and between SKA and the Client, and is a stand-alone agreement. As such, it is not dependent upon any third party agreement, nor is it dependent upon the success or failure of the Client's ventures or upon payment of the Client by any third parties.

We are pleased to have the opportunity to submit this proposal for professional services and will commence work upon agreement and your authorization to do so, which you may provide by signing and returning one (1) copy of this proposal.

Sincerely,

SKA Consulting Engineers, Inc.


Lebulon W. Wells, Jr., P.E.
Vice President

ZWW/tww

cc: Leann L. Rasmusson / Tracy L. Scott

Attachments: SKA General Conditions of Service
SKA 2019 Charge and Billing Rates

*Mr. Clint Shepherd
Buncombe County General Services
Proposal for Engineering Services
Buncombe County Courthouse-
Administration Offices, Detention Center
Exterior Façade Repairs
Asheville, North Carolina
(SKA Proposal No. 2019-212-006)*

*January 22, 2019
Page 4 of 5*



ACCEPTANCE:

The Terms and Conditions of this Agreement, (SKA Proposal No. 2019-211-006), the General Conditions of Service, and Limitations and Exclusions are understood and are acceptable to Buncombe County.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Please return one (1) executed copy of this Agreement to our office.

*Mr. Clint Shepherd
Buncombe County General Services
Proposal for Engineering Services
Buncombe County Courthouse-
Administration Offices, Detention Center
Exterior Façade Repairs
Asheville, North Carolina
(SKA Proposal No. 2019-212-006)*

*January 22, 2019
Page 5 of 5*



GENERAL CONDITIONS OF SERVICE

These General Conditions of Service are incorporated by reference into the foregoing Letter Proposal from SKA Consulting Engineers, Inc. ("SKA"), and shall be part of the Agreement under which services are to be performed by SKA for Client. The term "Agreement" shall mean the Letter Proposal from SKA, these General Conditions, any Fee Schedule and/or Schedule of Limitations/Exclusions that may be included in or attached to the Letter Proposal, and any other contract documents executed by SKA and Client.

Section 1: Scope of Services. The scope of services shall include all services provided by SKA, in its discretion, which are reasonably necessary and appropriate for the effective and prompt fulfillment of SKA's obligations under the Agreement. It is understood that the scope of services and the schedule, if any, set forth in the Letter Proposal are based on information provided by or on behalf of Client. In performing its scope of services, SKA may rely upon information supplied by or on behalf of Client, the contractors or consultants involved in the project upon which SKA's services are being provided ("the Project"), and information available from generally accepted reputable sources, without independent verification of this information by SKA. If this information is incomplete or inaccurate, or if unexpected conditions are discovered, the scope of services and the schedule and charges for performing the scope of services may change, even as the work progresses.

Section 2: Client's Duties / SKA's Right of Entry / Project Safety. To allow SKA to perform the scope of services, Client shall, at no expense to SKA: (a) provide all information regarding Client's requirements and operations necessary for the orderly progress of SKA's work; (b) designate a representative with authority to transmit and receive instructions and information, and to interpret and define Client's policies and requests for services; (c) provide a safe environment on and around the Project for SKA's work; and (d) provide access to publicly and privately owned property as required for SKA to perform the work, including the use of scaffolds or similar mechanical contrivances. Client grants to SKA, and its consultants and independent contractors, the right to enter the Project and property owned by Client and/or others in order for SKA to perform its work on the Project. Client agrees to obtain all legal rights-of-entry required for SKA to perform its work on the Project, and to hold harmless, indemnify and defend SKA from any alleged damages as a result of any unauthorized entry. SKA will perform work only under conditions deemed safe by SKA's personnel. Client will compensate SKA for any safety or security measures required by hazardous or unsafe job conditions. SKA is not responsible for the safety of other persons or property.

Section 3: Documents. All reports, notes, drawings, specifications, data, calculations, and other documents prepared by SKA shall remain the property of SKA. SKA shall store documents relating to SKA's services under the Agreement for a reasonable time after the completion of SKA's services. SKA will exercise reasonable care in safeguarding these documents, but disclaims any liability for loss of or damage to the documents. Client agrees not to use SKA-generated documents for marketing purposes, nor to use such documents for projects other than "the Project", without SKA's express written authorization. Review and authorization are essential because of the different circumstances associated with such use, including the passage of time.

Client agrees to waive any claim against SKA and to defend, indemnify and hold harmless SKA from any claim or liability for injury or loss or otherwise arising from any party's unauthorized reuse of documents prepared by SKA.

Section 4: Samples. Soil, rock, water and/or other samples obtained from the Project are the property of Client. SKA will have no obligation to maintain or preserve such samples after the completion of SKA's services under the Agreement. SKA shall immediately dispose of all samples unless Client instructs SKA otherwise in writing. Client is responsible for charges for storage by SKA of samples requested by Client. If requested by Client to store samples, SKA will exercise reasonable care in such storage, but disclaims any liability for loss of or damage to samples. In any event, if any such samples are contaminated by hazardous substances or suspected hazardous substances, it shall be Client's sole responsibility to immediately arrange for the lawful disposal of such substances, including the removal of all contaminated samples from the custody of SKA and transporting them to a lawful disposal site. SKA is entitled to dispose of all samples if storage charges are not paid within 45 days of invoice date.

Section 5: Hazardous Materials. "Hazardous materials" includes, but is not limited to, any substance, waste, oil, asbestos, lead, pollutant (including mold and mildew) or contaminant, in whatever form, now or hereafter included with such terms under any federal, state or local statute, ordinance, code, rule or regulation now existing or hereinafter enacted or amended. The scope of services for this Agreement does not include, and expressly excludes, any responsibility for detection, remediation, accidental release, or any services relating to hazardous materials. If SKA encounters, or reasonably suspects that it has encountered, hazardous materials on the Project, SKA shall cease



activity on the Project and promptly notify Client. Client shall initiate action, where appropriate, to identify and investigate the nature and extent of hazardous materials on the Project, and to abate and/or remove the same as may be required by federal, state or local law now existing or hereinafter enacted or amended. Unless otherwise specifically provided in writing, the services to be provided by SKA do not include identification of hazardous materials, and SKA has no duty to identify or attempt to identify the same on the Project. It is further understood and agreed that the services of SKA may be uninsurable as a result of the presence or potential presence of hazardous materials on the Project. If such circumstances arise, Client agrees to hold harmless, indemnify and defend SKA, its employees, consultants, independent contractors and agents, from and against any and all claims, lawsuits, damages, liability and costs, including but not limited to, costs of defense, arising out of or in any way connected with the presence, discharge, release, or escape of hazardous materials.

Section 6: Construction Observation Services. When construction observation services are included in the Agreement, SKA will provide personnel to make periodic observations to determine if construction is in general compliance with the contract documents. Client understands that SKA is not a guarantor or insurer of the work of the contractor or any of its subcontractors. Client understands that the contractor is solely and exclusively responsible for the accuracy and adequacy of construction and for all other activities performed by the contractor and its subcontractors and suppliers, including the methods and means of construction; supervision of personnel and construction; control and operation of machinery; falsework, scaffolding and other temporary construction aids; safety in, on and about the site; and compliance with all OSHA and other applicable state and local governmental agency regulations. SKA's monitoring of the contractor's performance expressly excludes and specifically disclaims any responsibility for review or observation of the adequacy and sufficiency of the contractor's safety measures or of safety conditions on the Project.

Section 7: Standard of Care. Services performed by SKA under this Agreement will be conducted in a manner consistent with that degree of care and skill ordinarily exercised by members of the engineering profession currently practicing in the same locality and under similar circumstances. No other representation, warranty or guaranty, expressed or implied, is included or intended in this Agreement, or in any report, opinion, document, or otherwise provided by SKA to Client.

Section 8: Suspension or Termination of Work. Client may, at any time and for any reason, suspend further services by SKA immediately upon SKA's receipt of written notice from Client. However, Client shall nonetheless remain liable for and shall promptly pay SKA for all services rendered to the date upon which SKA receives the written notice of suspension, plus suspension charges. Suspension charges shall include the cost of assembling documents, personnel and equipment rescheduling or reassignment, and fees or expenses charged as a result of commitments made to others by SKA on Client's behalf. If payment of SKA's invoices by Client is not made when due, SKA may, upon seven days' written notice to Client, suspend performance of services under this Agreement. If payment in full is not received by SKA within seven days of the date of the notice, the suspension shall take effect without further notice. SKA shall not resume services until payment of SKA's invoices are brought current. If SKA's invoices are not brought current within thirty days of the date of the notice, SKA may terminate this Agreement, under which circumstances Client will be liable to SKA for the amounts set forth above associated with Client's termination of the Agreement, plus the reasonable profit anticipated by SKA had SKA fully completed its work under the Agreement, and any other costs or expenses incurred as a result of SKA's cessation of work on the Project. SKA shall have no liability to Client or others for delay or damage caused because of such suspension of services. Client agrees to indemnify, hold harmless and defend SKA from and against any and all claims or liability arising or resulting from any suspension of services.

Section 9: Insurance / Liability. SKA carries workers compensation, general liability and professional liability insurance in amounts consistent with industry standards for firms our size with our average project sizes and annual billings. SKA will furnish appropriate insurance certificates to Client upon request. In the event Client requests that SKA acquire insurance coverage beyond SKA's normal levels of coverage, Client will pay SKA the costs associated with the acquisition of the additional coverage, plus a 10% administrative fee. If for whatever reason SKA cannot reasonably acquire the additional coverage requested by Client, Client agrees that SKA's normal coverage types and amounts are acceptable to Client. Client understands and agrees that SKA's total liability to Client for any and all injuries, claims, losses, expenses, or damages whatsoever, including attorneys' fees and legal expenses, arising out of or in any way related to the Project or this Agreement from any cause or causes, including, but not limited to, SKA's negligence, errors, omissions, breach of contract, or breach of warranty shall not exceed the total amount recoverable from SKA's insurance. Client also understands and agrees that SKA's total liability to Client for any and all injuries, claims, losses, expenses, or damages whatsoever, including attorneys' fees and expenses, as described above which is not covered by insurance coverage, shall not exceed the total of SKA's fees for the services rendered to Client on the Project. SKA shall not be liable for any reason for special, indirect or consequential damages, including loss of use



and lost profit. SKA shall take reasonable precautions to minimize damage to Client's property and/or to property owned by others during the conduct of any SKA field work and testing on the Project. Client understands that in the normal course of this type of work damage to Client's property and/or to property owned by others may occur, and that SKA shall not be liable for such damage.

Section 10: Conflicts of Interest: Client understands that SKA has a broad client base. This assignment may involve parties with adverse interests to clients with whom SKA has current or past relationships. It is SKA's policy to make reasonable attempts to identify such relationships prior to acceptance of a professional assignment, but SKA cannot assure that conflicts or perceived conflicts will not arise, and SKA does not accept and expressly disclaims any costs, expenses or damages claimed by Client for such occurrences.

Section 11: Consultants / Independent Contractors. SKA occasionally retains consultants as independent contractors to assist in the performance of SKA's work. If independent contractors are utilized by SKA on the Project, the services of these independent contractors will be billed to Client at the cost charged by the independent contractor to SKA, plus 10% if the independent contractor has at least \$500,000 of Professional / General Liability insurance, or 20% if the independent contractor has a lesser level of Professional / General Liability insurance. Such consultants shall be afforded the same rights and protections as SKA hereunder.

Section 12: Reimbursable Expenses. SKA will bill direct non-payroll expenses at cost plus 10%. Direct expenses shall include, but shall not be limited to, the following:

- a) Out-of-pocket expenses, such as travel, lodging, and costs for consultants, independent contractors and any other outside services SKA deems reasonably necessary for purposes of performing SKA's work under this Agreement.
- b) Costs of providing copies of receipts or detailed back-up information concerning charges included in SKA's invoices.
- c) Other costs reasonably incurred in the performance of SKA's work on the Project.

In addition to the above, charges for the use of SKA field and laboratory equipment, reproduction facilities, etc., will generally be billed consistent with SKA's current reimbursable rate schedule. Such items not listed on SKA's current reimbursable rate schedule will be billed at approximately 1% of replacement cost per day, subject to adjustment for minimum or extended usage.

Section 13: SKA's Invoices / Payment Terms. SKA's invoices will be based primarily upon the time spent by SKA's personnel involved with SKA's work on the Project, with this time being billed at the rates set forth in SKA's current Fee Schedule. SKA's expenses, including costs associated with SKA's retention of consultants and SKA's reimbursable expenses, will be included in SKA's invoices. SKA's time charges are accrued on an hourly basis, unless other arrangements are established. Minimum time charges for personnel at a job site are 8 hours per day, unless the time of the SKA employee or consultant on the day at issue is also used on another job. Hourly rates are not increased for overtime. Billing rates may be increased annually. Client understands and agrees that time is of the essence with respect to payment of SKA's invoices, and that timely payment is a material part of the consideration for services rendered by SKA under this Agreement. Client is responsible for payment of SKA's invoices, unless arrangements for another party to pay SKA's invoices are made in advance of SKA's performance of work, with said arrangements being made part of this Agreement. In the event that an agent for Client engages SKA on behalf of Client and Client fails to pay SKA's invoices on a timely basis, then Client's agent is also responsible for payment of SKA's invoices. Client shall pay all SKA's invoices, which will be submitted periodically and on a monthly basis, unless otherwise provided in this Agreement. SKA's invoices are due upon receipt by Client and are payable no later than thirty (30) days after the date of the invoice. Interest and finance charges of one and one-half percent (1.5%) per month or eighteen percent (18%) per annum will be assessed on all delinquent balances of principal past due, with interest and finance charges beginning to accrue on the thirty-first (31st) day after the date of the invoice. Any payments received by SKA thereafter shall be first applied to accrued interest and finance charges, and then to the principal balances of the oldest invoices first. If Client reasonably objects to all or any portion of any invoice, Client shall nevertheless timely pay the undisputed amount of such invoice and notify SKA of such objection in writing within fourteen (14) days of the date of the invoice; otherwise, such objections are expressly waived. Client shall pay all expenses and costs, including reasonable



attorneys' fees, incurred by SKA in the enforcement of this Agreement, including expenses and costs incurred by SKA in the collection of amounts owing to SKA.

Section 14: Miscellaneous Provisions.

Precedence: These General Conditions take precedence over any inconsistent or contradictory provisions contained in any other document included in the Agreement.

Entire Agreement: The Agreement constitutes the entire agreement between Client and SKA, supersedes all prior discussions or communications between Client and SKA, and cannot be changed, amended or altered unless in writing and acknowledged by SKA.

Governing Law: The laws of the State of North Carolina shall govern the validity and interpretation of this Agreement.

Mediation: All claims, disputes or controversies arising out of this Agreement shall be submitted to mediation prior to commencement of any legal action to enforce any of the terms of this Agreement, unless otherwise agreed in writing by the parties to this Agreement. This provision does not apply if a statute of limitations or a statute of repose may affect a claim of a party, in which event the party may commence legal action prior to submission of the dispute to mediation. If litigation is filed before mediation of the dispute, the mediation process shall begin within thirty (30) days after service of the summons and complaint, unless otherwise agreed upon by the parties to this Agreement.

No Third Party Liability: SKA's services are being performed solely for Client's benefit. No contractor, subcontractor, supplier, fabricator, manufacturer, tenant, occupant, consultant, or other third party shall have any claim against SKA as a result of SKA's services. Client shall defend, indemnify and hold harmless SKA from any third party claims arising from SKA's services for Client.

Project-Specific Work: SKA's work product, including its conclusions, relates only to the Project. Any use of SKA's work product, including but not limited to its conclusions, on any other project is not authorized by SKA, and SKA accepts no responsibility for any attempt to apply SKA's work product from the Project to any other project.

Transmission of SKA's Work Product: In the event that SKA's work product is stored or transmitted by some form of electronic media, Client agrees that SKA shall not be held liable for the completeness, transmission, accuracy or longevity of these materials, nor for misuse thereof.

Letter Proposal Duration: SKA's Letter Proposal expires 120 days after transmission to Client, unless a different expiration date is included in the proposal. SKA may withdraw or modify its Letter Proposal at any time prior to acceptance by Client.

Legal Process: Client is responsible, after notification from SKA, for payment of SKA's time charges, attorneys' fees and other expenses resulting from a required response by SKA to subpoenas or court orders issued at the request of any person or entity concerning any part of SKA's work associated with the Project. SKA's charges in this regard will be based on SKA's billing rates in effect at the time of SKA's receipt of the subpoena or court order.



2019 STANDARD CHARGE AND BILLING RATES

		<u>Rate per Hour</u>
PRINCIPAL ENGINEER	LEVEL 4	\$ 235.00
PRINCIPAL ENGINEER	LEVEL 3	\$ 219.00
PRINCIPAL ENGINEER	LEVEL 2	\$ 201.00
PRINCIPAL ENGINEER	LEVEL 1	\$ 182.00
SENIOR ENGINEER	LEVEL 3	\$ 177.00
SENIOR ENGINEER	LEVEL 2	\$ 167.00
SENIOR ENGINEER	LEVEL 1	\$ 157.00
SENIOR PROJECT ENGINEER	LEVEL 3	\$ 153.00
SENIOR PROJECT ENGINEER	LEVEL 2	\$ 146.00
SENIOR PROJECT ENGINEER	LEVEL 1	\$ 136.00
PROJECT ENGINEER	LEVEL 2	\$ 128.00
PROJECT ENGINEER	LEVEL 1	\$ 121.00
ENGINEERING INTERN	LEVEL 4	\$ 118.00
ENGINEERING INTERN	LEVEL 3	\$ 109.00
ENGINEERING INTERN	LEVEL 2	\$ 100.00
ENGINEERING INTERN	LEVEL 1	\$ 91.00
SENIOR TECHNICAL SPECIALIST	LEVEL 4	\$ 149.00
SENIOR TECHNICAL SPECIALIST	LEVEL 3	\$ 141.00
SENIOR TECHNICAL SPECIALIST	LEVEL 2	\$ 134.00
SENIOR TECHNICAL SPECIALIST	LEVEL 1	\$ 127.00
TECHNICAL SPECIALIST	LEVEL 2	\$ 122.00
TECHNICAL SPECIALIST	LEVEL 1	\$ 116.00
SENIOR TECHNICIAN	LEVEL 2	\$ 109.00
SENIOR TECHNICIAN	LEVEL 1	\$ 98.00
TECHNICIAN	LEVEL 3	\$ 86.00
TECHNICIAN	LEVEL 2	\$ 76.00
TECHNICIAN	LEVEL 1	\$ 65.00
INFORMATION SYSTEMS SPECIALIST		\$ 131.00
STUDENT / GRADUATE INTERN		\$ 79.00
CLERICAL		\$ 79.00



2019 REIMBURSABLE EXPENSES

Sub consultants and subcontractors	Cost + 10%
Lodging	Cost + 10%
Air travel fees (Airfare, baggage, etc.)	Cost + 10%
Ground travel fees (car rental, taxi, train, etc.)	Cost + 10%
Parking	Cost + 10%
Shipping	Cost + 10%
Purchased or rented equipment	Cost + 10%
Other fees incurred to perform services	Cost + 10%
Per Diem	\$ 55.00 per day
Mileage	\$ 0.65 per mile
Printing (beyond standard quantities)	\$ 25.00 per copy per document

SKA EQUIPMENT / TESTING

Group 1 (\$25): Items including Laser Level Survey (per day), M-Scope Metal Survey (per day), Use of On-Site Small Power Tools (per day), Wood or Concrete Surface Moisture Content Testing (per day), AAMA 501.2 Nozzle Testing (per day), Carbonation Testing (per project), and similar testing items and equipment

Group 2 (\$50): Items including Borescope Testing (per day), Calcium Chloride Moisture Tests (each), Powder Extraction from Concrete (each), Manual 2-D Crack Monitors (each), and similar testing items and equipment.

Group 3 (\$100): Items including Concrete Relative Humidity Testing (each), Tensile Bond Tests (each up to \$500 maximum per day limit of 10 tests in a single day) and similar testing items and equipment.

Group 4 (\$250 per day with weekly maximum of \$500): Items including Concrete Resistivity Testing, Concrete Cover Testing, Window/Door Air Testing, Spray Rack Test (ASTM E1105), Blower Door Testing, Infrared Testing, Brick Chamber Test, Masonry Wall Drainage Test (ASTM C1715), Ultrasonic Testing, and similar testing items and equipment.

Group 5 (\$500 per day with weekly maximum of \$1,000): Items including Concrete Half-Cell Testing, and similar testing items and equipment.

Other Testing or Equipment: As Indicated in Proposal