

**AGREEMENT FOR
DESIGN CONSULTANT SERVICES**

This Agreement for Design Consultant Services is made, and entered into this the 11th day of May 2023, by and between the **COUNTY OF BUNCOMBE**, a political subdivision of the State of North Carolina, (hereinafter “OWNER”), and Building Envelope Consultants and Scientists, PLLC., (hereinafter “DESIGNER” or “DESIGN CONSULTANT”), whose principal place of business is: 1103 N. Washington St; FL 3, Baltimore, MD 21213.

For Professional Services in connection with the Project known as:
Buncombe County Government
Administration Building Assessment

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 \$263,800.00 .

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%
Construction Administration (to include Close Out Documents)	20%
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.

- 7.1.3. Providing planning surveys or alternative site evaluations.
- 7.1.4. Providing services after payment by the Owner of the Final Payment to the Design Consultant other than services called for in the Basic Services.
- 7.1.5. Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practices consistent with the terms of this Agreement.

8. ARTICLE 8 NOTICES

- 8.1. Any notice required by this Agreement or other communications to either party by the other shall be in writing and deemed given when delivered personally or when deposited in the United States Post Office, first class, postage prepaid, addressed as follows, or to such other address as shall be duly given by notice meeting the requirement of this Article.

To Owner: Buncombe County
Attn: General Services Department
40 McCormick Place
Buncombe, NC 28801

To Design Consultant: Building Envelope Consultants and Scientists, PLLC
1103 N. Washington St; FL 3
Baltimore, MD 21213

9. ARTICLE 9 INSURANCE

- 9.1. Insurance
 - 9.1.1. Design Consultant agrees their insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the Owner's signing of this Agreement. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on Design Consultant's duty to carry adequate insurance. The insurance coverage and limits set forth below shall not act as, be construed, or deemed to be a limitation on the liability of Design Consultant, for losses or damages under this Agreement. The minimum insurance coverage which the Design Consultant shall procure and maintain at its sole cost and expense during the term of the Agreement is as follows:

Worker's Compensation. Coverage at the statutory limits in compliance with applicable State and Federal laws. Design Consultant shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

Employer's Liability. Coverage with minimum limits of \$1,000,000 each employee accident and \$1,000,000 each employee disease.

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 and General Services Department shall be named as additional insureds 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 and General Services Department are additional insureds 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 negligent 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.

Buncombe County Chief Financial Officer

DESIGN CONSULTANT:
BECS

OWNER:
COUNTY OF BUNCOMBE

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____



Building Envelope Consultants and Scientists, PLLC.

May 9, 2023

ATTENTION: **Buncombe County**
Ronnie Lunsford, PEM, Facilities/Project Manager
40 McCormick Pl,
Asheville, NC 28801

SUBJECT: **Proposal for Engineering Services (Task 1b to 4)**
Buncombe Admin Building
200 College Street
Asheville, NC 28801
BECS #20220652B v2

Dear Mr. Lunsford:

Building Envelope Consultants and Scientists, PLLC (BECS) is pleased to submit the following proposal to assist with the referenced project. Below, you will find our proposed scope of services based upon our knowledge of the project at this time and our experience with similar projects of this type.

Background

The Buncombe County Administrative Building is a four-story structure. The lower level is retail space while the remaining upper levels house office space. The building is steel framed with a façade consisting of curtain wall, punched windows, masonry units and a metal panel rain screen system.

In 2014 - 2022, SKA conducted investigations around the admin building to find and mediate existing water intrusion. From these investigations, SKA was able to find multiple discrepancies involving the curtain wall, WRB, flashing and the securement of the façade masonry units.

BECS performed a façade assessment with report March 10, 2023 outlining out recommendations for repair.



Proposed Scope of Services

The BECS services outlined below are conducted by a team of registered engineers and architects, building scientists, and roofing/waterproofing consultants, with specialties in structural and restoration engineering, building envelope, and general construction. The specialists working on each project have extensive experience in such investigations. Conclusions will be drawn from on-site observations and interviews with users and management/maintenance personnel. Appropriate documents will be reviewed for orientation purposes. Except where indicated otherwise, no destructive testing, calculations, intrusive observations, or laboratory analysis is included in the services outlined herein.

Task 1– Façade Observations, Drawing Review, and Report (Completed)

Task 1B –Window Forensic Water Testing

- Perform water testing and investigation following general industry guidelines of AAMA 511. The windows will be tested with the use a static pressure chamber built on the inside of the window assembly or a blower door fan to create a pressure differential inside of the unit. This work will require interior and exterior access to the unit or units for the duration of the testing and will require coordination with maintenance staff. If a static test chamber will be utilized, interior wall finishes and/or trim will need to be removed by others as well. BECS will make every effort to remove water that may infiltrate the unit during water testing, but BECS will not be responsible for damage that may occur to any interior spaces or finishes as a result of water testing operations.
- We will follow up on our investigation with a brief report or email summary of our findings. The intent of the water testing is to ascertain the reasoning for the water intrusion within the wall/window system and to develop repairs solution that will be incorporated into the skylight repair design manual.
- If required, we will attend one on site meeting during normal business hours (Monday through Friday 8:00 AM to 5:00 PM) with the Client following delivery of our findings to review conditions and recommendations and answer questions related to the investigation.

Items Provided by Others for Water Testing Activities:

- Power: Use of 110/120 power receptacles on the interior
- Water: A water source within 200 ft of the test area
- Access: Interior and exterior access will be required for BECS to either construct a test chamber or utilize a blower door fan, and observe testing from the interior
- Repairs: BECS shall not be responsible for repairs of any damage which may result from testing. BECS is also not responsible for removal or reinstallation of finishes or components needed to properly complete the testing.

Task 2 – Design Documents

- Prepare a technical specification and Drawings (together referred to as the Project Manual) to help identify repair or replacement needs for the components in question. The Design Intent of the Project Manual will be based on the referenced condition on our findings and the scope agreed to by the Client.

- Prepare repair details and drawings as necessary. The intended drawing deliverable is typically a 4-6 sheet set of drawings including a cover sheet/typical notes/plan/elevation/and details. Projects requiring extensive detailing beyond 6 sheets of drawings may require additional fees.
- The Task 2 deliverable is intended for bidding purposes only. During the completion of the bidding process and prior to contract award, the Task 2 deliverable may require revisions to document items changed or negotiated material delivery lead times, schedule, or other considerations. The Task 2 deliverable is not intended to be a permit or construction document.
- A Project Manual will be developed that will include:
 - Invitation to Bid
 - Instructions to Bidders
 - Bid Forms
 - Administrative Provisions
 - Scope of Work
 - Technical Specifications
 - Drawings
 - Bond Requirements
 - Insurance Requirements
 - Warranty Information
 - AIA Format /Owner Contract Form
 - General Conditions (AIA Format)
 - Material Requirements
- Below is an Expert from the BECS Report Dated March 10, 2023 explain our recommended repairs.

BECS recommends to follow Option 1/1A from SKA document dated April 6, 2020, *Narrative of Proposed Additional Repair*. In addition to these repairs, it is not recommended to salvage the masonry units in our opinion, this building is not historic in nature and this practice adds unforeseen costs, schedule changes and potential change orders into construction estimates. In addition, we do not recommend any sort of commercial building wrap as a weather-resistant barrier (WRB). For this building type and application, we recommend a liquid product as a WRB. BECS does not recommend removing the windows on the first and second floors as there are no reported issues at these locations and windows can be flashed properly without removal. The issues related to the water intrusion in the commissioner's chamber should be resolved and added to the scope of work. As mentioned in the report above, any sealant on the building that is deemed beyond its current lifespan should be replaced at this time and weep holes should be drilled on the base track of the metal panel rain screen system.

Option 1: Full replacement and rework per recommendations.

- Remove all existing masonry from the bottom of the third-floor windows to ground level. ~~Catalogue and save existing cultured stone in order to replace it at the same location from where it was removed.~~
- ~~Remove existing windows at the first and second floor levels.~~
- Remove existing masonry anchors, building wrap and rubberized asphalt flashing all around the building.
- Install new liquid type weather-resistant barrier all around the building equivalent to GCP Liquid Perm-a-Barrier ~~Tyvek Commercial Wrap~~. Lap, seal and terminate WRB in strict accordance with the manufacturer's written instructions.

- Install new screw-attached masonry anchors with triangular wire ties at spacing not to exceed 24” x 16”. Seal masonry anchors to WRB to preclude air or moisture intrusion at all locations.
- Install new window head and sill flashing at all wall openings, incorporating the new flashing with the new WRB in strict accordance with the manufacturer’s written recommendations.
- ~~Reinstall existing windows in the openings incorporating new window sill pans as required in such a manner as to not penetrate the new flashings in as much as possible.~~

Option 1A: Full replacement and rework per recommendations with utilizing brick veneer and accent brick in lieu of renaissance stone where renaissance stone is currently present.

- The work under this option shall be the same as Option 1, except the cultured stone masonry shall be replaced with new brick masonry to match the existing brick.

Task 3 – Bidding Services

- BECS will consult with the Client to establish a list of at least 3-5 qualified bidders. BECS will provide a written bidders list of pre-approved bidders for a project of this type and complexity to the Client for their review and approval. We will also suggest dates and times for the prebid meeting and receipt of bids. Once the bidder’s list, pre-bid meeting date/time, and period for bidding are approved by the Client, BECS will arrange the prebid meeting (see below).
- If NC IPS System integration is required. BECS will work with Buncombe County to integrate the scope of work and project documents into the IPS System.
- Conduct an on-site pre-bid meeting with the pre-approved Contractors. The Client and/or Client’s representative, building engineer, Contractors, and BECS will attend.
- Prepare and distribute the required bid addenda. BECS will respond in written format to questions and needed clarifications requested by the bidders and/or Client and Client’s representative.
- Bids will be sent to the Client with a copy to BECS. BECS will review the bid results and provide a letter with a summary of contractor bids received and our recommendations on the selection of a Contractor for the project.
- BECS will attend one on-site meeting with the Client or Client’s representative to review the bids and discuss repair scenarios, costs, project duration, etc. We will answer questions and provide clarifications needed or asked by the Client and the overall Project Team.
- Our price does not include short list or other interviews with contractors, Best and Final negotiations, rebidding due to financial restrictions, value engineering, or rebidding or additional bidding due to a lack of bid participation. These and any other services not specifically outlined above if requested will be performed at Time and Expense.
- Following our meeting, BECS will act upon the direction provided by the Client including notifying bidding Contractors of the Client’s decision regarding Contractor selection. Services beyond these will be performed if requested at Time and Expense.



Task 4A – Quality Assurance Services

Pre-Construction Phase

- We will assist the Contractor and Client with the preparation of AIA A104 Format Contract Documents as reviewed and approved during Design Services by the attorney for the Client(s). BECS will finalize and assemble the complete contract based on the decisions made by the Client on bids received in Task 3. We will deliver the completed document to the selected Contractor for signature. Following the signature by the Contractor, BECS will deliver the contract to the Client for signature. These functions will be performed electronically unless directed otherwise by the Client.
- Once the Client and Contractor have executed an agreement and are under contract, BECS will conduct an on-site pre-construction conference. The Client, Client’s representatives, property manager, building engineer, contractor, subcontractors, code officials (as needed), BECS, and others (collectively the Project Team) will attend.

Permitting

- BECS will update the Task 2 design documents for submission as permit documents. This work will be provided on a Time and Expense basis and will depend on the requirements of the local Authority Having Jurisdiction (AHJ) that are in-place at the time of permitting. As these requirements are constantly changing, BECS cannot predict or project the amount of time our permitting revisions will require.
- BECS assistance during the permitting process is limited to the provision of stamped and sealed drawings for the Contractor or Owner to utilize as attachments to the permit application. We are not proposing, nor do we typically provide, permit “walk-through” or expediting services. These services are best retained directly by the Contractor or Owner through a qualified local expeditor that is familiar with the policies and procedures of the AHJ.
- BECS will update the permit documents to reflect the local building code and special inspection requirements. We will complete forms from the AHJ that are provided by the expeditor. Should the AHJ require a calculations package for our work one will be developed at an additional fee. Should the AHJ request extensive revisions to the permit set requiring additional drafting, analysis, or calculations; or the addition of specification sections, this will be done for an additional fee.

Construction Phase

- Review of Contractor material, administrative, and safety submittals. Approve/disapprove submittals and initiate field-installed mock-up samples for Client review. During this phase, the Contractor will install samples of the approved products in the field for Client review, selection, and approval. Detailed work will not commence until submittals and mock-ups are approved.
- The Contractor will request payment for work completed about every 30 days for the duration of the project. Retainage will be withheld until all work is reviewed, accepted, and agreed complete by the project team. BECS will review Contractor pay requisitions, the release of lien documents, change orders, and close-out documents before submitting them to the Client for processing. We will, in conjunction with the Client, approve/disapprove these documents.
- Provide clarification of technical or contract issues.
- Conduct periodic progress meetings with the project team to review past Work, resolve project-related issues, review the Contractor's payment applications, and discuss future Work.



Building Envelope Consultants and Scientists, PLLC.

Proposal for Engineering Services (Task 1b to 4)
Buncombe Admin Building
200 College Street
Asheville, NC 28801
BECS #20220652B v2
May 9, 2023

- Perform periodic site visits during construction at milestones and or hold points, or other times as needed, to observe the progress of the Work, verify quantities of repair and determine if the Work is being performed in general accordance with the Project Specifications. (Minimum two visits per week)

Post Construction

- We will prepare a formal punch list following substantial completion and conduct a formal walkthrough with the Client following the Contractor's formal statement of completion.
- Assemble close-out documents including a letter of substantial completion, contractor's formal statement of completion, and warranty information and guidelines and submit to the Client for the project records.

Our services during construction are limited to those described in the scope of work, attached terms and conditions, and those discussed in the A104 contract format for the roles of the Architect. We are not responsible for Contractor means and methods, staging, access, shoring, bracing, safety, scheduling, in-house quality assurance, temporary protection, or any other roles of the Contractor as defined by the A104 contract format and industry-standard documents. BECS is not an "owner's representative", "construction manager", "construction project manager", or "construction manager at risk"; our involvement during construction is that of reviewing the Contractor's work for conformance with the project manual, drawings, industry standards, and the design intent. BECS does not offer or imply any warranty or guarantee on the installed work.

Task 4B – Functional Performance Testing Services

- As part of our quality assurance services, BECS will self-perform the following tests as required per the specifications issued in Task 2, Design. These testing services are required/recommended by industry standard, various state building codes and/or manufacturers of materials being used in this project.

Testing Services include:

ASTM C1521 - Evaluating Adhesion of Installed Weatherproofing Sealant Joints. Perform Sealant Pull tests one test per 500 LF.

ASTM E1105: *Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows.* After windows are repaired or replaced this water performance test (sometimes mandated by the building code) recreates high wind conditions with winds up to 75 MPH while simultaneously spraying a driven rain utilizing a spray rack. This test is performed to ensure the restoration of the skylight system and ribbon windows and flashing design is watertight or that the window repairs are watertight.





Consulting Fees and Payment Terms

Our consulting fees represent our estimate of the time and expense that will be required on behalf of the project. Proposals are valid for 90 calendar days from the date the proposal is prepared/written. If the Client does not accept the proposal or certain Tasks within that time frame, then the proposal and/or Tasks not selected will be renegotiated at the time the proposal and/or Task is formally selected.

Task 1B – Window Forensic Water Testing (T&E Budget)	\$6,500
Task 2 – Design Documents (T&E Budget)	\$85,000
Task 3 – Bidding Services (T&E Budget)	\$8,000
Task 4A – Quality Assurance Services Preconstruction Services & Permitting (T&E Budget) Construction Phase & Post Construction Phase Services (Lump Sum \$3,100/Week; Estimated Project Schedule 48 Weeks)	\$9,000 *\$148,800
Task 4B – Functional Performance Testing Services (T&E Budget)	\$6,500

**Quality Assurance Services – Construction Phase: If the project duration is less than 48 weeks BECS will not invoice for the remaining balance of the 48-week project schedule estimate. If the project is over 48 weeks BECS will request a change order based on the contractors remaining estimated schedule.*

Schedule

BECS will endeavor to complete the contracted work in a timeframe mutually agreed to with the client. The timeframe for completion of construction may be impacted by items beyond our control including, but not limited to: contractor availability, weather, and the permitting process. BECS will complete those items in the scope of service that are within our control in a timely manner. Items beyond our control shall not be considered as delays on the part of BECS.

BECS will add this work to our staffing place and begin work in earnest on the project within 1-2 weeks of receipt of written notice to proceed, a signed proposal acceptance sheet, or an executed contract between BECS and the Client. Our typical delivery time for Task 1 services is 3-4 weeks.

Additional Services

Unforeseen and hidden conditions may necessitate the need for additional services to be performed beyond those defined. If identified, BECS will submit an Additional Task Service Authorization for Client’s approval. No further work will be performed without the Client’s written approval. Additional Task Services will follow the terms and conditions attached herein.



Building Envelope Consultants and Scientists, PLLC.

Proposal for Engineering Services (Task 1b to 4)
Buncombe Admin Building
200 College Street
Asheville, NC 28801
BECS #20220652B v2
May 9, 2023

Authorization

If the scope of work and proposed fees are acceptable, please sign the attached Proposal Acceptance Sheet and return it to us.

If a separate Professional Services agreement is to be used, please make it available to us for review and comment prior to formatting for this project. Contractor-type agreements indicating liens, warranties, guaranties, and retainage will not be agreed to. The fees and schedule provided are based on the use of the attached terms and conditions and proposal acceptance sheet, the use of alternative contract forms may result in revisions to the fees and schedule.

We appreciate your consideration of BECS for this work and look forward to assisting you on this project.

Sincerely,

Building Envelope Consultants and Scientists, PLLC

Executive Vice President

A handwritten signature in black ink, appearing to read 'JP McDonald'.

JP McDonald, PE
Vice President

Attachments: Proposal Acceptance Sheet/Terms and Conditions



Building Envelope Consultants and Scientists, PLLC.

Proposal for Engineering Services (Task 1b to 4)
Buncombe Admin Building
200 College Street
Asheville, NC 28801
BECS #20220652B v2
May 9, 2023

PROPOSAL ACCEPTANCE SHEET

Building Envelope Consultants and Scientists, PLLC (BECS) is pleased to provide the services listed below in this Work Authorization. The purpose of this document is to obtain your authorization for the scope of work defined herein and confirm the terms and conditions (4 Pages Attached Hereto) under which our agreement will be based ("Project").

PROJECT INFORMATION: **Proposal for Engineering Services (Task 1b to 4)**
Buncombe Admin Building
200 College Street
Asheville, NC 28801
BECS #20220652B v2

PAYMENT OF CHARGES - Charge invoice to the account of:

ATTENTION: **Buncombe County**
Ronnie Lunsford, PEM, Facilities/Project Manager
40 McCormick Pl,
Asheville, NC 28801

FOR APPROVAL OF CHARGES (if different from above):

Firm: _____
Attention: _____
Street Address: _____
City/State/Zip: _____
Email/Phone: _____

PAYMENT TERMS: BY SIGNING BELOW CLIENT ACKNOWLEDGES PAYMENTS ARE DUE NO LATER THAN 30 DAYS FROM THE DATE OF THE INVOICE.

WORK AUTHORIZED BY:

(Signature) (Date)

(Please Print Name and Title)

(Email) (Phone Number)



Building Envelope Consultants and Scientists, PLLC.

Proposal for Engineering Services (Task 1b to 4)
Buncombe Admin Building
200 College Street
Asheville, NC 28801
BECS #20220652B v2
May 9, 2023

TERMS AND CONDITIONS

SECTION 1: SCOPE OF WORK: Building Envelope Consultants and Scientists, PLLC (BECS) shall perform the services defined in the contract (“Scope of Work”) and shall invoice the Client for those services. Any cost estimates stated in this agreement shall not be considered as a firm figure unless otherwise specifically stated in this agreement. Subsurface, hidden, unforeseen, inherent design defects, etc. will vary and are often unknown. Such conditions can alter the scope, project durations, and project costs for which BECS is not responsible. If unexpected site conditions are discovered, the scope of work may change even as the work is in progress. BECS may perform additional work with prior authorization and will provide confirmation of fees. All costs incurred because of delays in authorizing the additional work will be billed to the Client. Fees are valid for one year following the date of this agreement, unless otherwise noted. Initiation of services by BECS pursuant to this agreement will incorporate these terms and conditions.

SECTION 2: ACCESS TO SITES, PERMITS, AND APPROVALS: Unless otherwise agreed, the Client will furnish BECS with right-of-access to the site in order to conduct the Scope of Work. While BECS will take all reasonable precautions to minimize any damage to the property, it is understood by the Client that in the normal course of work some damage may occur, the restoration and costs associated with such restoration are not part of this agreement. Unless otherwise agreed, the Client understands that they must, through the Contractor or through their own means, secure all necessary approvals, permits, licenses, and consents necessary to the performance of the services hereunder. Please note that the specifications provided by BECS obligate the Contractor to obtain all necessary building permits. BECS will provide stamped and sealed drawings as necessary for permitting and documentation of special inspections required as part of Quality Control Services. Responses to permit department clarifications and questions may result in additional design fees if the permit department requests specific plans or details not previously developed by BECS. Items such as energy code, fire code, and ADA code compliance are not typically considered in restoration projects with no change of use or occupancy and are not included in BECS services; therefore, if the permit department requests information related to these items the Client may need to retain the services of a qualified, licensed consultant with expertise in those disciplines to meet permit requirements. Special inspections may be required, and the client may have to retain a special inspection agency to complete these tasks. Attendance at permit department meetings and/or permit “walk-through” services or expediting of permits is not included in our scope. Costs associated with such services if requested by the client and any permitting activity above and beyond the initial permit forms and the required number of stamped and sealed drawings for the initial submission will be invoiced on a Time and Expense (T&E) basis.

SECTION 3: TESTING, TEST SAMPLES, AND LOCATIONS: Samples of the substrate being inspected and/or associated system(s) may be taken during the performance of the work. BECS can provide temporary repairs at a sample and destructive testing location; however, the Client will be responsible for providing permanent repairs to comply with manufacturer's warranty requirements if in effect. BECS will in no way be responsible for leaks or any damages caused by our testing and/or sampling methods as requested and agreed to by the client and/or due to the failure of the Client to provide permanent repairs to the sample and test locations following completion of our work. BECS recommends that the Client hire a contractor approved by the material manufacturer to install and repair guaranteed/warranted systems and to provide permanent repairs to the sample and test locations. Unless otherwise noted, the accuracy of all sample and test locations will be commensurate only with placing and approximate measurements or estimates. The accuracy of our findings will only be applicable to the areas tested.

SECTION 4: UNANTICIPATED HAZARDOUS MATERIALS AND SUBSURFACE CONDITIONS: It shall be the duty of the unit owner, the Client, or their representatives to advise BECS of any known or suspected hazardous substances or subsurface conditions, which are or may be related to the Scope of Work provided; such conditions and/or substances include, but are not limited to, products, materials, by-products, wastes or samples of the foregoing, abandoned wall and foundation systems, pipes, conduits, etc., which BECS may encounter when performing its Scope of Work, or which hazardous substances exist or may exist on or near any premises upon which work is to be performed by BECS employees, agents or subcontractors. Although in no way responsible to identify hazardous substances or subsurface conditions as part of their work, if BECS suspects the existence of hazardous materials or abandoned obstructions during the course of providing services, BECS may in its sole discretion terminate further work on the project, or suspend work on the project, and notify Client of the condition. Services may be resumed only after a renegotiation of the scope of services and fees. In the event that renegotiation cannot occur to the satisfaction of BECS, BECS may in its sole discretion terminate this contract. BECS will not be responsible for any impact such substances and/or conditions might have on the project.



Building Envelope Consultants and Scientists, PLLC.

Proposal for Engineering Services (Task 1b to 4)
Buncombe Admin Building
200 College Street
Asheville, NC 28801
BECS #20220652B v2
May 9, 2023

SECTION 5: DISPOSAL OF HAZARDOUS MATERIALS AND CONTAMINATED EQUIPMENT: BECS does not create, generate or at any time own or take possession or ownership of or arrange for transport, disposal or treatment of hazardous materials as a result of its exploration services. All hazardous materials, including, but not limited to, samples, drilling fluids, decontamination of fluids, development fluids, soil cuttings, and tailings, and used disposable protective gear and equipment, are the property of the Client. The Client acknowledges and agrees that it is responsible for the proper transportation and disposal of such property unless prior contractual arrangements are made. All laboratory and field equipment that cannot readily and adequately be cleansed of its hazardous contaminants shall become the property and responsibility of the Client. The Client shall purchase all such equipment and it shall be turned over to the Client for proper disposal unless prior alternate contractual arrangements are made.

SECTION 6: REPORTS AND INVOICES: BECS will furnish an electronic copy of the report of findings to the Client. Up to two hard copies will be furnished upon request. Additional hard copies will be furnished at the rate specified in the fee schedule. BECS will submit monthly invoices to the Client and a final bill upon completion of the services. Payment is due upon presentation of the invoice and is past due thirty (30) days from the invoice date. BECS will apply up to a 4% processing fee for all credit card transactions. Client agrees to pay a finance charge of **2% of the invoiced amount every 14 calendar days beyond thirty (30) days from the invoice date.** The Client also agrees to pay all costs and expenses, including, but not limited to, reasonable attorney's fees incurred by BECS relating to collection procedures on overdue accounts. Failure of Client to abide by the provisions of this section will be considered immediate grounds for termination of this agreement by BECS.

SECTION 7: OWNERSHIP OF DOCUMENTS: All reports, sample logs, field data, field notes, laboratory test data, calculations, estimates, drawings, and other documents prepared by BECS as instruments of service shall remain the property of BECS whether or not the Project is completed. The Client may make and retain copies for information and reference in connection with the use and occupancy of the Project by the Client and others; however, such documents are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project, or on other Projects. Any reuse without written verification or adaptation by BECS for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to BECS. The Client shall indemnify and hold harmless BECS, its members, employees, agents, representatives and contractors from any and all claims, causes of action, damages, compensation, sums of money, losses and expenses including attorney's fees arising out of or resulting from the use of any and all documents prepared by BECS for Client or any third-party claims. Any such verification or adaptation will entitle BECS to further compensation at rates to be agreed upon by the Client and BECS.

SECTION 8: CONFIDENTIALITY: BECS shall hold confidential all business or technical information obtained from the Client or its affiliates or generated in the performance of the Scope of Work under this agreement and identified in writing by the Client as "confidential". BECS shall not disclose such information without the Client's consent except to the extent required for 1) Performance of the services under this agreement; 2) Compliance with professional or ethical standards of conduct for the preservation of public safety, health, and welfare; 3) Compliance with any court order or other governmental directives; and/or 4) Protection of BECS against claims or liabilities arising from the performance of services under this agreement. BECS's obligation hereunder shall not apply to information in the public domain or lawfully acquired on a non-confidential basis from others.

SECTION 9: STANDARD OF CARE: Scope of Work performed by BECS under this agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. No other warranty, express or implied, is made or intended by the proposal for consulting services or by furnishing oral or written reports of the findings made. The Client recognizes that subsurface conditions may vary from those encountered at the location where samples, surveys, tests or explorations are made by BECS and that the data, interpretations, and recommendations of BECS are based solely upon the data available to BECS. BECS will be responsible for those data, interpretations, and recommendations, but shall not be responsible for the interpretations by others of the information developed.

SECTION 10: SAFETY: BECS has adopted safety policy procedures for its personnel in the performance of our services. BECS is not responsible or liable for injuries or damage incurred by third parties who are not employees of or engaged by BECS. It is understood that BECS will not be responsible for job or site safety of the project. Job and site safety will be the sole responsibility of the Client unless contracted to others.



Building Envelope Consultants and Scientists, PLLC.

Proposal for Engineering Services (Task 1b to 4)
Buncombe Admin Building
200 College Street
Asheville, NC 28801
BECS #20220652B v2
May 9, 2023

SECTION 11: SUBPOENAS: The Client is responsible, after notification, for payment of time charges and expenses resulting from the required response by BECS to subpoenas issued by any party other than BECS in conjunction with the work performed under this contract. Charges are based on fee schedules in effect at the time the subpoena is served.

SECTION 12: LIMITATION OF LIABILITY: To the maximum extent permitted by law, in no event shall BECS be liable to client or any third party for any direct, consequential, special, incidental, punitive, indirect, exemplary, or any other damages arising out of this agreement or scope of work, even if BECS has been advised about the possibility of such damages (whether such damages arise in contract, tort (including negligence) or otherwise). In no event shall BECS's cumulative liability, for damages of any type to the Client under this agreement, exceed the amount paid by the Client to BECS pursuant to this agreement.

SECTION 13: INDEMNIFICATION: The Client covenants to defend and indemnify and hold harmless BECS, its members, employees, agents and subcontractors (collectively, BECS) from and against all claims, actions, judgments, damages, liabilities, costs and expenses including, but not limited to, attorneys' fees and disbursements attendant thereto, in connection with any claim brought by BECS and/or a third party against BECS, arising from or out of Client's breach or threatened breach of any duty, obligation, representation, warranty, and/or covenant, or failure to comply with any provision of this agreement, the Scope of Work, or occasioned wholly or in part by any act or omission of Client.

SECTION 14: INSURANCE: BECS carries the following insurance. (a) Worker's Compensation Insurance, (b) Comprehensive General Liability Insurance, (c) Automobile Insurance and (d) Professional Liability Insurance Certificates for all such policies of insurance will be provided to Client upon written request.

SECTION 15: ENVIRONMENTAL INDEMNITY: The Client acknowledges and agrees that BECS has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substances or conditions at the site. Accordingly, except as expressly provided in this agreement, the Client waives any claims against BECS and agrees to indemnify and save BECS, its members, agents, subcontractors and employees harmless from any claim, actions, damages, judgments, losses, costs, liability or defense cost, including, but not limited to, attorney's fees and disbursements attendant thereto, and other incidental costs, for injury or loss sustained by any party from such exposures allegedly arising out of or related to BECS's performance of the Scope of Work.

SECTION 16: TESTING AND OBSERVATION SERVICES: If BECS is retained by Client to provide a site representative for the purpose of testing or observing specific portions of the work or other field activities as set forth in the proposal, then this section applies. For the specified assignment, BECS will report test results, observations and professional opinions to the Client. The presence of BECS field representatives will be for the purpose of providing field testing and observation. The Scope of Work does not include supervision or direction of the actual work of the contractor, their employees or agents. The contractor for this project should be so advised. The contractor should also be informed that neither the presence of our field representative nor the testing and/or observation by our firm shall excuse him in any way for defects discovered in his work. The term "observation" implies that we would observe the progress of the work we have agreed to be involved with and perform tests from which to develop an opinion as to whether the work substantially complies with the specifications and contract documents. BECS shall not be viewed as the conduit for construction communication or the liaison. BECS handles construction contract disputes as per AIA A 104 in the event of a conflict between the client and the contractor. With any manufactured product, there are statistical variations in its uniformity and the accuracy of tests used to measure its qualities. As compared with other manufactured products, field construction usually has wider fluctuations in both product and test results. Thus, even with very careful testing and observation, it cannot be said that all parts of the product comply with the job requirements. Our proposal is for the Scope of Work requested by the Client. The Client acknowledges and understands that the degree of certainty for compliance with project specifications is much greater with full-time observation than it is with intermittent observation.

SECTION 17: SAMPLES: BECS will retain all test samples that are transported to BECS for 60 days after submission of the findings report. Further storage or transfer of samples can be made at the Client's sole expense upon written request.



Building Envelope Consultants and Scientists, PLLC.

Proposal for Engineering Services (Task 1b to 4)
Buncombe Admin Building
200 College Street
Asheville, NC 28801
BECS #20220652B v2
May 9, 2023

SECTION 18: SEVERABILITY: If any of the provisions contained in this agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions will not be impaired and the parties hereto agree that this agreement shall be appropriately modified so that each and every provision hereof is enforceable to the maximum extent permitted by law.

SECTION 19: TERMINATION: This Agreement may be terminated by either party upon seven (7) days prior written notice in event of a material breach of any of the terms, covenants, obligations or duties under this agreement and a failure to cure such breach within such seven (7) day period. Such termination shall not be effective if that material breach has been cured before the expiration of the seven (7) day period. In the event of termination, BECS shall be paid for all services performed through the termination notice date plus all reasonable termination expenses, including, but not limited to, all direct costs of BECS required to complete analyses and records necessary to complete its files and may also include a report on the Scope of Work performed to the date of termination or suspension.

SECTION 20: ASSIGNS: Neither the Client nor BECS may delegate, assign, sub-write or transfer its duties or interest in this agreement without the prior written consent of the other party.

SECTION 21: PRECEDENCE: These Terms and Conditions shall take precedence and control over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding BECS's Scope of Work.

SECTION 22: ENTIRE AGREEMENT: This Agreement, the attached documents and those incorporated herein constitute the entire agreement between the parties and cannot be changed except by a written instrument signed by both the parties.

SECTION 23: GOVERNING LAW: This Agreement shall be governed, construed and enforced in accordance with the laws of the State, Commonwealth, or District in which the work occurs.

