

**AGREEMENT FOR TECHNICAL SERVICES  
FOR  
FACILITY CONDITION ASSESSMENT CONSULTING SERVICES  
FOR WAKE COUNTY FACILITIES**

This Agreement, made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Wake County, North Carolina (hereinafter, the "County") and \_\_\_\_\_ (hereinafter, the "Consultant").

**WITNESSETH:**

That the County and Consultant, for the consideration herein named, do hereby agree as follows:

**ARTICLE 1**

1.1 **Scope of Work**

1.1.1 This Agreement is for professional services to be rendered by Consultant to County with respect to a project known as Facility Condition Assessments for Wake County Facilities (hereinafter, the "Project"). The Project is described more particularly as follows:

A multi-year program to establish Facility Condition Assessment files for each of the County's facilities (totaling approx. 4.8 million SF of building space). The process will typically involve the assessment of multiple facilities within a range of 300-500,000 per year over several years. The Facility Condition Assessment process will be similar each year utilizing key steps for data collection, evaluation and presentation in an effort to establish annualized budgets for capital improvement and maintenance & repair projects.

The primary objective of the Facility Condition Assessment process is to provide comprehensive analysis and report on all field assessments and reinvestment recommendations for all specified County facilities. The individual facilities will be assessed in a sequence so that every facility is assessed within a 7-year period, which is consistent with the County's 7-year Capital Improvement Program budget cycle.

Consulting services will include identification of current facility condition deficiencies, recommended corrective action for deficiencies, cost estimating, forecasting for costs associated with assessment findings along with documenting corrective actions taken, utility information and integration of other building studies.

1.1.2 The Consultant will perform condition assessments for all items described in the Basic Services.

1.1.3 By his execution of this Agreement, the Consultant represents and agrees that he is qualified to and fully capable of performing and providing the services required or necessary under this Agreement in a fully competent, professional and timely manner.

1.1.4 Time is of the essence with respect to this Agreement.

1.1.5 The services to be performed under this Agreement consist of Basic Services, as described and designated in Article 4 hereof. Compensation to the Consultant for Basic Services under this Agreement shall be as set forth herein.

**ARTICLE 2**  
**RESPONSIBILITIES OF THE CONSULTANT**

2.1 Services to be Provided

2.1.1 The Consultant shall provide the County with all services required to satisfactorily complete the Project within the time limitations set forth herein and in accordance with Article 2.2 of this agreement.

2.2. Standard of Care

2.2.1 The Consultant shall exercise reasonable care and diligence in performing services under this Agreement in accordance with the generally accepted standards of this type of Consultant practice throughout the United States and in accordance with applicable federal, state and local laws and regulations applicable to the performance of these services. The Consultant shall serve as a representative of the County in accordance with the terms and conditions of this Agreement.

2.2.2 The Consultant shall be responsible for all errors or omissions, in the drawings, specifications, reports or other documents prepared by the Consultant.

2.2.3 The Consultant shall correct at no additional cost to the County any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts in any reports, drawings, specifications or other documents prepared by the Consultant.

2.2.4 The Consultant shall assure that all reports, drawings, specifications or other documents prepared by him hereunder are in accordance with applicable laws, statutes, building codes and regulations and that all necessary or appropriate applications for approvals are submitted to federal, state and local governments or agencies in a timely manner so as not to delay the Project.

**ARTICLE 3**  
**BASIC SERVICES**

3.1 Basic Services

3.1.1 The Consultant shall perform as Basic Services that work and services described herein and as described in Attachment A.

3.1.2 The Basic Services will be performed by the Consultant in accordance with project schedules to be developed and attached to each work order amendment to this Basic Agreement.

**ARTICLE 4**  
**DURATION OF SERVICES**

4.1 Scheduling of Services

4.1.1 The Consultant shall schedule and perform his activities in a timely manner so as to meet the Milestone Dates referenced in Article 3.

4.1.2 Should the County determine that the Consultant is behind schedule, it may require the Consultant to expedite and accelerate his efforts, including providing additional resources and working overtime, as necessary, to perform his services in accordance with the approved project schedule at no additional cost to the County.

4.1.3 The commencement date for the Consultant's Basic Services shall be the date of delivery to the Consultant from the County of a fully executed original of this Agreement.

**ARTICLE 5**  
**COMPENSATION**

5.1 Compensation for Basic Services

5.1.1 Compensation for Basic Services shall include all compensation due the Consultant from the County for all services under this Agreement except for any authorized Reimbursable Expenses which are defined herein. The Consultant's compensation for Basic Services shall be negotiated between the Consultant and Owner based on a mutually agreed scope of work for each work assignment. The compensation due the Consultant shall be stipulated in an amendment to the Agreement.

5.1.2 Payment for Basic Services shall become due and payable monthly in proportion to satisfactory services performed and work accomplished. Payments will be made monthly by the County within 30 calendar days of receipt of an invoice which is in form and substance acceptable to the County. Each invoice shall contain the Consultant's name and federal tax identification number.

5.2 Reimbursable Expenses

5.2.1 Reimbursable expenses are in addition to the fees for Basic Services and are for the following expenditures to the extent reasonable and actually incurred by the Consultant with respect to the Project:

5.2.2 Actual expenditures for postage, reproductions, photography and long distance telephone charges directly attributable to this Project.

5.2.3 The actual cost of reproduction of reports, plans and specifications excluding documents for exclusive use by the Consultant.

5.2.4 The Consultant shall not be entitled to any mark-up on actual expenses which are incurred.

**ARTICLE 6**  
**RESPONSIBILITIES OF THE COUNTY**

6.1 **Cooperation and Coordination**

6.1.1 The County has designated the Director of Facilities Design & Construction to act as the County's representative with respect to the Project and shall have the authority to render decisions within guidelines established by the County Manager and the County Board of Commissioners and shall be available during working hours as often as may be reasonably required to render decisions and to furnish information.

**ARTICLE 7**  
**INSURANCE**

7.1 **General Requirements**

7.1.1 The Consultant shall purchase and maintain and shall cause each of its Consultants to purchase and maintain during the period of performance of this Agreement and for five years after issuance of a Certificate of Final Completion of the Project insurance for protection from claims under workers' or workmen's compensation acts; Commercial General Liability Insurance (including broad form contractual liability and complete operations, explosions, collapse, and underground hazards coverage) covering claims arising out of or relating to bodily injury, including bodily injury, sickness, disease or death of any of the Consultant's or Consultants' employees or any other person and to real and personal property including loss of use resulting thereof; Commercial Automobile Liability Insurance, including hired and non-owned vehicles, if any, covering personal injury or death, and property damage; and Professional Liability Insurance, covering personal injury, bodily injury and property damage and claims arising out of or related to the performance under this Agreement by the Consultant or its agents, Consultants and employees.

7.1.2 The minimum insurance ratings for any company insuring the Consultant shall be Best's A-. Should the ratings of any insurance carrier insuring the Consultant fall below the minimum rating, the County may, at its option, require the Consultant to purchase insurance from a company whose rating meets the minimum standard.

7.2 Limits of Coverage

7.2.1 Minimum limits of insurance coverage shall be as follows:

INSURANCE DESCRIPTION	MINIMUM REQUIRED COVERAGE
• Worker's Compensation	Limits for Coverage A - Statutory State of N.C.
Coverage B - Employers Liability	\$500,000 each accident and policy limit and disease each employee
• Commercial General Liability	\$1,000,000 Each Occurrence \$2,000,000 Aggregate
• Commercial Automobile Liability Combined Single Limit	\$1,000,000
• Professional Liability	\$1,000,000 each claim \$2,000,000 Aggregate

7.2.2 . If any coverage is on a claims-made basis, Provider agrees to maintain a retroactive date prior to or equal to the effective date of this Agreement and to purchase and maintain Supplemental Extended Reporting Period or 'tail coverage' with a minimum reporting period of not less than three (3) years if the policy expires or is cancelled or non-renewed. If coverage is replaced, the new policy must include full prior acts coverage or a retroactive date to cover the effective dates of this Agreement. Provider shall provide a Certificate of Insurance annually to Wake County indicating any claims made coverage and respective retroactive date. The duty to provide extended coverage as set forth herein survives the effective dates of this Agreement.

7.3 Proof of Coverage

7.3.1 Evidence of such insurance shall be furnished to the Owner. Copies or originals of correspondence, certificates or other items pertaining to insurance shall be sent to: Wake County Finance Department, Wake County Justice Center, Suite 2900, PO Box 550, Raleigh, NC 27602. Upon cancellation, non-renewal or reduction, the Consultant shall procure substitute insurance so as to assure the Owner that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

7.4 Indemnity

7.4.1 The Consultant agrees to indemnify and hold harmless the Owner from all loss, liability, claims or expense, including attorney's fees, arising out of or related to the Project and arising from bodily injury including death or property damage to any person or persons caused in whole or in part by the negligence or misconduct of the Consultant except to the extent same are caused by the negligence or willful misconduct of the Owner. It is the intent of this provision to require the Consultant to indemnify the Owner to the fullest extent permitted under North Carolina law.

7.5 Owner's Insurance Option

7.5.1 At any time during the performance of this Agreement, the Owner may, at its sole option, provide for itself, for the Consultant and for its Consultants any or all of the insurance coverage required under the Article.

7.5.2 If the Owner elects to provide such coverage it shall notify the Consultant in writing and provide to the Consultant such certificate or certificates of coverage as may be applicable.

7.5.3 If the Owner elects to provide such cover it shall be entitled to pro rata reduction in the fees for Basic Services equal to the cost of providing such coverage to the Consultant and its Consultants.

**ARTICLE 8**  
**AMENDMENTS TO THE AGREEMENT**

8.1 Changes in Basic Services

8.1.1 Changes in the Basic Services and entitlement to additional compensation or a change in duration of this Agreement shall be made by a written Amendment to this Agreement executed by the Owner and the Consultant. The Consultant shall proceed to perform the Services required by the Amendment only after receiving a fully executed Amendment from the Owner or a written notice from the Owner directing the Consultant to proceed, whichever is earlier.

8.1.2 The Owner may, without invalidating this Agreement, make written changes in the Consultant's Basic Services or Additional Services of this Agreement by preparing and executing an Amendment to the Agreement. Within three (3) days of receipt of such an Amendment, the Consultant shall notify the Owner in writing of any change contained therein that the Consultant believes significantly increases or decreases the Consultant's services with respect to the Project and request an adjustment in compensation with respect thereto. If the Amendment significantly increases or decreases the Consultant's services, the Consultant's compensation may be equitably adjusted.

8.1.3 The Consultant's hourly rates are included in Attachment B to this agreement.

**ARTICLE 9**  
**TERMINATION AND SUSPENSION**

9.1 Termination for Convenience of the County

9.1.1 This Agreement may be terminated without cause by the County and for its convenience upon seven (7) days prior written notice to the Consultant.

9.2 Other Termination

9.2.1 After seven (7) days written notice to the other party of its material breach of the Agreement, this Agreement may be terminated by the noticing party, provided that the other party has not taken all reasonable actions to remedy the breach.

### 9.3 Compensation After Termination

9.3.1 In the event of termination, the Consultant shall be paid that portion of his fees and expenses that it has earned to the date of termination, less any costs or expenses incurred or anticipated to be incurred by the County due to errors or omissions of the Consultant.

9.3.2 Should this Agreement be terminated, the Consultant as provided under this Article 9, the Owner shall be granted, at no additional cost, ownership of all documents, drawings, and electronic data bases relating to the Project, including the ownership and use of all drawings, reports, specifications, documents and materials relating to the Project prepared by or in the possession of the Consultant. The Consultant shall turn over to the Owner within seven (7) days and in good unaltered condition reproduces of all original documents, electronic data bases and materials. In the event of such termination, and should the Owner use such documents for completion of the Project, the Owner shall be responsible for any cost, expense, damage or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by the Owner, its Contractor(s), agents or employees in connection with Owner's use of such drawings, reports, specifications, documents, materials and other work provided as part of Basic Services and Additional Services. The Consultant specifically agrees to incorporate the provisions of this paragraph in all contracts for the services of Consultant's sub-consultants. The Owner agrees that the Consultant may retain one set of drawings for its records.

### 9.4 Waiver

9.4.1 The payment of any sums by the County under this Agreement or the failure of the County to require compliance by the Consultant with any provisions of this Agreement or the waiver by the County of any breach of this Agreement shall not constitute a waiver of any claim for damages by the County for any breach of this Agreement or a waiver of any other required compliance with this Agreement.

## **ARTICLE 10** **ADDITIONAL PROVISIONS**

### 10.1 Relationship of Parties

10.1.1 Consultant is an independent contractor of the County. Neither Consultant nor any employee of the Consultant shall be deemed an officer, employee or agent of the County. Consultant's personnel shall not be employees of, or have any contractual relationship with the County.

### 10.2 Limitation and Assignment

10.2.1 The County and the Consultant each bind themselves, their successors, assigns and legal representatives to the terms of this Agreement. Neither the County nor the Consultant shall assign or transfer its interest in this Agreement without the written consent of the other.

### 10.3 Governing Law

10.3.1 This Agreement and the duties, responsibilities, obligations and rights of respective parties hereunder shall be governed by the laws of the State of North Carolina.

#### 10.4 Dispute Resolution

10.4.1 Any and all suits or actions to enforce, interpret or seek damages with respect to any provision of, or the performance or non-performance of, this Agreement shall be brought in the General Court of Justice of North Carolina sitting in Wake County, North Carolina, or the United States District Court sitting in Wake County, North Carolina, and it is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or actions.

#### 10.5 Extent of Agreement

10.5.1 This Agreement represents the entire and integrated agreement between the County and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

#### 10.6 Severability

10.6.1 If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.

#### 10.7 Ownership of Documents

10.7.1 All designs, drawings, specifications, design calculations, notes and other works developed in the performance of this contract shall become the property of the County and may be used on any other project without additional compensation to the Consultant. The use of the documents by the County or by any person or entity for any purpose other than the Project as set forth in this Agreement shall be at the full risk of the County or such person or entity.

#### 10.8 Non-Appropriation

10.8.1 Provider recognized that Wake County is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate.

In the event that public funds are not available and not appropriated to purchase the services specified in this Agreement, then this Agreement shall automatically expire without penalty to Wake County and without the seven (7) day notice requirement set forth in Section 9.1.1.

In the event of a legal change in Wake County's statutory authority, mandate, and mandated functions which adversely affects Wake County's authority to continue its obligations under this Agreement, then this Agreement shall automatically expire without penalty to Wake County and without the seven (7) day notice requirement set forth in Section 9.1.1.

#### 10.9 E-Verify Compliance

10.9.1 To ensure compliance with the E-Verify requirements of the General Statutes of North Carolina, all consultants, contractors, including any subcontractors employed by the contractor(s), by submitting a bid, proposal or any other response, or by providing any material, equipment, supplies, services, etc., attest and affirm that they are aware and in full compliance with Article 2 of Chapter 64, (NCGS64-26(a)) relating to the E-Verify requirements.

10.10 Iran Divestment

10.10.1 By signing this agreement, Consultant certifies that as of the date of execution of this Agreement 1) it does not appear on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143-6A-4 and published on the State Treasurer's website at www.nctreasurer.com/Iran and 2) it will not utilize any subcontractor that appears on the Final Divestment List in the performance of duties under this Agreement.

IN WITNESS WHEREOF, the parties, by and through their authorized agents, have hereunder set their hands and seal, all as of the day and year first above written.

COUNTY OF WAKE  
PO Box 550  
Raleigh, NC 27602

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By:

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By:

\_\_\_\_\_  
Printed Name:

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Printed Name:

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Title:

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Title:

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

\_\_\_\_\_  
Wake County Finance Officer

This instrument has been reviewed by Wake County Facilities, Design & Construction.

\_\_\_\_\_  
Mark Forestieri  
Director, Facilities Design & Construction

The person responsible for monitoring the contract performance requirements is

\_\_\_\_\_.

\_\_\_\_\_ Department Head Initials