AGREEMENT FOR
PROFESSIONAL LAND SURVEYING SERVICES

This Agreement, made as of the 29th day of January, 1999, by and between the County of Wake (hereinafter, the "Owner") and McKim & Creed Engineers, P.A., a professional firm with partners or principals registered in North Carolina as professional engineers and land surveyors and with offices in North Carolina (hereinafter, the "Consultant").

WITNESSETH:

That the Owner 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 land surveying services to be rendered by Consultant to Owner with respect to various County land acquisition and capital improvement projects (hereinafter, the "Project"). It is described more particularly in Attachment A.

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

1.1.3 Time is of the essence of this Agreement.

1.1.4 The services to be provided under this Agreement consist of Basic Services, as described and designated in Article 4 hereof and in Attachment B to this Agreement, along with such Additional Services as are designated in Article 5 of this Agreement or as may from time-to-time be agreed upon by the Owner and Consultant by Amendment to this Agreement. Compensation to the Consultant for Basic Services under this Agreement shall be as set forth herein, and compensation for Additional Services shall be as set forth herein or in any Amendment providing for them. All services performed by the Consultant not identified as Additional Services in Article 5 or in a written Amendment entered into by the Owner and the Consultant for such additional services relating to the Project shall be deemed Basic Services which are provided without additional compensation.

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ARTICLE 2

2.1 Definitions
2.1.1 Additional Services - See Section 1.1.4 and Article 5.
2.1.2 Basic Services - See Article 4 and Attachment B.
2.1.3 Compensation for Basic Services - See Section 7.1 and 7.2.
2.1.4 Consultant’s Key Personnel - See Section 3.3.1 and Attachment D.
2.1.5 County Board of Commissioners - The Board of Commissioners of Wake County.
2.1.6 County Manager - The employee of Wake County bearing that title.
2.1.7 Director, Facilities Design & Construction - See Section 8.13. The employee of Wake County bearing that title.
2.1.8 Milestone Dates - See Attachment C.
2.1.9 Reimbursable Expenses - See Section 7.5.

ARTICLE 3

RESPONSIBILITIES OF THE CONSULTANT

3.1 Services to be Provided
3.1.1 The Consultant shall provide the Owner with professional land surveying services required to satisfactorily complete each work assignment authorized by Amendment to this Agreement within the time limitations set forth herein and in accordance with high professional standards. Such services may include, but will not be limited to the following:

• Geographic Information System Improvements
• Landfill Improvements
• Waterline Extensions
• Wastewater Collection and Pumping Facilities
• Parks & Recreation Facilities
• Libraries
• Criminal Justice Facilities
• Open Space / Historic Preservation
• Governmental Office Buildings
• Little River Reservoir Land Acquisitions

3.2 Standard of Care
3.2.1 The Consultant shall exercise reasonable care and diligence in performing services under this Agreement in accordance with high standards of land surveying practice in North Carolina and in
accordance with federal, state and local laws and regulations applicable to the performance of these services. The Consultant shall serve as a representative of the Owner in accordance with the terms and conditions of this Agreement.

3.2.2 The Consultant shall be responsible for all errors or omissions, in the drawings, plats, electronic files and other documents prepared by the Consultant. It shall be the responsibility of the Consultant, throughout the period of performance under this Agreement, to use reasonable professional care and good judgment to guard the Owner against defects and deficiencies in the Work.

3.2.3 The Consultant shall correct at no additional cost to the Owner any and all errors, omissions, discrepancies, mistakes or conflicts in the drawings, plats, electronic files and other documents prepared by the Consultant.

3.2.4 The Consultant shall assure that all drawings, plats, electronic files and other documents prepared by him hereunder are in accordance with applicable laws, statutes, building codes and regulations. The Consultant shall assure that all necessary or appropriate approvals are obtained from federal, state and local governments or agencies in a timely manner so as not to unnecessarily the project.

3.2.5 The Consultant shall perform all services in a timely manner in accordance with all mutually agreed schedules for the Project as stipulated in each work assignment which is authorized by an Amendment.

3.2.6 The Consultant shall reimburse the Owner for costs, damages and expenses, including attorney's fees and costs of defense, incurred by the Owner when such costs, damages and expenses are the result of any error, omission or delay of the Consultant.

3.3 Consultant's Key Personnel

3.3.1 The Consultant's Key Personnel for the project are listed in Attachment D to this Agreement. No changes in the key personnel indicated in Attachment D shall be permitted except with the prior written consent of the Owner.

ARTICLE 4
BASIC SERVICES

4.1 Basic Services

4.1.1 The Consultant shall provide the Basic Services required for each work assignment as authorized and more specifically defined by each Amendment to this Agreement.
ARTICLE 5
ADDITIONAL SERVICES

5.1 Additional Services which may be provided by the Consultant or his Consultants, if authorized in advance by the Owner, pursuant to this Agreement are:

5.1.1 Making major revisions in drawings, plats, electronic files or other documents when such revisions are inconsistent with written approvals or instructions previously given by the Owner or are due to causes beyond the control and without the fault or negligence of the Consultant.

5.1.2 Preparing to serve or serving as an expert witness for the Owner in connection with arbitration or legal proceedings unless the subject matter of the proceedings includes matters arising out of or related to the Consultant's performance of service with respect to the Project.

ARTICLE 6
DURATION OF CONSULTANT'S SERVICES

6.1 Scheduling of Services

6.1.1 Attachment C to this Agreement is the format for Key Milestone Listing which defines the sequence and timing of the Consultant’s professional services. Key Milestone Listings will be established jointly by the Consultant and Owner for any work assignment authorized by Amendment to this Agreement. The Consultant shall schedule and perform his activities so as to meet each Milestone Date. No deviation by the Consultant from the Key Milestone Listing shall be allowed without prior written approval by the Owner.

6.1.2 Should the Owner determine that the Consultant is behind schedule, it may require the Consultant to expedite and accelerate its efforts, including providing additional manpower and/or overtime, as necessary, to perform its services in accordance with the Key Milestone Listing at no additional cost to the Owner.
ARTICLE 7
CONSULTANT'S COMPENSATION

7.1 Compensation for Basic Services

7.1.1 Compensation for Basic Services shall include all compensation due the Consultant from the Owner for all services under this Agreement except for Additional Services and Reimbursable Expenses.

7.2 Breakdown of Compensation for Basic Services

7.2.1 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 this Agreement.

7.3 Payment for Basic Services Rendered

7.3.1 Payment to the Consultant 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 Owner within 30 calendar days of receipt of an invoice which is in form and substance acceptable to the Owner. In the event the Owner finds any part or parts of all or any portion of an invoice presented by the Consultant not to be acceptable, it shall identify to the Consultant the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. No deductions shall be made from the Consultant's fees for basic services except in accordance with this Agreement or to reimburse the Owner for costs or expenses incurred or anticipated to be incurred for which the Consultant is liable.

7.4 Compensation for Additional Services

7.4.1 With respect to Additional Services authorized by the Owner in accordance with Article 5 or any Amendment to this Agreement, the Owner and the Consultant shall negotiate in good faith to reach agreement on a mutually agreeable fee for the additional services.

7.5 Reimbursable Expenses

7.5.1 Reimbursable expenses are in addition to the fees for Basic Services and Additional Services, and are for the following expenditures to the extent reasonable and actually incurred by the Consultant, his employees, or his consultants with respect to the Project:
7.5.2 Actual expenditures for postage, mileage, concrete or pre-cast aluminum monuments, reproductions, governmental fees, photography, and long distance telephone charges directly attributable to this Project.

7.5.3 The actual cost of reproduction of plans, plats excluding documents for exclusive use by the Consultant.

7.5.4 Vehicle mileage shall be reimbursed at the rate of $0.32 per mile for passenger vehicles and $0.50 per mile for survey vehicles.

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

7.6 Accounting Records

7.6.1 Accounting records of the Consultant's compensation for Additional Services and Reimbursable Expenses pertaining to the Project shall be maintained by the Consultant in accordance with generally accepted accounting practices and shall be available for inspection by the Owner or the Owner's representatives at mutually convenient times for a period of three (3) years after completion for each work assignment authorized by Amendment.

ARTICLE 8
RESPONSIBILITIES OF THE OWNER

8.1 Cooperation and Coordination

8.1.1 The Owner shall meet with the Consultant as necessary at mutually convenient times to provide pertinent information about each work assignment associated with the Project.

8.1.2 The Owner shall examine documents submitted by the Consultant for review and shall make reasonable efforts to promptly respond thereto.

8.1.3 The Owner's Director, Facilities Design & Construction shall act in the Owner's behalf and as its representative with respect to the Project and shall have the authority to render decisions and approve changes in the scope of the Project 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.

8.1.4 All information required of the Owner pursuant to this Article 8, shall be furnished at the Owner’s expense and, absent any negligence or failure to follow professional standards on the part of Consultant, the Consultant shall be entitled to rely upon the accuracy and completeness of such services, data, information, surveys and reports.
8.2  Permits and Approvals

8.2.1  The Owner shall secure and pay for all necessary right-of-entry permits and related charges required to enable the Consultant to have access to the project sites.

ARTICLE 9
INSURANCE

9.1  General Requirements

9.1.1  The Consultant shall purchase and maintain during the period of performance of this Agreement and for five years after completion of each work assignment authorized by Amendment insurance for protection from claims under workers' or workmen's compensation acts; Comprehensive General Liability Insurance covering claims arising out of or relating to bodily injury, including bodily injury, sickness, disease or death of any of the Consultant's employees or any other person and to real and personal property including loss of use resulting thereof; Comprehensive 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 and employees.

9.1.2  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.

9.2  Limits of Coverage

9.2.1  Minimum limits of insurance coverage shall be as follows:

<table>
<thead>
<tr>
<th>INSURANCE DESCRIPTION</th>
<th>MINIMUM REQUIRED COVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Worker's Compensation</td>
<td>Limits for Coverage A - Statutory State of NC</td>
</tr>
<tr>
<td>Coverage B - Employers Liability</td>
<td>$500,000 each accident and policy limit</td>
</tr>
<tr>
<td></td>
<td>and disease each employee</td>
</tr>
<tr>
<td>• Commercial General Liability</td>
<td>$1,000,000 Each Occurrence</td>
</tr>
<tr>
<td></td>
<td>$2,000,000 Aggregate</td>
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<tr>
<td>• Automobile Liability</td>
<td></td>
</tr>
<tr>
<td>Combined Single Limit</td>
<td>$500,000</td>
</tr>
<tr>
<td>• Professional Liability</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>
9.2.2 All insurance policies (with the exception of Worker's Compensation and Professional Liability) required under this Agreement shall name the Owner as an additional insured party for the insurance.

9.3 **Proof of Coverage**

9.3.1 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 Office Building, Room 900, 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.

9.4 **Indemnity**

9.4.1 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.

**ARTICLE 10**

**AMENDMENTS TO THE AGREEMENT**

10.1 **Changes in the Consultant's Basic Services**

10.1.1 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.

10.2 **Owner Changes**

10.2.1 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 provision contained therein that the Consultant believes significantly increases or decreases the Consultant's services with respect to the Amendment and request an adjustment in compensation with respect thereto. If the provision referenced in the Consultant’s written response to the Amendment significantly increases or decreases the Consultant's services and the written response is provided within the stipulated time period, the Consultant's compensation will be equitably adjusted.

ARTICLE 11
TERMINATION AND SUSPENSION

11.1 Termination for Convenience of the Owner

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

11.2 Other Termination

11.2.1 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.

11.3 Compensation After Termination

11.3.1 In the event of termination for the convenience of the Owner, the Consultant shall be paid that portion of its fees and expenses that it has earned to the date of termination, plus five percent (5%) of any unearned compensation for Basic Services which had been previously authorized by Amendment, less any costs or expenses incurred or anticipated to be unearned by the Owner due to errors or omissions of the Consultant.

11.3.2 In the event of termination by reason of a material breach of the Agreement by the Owner, the Consultant shall be entitled to the same compensation as it would have received had the Owner terminated the Agreement for convenience, and the Consultant expressly agrees that said compensation is fair and appropriate as liquidated damages for any and all costs and damages it might incur as a result of such termination.

11.3.3 In the event of termination by reason of a material breach of the Agreement by the Consultant, the Consultant shall be paid that portion of its 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 Owner due to errors or omissions of the Consultant or by reason of the Consultant's breach of this Agreement.

11.3.4 Should this Agreement be terminated, the Consultant as provided under Article 11, the Owner shall be granted, at no additional cost, ownership of all documents, drawings, plats and electronic data bases relating to the Project, including the ownership and use of all documents and other 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 reproducibles of all original drawings, documents, electronic data bases and materials. In the event of such termination, and should the Owner use such documents or data bases for completion of the Project, the Owner shall indemnify and hold the Consultant harmless from and against 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 documents and electronic data bases. The Owner agrees that the Consultant may retain one set of documents, drawings and electronic data bases for its records.

11.3.5 Should this Agreement be terminated, the Owner shall, nevertheless, have the right to require the Consultant to perform such additional effort as may be necessary to provide professionally certified and sealed drawings and to deliver to the Owner such certified and sealed drawings with respect to any work assignment, phase or element of the project, for which effort the Consultant shall be compensated in accordance with this Agreement.

11.4 Suspension

11.4.1 The Owner may order the Consultant in writing to suspend, delay or interrupt all or any part of its Services on the Project for the convenience of Owner.

11.4.2 In the event the Consultant believes that any suspension, delay or interruption of any or all of the Work on the Project, may require an extension of the duration of Basic Services or an increase in the level of staffing by the Consultant, he shall so notify the Owner and propose an amendment of the Key Milestone Listing for consideration of the Owner. Such amendment or extension shall be effective only upon the written approval of the Owner, which will not be withheld unreasonably. In the event the duration of Basic Services is extended or shortened or the level of staffing by the Consultant is increased or decreased, the Consultant's compensation for Basic Services may be equitably adjusted.

11.4.3 A suspension, delay or interruption of the Project shall not terminate this Agreement; provided, however, that if such suspension, delay or interruption causes a suspension of the Consultant's
services for a period exceeding ninety (90) days, the Consultant's compensation for Basic Services may be equitably adjusted. This adjustment shall not be unreasonably withheld by the Owner.

11.5 Waiver

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

**ARTICLE 12**

**ADDITIONAL PROVISIONS**

12.1 Confidentiality

12.1.1 The Consultant shall use his best efforts not to disclose or permit the disclosure of any confidential information relating to the Project, except to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this Agreement.

12.2 Limitation and Assignment

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

12.3 Governing Law

12.3.1 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.

12.4 Dispute Resolution

12.4.1 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.
12.5  **Extent of Agreement**

12.5.1 This Agreement represents the entire and integrated agreement between the Owner 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 the Owner and the Consultant.

12.6  **Severability**

12.6.1 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.

12.7  **Ownership of Documents**

12.7.1 All designs, drawings, plats, electronic data bases, field notes and other works developed in the performance of this contract shall become the property of the Owner and may be used on any other project without additional compensation to the Consultant. The use of the documents by the Owner 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 Owner or such person or entity.

12.8  **E-Verify**

12.8.1 To ensure compliance with the E-Verify requirements of the General Statutes of North Carolina, all 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 N.C.G.S. Chapter 64, Article 2 (N.C.G.S. 64-26(a)) relating to the E-Verify requirements.

12.9  **Iran Divestment**

12.9.1 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.
12.10 List of Attachments

12.10.1 The following Attachments are incorporated herein and made a part of this Agreement by reference:

Attachment A - Project Summary
Attachment B - Scope of Basic Services (Summary Only)
Attachment C - Key Milestone Listing (Format only)
Attachment D - Consultants Key Personnel and Hourly Rates Schedule

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.

ATTEST: MCKIM & CREED ENGINEERS, P.A.
5625 Dillard Road
Cary, NC 27511

By: ____________________________ By: ____________________________
Title: ___________________________ Title: ___________________________

SEAL
ATTEST: COUNTY OF WAKE
   c/o Facilities Design & Construction
   PO Box 550
   Raleigh, NC  27602

By: ______________________________  By: ______________________________
    Mark Forestieri
    Director, Facilities Design & Construction

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 is approved as to form.

__________________________
Wake County Attorney

The person responsible for monitoring the contract performance requirements is ____________________.

_____ Department Head Initials