

**AGREEMENT FOR TESTING AND INSPECTION SERVICES
FOR**

This Agreement, made and entered into this ____ day of _____, 2023, between the Owner, Guilford County Board of Education (“Owner”) and _____, (the “Testing and Inspection Consultant”), for the _____, hereinafter referred to as the Project. The Project is clearly described in the plans and specifications dated _____, prepared by _____ (the “Designer”) which have been reviewed by the Consultant.

WITNESSETH:

WHEREAS, the Testing and Inspection Consultant has submitted a Proposal dated _____ (included as Attachment A) to provide certain testing, inspection and quality assurance services to the Owner during the construction phase of the Project; and

WHEREAS, the Testing and Inspection Consultant has represented to the Owner that it is qualified and capable of providing such testing, inspection and quality assurance services in a competent and professional manner; and

NOW, THEREFORE, the Owner and Testing and Inspection Consultant, for and in consideration of the terms and provisions hereinafter set forth, do mutually agree as follows:

ARTICLE 1

TESTING AND INSPECTION CONSULTANT’S SERVICES AND RESPONSIBILITIES

1.1 The Testing and Inspection Consultant shall serve in the role of a quality assurance consultant to the Owner during the construction phase of the Project to guard the Owner against defects and deficiencies in the Work. In the course of providing such services, the Testing and Inspection Consultant shall continually cooperate, communicate, consult and coordinate with the Owner and the Designer in an effort to achieve the Owner’s objectives for quality control for the following items of work:

- Mass earthwork and rock excavation
- Excavating and backfilling for site utilities, driveways, parking areas, foundations and retaining walls
- Hot-mixed asphalt paving, stone base and sub-grade preparation
- Sub grade preparation and stone base for slab on grade
- Cast-in-place concrete (reinforced and non-reinforced)
- Masonry wall systems and materials
- Structural steel erection (welding & bolts)
- Steel decking
- Fireproofing of structural steel and steel decking
- Damp proofing and waterproofing
- Roofing systems, flashing and sheet metal
- Other items as may be requested by Owner from time to time

1.2 The Testing and Inspection Consultant shall perform all technical services under the general direction and supervision of a Registered Professional Engineer licensed in the State of North Carolina and in substantial accordance with the basic requirements of the appropriate Standards of The American Society for Testing and Materials, where applicable, or other standards referenced in the Project plans and specifications.

1.3 The Testing and Inspection Consultant agrees to use its best professional skill and judgment in the performance of its duties for the Project, to meet the standard of care for performing professional testing and inspection services in and around Guilford County and similar communities, and to proceed in an orderly fashion.

1.4 By executing this Agreement, the Testing and Inspection Consultant represents that it is: a) capable of providing the resources necessary to perform the services contemplated herein; b) knowledgeable of current laws, rules, regulations, which are applicable to the design and construction of the Project, including State, local and administrative regulations and approvals, orders and written interpretations by governing public authorities of such ordinances, requirements, codes, laws, rules, and regulations in effect at the time of commencement of services on the Project; and c) that all documents and recommendations shall be made in

accordance with and shall accurately meet, reflect and incorporate all such laws, rules and regulations.

1.5 The Testing and Inspection Consultant shall promptly submit formal reports of all tests, inspections and services performed indicating, where applicable, compliance or non-compliance with the Project specifications or other contract documents. Testing and Inspection Consultant observes any work or materials that do not conform to the Construction Documents, the Testing and Inspection Consultant shall immediately make an oral and written report to the Designer and Owner of any such defects, deficiencies, acts or omissions. Such reports shall be complete and factual, citing the tests performed, methods employed, values obtained, parts of the structure or Project area involved and shall be signed by the Professional Engineer assigned responsibility for supervising such tests or inspections.

1.6 The Testing and Inspection Consultant shall use testing machines or equipment which have been calibrated within a period not exceeding twelve (12) months from the time of use by devices of accuracy traceable to the National Bureau of Standards of the United States Department of Commerce, and, upon request, submit to Owner or his authorized representative documentation of such calibration.

1.7 With respect to the performance of the testing and inspection services, the Testing and Inspection Consultant shall take safety precautions required by federal, state and local laws, rules, regulations, statutes or ordinances.

1.8 The Testing and Inspection Consultant is not the general agent of the Owner, and shall have authority to act on behalf of the Owner only to the extent provided in this Agreement.

1.9 The Testing and Inspection Consultant shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences (except to the extent phasing is required in a contract or schedule) or procedures, or for safety precautions and programs in connection with the Work.

1.10 The Testing and Inspection Consultant (“Consultant”) shall be responsible for the Consultant’s negligent acts or omissions, including, but not limited to, instances where Consultant has actual knowledge through readily identifiable field observation documentation or test results and does not disclose such information to the Owner or Owner’s representative in a timely manner, including, but not limited to, the performance of Contractor’s work not in conformance with the approved contract documents and not in conformance with generally

accepted construction means, methods and techniques when such failures to conform were not open and generally recognizable to Owner or its representative when present on the site and in such an event Consultant's responsibility will be to the extent that the Owner is damaged by Consultant's negligent acts or omissions in performance of the services included in this agreement and such failure to disclose is determined not to be the responsibility of Contractor(s), Construction Manager at Risk or of any other persons or entities performing portions of the work.

Consultant shall not have control over or charge of and shall not be responsible for, acts or omissions of the Contractor(s), Construction Manager at Risk or of any other person or entities performing portions of the work. Consultant's obligation is to provide prompt notice through field observation documentation and test results pursuant to its scope of work herein of any performance of Contractor's work not in conformance with the approved contract documents where such performance was not open and generally recognizable to Owner or its representative when present on the site and in such an event Consultant's responsibility will be to the extent that the Owner is damaged by Consultant's negligent acts or omissions in performance of the services included in this agreement and such is determined not to be the responsibility of Contractor(s), Construction Manager at Risk or of any other persons or entities performing portions of the work.

ARTICLE 2

OWNER'S RESPONSIBILITIES

2.1 The Owner shall meet with the Testing and Inspection Consultant as necessary at mutually convenient times to provide information necessary to enable the Testing and Inspection Consultant to perform the services outlined herein.

2.2 The Owner shall designate a representative who shall be fully acquainted with the Scope of Work, shall render decisions promptly and furnish information expeditiously to the Testing and Inspection Consultant.

2.3 The Owner has retained _____, as the Project Designer to prepare construction documents, provide bidding phase services, construction inspection and construction administration for the Project. The Designer's services, duties and

responsibilities are described in the Standard Form of Agreement Between Owner and Designer dated _____. Pertinent parts of the Agreement will be furnished to the Testing and Inspection Consultant, if so requested.

2.4 The Owner shall furnish the Testing and Inspection Consultant with copies of construction documents.

2.5 If the Owner becomes aware of any fault or delay in the Project or any nonconformance which affects the Scope of Services covered by this Agreement, it shall give prompt written notice to the Testing and Inspection Consultant.

2.6 The Owner shall furnish required information and approvals as expeditiously as possible for orderly progress of the Work and shall make reasonable efforts to comply with the time conditions for such Owner activities as set out in the Construction Schedule.

ARTICLE 3

PAYMENTS AND COMPENSATION TO THE TESTING AND INSPECTION CONSULTANT

3.1 Payments on Account of Basic Services. Subject to the limitations hereinafter set forth, the Owner shall pay the Testing and Inspection Consultant during the term of this Contract on an hourly and unit price basis for all personnel services reasonably required for accomplishment of the work to be performed under this Contract, which hourly rates shall cover all salaries, expenses, overhead and professional fee associated with the services rendered under the terms of this Contract. The Testing and Inspection Consultant's hourly fee schedule for its personnel and estimated number of man hours to provide the services required by the Contract are listed in Attachment A.

3.2 It is mutually agreed that the maximum total compensation to be paid to the Testing and Inspection consultant for all Services rendered under the terms of this contract shall not exceed the sum of _____ without the prior written approval of the Owner.

3.3 The Testing and Inspection Consultant shall submit to the Owner by the fifth (5th) day of each month an itemized invoice for services provided under this Contract during the previous calendar month. Such invoices shall provide an itemization of the dates on which work

was performed by each staff member and the number of hours expended or individual tests performed. The Testing and Inspection Consultant shall provide a separate invoice for any re-testing services provided pursuant to Article 4.3. The Owner shall make payment for the amount he determines is due the Testing and Inspection Consultant within thirty (30) days after approval of each invoice. The final invoice shall be marked "FINAL", and there shall be no further invoices received by the Owner unless additional services are requested in writing by the Owner. The Testing and Inspection Consultant's acceptance of payment pursuant to such final invoice shall constitute a full release of the Owner for any and all payments due or claimed to be due the Testing and Inspection Consultant under this Agreement. Notwithstanding the above, it is understood and agreed that at no time shall the aggregate of payments to the Testing and Inspection Consultant for Services exceed the maximum compensation provided for by this Agreement unless otherwise agreed in writing by both parties.

ARTICLE 4

ADDITIONAL SERVICES

4.1 The Owner, without invalidating this Contract, may authorize the Testing and Inspection Consultant to provide Additional Services over, above and beyond the Basic Services described in Attachment A. Such authorization must be by written Amendment to this Contract, executed by both parties. Additional services shall be provided by the Testing and Inspection Consultant at the hourly rates and unit prices included in Attachment A.

4.2 Payments on account of authorized Additional Services shall be made monthly, by the Owner, following the submission procedures described in Article 3.3 hereof.

4.3 Any re-testing or re-inspection required during the course of the Project shall not be considered Additional Services. Notwithstanding the foregoing, however, re-testing and re-inspection services shall be performed only with written authorization after forty-eight (48) hours written notice to Owner. The parties acknowledge that in order to expedite any required re-testing or re-inspection, such notice and authorization initially may be accomplished through electronic mail or facsimile, provided, however, that the parties later confirm the prior electronic mail or facsimile communication through signed written notice and authorization.

ARTICLE 5

INSURANCE

5.1 General Requirements. The Testing and Inspection Consultant shall purchase and maintain insurance with coverage specific to its work on this Project for protection from claims under workers' or workmen's compensation acts; claims resulting from negligent acts or omissions for damages because of bodily injury, including personal injury, sickness, disease or death of any of the Testing and Inspection Consultant's employees or any other person; claims for damages because of injury to or destruction of personal and / or real property including loss of use resulting therefrom; and claims arising out of the performance of this Agreement and caused by negligent acts or omissions for which the Testing and Inspection Consultant is legally liable. Minimum limits of coverage for its work on the Project shall be:

Insurance Description	Minimum Required Coverage
a. Worker's Compensation	Statutory
b. Employer's Liability	
Each Accident	\$ 100,000
Disease – Each Employee	\$ 100,000
Disease – Policy Limit	\$ 300,000
c. Public Liability	Combined, Single Limit
Bodily Injury and Property Damage	\$1,000,000
Each Occurrence / Aggregate	\$1,000,000
d. Automobile Liability	Combined Single Limit
Each Accident	\$1,000,000
e. Professional Liability	\$1,000,000
Each Claim / Aggregate	\$1,000,000

Evidence of such insurance shall be furnished to the Owner, and the Owner shall receive thirty (30) days prior written notice of any cancellation, non-renewal or reduction of coverage of any of the policies. Upon notice of such cancellation, non-renewal or reduction, the Testing and Inspection Consultant shall procure substitute insurance so as to assure the Owner that the minimum limits of coverage are maintained continuously throughout the period of this Agreement and as otherwise required by Article 5.4 herein.

5.2 The Testing and Inspection Consultant shall deliver to the Owner a Certificate of Insurance of its Professional Liability coverage annually, so long as it is required to maintain such coverage pursuant to this Agreement.

5.3 The Owner shall be named as an additional named insured on all policies except the Professional Liability policy and the Workers' or Workmen's Compensation policy.

5.4 The Testing and Inspection Consultant shall maintain in force during the performance of this Agreement and for three (3) years after final completion of the Project, the Professional Liability coverage referenced above.

5.5 The Owner shall be under no obligation to review any Certificates of Insurance provided by the Testing and Inspection Consultant or to check or verify the Testing and Inspection Consultant's compliance with any or all requirements regarding insurance imposed by the Contract Documents. The Testing and Inspection Consultant is fully liable for the amounts and types of insurance required herein and is not excused should any policy or Certificate of Insurance provided by the Testing and Inspection Consultant not comply with any or all requirements regarding insurance imposed by the Contract Documents.

ARTICLE 6

INDEMNITY

6.1 Notwithstanding anything to the contrary contained herein, the Testing and Inspection Consultant shall indemnify and hold harmless the Owner and its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, to the extent arising out of or resulting from (1) the Testing and Inspection Consultant's performance or failure to perform its obligations under this Agreement and (2) any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of personal and/or real property including the loss of use resulting therefrom and caused by any negligent act or omission of the Testing and Inspection Consultant, anyone directly or indirectly employed by the Testing and Inspection Consultant or anyone for whose acts the Testing and Inspection 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 Agreement.

6.2 Except as otherwise set forth in this Agreement, the Testing and Inspection 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 Testing and Inspection Consultant for the acts or failures to act by the Designer, Contractor or Construction Manager at Risk. Owner shall be responsible for the acts or failures to act of Owner's Consultants only to the extent the Testing and Inspection Consultant shall (a) give Owner written notice thereof and make demand that such acts or failures to act be cured, giving specifics required, and (b) Owner shall fail to cause its consultants to remedy such acts or failures to act within twenty (20) days of receipt of such written notice.

ARTICLE 7

AMENDMENTS TO THE CONTRACT

7.1 Changes in the Basic Services and entitlement to additional compensation or a change in duration of this Contract shall be made by a written Amendment to this Contract executed by the Owner and the Testing and Inspection Consultant. The Testing and Inspection 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 Testing and Inspection Consultant to proceed, whichever is earlier.

ARTICLE 8

TERMINATION AND SUSPENSION

8.1 If the Owner fails to make payments to the Testing and Inspection Consultant in accordance with this Agreement and such failure continues without cure for a period of thirty (30) days after written notice of such failure, such failure shall be considered substantial nonperformance and cause for termination or, at the Testing and Inspection Consultant's option, cause for suspension of performance of services under this Agreement. The Testing and Inspection Consultant shall give fifteen (15) days' written notice to the Owner before terminating or suspending services. Notwithstanding the foregoing, failure of Owner to make payments

claimed by the Testing and Inspection Consultant shall not constitute a breach of this Agreement if the Owner disputes the Testing and Inspection Consultant's claim for compensation, and the Testing and Inspection Consultant shall continue to perform as required hereunder until resolution of such dispute without waiver of any claims.

8.2 Owner may suspend further performance of this Agreement for funding or other consideration at Owner's sole election. In the event that Owner suspends Testing and Inspection Consultant's performance under this section, Owner shall pay for all work performed to date on a percentage completion basis. In the event such suspension continues for a period exceeding 180 days, and Owner subsequently elects to proceed, an equitable adjustment shall be made to Testing and Inspection Consultant's fee but only to the extent that Testing and Inspection Consultant incurs reasonable, direct, out-of-pocket expenses which it would otherwise not have occurred but for the suspension. Lost profit or extended overhead shall not be considered.

8.3 If the Owner suspends the Project for more than 180 cumulative days for reasons other than the fault of the Testing and Inspection Consultant, the Testing and Inspection Consultant may terminate this Agreement by giving not less than seven (7) days' written notice.

8.4 Termination for Convenience.

8.4.1 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Testing and Inspection Consultant for the Owner's convenience and without cause.

8.4.2 In the event of a termination for convenience of the Owner, the Testing and Inspection Consultant's sole and exclusive right and remedy is to be paid for all work performed through the date of termination and reimbursement of all reasonable out-of-pocket costs paid to third parties as a result of the termination. The Testing and Inspection Consultant shall not be entitled to be paid any amount as profit for unperformed services or consideration for the termination of convenience by the Owner.

8.5 Upon the appointment of a receiver for the Testing and Inspection Consultant, or if the Testing and Inspection Consultant makes a general assignment for the benefit of creditors, the Owner may terminate this Agreement, without prejudice to any right or remedy otherwise available to the Owner, upon giving three (3) days written notice to the Testing and Inspection Consultant. If an order for relief is entered under the bankruptcy code with respect to the Testing and Inspection Consultant, the Owner may terminate this Agreement by giving three (3) days

written notice to the Testing and Inspection Consultant unless the Testing and Inspection Consultant or the trustee: (a) promptly cures all breaches; (b) provides adequate assurances of future performance; Testing and Inspection Consultant compensates the Owner for actual pecuniary loss resulting from such breaches; and (d) assumes the obligations of the Testing and Inspection Consultant within the statutory time limits.

8.6 If the Testing and Inspection Consultant persistently or repeatedly refuses or fails, except in cases for which an extension of time is provided, to supply sufficient properly skilled staff or proper materials, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority jurisdiction, or otherwise substantially violates or breaches any term or provision of this Agreement, then the Owner may, without prejudice to any right or remedy otherwise available to the Owner, and after giving the Testing and Inspection Consultant seven (7) days written notice, terminate this Agreement.

8.7 Upon termination of this Agreement by the Owner under Articles 8.5 and 8.6, the Owner shall be entitled to furnish or have furnished the Services to be performed hereunder by the Testing and Inspection Consultant by whatever method the Owner may deem expedient. Also, in such cases, the Testing and Inspection Consultant shall not be entitled to receive any further payment until completion of the Work. The compensation due to the Testing and Inspection Consultant under this Agreement shall be based on the services completed by the Testing and Inspection Consultant prior to termination. Provided, however, that if the costs and expenses incurred by Owner exceed the unpaid balance of this Contract, no further payment shall be due Testing and Inspection Consultant.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 This Agreement shall be governed by the laws of the State of North Carolina.

9.2 Time is of the essence for the inspection services, testing services, observation services and other services provided pursuant to this Agreement.

9.3 The Owner and Testing and Inspection Consultant, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Owner and Testing and Inspection Consultant shall assign this Agreement without the written consent of the other. The Owner and Testing and Inspection Consultant shall not, in

connection with any such assignment by the Owner, be required to execute any documents that in any way might, in the judgment of the Owner and Testing and Inspection Consultant, increase the Owner and Testing and Inspection Consultant's contractual or legal obligations from risk, or the availability or cost of its professional or general liability insurance.

9.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Owner and Testing and Inspection Consultant.

9.5 This Agreement constitutes the entire agreement between the parties and all actions preceding this Agreement are superseded by this Agreement. This Agreement may be amended only upon written mutual consent of both parties.

9.6 The payment of any sum to Testing and Inspection Consultant shall not constitute a waiver of any right or remedy that exists under the law and Owner specifically reserves all rights and remedies, including specifically the right to claim that Testing and Inspection Consultant breached this Agreement.

9.7 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.

9.8 If any one or more provisions in this Agreement are void, unenforceable, illegal or invalid for any reason, the remainder of the Agreement shall remain in full force and effect as if the void, unenforceable, illegal or invalid provision had not been herein contained.

9.9 The headings or captions of this Agreement are for information only and should not control or otherwise affect the information set forth herein or the interpretation thereof.

9.10 Unless notification is otherwise given in writing, Owner's representative shall be Julius Monk.

9.11 All notices shall be sent to the parties at the following addresses:

Owner
Guilford County Schools
617 West Market Street
Greensboro, NC 27401
ATTN: F. Gene Sides, Jr.

Testing and Inspection Consultant

ATTN: _____

9.12 List of Attachments

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

Attachment A – Testing and Inspection Consultant’s Proposal dated Month Day,
Year

IN WITNESS WHERE OF, 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.

_____	_____
OWNER (Signature)	CONSULTANT (Signature)
_____	_____
<i>(Printed name and title)</i>	<i>(Printed name and title)</i>

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