

Exhibit A

STATE OF SOUTH CAROLINA )
) AGREEMENT FOR
) PROFESSIONAL SERVICES
COUNTY OF YORK )

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into as of the latest date of execution set forth on the signature page hereto (the "Effective Date"), by and between CITY OF ROCK HILL, a South Carolina municipal corporation ("City"), whose address is P.O. Box 11706, 155 Johnston Street, Rock Hill, South Carolina 29731-1706, Facsimile: (803) 329-7007, Attention: City Manager, and \_\_\_\_\_, a \_\_\_\_\_ ("Company"), whose address is \_\_\_\_\_, Facsimile: \_\_\_\_\_, Attention: \_\_\_\_\_ (City and Company are hereinafter collectively referred to as the "Parties").

WHEREAS, City has need of professional services from Company as such services outlined in PURXXX (Project Name) and are described in more detail on Exhibit A attached hereto and incorporated herein by this reference (collectively, "Services");

WHEREAS, Company wishes to provide the Services to City in accordance with the terms set forth on Exhibit A hereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and the foregoing recitals, which are incorporated herein by this reference, the Parties hereby agree as follows:

1. Provision of Services. Company shall provide the Services in accordance with the terms and timelines more fully set forth in Exhibit A hereto. Each particular task set forth in Exhibit A shall not be deemed completed until approved by City. Company shall, at its sole cost, take necessary steps to modify the work product constituting the Services to ensure satisfaction by City. Company acknowledges that the Services shall not be complete until City is satisfied with the results of the Services. All final work products resulting from the Services must be in form and content satisfactory to City. Time is of the essence with respect to Company's completion of the Services.

2. Term. This Agreement shall terminate upon completion of the Services in accordance with the timelines set forth in Exhibit A hereto, unless terminated earlier as provided herein. If no deadline for completion of the Services is set forth on Exhibit A, Company shall complete the Services in accordance with this Agreement no later than \_\_\_\_\_.

3. Payment. Subject to the terms of this Agreement, City shall pay Company up to an amount not to exceed \$\_\_\_\_\_ for the Services as set forth on the attached Exhibit C (collectively, "Fees"). The Fees includes all of Company's fees, costs

and expenses in performing the Services, including, without limitation, fees, travel expenses, overhead, manpower, telephone, facsimile, computer copy, and delivery costs and charges. The Fees will be invoiced on a monthly basis by Company for Services performed as of the date of the invoice. City agrees to pay the Fees within 30 days of receipt of each monthly invoice, subject to the terms of this Agreement. Notwithstanding the foregoing, (i) the total amount of Fees to be paid by City will not exceed \$\_\_\_\_\_, unless mutually agreed to in writing by the Parties, and (ii) City shall only be responsible for paying for those Services as are rendered promptly, properly and completely in accordance with all of the terms and conditions of this Agreement. Prior to final payment of the Fees by the City, the Company shall deliver or otherwise make available to the City all documents, data (including electronic data in its original form), drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or created by the Company or any third party acting by or under the direction of the Company in performing the Services under this Agreement, whether completed or in process. After receipt of such information, the City shall make final payment for the Fees.

4. **Independent Contractor Status.** Company is an independent contractor of City. Nothing in this Agreement shall be deemed to place the Parties in the relationship of employer/employee, partners, or joint venturers. No Party shall have the right to obligate or bind the other in any manner. Company agrees and acknowledges that it will not hold itself out as an authorized agent with the power to bind City in any manner. Each Party shall only be responsible for any withholding taxes, payroll taxes, disability insurance payments, unemployment taxes, or other similar taxes or charges with respect to its activities in relation to performance of its obligations under this Agreement.

5. **No Subcontractors.** Company shall not delegate, subcontract or assign all or any portion of the Services to any third party (collectively, "Contractors"), other than those third parties listed on Exhibit E attached hereto and incorporated by this reference, without the express prior written consent of City. Company shall cause any Contractor to comply with all of the terms of this Agreement.

6. **Assignment and Assumption; Change in Control.** Company shall not sell, convey, assign, transfer, hypothecate, encumber or permit or suffer any encumbrance of all or any portion of its interest in this Agreement unless approved in writing in advance by City. Any attempt to so transfer or encumber any such interest in contravention hereof shall be void. In the event of a change in "Control" of Company (as defined below), City shall have the option of terminating this Agreement by written notice to Company. Company shall notify City within 10 days of the occurrence of a change in Control. As used in this Agreement, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be, fifty-one percent (51%) or more of the equity interests, value or voting power in a Company or (ii) the power to direct or cause the direction of the management and policies of a Company whether through the ownership of voting securities, by contract or otherwise.

7. **Termination; Provision of Documents to City.** In addition to its other rights under this Agreement, City may terminate this Agreement if City determines, in its sole discretion, that the Services are no longer needed or desired by City, by providing Company ten (10) days advance notice of such termination and paying Company for the applicable portion of the Fees due to Company for work completed as of the date of termination in accordance with this Agreement; provided Company shall not be entitled to such payment if City terminates this Agreement pursuant to a default by Company as provided in Section 9 of this Agreement. In addition, upon receipt of a termination notice from the City, but prior to final payment by the City, the Company shall: (1) promptly discontinue all Services affected (unless a termination notice from the City directs otherwise); and (2) deliver or otherwise make available to the City all documents, data (including electronic data in its original form), drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or created by the Company or any third party acting by or under the direction of the Company in performing the Services under this Agreement, whether completed or in process. After receipt of such information, the City shall make final payment for the applicable portion of the Fees due to Company for work completed as of the date of termination in accordance with this Agreement.

8. **Representations and Warranties of Company.** Company represents and warrants to City as follows:

(a) In providing the Services, Company and its Contractors shall utilize the care and skill ordinarily used by members of Company's or a Contractor's profession practicing under similar circumstances at the same time and in the same locality. All Services (including, without limitation, all work products resulting from the Services) shall be performed in a good and workmanlike manner, shall be fit for the purposes for which they are intended, and shall be free from all defects in design and/or construction, as applicable.

(b) All employees provided by Company or a Contractor to City shall have the qualifications, skills and experience necessary to perform his or her job in accordance with the requirements of this Agreement. City may request the removal of any Contractor or an employee of Company from the project for good cause.

(c) Company is a \_\_\_\_\_ validly existing and in good standing under the laws of the State of \_\_\_\_\_, and is duly qualified to transact business in the State of South Carolina to the extent required by law. Each Contractor, if an entity, shall be validly existing and in good standing under the laws of the jurisdiction of its organization, and shall be duly qualified to transact business in the State of South Carolina to the extent required by law.

(d) The execution, delivery, and performance of this Agreement have been duly authorized by Company by all appropriate Company action. Company shall deliver evidence of such authorization to City upon request.

(e) No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Company to enter into and perform its obligations under this Agreement.

(f) Company shall comply with, and Company shall cause its Contractors to comply with, all applicable federal, state and local laws and regulations applicable to the Services or Company. Company and its Contractors shall obtain all applicable permits and licenses, including a City of Rock Hill Business License a copy of which shall be attached hereto as Exhibit F.

(g) The performance of this Agreement by Company will not violate any contracts or agreements with third parties or any third party rights, including but not limited to non-compete agreements, non-disclosure agreements, patents, trademarks or intellectual property rights.

9. **Default**. The following events shall constitute a default of this Agreement:

(a) Failure of Company or its Contractors to perform the Services at any time in accordance with this Agreement;

(b) Defects in materials and/or documents provided by Company or its Contractors pursuant to this Agreement which are recurring or substantial, in the sole opinion of City;

(c) Defects or deficiencies in the provision of the Services which are recurring or substantial in nature, in the sole opinion of City;

(d) Failure of Company, upon receiving written notice from City, to promptly remedy any defects in materials or workmanship which are provided by Company or its Contractors pursuant to this Agreement;

(e) Failure by Company, within five (5) days upon receiving written notice from City, to correct any defects or deficiencies in the provision of the Services by Company or its Contractors pursuant to this Agreement;

(f) Any affirmative act of insolvency by Company, or the filing by Company of any petition under any bankruptcy, reorganization, insolvency, or moratorium law, or any law for the relief of, or relating to, debtors;

(g) Any assignment by Company for the benefit of creditors;

(h) The filing of any involuntary petition under any bankruptcy statute against Company; or

(i) The nonperformance by Company or its Contractors of any other term, covenant, or condition of this Agreement which is not cured within five (5) days after written notice thereof from City to Company.

10. **Remedies on Default.** Company's sole remedy against City for any City breach or default hereunder shall be limited to the Company bringing an action against the City for the amount due and owing to the Company for Services completed by Company as provided under this Agreement. However, in no event shall City be liable to Company for any consequential damages, incidental damages or lost profits.

Except as otherwise provided by this Agreement, City may without notice to or demand on Company, on occurrence of any of the foregoing events of default:

(a) Terminate this Agreement, such termination to be effective five days following written notice by City to Company of City's election to terminate this Agreement;

(b) Sue for and collect all sums or amounts due City as a result of defaults of this Agreement by Company or its Contractors, including incidental damages resulting therefrom;

(c) Exercise any remedy provided for by this Agreement; and/or

(d) Exercise any applicable legal or equitable remedy.

11. **Attorneys' Fees.** If any Company defaults on its obligations under this Agreement, the City shall be entitled to recover from Company the costs and attorneys' fees incurred in the enforcement or interpretation of any provision of this Agreement.

12. **Indemnification.** Company shall indemnify and hold City harmless from and against all liability, loss, damages or injury, and all costs and expenses (including attorneys' fees and costs of any suit related thereto), suffered or incurred by City, to the extent arising from Company's or its Contractors' negligent performance of the Services under this Agreement, intentional misconduct, negligent acts or omissions, or breach of any term, covenant, representation or warranty of this Agreement.

13. **Insurance.** During the term of this Agreement, Company shall maintain insurances as required and set forth on the attached Exhibit D which is attached hereto and incorporated by this reference. Company's certificates of insurance are attached hereto as part of Exhibit D.

Any insurance provider of Company shall be admitted and authorized to do business in the State of South Carolina and shall carry a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A" Overall and a Financial Size Category of "X" (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and

conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable. Company shall not self-insure.

Company shall cause each of its Contractors to maintain the insurance coverages set forth in this section.

14. **City's Condition Precedent; Non-Appropriation of Funds.** This Agreement shall be subject annually to the availability and appropriation of funds by City Council. If City Council does not appropriate the funding needed by City to make payments under this Agreement for a given fiscal year, City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, City will promptly notify Company of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by City, which is attributable to non-appropriation of funds, shall constitute a breach of or default under this Agreement.

15. **Ownership of Information.** All of the reports, information, plans, sketches and data prepared or assembled by City and delivered to Company or its Contractors pursuant to the terms of this Agreement are considered "Confidential Information" as defined in Paragraph 16 of this Agreement. Company agrees that such Confidential Information shall not be made available to any individual, organization, corporate entity or other third party, other than its Contractors or employees as provided below in Paragraph 16, or used in any way to further the interest of Company or any client of Company, or any third party, without the prior written permission of City. Subject to the provisions of this Paragraph, all of the reports, information, plans, sketches and data prepared or assembled by City pursuant to the terms of this Agreement are instruments of service in respect to the Services, and City shall retain the sole ownership and property interest therein. All of the reports, information, plans, sketches, data and regulations prepared or assembled by Company or its Contractors pursuant to the terms of this Agreement shall become the property of City immediately upon delivery thereof to City. Company assigns to City all materials prepared, developed or created pursuant to this Agreement including, but not limited to the right to: (i) reproduce the work; and (ii) prepare derivative works.

16. **Nondisclosure of Confidential Information.** Company hereby acknowledges that it may be furnished with, or may otherwise receive or have access to, information or materials which relate to past, present or future products, software, research and development, inventions, processes, techniques, designs, or technical information and data of City, including all information protected by the Trade Secret Act, S.C. Code Ann § 37-8-10 et seq., as well as any information which City identifies to a Company in writing as Confidential ("Confidential Information"). Company shall preserve in confidence and protect from disclosure all Confidential Information, whether disclosed before or after the Effective Date of this Agreement, unless (1) the Confidential Information is already in the public domain; (2) City consents to the disclosure of such Confidential Information in writing; or (3) Company discloses the Confidential Information in accordance with the terms of any written agreement between City and

Company, or in accordance with the order of any competent court or government agency; provided, however, that prior to such disclosure, Company shall inform City of the order and permit City to seek a protective order or other appropriate relief.

If Company is advised by the City that this is a confidential project, Company agrees to keep and maintain confidentiality regarding its undertaking of this project. Company shall coordinate its services only through the City representative(s) designated by City from time to time, and shall provide information regarding this project only to those persons approved by City, including, without limitation, Contractors, and with whom Company has a binding and enforceable non-disclosure agreement. Company shall not share any information regarding this project, including, without limitation, Confidential Information, with any third party unless Company and each such third party (including any Contractors) have entered into a legally enforceable and binding non-disclosure agreement. Notwithstanding the foregoing, Company may, without City's prior consent, disclose Confidential Information to its employees who have a need to know such information, who are informed of the confidential nature of such information, and who have legally enforceable nondisclosure obligations to Company.

17. **Caption Sections.** Paragraphs, titles, headings and captions contained in this Agreement are inserted only for convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

18. **Waiver and Severability.** If any part of this Agreement, for any reason, is declared invalid or void, such declaration shall not affect the remaining portions of the Agreement which shall remain in full force and effect as if this Agreement had been executed with the invalid portion eliminated. However, if any provision which has been declared invalid or unenforceable shall be a provision that would prevent the continued and complete performance of this Agreement by Company and City, then Company and City hereby agree that they will renegotiate that term or provision in order to otherwise render the Agreement valid and enforceable. If Company or City decides not to enforce a provision of this Agreement, such decision in favor of non-enforcement shall not constitute a complete and full waiver of the right of that person or entity in the future to enforce that provision of the Agreement in the event of any subsequent breach or failure to comply in full with that provision of the Agreement.

19. **Governing Law.** Except to the extent that this Agreement may be governed by any federal law, including federal bankruptcy law, this Agreement shall be governed by, construed and interpreted under, and enforced exclusively in accordance with the laws of the state of South Carolina, and the courts in the state of South Carolina shall have jurisdiction with respect to any dispute arising hereunder.

20. **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed received when delivered by hand, mailed by certified or registered mail, postage prepaid, or mailed by overnight mail, or sent by facsimile with confirmation of receipt, and addressed to the Parties at their respective

addresses set forth on the first page of this Agreement. Notices may be delivered to (or given on behalf of the applicable Party by) each Party's respective attorney.

21. **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Electronic, PDF and facsimile signatures shall be deemed to be original signatures. Any such counterpart may be signed by one or more of City and Company as long as each of them has signed one or more of such counterparts.”

22. **No Construction Against Drafter.** City and Company hereby acknowledge that they have reviewed this Agreement and have been afforded an opportunity to consult with an attorney. City and Company concur that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of any provision of this Agreement.

23. **Covenant to Sign Other Documents.** City and Company acknowledge that consummation of the transaction contemplated hereby may require the execution prior hereto, contemporaneously herewith and/or sometime hereafter of certain documents in addition to this Agreement which each of them, by their signatures herein below, covenants, represents and warrants that they will promptly do, provided such documents (and the other parties thereto, as applicable), are reasonably satisfactory to Company and City.

24. **Modification and Amendment.** No change, amendment or modification of this Agreement shall be made unless agreed to in writing by Company and City.

25. **Warranty of Authority.** The terms of this Agreement are contractual and not a mere recital, and all signatory parties hereto represent and warrant that they have the full and complete authority to execute and enter into this Agreement.

26. **Equal Opportunity Employer; Compliance with Federal, State and Local Law.** Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. Company further agrees that it will at all times during the term of this Agreement be in compliance with, and Company shall cause its Contractors to comply with, all applicable federal, state and/or local laws regarding employment practices. Such laws include, but shall not be limited to, workers' compensation, Title 7 of the Civil Rights Act of 1964 (Title 7), the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the provision of the Services. Specifically, Company asserts that it has adopted and will maintain and enforce a policy of non-discrimination on the basis of race, color, religion, sex, age, national origin, or disability. Company certifies to City that it will comply with the provisions of Title 8, Chapter 14 of the South Carolina Code of Laws regarding the employment of unauthorized aliens. Company agree to provide to City, upon request, any documentation regarding (i) the applicability of Title 8, Chapter 14 of



the South Carolina Code of Laws to the Company or any subcontractor or sub-subcontractor; or (ii) the compliance with Title 8, Chapter 14 of the South Carolina Code of Laws to the Company or any subcontractor or sub-subcontractor.

27. **Terms of this Agreement Controlling.** In the event of any inconsistency or conflict between any term, covenant or condition of this Agreement and any other document pertaining to this Agreement, including but not limited to any exhibits, RFPs, responses to RFPs, bids, letters, memoranda, correspondence or any amendments or modifications thereof (collectively, “Documents”), all terms, covenants and conditions of this Agreement shall in all respects be controlling. Any contrary term, covenant or condition in the Documents, or any amendment or modification thereof, is hereby superseded by the applicable provision of this Agreement. The term “Agreement” as used in this Agreement shall include this Agreement and the exhibits and schedules attached hereto including, without limitation, Exhibits A-F.

28. **Survival.** All of Company’s representations, warranties and covenants under this Agreement shall survive completion of performance of the Services and/or termination of this Agreement.

29. **Entire Agreement.** Except as otherwise provided herein, this Agreement shall constitute the entire and full agreement and understanding between Company and City, and shall supersede all prior and/or contemporaneous agreements, understandings and discussions between them, written and/or oral, all of which shall be deemed merged into this Agreement and shall be of no further force and effect.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Company and City have executed and delivered this Agreement as of the Effective Date.

Witnesses:

**CITY OF ROCK HILL**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

Witnesses:

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

**Exhibit A - Architect's/Engineer's Services and Schedule**

**Exhibit B – Owner’s Responsibilities**

**Exhibit C – Consultant Fee Structure for Services and Reimbursable Expenses**

## Exhibit D – Insurance

A. The types of liability insurance are as follows:

1. By Architect/Engineer

<u>Type of Insurance</u>	<u>Limits of Liability</u>
a. Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
b. Automobile Liability	\$1,000,000 per occurrence
c. Worker’s Compensation	Statutory
d. Employer’s Liability	\$1,000,000 per occurrence
e. Environmental Pollution Liability	\$1,000,000 per claim made or per occurrence
f. Professional Liability	\$1,000,000 per clam made or per occurrence

2. The commercial general liability insurance required above will include contractual liability coverage, and the commercial general liability and automobile liability insurance policies and shall name the City as an additional insured.
3. A signed Certificate or Certificates of Insurance shall be attached as appendices to this Exhibit. Such Certificate(s) of Insurance shall provide for thirty (30) days written notice to the City prior to cancellation or material modification of any insurance referred to herein.

**Exhibit E – Architect’s/Engineer’s Sub-Consultants**

Please provide the following information about sub-consultants to be utilized by the Architect/Engineer for this project.

- Discipline
  - Contact Name
  - Company
  - Address Line 1
  - Address Line 2
  - Telephone Number
  - Email address

**Discipline**

**Consultant Contact Information**

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**Exhibit F – City Business License**