

EXHIBIT 'A'

AGREEMENT

between

ENGINEER

and

HACC, CENTRAL PENNSYLVANIA'S COMMUNITY COLLEGE

This Agreement dated _____, between HACC, Central Pennsylvania's Community College (HACC), whose primary address is One HACC Drive, Harrisburg, PA 17110 and _____ (Engineer), whose address is _____, is made and entered into for the Engineer to provide services as stipulated below on the Terms and Conditions set forth.

- 1) **Facilities Covered:** HACC's location(s) covered under this Agreement is noted by checkmark:
 - a) Harrisburg Campus, One HACC Drive, Harrisburg, PA 17110
 - b) Lancaster Campus, 1641 Old Philadelphia Pike, Lancaster, PA 17602
 - c) Lebanon Campus, 735 Cumberland Street, Lebanon, PA 17042
 - d) **Gettysburg Campus, 731 Old Harrisburg Pike, Gettysburg, PA 17325**
 - e) York Campus, 2010 Pennsylvania Avenue, York, PA 17404
- 2) **Statement of Work:** The Engineer hereby agrees to furnish and provide appropriate supervision, labor, material, tools and all other items necessary to perform the services herein specified and described in Exhibit "A" to the Agreement.

- 3) **Purchase Order:** All authorizations for the Engineer's Services will be issued by HACC to the Engineer in the form of a Purchase Order which will incorporate the Agreement by reference.

All Purchase Orders issued shall be subject to the Terms and Conditions set forth in this Agreement and any special Terms and Conditions which may be included in a Purchase Order; in the event any general terms and conditions provided with a Purchase Order conflict with any Terms and Conditions in the Agreement, the Terms and Conditions of this Agreement shall prevail.

- 4) **Cost of the Work:** Engineer agrees to perform all work as outlined in the attached Exhibit 'A' – Scope of work for the amount of WORDS (\$_____).

HACC, Central Pennsylvania's Community College reserves the option to renew this contract on a year to year basis, up to an additional three years.

- 5) **Payment Terms and Changes:** The payment for services to be provided by the Engineer

Pay Applications are to be addressed to HACC and submitted to Eastern pcm, LLC on the 25th of the month, estimated through the 30th. Payment will be made by the 30th of the following month.

- 6) **Indemnification:** The Engineer shall hold HACC, Central Pennsylvania's Community College, JMZ Architects & Planners, P.C. and Eastern pcm, LLC harmless from any liability, costs, or penalties, including reasonable attorney's fees, in any way resulting from the performance of the services related to this Contract from the conduct or actions of any persons provided by the Engineer for performance of this agreement and will indemnify the College for any costs of defense paid because of actions of the Engineer or its employees in the performance of this agreement.

7) **Construction Manager/Owner's Representative:** Engineer acknowledges that Eastern pcm, LLC is the Construction Manager/Owner's Representative for the project. Contact information is as follows:

Eastern pcm, LLC
212 Locust Street, Suite 604
Harrisburg, PA 17101
Phone: (717) 233-3816
Fax: (717) 233-1666

8) **Insurance:** The Engineer shall provide general liability and other insurance as follows:

1. Workers' Compensation:

- (a) State: **Pennsylvania** Statutory
- (b) Applicable Federal (e.g., Longshoremen, Harbor Work, Work at or outside U.S. Boundaries): Statutory
- (c) Employer's Liability: Statutory
- (d) Benefits Required by Union labor contracts: As applicable.

2. General Liability

- (a) General Aggregate \$2,000,000
- (b) Products & Completed Operations Aggregate \$2,000,000
- (c) Personal & Advertising Injury \$1,000,000
- (d) Each Occurrence \$1,000,000

3. Excess Liability \$2,000,000

4. Business Automobile Liability \$1,000,000
Per Accident

The Engineer shall name as Additional Insured, on all insurance policies, the following:

- 1. HACC, Central Pennsylvania's Community College
- 2. Eastern pcm, LLC

Certificates of Insurance reflecting the above must be forwarded to the Construction Manager, Eastern pcm, LLC, prior to commencing work.

9) **Force Majeure:** Neither party to this Agreement will be liable to the other for any failure or delay in performance under this Agreement due circumstances beyond its reasonable control including, without limitation, acts of God, accident, labor disruption, acts, omissions and defaults of third parties, and official governmental and judicial action not the fault of the party failing or delaying in performance.

10) **Conduct on HACC's Property:** The Engineer shall at all times maintain good order among its employees and persons brought upon HACC's premises. The Engineer shall confine its employees and all other persons who come onto HACC's premises at Engineer's request or for reasons relating to this Agreement, and its equipment, to that portion of HACC's premises where the work under this Agreement is to be performed, and to roads and gates leading to and from such sites, and to any other area which HACC may designate, and shall comply with all HACC's vehicle and security regulations. The Engineer must be issued ID Badges or sign in an out at the security desk whenever performing work upon HACC's premises.

- 11) **Termination for Default:** HACC may, by written notice to Engineer, terminate the Agreement in whole or in part for default if Engineer fails to perform in accordance with any of the requirements of this Agreement or any related purchase order or to make sufficient progress as to endanger performance of this Agreement or any related purchase order. Any such termination will be at no cost to HACC except for completed Services delivered to and accepted by HACC, prior to said termination, and Engineer shall repay to HACC any progress payments made in excess thereof. Termination hereunder shall not relieve Engineer of performing any un-terminated portion of this Agreement or any related purchase order. In the event of termination pursuant hereto, HACC may procure or otherwise obtain, upon such terms and in such manner as HACC may deem appropriate, Services similar to those terminated, and Engineer shall be liable to HACC for any damages arising therefrom, including attorney's fees and excess costs incurred by HACC in obtaining similar services.
- 12) **Termination for Convenience:** HACC may, by written notice to Engineer, terminate all or part of this Agreement or any related purchase order for HACC's convenience. Engineer's termination claim proposal shall be based on non-recurring costs not recovered and inventories and materials not usable on other projects, and shall be received by HACC within thirty (30) days of the effective date of termination. HACC shall have the option to verify supporting detail and records of such proposals and negotiate an equitable settlement. No amount for anticipated profit on Services not performed shall be allowed. In no event shall the sum of the negotiated termination adjustment and the amounts paid and/or due Engineer for the un-terminated portion of this Agreement or resultant purchase order exceed any Agreement or purchase order total price. Any termination shall not effect either party's obligation as to any un-terminated portion of the Agreement or related purchase order. Upon receipt of a termination notice, Engineer shall stop work to the extent specified in the notice and take other such action as may be necessary or as HACC may direct to minimize the cost of termination to HACC. In addition, Engineer shall take such actions as may be necessary or as HACC may direct for the transfer, protection, or preservation of property and other rights which become HACC's as a result of termination. Supplier shall promptly refund HACC any payments in excess of the sum of payments due for (a) accepted Services (b) the un-terminated portion of the Agreement or any related purchase order, and (c) termination charges hereunder.
- 13) **Insolvency:** Should Engineer become insolvent, make an assignment for the benefit of creditors, be adjudicated as a bankrupt, admit in writing inability to pay its debts generally as the same become due, or should any proceedings be instituted by Engineer under any State or Federal law for relief of debtors or for the appointment of a receiver, trustee or liquidator of Engineer, or should a petition in bankruptcy or for a reorganization or for an adjunction of Engineer as an insolvent or as a bankrupt be filed, or should an attachment be levied upon Engineer's equipment and not be removed within five (5) days therefrom, then upon the occurrence of any such event, HACC shall thereupon have the right to cancel this Agreement and to terminate all Services then being performed by Engineer hereunder.
- 14) **Rights Upon Orderly Termination:** Upon termination or other expiration of the Agreement, or any related Agreement made hereunder, each party shall forthwith return to the other all papers, materials, and properties of the other held by such party and required to be returned by this Agreement or any such related Agreement. In addition, each party will assist the other party in the orderly termination of this Agreement and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each party.
- 15) **Dispute Resolution:** All claims, disputes, and other matters in question between the Engineer and the Owner arising out of or relating to this Agreement, the Project, the Work, the Contract Documents or the breach thereof may, at the Owner's sole option, and only upon the exercise of that sole option by the Owner, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the

American Arbitration Association. The Engineer may not unilaterally elect arbitration or cause arbitration to occur. The Owner has the sole discretion to decide whether or not any such claims, disputes or other matters shall be submitted for arbitration.

Mediation shall not begin unless representatives of the mediation claimant and mediation respondent are either the principals themselves or authorized in writing by their principals to settle the matter. Such written authorization shall be presented to the mediator.

Arbitration, if elected by the owner, shall be heard and decided by one arbitrator with at least 15 years of construction industry experience if the claim is less than \$250,000.00. If the total exceeds that amount, the claim shall be heard and decided by three such arbitrators.

Proceed if evidence to be presented during arbitration has been shared with the opposition a minimum of 14 days prior to the arbitration hearing.

If arbitration is selected by HACC, HACC shall also select the number of arbitrators and the manner of arbitration, which shall be either: (1) arbitration according to the rules of the American Arbitration Association; or (2) referral to one or more arbitrators mutually agreed upon by the parties.

When a written decision of HACC states that (1) the decision is final but subject to arbitration and (2) a demand for arbitration of a claim covered by such decision must be made within thirty (30) days after the date on which the party making the demand received the final written decision, then failure to demand arbitration within said thirty (30) days' period shall result in HACC's decision becoming final and binding upon HACC and Engineer.

In responding to a claim brought by a Engineer, HACC shall have a minimum of sixty (60) days in which to respond to a revised claim prior to the arbitration hearing.

- 16) **Assignment or Transfer:** This contract may not be assigned or transferred by Engineer, in whole or in part, without the written permission of HACC's Purchasing and Business Services Office, nor may any rights to any monies due or to become due hereunder be assigned. The Engineer(s) is an independent Engineer providing services for HACC.
- 17) **Compliance with Laws:** The Engineer agrees that it will comply with all applicable federal, state, county, and local laws, ordinances, rules, regulations, and codes in the performance of this Agreement, including the procurement of permits and certificates where needed. The Engineer further agrees to and hereby does indemnify and hold harmless HACC against loss or damage that may be sustained by reason of the failure of the Engineer or its employees or agents to comply with the aforementioned federal, state, county, and local laws, ordinances, regulations, and codes.

This Agreement is subject to applicable laws and executive orders relating to equal opportunity and nondiscrimination in employment. Neither Engineer nor its agents or subcontractors shall discriminate in its employment practices against any person by reason of handicap, race, religion, color, sex, or national origin. The Engineer agrees to comply, and to cause its agents and subcontractors to comply, with the provisions of said laws and orders (including without limitation the provisions of the Americans with Disabilities Act of 1990), as well as other laws and orders relating to the employment of the handicapped, the employment of veterans, and the use of minority business enterprises, to the extent any such laws and others are applicable in the performance of work or furnishing or services, materials or supplies hereunder. For this purpose, the provisions of such laws and orders and pertinent regulations issued thereunder shall be deemed an integral part of this Agreement to the same extent as if written at length herein.

- 18) **Equal Opportunity and Non-Discrimination:** HACC, Central Pennsylvania's Community College is committed to providing opportunities for woman and minority owned businesses. HACC, Central Pennsylvania's Community College encourages Women & Minority Business Enterprise's to participate in the bidding process but does not grant special status to WMBE's when making procurement decisions. HACC, Central Pennsylvania's Community College is committed to non-discrimination and equal employment opportunity. HACC, Central Pennsylvania's Community College will not knowingly contract with any firm that is not an equal opportunity employer.
- 19) **Right To Audit:** HACC and appropriate designated representatives reserve the right to audit account records and other financial records of the Engineer, as they pertain to HACC. Auditors selected by HACC shall perform such audits.
- 20) **Criminal Background Check:** The Engineer will conduct a thorough criminal background/history check of every employee it intends to assign to work at HACC. The costs associated with conducting such checks will be born by the Engineer.
- 21) **Confidentiality:** The Engineer agrees that all information obtained by or provided to Engineer in carrying out the Services provided for hereunder, including the contents of the Agreement, will be maintained in confidence by the Engineer, and the Engineer will neither publish nor disclose to third persons nor otherwise make use of such confidential information except for the performance of such Services hereunder. This obligation shall not apply with respect to any information (a) which is already in the possession of the Engineer prior to acquiring the information hereunder, (b) which is or becomes in the public domain through no fault of Engineer, or (c) which is rightfully obtained by Engineer on a non-confidential basis from a third party.
- 22) **Independent Contractor:** HACC and Engineer intend that an independent contractor's relationship shall be created by this Agreement and nothing contained shall be presumed to create an employer / employee relationship. Engineer shall be solely responsible for the payment of wages, salaries and other amounts due its employees in connection with this agreement and shall be responsible for all reports and obligations related to Social Security, income taxes, unemployment and other withholding taxes, workers compensation and similar matters.
- 23) **Paragraph Headings:** All paragraph headings used are for the convenience of the parties only and shall not be considered a part of this Agreement nor used to interpret or construe the intent of the parties hereunder.
- 24) **Advertising or Publicity:** Neither HACC nor the Engineer shall use the name of the other in publicity releases or advertising without securing the prior written consent of the other, provided, however, that the Engineer may refer to HACC in any list of its customers.
- 25) **Non-Waiver:** No term or provision of this Agreement shall be deemed waived and no breach or default shall be deemed excused, unless such waiver or consent shall be in writing and signed by the claimed to have waived or consented. No consent by any party to, or waiver of, a breach or default by the other, whether express or implied, shall constitute a consent to, waive of, or excuse for any different or subsequent breach or default.
- 26) **Severability:** If any provision of the Agreement is in conflict with any statute or rule of law or may be determined by a court of competent jurisdiction to be illegal or unenforceable, then such provision will be deemed inoperative to the extent that it may conflict therewith or be illegal or unenforceable, and each provision not so affected will be enforced to the full extent provided by law.

27) **Governing Law:** The terms and conditions herein constitute the sole and entire agreement among parties and the laws of the Commonwealth of Pennsylvania shall govern any disputes. The Dauphin County Court of Common Pleas shall have exclusive jurisdiction over any and all litigation arising from the terms of this agreement.

28) **Entire Agreement:** This Agreement and all resultant purchase orders, supplements, attachments, and incorporations constitute the entire agreement between HACC and the Engineer. No conversations, understandings, or agreements varying, extending, or affecting in any way the terms or provisions of this Agreement will be binding on either party unless reduced to writing and duly executed by an authorized representative of each party.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the day and year indicated on the first page hereof.

ENGINEER

HACC, Central Pennsylvania's Community College

By: _____

By: _____

Name:

Name: George A. Franklin, Jr.

Title:

Title: VP Finance & College Resources

Date: _____

Date: _____