**BRUNSWICK COUNTY BOARD OF COMMISSIONERS**
**REGULAR MEETING AGENDA**
**May 3, 2021**
**3:00 PM**

## I. Call to Order

## II. Invocation/Pledge of Allegiance

## III. Adjustments/Approval of Agenda

## IV. Public Comments

## V. Approval of Consent Agenda

1. Administration - Brunswick County Schools Union Elementary and Southport Elementary Roof Replacement

   Request that the Board of Commissioners approve and authorize the Chairman to sign the AAR of North Carolina Inc. contract for roof replacement at Southport Elementary School in the amount of $864,750 and the Coastal Commercial Roofing Company Inc. contract for the roof replacement at Union Elementary School in the amount of $328,993.

2. Administration - National Safe Boating Week Proclamation

   Request that the Board of Commissioners approve a Proclamation recognizing May 22 - 28, 2021 as National Safe Boating Week.

3. Clerk to the Board - Meeting Minutes

   Request that the Board of Commissioners approve the draft minutes from the April 19, 2021 Regular Meeting.

4. County Attorney - Sea Breeze Campground Deed of Dedication

   Consider accepting the Deed of Dedication for water infrastructure in Sea Breeze Campground.

5. County Attorney - Shingletree, Parcel A - Deed of Dedication

   Consider accepting the Deed of Dedication for water and sewer infrastructure for Shingletree, Parcel A, Tract 1.

6. Finance - Fiscal Items

   Request that the Board of Commissioners approve Budget Amendments, Capital Project Ordinances and Fiscal Items of a routine nature on the consent agenda.

   **-Environmental Health Additional State Revenues Budget Amendment**
   Appropriate $4,814 of additional state revenues restricted funding for Food and Lodging program with the FY20-21 agreement addendum.

   **-Water Anticipated Expenditures Budget Amendment**
   Reduce the transfer to the water capital projects fund $355,000 for anticipated water funds expenditures 211 water plant chemicals $120,000, water construction tap on supplies $115,000, repair and maintenance vehicles $10,000, overtime $10,000 and $100,000 miscellaneous expense to authorize transfer within the water fund by the Fiscal Operations Director as needed to prevent a statutory exception of expenditures in excess of amounts budgeted at year end.

   **-Wastewater Revenues Budget Amendment**

Appropriate $50,000 of Ocean Isle Beach wholesale wastewater sales for Operations and Maintenance reimbursements, $95,000 of West Regional wholesale wastewater sales for electricity, $80,000 of NE Brunswick Regional wholesale wastewater sales for chemicals, contracted services, water and $100,000 wastewater retail revenues to miscellaneous expense and authorize transfer within the wastewater fund by the Fiscal Operations Director as needed to prevent a statutory exception of expenditures in excess of amounts budgeted at year end.

**-General Fund Revenues Budget Amendment**
Appropriate $1,000,000 of Register of Deeds revenues and anticipated expenditures of $417,100, $208,372 of Solid Waste Revenues and anticipated expenditures of $192,000, Building Inspections Revenues $150,000 and increase anticipated expenditures legal $16,372, Board of Elections $33,550, law enforcement separation $11,100, emergency services $377,000, soil and water $5,118, fire inspections $41,200 and the remaining amount in Non-Departmental miscellaneous expense for projection of actual needs. Amounts in Non-Departmental is to authorize transfer within the general fund by the Fiscal Operations Director as needed to prevent a statutory exception of expenditures in excess of amounts budgeted at year end.

**-Excess Collections Schools Budget Amendment**
Appropriate estimated excess collections of Ad Valorem and Legislated Sales Tax in excess of budget for transfer to the schools capital reserve and to authorize the Fiscal Operations Director to adjust the budget for final collections as of June 30, 2021.

**-Water Capital Project Budget Amendment and CPO**
Appropriate $876,200 of transfer from water fund to the NW Plant Expansion project for reimbursement expenditures not debt proceeds eligible.

**-911 Emergency Telephone Ineligible Expenditures Budget Amendment**
Appropriate $145,288 Sales Tax Article 39 for transfer to the Emergency Telephone System Fund for expenditures deemed ineligible expenditures by the North Carolina 911 Board.

**-Airport Grant 36237.45.18.1 Budget Amendment and CPO**
Airport grant 36237.45.18.1 has been closed and $400 of expenditures has been deemed ineligible for grant reimbursement. Reduce the grant revenues $360 and transfer the $40 grant match to the county capital reserve undesignated closing grant 36237.45.18.1. Talbert and Bright has credited Brunswick County $400 for the ineligible expenditures.

7. Health and Human Services - Brunswick Senior Resources Inc. Budget Revision #1 to HCCBG Funding

   Request that the Board of Commissioners approve the attached Revision #1 budget document for the Fiscal Year 2020-2021 Home and Community Care Block Grant for Older Adults.

8. Health and Human Services - Health Services - FY 21-22 State Consolidated Agreement Approval (Amendment 1)

   Request that the Board of Commissioners approve an amendment to the consolidated agreement for FY 21-22 between the State of North Carolina and Brunswick County Health Services.

9. Operation Services - Amended Resolution to Post-Disaster Debris Policy

   Request that the Board of Commissioners approve an amended Resolution updating the county's post-disaster debris management policy.

10. Operation Services - Leland Fuel Site Upgrades

    Request that the Board of Commissioners approve the contract with MECO, Inc. of Augusta to complete fuel site upgrades at the Leland EMS Site #2 Fuel Site which is located at 8605 Trade Street NE, Leland, NC.

11. Utilities - Comprehensive Water Master Plan 2021

    Request that the Board of Commissioners authorize the Chairman and Clerk to the Board to approve the Professional Services Agreement for Architectural, Engineering and/or Surveying Services with CDM Smith, Inc., in the amount of $243,900 for engineering services associated with the 2021 Comprehensive Water Treatment & Distribution System Master Plan and approve an associated budget amendment.

12. Utilities - Disaster Response Emergency On-Call Construction Services

    Request that the Board of Commissioners approve an amendment extending the term of the Disaster Response Emergency/On-Call Construction or Repair Agreement with State Utility Contractors, Inc.

13. Utilities - Water Week Resolution

    Request that the Board of Commissioners approve a resolution regarding recognizing Drinking Water Week.

## VI. Presentation

1. Presentation - Health and Human Services - Trillium Health Resources Annual Report (Dennis Williams, Southern Regional Director)

   Request that the Board of Commissioners receive the Trillium Annual Report.

2. Presentation - Health and Human Services - Wilmington Area Rebuilding Ministry Inc. (JC Lyle, Executive Director)

   Request that the Board of Commissioners receive an update on the progress of Wilmington Area Rebuilding Ministry Inc. (WARM), in Brunswick County.

## VII. Other Business/Informal Discussion

## VIII. Closed Session

1. Closed Session - Approve Closed Session Minutes and Consult with Attorney

   Request that the Board of Commissioners enter into Closed Session pursuant to N.C.G.S. 143-318.11(a)(1) to approve closed session minutes and 143-318.11(a)(3) to consult with its attorney.

## IX. Adjournment

# Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
## May 3, 2021

**Action Item # V. - 1.**
Administration - Brunswick County Schools Union Elementary and Southport Elementary Roof Replacement

**From:**
Julie A. Miller

**Issue/Action Requested:**
Request that the Board of Commissioners approve and authorize the Chairman to sign the AAR of North Carolina Inc. contract for roof replacement at Southport Elementary School in the amount of $864,750 and the Coastal Commercial Roofing Company Inc. contract for the roof replacement at Union Elementary School in the amount of $328,993.

**Background/Purpose of Request:**
Brunswick County Board of Education approved both contracts on 4/20/2021 and staff recommends the contract with AAR of North Carolina Inc in the amount of $864,750 and the contract with Coastal Commercial Roofing Company Inc. in the amount of $328,993 be executed by the Board of Commissioners. The contracts are fully funded by bond proceeds.

**Fiscal Impact:**
Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations

**Approved By County Attorney:**
Yes

**County Manager's Recommendation:**
Recommend the Board of Commissioners approve and authorize the Chairman to sign the AAR of North Carolina Inc. contract for roof replacement at Southport Elementary School in the amount of $864,750 and the Coastal Commercial Roofing Company Inc. contract for the roof replacement at Union Elementary School in the amount of $328,993.

**ATTACHMENTS:**

Description

- BCS Award Contract - Union Elementary
- BCS Award Contract - Southport Elementary

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# OWNER-CONTRACTOR AGREEMENT

SCHOOL NAME: **Union Elementary**

PROJECT: **Roof Replacement**

THIS AGREEMENT, made this 25th day of March, Two Thousand and Twenty-One by and between County of Brunswick, North Carolina (herein referred to as the "Owner"), whose mailing address is 30 Government Center Dr and Coastal Commercial Roofing Co., Inc., (herein referred to as the "Contractor"), whose mailing address is 4355 Adrian Highway, Conway, SC 29526. Correspondence, submittals, and notices relating to or required under this Contract shall be sent in writing to the above addresses; unless either party is notified in writing by the other, of a change in address.

WITNESSETH:

WHEREAS, it is the intent of the Owner to obtain the services of the Contractor in connection with the roof replacement (hereinafter referred to as the "Project" or the "Work"); and

WHEREAS, the Contractor desires to perform such construction in accordance with the terms and conditions of this Agreement,

NOW, THEREFORE, in consideration of the promises made herein and other good and valuable consideration, the following terms and conditions are hereby mutually agreed to, by and between the Owner and Contractor:

## Article 1
## DEFINITIONS

1.1 All terms in this Agreement which are defined in the Information for Bidders and the General Conditions shall have the meanings designated therein.

1.2 The Contract Documents are as defined in the General Conditions. Such documents form the Contract, and all are as fully a part thereof as if attached to this Agreement or repeated herein.

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Article 2

STATEMENT OF THE WORK

2.1 The Project is the Work identified in the plans and specifications prepared by REI Engineers dated February 19, 2021 for Brunswick County Board of Education, Union Elementary School Roof Replacement, including the following addenda:

Addendum 1 date March 15, 2021

A listing of the plans and specifications included in the Contract Documents is attached as Exhibit A.

2.2 The Parties agree that the Project shall include the following alternates:

NA

2.3 The Parties agree to the following modifications to the Project's plans and specifications, including the noted value engineering items:

None

2.4 The Parties agree that the following allowances are included in the Contract Sum in Section 5.1 below:

Contingency allowance - $20,000

Repair 2500 SF of Corroded Steel Deck with Coating –

Repair 250 SF of Steel Deck with Steel Plates –

Overlay 100 SF of Deteriorated Steel Deck with New Steel Deck –

Replace 100 SF Deteriorated Cementitious Wood Fiber Deck –

Replace 2,000 SF of Wet or Deteriorated Existing Gypsum Substrate –

Replace 600 BF of Deteriorated Wood Blocking –

Replace 100 SF of Deteriorated Plywood –

Provide 100 SF of Additional Manufacturer's Walk Pad Material

2.5 The Contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work, as required by the Contract Documents.

2.6 The Contractor shall further provide and pay for all related facilities described in any of the Contract Documents, including all work expressly specified therein and such additional work as may be reasonably inferred therefrom, saving and excepting only such items of work as are specifically stated in the Contract Documents not to be the obligation of the Contractor. The

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totality of the obligations imposed upon the contractor by this Article and by all other provisions of the Contract Documents, as well as the structures to be built and the labor to be performed, is herein referred to as the "Work".

## Article 3

## DESIGN CONSULTANT

3.1 The Design Consultant (as defined in the General Conditions) shall be REI Engineers whose address is 1927 JN Pease Place, Ste 201, Charlotte, NC 28262, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by designating a different person or organization to act as its Design Consultant and so advising the Contractor in writing, at which time the person or organization so designated shall be the Design Consultant for purposes of this Contract.

## Article 4

## TIME OF COMMENCEMENT AND COMPLETION

4.1 The Contractor shall commence the Work promptly upon the date established in the Notice to Proceed. If there is no Notice to Proceed, the date of commencement of the Work shall be the date of this Agreement or such other date as may be established herein.

4.2 Time is of the essence. The Contractor shall achieve Final Completion, as defined in the General Conditions on or before the date established for Final Completion in the Supplemental Conditions.

4.3 The Supplemental Conditions contains certain specific dates that shall be adhered to and are the last acceptable dates unless modified in writing by mutual agreement between the Contractor and the Owner. All dates indicate midnight unless otherwise stipulated. The only exceptions to this schedule are defined in the General Conditions under 7.2 DELAYS AND EXTENSIONS OF TIME.

4.4 Should the Contractor fail to complete the Work on or before the dates stipulated for Substantial Completion and/or Final Completion, or such later date as may result from an extension of time granted by the Owner, he shall pay the Owner, as liquidated damages the sums set forth in the General and Supplemental Conditions.

## Article 5

## CONTRACT SUM

5.1 Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Modification or as otherwise provided in the Contract Documents, the Owner shall pay to the Contractor, in current funds and at the time and in the installments hereinafter specified, the sum of Three hundred twenty-eight thousand, nine hundred ninety-three dollars ($328,993) herein referred to as the "Contract Sum". This amount includes the base bid and the Alternates in Section 2.2

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5.2 The Contract Sum includes the value engineering items and other contract modifications noted in Section 2.3 above that total $0.00.

5.3 Unit Prices are established as follows for the Project:

| | | |
|---|---|---|
| Unit Price No. 1 | Steel Roof Deck Repair & securement with coating | $2.75 SF |
| Unit Price No. 2 | Repair steel deck with steel plates | $4.50SF |
| Unit Price No. 3 | Overlay deteriorated steel deck with new steel deck | $7.00SF |
| Unit Price No. 4 | Cementitious Wood Fiber Decks | $15.00SF |
| Unit Price No. 5 | Roof Insulation – replace wet or deteriorated existing gypsum substrate | $1.50SF |
| Unit Price No. 6 | Replace deteriorated wood blocking | $4.50BF |
| Unit Price No. 7 | Replace deteriorated plywood | $3.00SF |
| Unit Price No. 8 | Provide additional manufacturer's walk pad material | $10.00LF |

## Article 6

## PROGRESS PAYMENTS

6.1 The Contractor hereby agrees that on or about the First day of the month for every month during the performance of the Work he will deliver to the Owner's Project Manager an Application for Payment in accordance with the provisions of Article 8 of the General Conditions. This date may be changed upon mutual agreement, stated in writing, between the Owner and Contractor. Payment under this Contract shall be made as provided in the General Conditions. Payments due and unpaid under the Contract Documents shall not bear interest.

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Article 7

OTHER REQUIREMENTS

7.1 The Contractor shall submit the Performance Bond, Labor and Material Payment Bond and Certification of Insurance as required by the Contract Documents.

7.2 The Owner shall furnish to the Contractor one **(1)** set of drawings and one **(1**) set of specifications, at no extra cost, for use in the Construction of the Work. Additional sets of drawings or specifications may be obtained by the Contractor by paying the Owner for the costs of reproduction, handling and mailing.

7.3 The Contractor shall make a good faith effort to utilize Historically Underutilized Businesses (HUB's) per N.C. Gen. Stat. 143-128.2, and as described in the construction documents.

7.4 The General Conditions, Supplemental Conditions and the plans and specifications, including any addenda, are incorporated herein by reference.

7.5 This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

IN WITNESS WHEREOF, County of Brunswick, North Carolina (hereinbefore called the "Owner") has caused these presents to be signed and its corporate seal to be hereunto affixed, attested by its Chairperson and Secretary, and Coastal Commercial Roofing Co., Inc. (here in before called "Contractor") has caused these presents to be signed by its President and its Corporate seal to be hereunto affixed, as hereinafter attested, all as of the day and year first above written.

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**COUNTY OF BRUNSWICK, NORTH CAROLINA**

APPROVED AS TO FORM

Bryan W. Batton

Bryan W. Batton, Asst. County Attorney
Brunswick County, NC

_____(Seal)

Chairman, Board of Commissioners

ATTEST:

_____(Seal)

Clerk to the Board of Commissioners

[Seal]

This contract was approved by the Board on the 3rd day of May, 2021.

COASTAL COMMERCIAL ROOFING CO., INC.

By: David T. Griffin

David T. Griffin (Print Name), President or Vice-President

ATTEST:

Jonya Ravon

Corporate Secretary [Corporate Seal]

| This Instrument Has Been Pre-audited In The Manner Required By The School Budget And Fiscal Control Act | This Instrument Has Been Pre-audited In The Manner Required By The Local Government Budget And Fiscal Control Act |
|---|---|
| Freyja Cahill | Julie A. Miller |
| Freyja Cahill, Finance Officer<br>Brunswick County Schools | Julie A. Miller, Director Of Fiscal Operations, County of Brunswick, North Carolina |

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# SECTION GC

# GENERAL CONDITIONS
# OF THE
# CONTRACT FOR CONSTRUCTION
# FOR ROOFING PROJECTS

## TABLE OF ARTICLES

1. CONTRACT DOCUMENTS
2. OWNER
3. CONTRACTOR
4. SUBCONTRACTORS
5. WORK BY OWNER OR BY SEPARATE CONTRACTORS
6. MISCELLANEOUS PROVISIONS
7. TIME
8. PAYMENTS AND COMPLETION
9. INSURANCE
10. CHANGES IN THE WORK
11. UNCOVERING AND CORRECTION
12. TERMINATION OF THE CONTRACT

APPENDIX A – Contractor's Sales Tax Report
APPENDIX B-1 – Change Proposal Form (Time & Materials or Unit Price)
APPENDIX B-2 – Change Proposal Form (Fixed Price)

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## ARTICLE 1

## CONTRACT DOCUMENTS

1.1 GENERAL

1.1.1 The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order issued pursuant to the provisions of Article 10, (3) a written interpretation issued by the Design Consultant, or (4) a written order for a minor change in the Work issued pursuant to this contract.

1.1.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.1.3 All Drawings, Specifications and copies thereof furnished by the Design Consultant are and shall remain his property. They are to be used only with respect to this Project and are not to be used on any other project.

1.1.4 The Contractor will be furnished with one set of drawings and specifications at no cost. Additional copies may be purchased.

END OF ARTICLE 1

## ARTICLE 2

## OWNER

2.1 INFORMATION, SERVICES AND RIGHTS OF THE OWNER

2.1.1 The Owner shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.

2.1.2 The Owner shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. This requirement applies continuously throughout contract performance and is not limited to regular working hours.

2.1.3 The Owner will have authority to require special inspection or testing of the work whether or not such Work is then fabricated, installed, or completed. However, neither the Owner's authority to act under Subparagraph 2.2.4, nor any decision made by the Owner in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Owner to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.1.4 The Owner shall have the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors, and the Design Consultant, to discuss such matters as procedures, progress, problems, and scheduling.

2.1.5 The Owner and Design Consultant shall not be responsible or liable to Contractor for the acts, errors or omission of the Contractor, any separate Subcontractor, any separate contractor or any contractor's or subcontractor's agents or employees, or any other persons performing any of the Work.

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2.1.6 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid unreasonable delay in the orderly progress of the Work.

2.1.7 The parties acknowledge that the Owner may perform all or part of its obligations pursuant to this Agreement through the Superintendent or his designee.

2.1.8 The foregoing rights are in addition to other rights of the Owner enumerated herein and those provided by law.

2.2 OWNER'S RIGHT TO STOP OR TO SUSPEND THE WORK

2.2.1 If the Contractor fails to correct defective Work or fails to carry out the Work or supply labor and materials in accordance with the Contract Documents, the Owner by a written order may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

2.2.2 The Owner may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as he may determine to be appropriate for the convenience of the Owner.

2.2.3 If the performance of all or any part of the Work (including the work of the Contractor and its subcontractors) is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Owner or the Design Consultant in the administration of this Contract, or by failure of any one of them to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for an increase in the actual time required for performance of the Work by the Contractor, due solely to such unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no claim shall be made under this Subparagraph for any suspension, delay, or interruption pursuant to Subparagraph 2.3.1, or for which claim is provided or excluded under any other provision of this Contract. No claim under this Subparagraph shall be allowed on behalf of the Contractor or its subcontractors, unless within 10 days after the act or failure to act involved, and for continuing or ongoing acts or failures to act within 10 days of the first day of the act or failure to act the Contractor submits to the Owner a written statement setting forth, as fully as then practicable, the extent of such claim, and unless the claim is asserted in writing within 20 days after the termination of such suspension, delay, or interruption. For continuing or ongoing acts or failures to act, the Contractor shall update its written statement every 15 days until the suspension, delay or interruption is terminated. The Contractor shall waive any and all claims not filed in strict conformance with this paragraph. The Contractor shall indemnify, defend and hold the Owner harmless from any claim by a Subcontractor that is waived because it is not filed in strict conformance with this paragraph or any other provision of this Agreement regarding claims.

2.2.4 In the event of a suspension of work or delay or interruption of work, the Contractor will and will cause his subcontractors to protect carefully his, and their, materials and work against damage or injury from the weather and maintain completed and uncompleted portions of the work as required by the Contract Documents. If, in the opinion of the Owner, any work or material shall have been damaged or injured by reason of failure on the part of the Contractor or any of his subcontractors to so protect same, such work and materials shall be removed and replaced at the expense of the Contractor.

2.2.5 No claim by the Contractor shall be allowed if asserted after final payment under this Contract or if it is not asserted in strict conformance with Subparagraph 2.2.

2.3 OWNER'S RIGHT TO CARRY OUT THE WORK

2.3.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within ten days after the date written notice is mailed by the Owner to commence and continue remedy of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedy he may have, make good such deficiencies and may further elect to complete all Work thereafter through such means as the Owner may select, including the use of a new contractor. In such case the Owner shall issue a Change Order deducting from the payments then or thereafter due the Contractor the cost of correcting such

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deficiencies, including compensation for the Design Consultant's additional services made necessary by such default, neglect or failure. Such action by the Owner and the amount charged to the Contractor are both subject to the prior approval of the Design Consultant. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner. Notwithstanding the Owner's right to carry out a portion of the work, warranty, maintenance and protection of the work remains the Contractor's responsibility. Further, the provisions of this paragraph do not affect the Owner's right to require the correction of defective or non-conforming work in accordance with this contract.

END OF ARTICLE 2

## ARTICLE 3

## CONTRACTOR

3.1 DEFINITION

3.1.1 This entire Contract is not one of agency by the Contractor for Owner but one in which Contractor is engaged independently in the business of providing the services and performing the Work herein described as an independent contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS

3.2.1 Before placing his proposal to the Owner, and continuously after execution of the Contract, the Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency or omission he may discover, including any requirement which may be contrary to any law, ordinance, rule, regulation or order of any public authority bearing on the performance of the Work. If the Contractor has reported in writing an error, inconsistency or omission, has promptly stopped the affected work until otherwise instructed, and has otherwise followed the instructions of the Owner, the Contractor shall not be liable to the Owner or the Design Consultant for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall perform no portion of the Work at any time without Contract Documents and, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

3.2.2 All designs, drawings, specifications, design calculations, notes and other works provided for this contract are the sole property of the Owner and may not be used on any other design or construction project. The use of the design, including tracings and specifications, by any person or entity, for the purpose other than the Project, shall be at the full risk of such person or entity

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and all statutory or legal requirements. This requirement applies continuously throughout contract performance and is not limited to regular working hours.

3.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and Sub- subcontractors, suppliers, their agents and employees, and other persons performing any of the Work and for their compliance with each and every requirement of the Contract Documents, in the same manner as if they were directly employed by the Contractor.

3.3.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the acts, failures to act or duties of the Owner or the Design Consultant in their

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administration of the Contract, or by inspections, tests or approvals (or the lack thereof) required or performed under Paragraph 6.5 by persons other than the Contractor.

3.3.4 The Contractor shall verify all grades, lines, levels and dimensions as indicated and shown on the plans and specifications prior to beginning the work and shall immediately report in writing any errors or inconsistencies to the Design Consultant before commencing the work.

3.3.5 Contractor shall protect existing surfaces, finishes and adjacent facilities from damage during construction. Any damage shall be repaired by Contractor at his own expense prior to completion of the Project. Prior to construction start, Contractor and Owner shall perform an inspection to record existing conditions, damaged and undamaged.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, supplies, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary or proper for or incidental to the execution and completion of the Work required by and in accordance with the Contract Documents and any applicable code or statute, whether specifically required by the Contract Documents or whether their provision may reasonably be inferred as necessary to produce the intended results, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Final payment will not be made until the Work is so completed.

3.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. The Owner may, by notice in writing, require the Contractor to remove from the work any employee the Owner deems incompetent, careless or otherwise objectionable. All agents and workers of the contractor and its subcontractors shall wear identification badges provided by the Contractor at all times they are on the Owner's property. The identification badges shall at a minimum display the company name, telephone number and employee's picture and name and must be worn in plain view at all times. Additionally, once school staff occupies the building, all contractors and their respective subcontractors shall be required to sign in and out of the visitor's log each day they are performing services. They must also wear a visitor's pass which will indicate to staff that they have met this requirement which applies to anyone performing services anywhere on the school property.

3.4.3 The Contractor shall be responsible for ensuring that the work is completed in a skillful and workmanlike manner.

3.4.4 All equipment, apparatus and/or devices of any kind to be incorporated into the work that are shown or indicated on the drawings or called for in the specifications or required for the completion of the work shall be entirely satisfactory to the Owner and the Design Consultant as regards operations, capacity and/or performance. No approval, either written or verbal, of any drawings, descriptive data or samples of such equipment, apparatus and/or device shall relieve the Contractor of his responsibility to turn over the same in good working order for its intended purpose at the completion of the Work in complete accordance with the Contract Documents. Any equipment, apparatus and/or device not fulfilling these requirements shall be removed and replaced by proper and acceptable equipment, etc. or put in good working order satisfactory to the Owner and Design Consultant without additional cost to the Owner.

3.4.5 All materials and Work shall meet North Carolina Building Codes. Should there be any discrepancies between design and code, the more stringent requirement shall apply. All materials shall comply with standards (or approved products) as set by the specifications. Unless otherwise specified, NO ASBESTOS CONTAINING MATERIALS SHALL BE INSTALLED. BY DEFINITION, INSTALLATION OF ASBESTOS MATERIALS WILL BE CONSIDERED CONTRACTOR'S NEGLIGENCE AND THE CONTRACTOR SHALL PERFORM ALL NECESSARY WORK TO REMOVE THE ASBESTOS AND RESTORE THE SITE TO THE 'PRE-CONTRACT' CONDITION. Contractor shall assume all facilities built prior to 1979 have lead-based paint. Any paint removal shall be in accordance with OSHA standard pertaining to lead (29 CFR 1915.1025).

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3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and the Design Consultant that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all workmanship will be of first class quality, free from faults and defects and in conformance with the Contract Documents and all other warranties and guaranties specified therein. Where no standard is specified for such workmanship or materials, they shall be the best of their respective kinds. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner or the Design Consultant, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 11.

3.5.2 The warranties set forth in this Paragraph 3.5 and elsewhere in the Contract Documents shall survive Final Completion of the Work.

3.5.3 If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective, not in accordance with the Contract Documents, or not in accordance with the guarantees and warranties specified in the Contract documents, the Contractor shall correct it within five (5) working days or such other period as mutually agreed, after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice with reasonable promptness after discovery of the condition. For items, which remain incomplete or uncorrected on the date of Substantial Completion, the one-year warranty shall begin on the date of Final Completion of the Work. If the Contract Documents include painting work, the one year warranty period in this section shall be extended to two years.

3.5.4 If at any time deficiencies in the Work are discovered which are found to have resulted from fraud or misrepresentation, or an intent or attempt to or conspiracy to defraud the Owner by the Contractor, any Subcontractor or Supplier, the Contractor will be liable for replacement or correction of such Work and any damages which Owner has incurred related thereto, regardless of the time limit of any guarantee or warranty.

3.5.5 The Contractor shall bear the cost of making good all work of the Owner, separate contractors or others, destroyed or damaged by such correction or removal required under this Article 3, Article 11 or elsewhere in the Contract Documents.

3.6 TAXES

3.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

3.6.2 The Contractor shall provide a completed Contractor's Sales Tax Report (attached hereto as Appendix A) with each application for payment for all items provided by the Contractor or any Sub-Contractors and incorporated into this project. The Contractor shall account for at least 2% of the total contract amount in sales tax or provide justification satisfactory to the Owner that the actual sales tax paid is less than 2%. In the event the Contractor does not provide adequate justification to support the shortfall, the Contractor shall pay the Owner the difference between the amount accounted for and the 2% minimum. Such compensation shall not be deemed a penalty, but reimbursement of funds the Owner would otherwise be entitled to recover from the State.

3.6.3 Sales and Use Tax. Contractor shall be responsible for complying with any applicable sales and use tax obligations imposed by Chapter 105, Article 5 of the North Carolina General Statutes. Where Contractor has been contracted with to oversee "new construction" or "reconstruction" as defined in G.S. 105-164.4H, Contractor shall be responsible for issuing and maintaining an Affidavit of Capital Improvement.

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3.7 PERMITS, FEES AND NOTICES

3.7.1 The Contractor shall secure and pay for the building permit and for all other permits and governmental fees necessary for the proper execution and completion of the Work. Costs for service and final service connections by public utilities will be reimbursed to the Contractor by the Owner. The Owner shall not be responsible for the cost of any temporary utilities.

3.7.2 Each Contractor will pay for his own license and reinspection fees for his part of the work necessary for the proper execution and completion of the work.

3.7.3 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

3.8 PROGRESS SCHEDULE

3.8.1 The Contractor shall prepare and submit to the Owner for the Owner's review and approval an estimated progress schedule for the Work. This schedule shall be in accordance with any general requirements included in the specifications for this project.

3.9 RESPONSIBILITY FOR COMPLETION

3.9.1 The Contractor shall furnish such manpower, materials, facilities and equipment and shall work such hours, including night shifts, overtime operations and Sundays and holidays, as may be necessary to ensure the performance of the Work within the Milestone and Completion dates specified in the Owner-Contractor Agreement.

3.9.2 If the actions taken by the Contractor are not satisfactory, the Design Consultant or Owner may direct the Contractor to take any and all actions necessary to ensure completion within the required Milestone and Completion dates, without additional cost to the Owner. In such event, the Contractor shall continue to assume responsibility for his performance and for completion within the required dates.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

3.10.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be delivered to the Owner upon completion of the Work.

3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.11.1 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data, Manuals and Samples required by the Contract Documents.

3.11.2 Do not order materials until receipt of written approval. Furnish materials equal in every respect to approved samples.

3.11.3 By approving and submitting Shop Drawings, Product Data, Manuals and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Contractor shall adhere to any supplementary processing and scheduling instructions pertaining to Shop Drawings, which may be issued by the Design Consultant.

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3.11.4 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Design Consultant's review of Shop Drawings, Product Data, Samples or Manuals under unless the Contractor has specifically informed the Design Consultant in writing of such deviation at the time of submission and the Design Consultant has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, Samples, or Manuals by the Design Consultant's review thereof.

3.11.5 The Contractor shall make corrections required by the Design Consultant and shall resubmit the required number of corrected copies of Shop Drawings or new Product Data or Samples. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Design Consultant on previous submittals. Resubmittals necessitated by required corrections due to Contractor's errors or omissions shall not be cause for extension of Contract Time, and any costs associated with the processing of these resubmittals shall be paid by the Contractor.

3.11.6 No portion of the Work requiring submission of Shop Drawings, Product Data, Samples or Manuals shall be commenced until the submittal has been approved by the Design Consultant. All such portions of the Work shall be in accordance with approved submittals.

3.12 EQUAL PRODUCTS AND SUBSTITUTIONS

3.12.1 All materials, supplies and articles furnished under this Contract shall, whenever specified and otherwise practicable, be the standard products of recognized, reputable manufacturers. Unless otherwise specifically provided in the Contract Documents, the naming of a certain brand, make, manufacturer or article, device, product, material, fixture or type of construction shall convey the general style, type, character and standard of quality of the article desired and shall not be construed as limiting competition. The Contractor, in such cases, may with Owner approval, use any brand, make, manufacturer, article, device, product, material, fixture, form or type of construction which in the judgment of the Design Consultant is equal to that specified. An item may be considered equal to the item so named or described if, in the opinion of the Owner and Design Consultant (1) it is at least equal in quality, durability, appearance, strength, and design; (2) it will perform at least equally the specific function imposed by the general design for the work being contracted for or the material being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the specifications. Approval by the Owner and Design Consultant will be granted based upon considerations of quality, workmanship, economy of operation, suitability for the purpose intended, and acceptability for use on the Project.

3.12.2 Contractor must provide evidence that proposed substitution does not require revisions to the Contract Documents, that is consistent with Contract Documents, and will produce the indicated results, and is comparable with other portions of the Work. Contractor must provide a detailed comparison of significant qualities or proposed substitution with those of the Work Specified, including but not limited to the following significant qualities: performance, weight, size, durability, visual effect, sustainable design features, warranties, and any specific features and requirements indicated in Contract Documents. An annotated copy of applicable Specification Section and point-by-point comparison between specified product and the proposed substitution describing each point of compliance, non-compliance, and variance between the specified and proposed product shall be provided.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, easements, right-of- way agreements and the Contract Documents. The Contractor shall not unreasonably encumber the site, in the opinion of the Owner, with any materials, equipment or trailers nor shall he block the entrances or otherwise prevent reasonable access to the site, other working and parking areas, completed portions of the Work and/or properties, storage areas, areas of other facilities that are adjacent to the worksite. If the Contractor fails or refuses to move said material, equipment or trailers within 24 hours of notification by the Owner, to so do, the Owner shall have the right, without further notice, to remove, at the Contractor's expense, any material, equipment and/or trailers which the Owner deems are in violation of this paragraph.

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3.14 CUTTING AND PATCHING OF WORK

3.14.1 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation.

3.14.2 Existing structures and facilities including but not limited to building, utilities, topography, streets, curbs, walks, etc., that are damaged or removed due to required excavations or other construction work, shall be patched, repaired or replaced by the Contractor to satisfaction of the Design Consultant and the Owner of such structures and facilities and authorities having jurisdiction.

3.15 CLEANING UP

3.15.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. If the Contractor fails to clean up during or at the completion of the Work, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 INDEMNIFICATION

3.16.1 To the fullest extent permitted by law, the Contractor shall, at his sole cost and expense, indemnify, defend, and hold harmless the Owner and the Design Consultant and their agents, representatives, and employees from and against all claims, actions, judgments, costs, liabilities, penalties, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or caused by any negligent act, error or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The above 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 Paragraph 3.16. The parties agree that this indemnification clause is an “evidence of indebtedness” for purpose of N.C. Gen. Stat. § 6-21.2. The parties also specifically acknowledge that the Owner is a public body and it is the intent of the parties that the Owner not incur any expenses when the Contractor is solely responsible for the claims.

3.16.2 In any and all claims against the Owner or the Design Consultant or any of their agents, representatives, or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 3.16 shall not be limited in any way by Contractor’s insurance coverage required herein.

3.16.3 No provision of this Paragraph 3.16 shall give rise to any duties on the part of the Design Consultant or the Owner, or any of their agents, representatives, or employees.

3.18 CONDITIONS AFFECTING THE WORK

3.18.1 The Contractor shall be responsible for taking all steps necessary to ascertain the nature and location of the Work and the general and local conditions, which can affect the Work or the cost thereof. The Owner assumes no responsibility for any understanding or representation about conditions affecting the Work made by any of his officers, employees, representatives, or agents prior to the execution of the Contract, unless such understandings or representations are expressly stated in the Contract Documents.

3.19 MISCELLANEOUS.

3.19.1 The Contractor shall provide documentation acceptable to the Owner showing the amount of MBE participation (including a complete list of all subcontractors and their final subcontract amounts) and sales tax paid by the Contractor and its subcontractors for materials purchased for Projects completed under this contract.

3.20 APPLICABLE LAWS.

3.20.1 This Contract and the relationship of the parties shall be governed by the laws of the state of North Carolina.

3.20.2 Contractor shall comply with all applicable laws and regulations in providing services under this Contract. Contractor shall not employ any individuals to provide services to the Owner who are not authorized

by federal law to work in the United States. Contractor represents and warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Contract by any governmental department or agency. Contractor must notify Owner within thirty (30) days if debarred by any government entity during this Contract. The Contractor represents that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system. The Contractor further warrants that it will use the E-Verify system to verify employment eligibility of all its employees throughout the term of this Contract, and that it will remain in compliance with all I-9 requirements throughout the term of this Contract. The Contractor shall also ensure that any subcontractors use the E-Verify system at all times while providing subcontracted services in connection with this Contract. Contractor is responsible for providing affordable health care coverage to all of its full-time employees providing services to the school system. The definitions of "affordable coverage" and "full-time employee" are governed by the Affordable Care Act and accompanying IRS and Treasury Department regulations.

3.20.3 The Contractor also acknowledges that G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. The Contractor shall conduct or arrange to have conducted, at its own expense, sexual offender registry checks on each of its employees, agents, ownership personnel, or contractors ("contractual personnel") who will engage in any service on or delivery of goods to school system property or at a school-system sponsored event, except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at: (1) the administrative office, provided that such office is not located at a school site; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites. The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the Registries"). For the Contractor's convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at http://www.nsopw.gov/. The Contractor shall provide certification on the Sexual Offender Registry Check Certification Form that the registry checks were conducted on each of its contractual personnel providing services or delivering goods under this Agreement prior to the commencement of such services or the delivery of such goods. The Contractor shall conduct a current initial check of the registries (a check done more than 30 days prior to the date of this Agreement shall not satisfy this contractual obligation). In addition, the Contractor agrees to conduct the registry checks and provide a supplemental certification form before any additional contractual personnel are used to deliver goods or provide services pursuant to this Agreement. The Contractor further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. The Contractor shall not assign any individual to deliver goods or provide services pursuant to this Agreement if said individual appears on any of the listed registries. The Contractor agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents to the Owner upon request. The Contractor specifically acknowledges that the Owner retains the right to audit these records to ensure compliance with this section at any time in the Owner's sole discretion. Failure to comply with the terms of this provision shall be deemed a material breach of the Agreement. In addition, the Owner may conduct additional criminal records checks at the Owner's expense. If the Owner exercises this right to conduct additional criminal records checks, the Contractor agrees to provide within seven (7) days of request the full name, date of birth, state of residency for the past ten years, and any additional information requested by the Owner for all contractual personnel who may deliver goods or perform services under this Agreement. The Contractor further agrees that it has an ongoing obligation to provide the Owner with the name of any new contractual personnel who may deliver goods or provide services under the Agreement. The Owner reserves the right to prohibit any contractual personnel of the Contractor from delivering goods or providing services under this Agreement if the Owner determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others.

3.20.4 Anti-Nepotism. Contractor warrants that, to the best of its knowledge and in the exercise of due diligence, none of its corporate officers, directors, or trustees and none of its employees who will directly provide services under this Agreement are immediate family members of any member of the Board of Education or of any principal or central office staff administrator employed by the Board. For purposes of this provision, "immediate family" means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law

relationships. Should Contractor become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Agreement, Contractor shall immediately disclose the family relationship in writing to the Superintendent of the Schools. Unless formally waived by the Board, the existence of a family relationship covered by this Agreement is grounds for immediate termination by Owner without further financial liability to Contractor.

3.20.5 Restricted Companies Lists. Contractor represents that as of the date of this Contract, Contractor is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Contractor also represents that as of the date of this Contract, Contractor is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.

3.21 COMPLIANCE WITH BOARD POLICIES AND PROCEDURES

The Contractor agrees to comply with the all of the Owner's policies at all times that the Contractor, its subcontractors and employees are on the Owner's property. The Contractor acknowledges that Board policies are available for review at the Owner's website and agrees to comply with the policies. The Contractor also agrees to comply with the following provisions:

3.21.1 The Contractor, its Subcontractors and employees shall not possess or carry, whether openly or concealed, any gun, rifle, pistol, or explosive on any property owned by the Owner. This includes firearms locked in containers, vehicles or firearm racks within vehicles. The Contractor, its Subcontractors and employees shall not cause, encourage or aid a minor, who is less than 18 years old to possess or carry, whether openly or concealed, any weapons on any property owned by the Owner.

3.21.2 The Contractor, its Subcontractors and employees, are prohibited from profane, lewd, obscene or offensive conduct or language, including engaging in sexual harassment.

3.21.3 The Contractor and its Subcontractors shall not manufacture, transmit, conspire to transmit, possess, use or be under the influence of any alcoholic or other intoxicating beverage, narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana or anabolic steroids, or possess, use, transmit or conspire to transmit drug paraphernalia on any property owned by the Owner.

3.21.4 The Contractor and its Subcontractors may not at any time use or display tobacco or nicotine-containing products, including but not limited to electronic cigarettes (e-cigarettes), on school premises, both indoor and outdoor. The prohibition of the display of tobacco or nicotine products shall not extend to a display that has a legitimate instructional or pedagogical purpose. For purposes of this Contract, "tobacco product" is defined to include cigarettes, cigars, blunts, bidis, pipes, chewing tobacco, snuff, and any other items containing or reasonably resembling tobacco, tobacco products, or any facsimile thereof. "Tobacco use" includes smoking, chewing, dipping, or any other use of tobacco products.

3.21.5 The Contractor, its Subcontractors and employees shall not solicit from or sell to students or staff within the Owner's facilities or campuses, and shall not give gifts of any value to school system employees.

3.21.6 Operators of all commercial vehicles on any property owned by the Owner shall be subject to post-accident, random, reasonable suspicion and follow-up testing for drugs and alcohol.

3.21.7 The Contractor, its Subcontractors and employees are prohibited from using access to the site pursuant to this Agreement as a means to date, court, or enter into a romantic or sexual relationship with any student enrolled in the School System. The Contractor agrees to indemnify the Owner for claims against the Owner resulting from relationships which have occurred or may occur between a student and an employee of the Contractor or Subcontractor.

END OF ARTICLE 3

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## ARTICLE 4

## SUBCONTRACTORS

4.1 DEFINITION

4.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor may be referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term Subcontractor does not include any Separate Contractor or his subcontractors.

4.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site or who contracts to perform or supply any of the Work under the scope of a Subcontractor's subcontract. The term Sub-subcontractor may be referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.

4.1.3 Nothing contained in the Contract Documents is intended to, nor shall it create, any contractual relationship between the Owner, the Design Consultant, or any of their agents, consultants, employees, independent contractors, or representatives and any Subcontractor, Sub-subcontractor, Supplier or Vendor of the Contractor, except the relationship between Owner and Contractor, but the Owner shall be entitled to performance of all obligations intended for his benefit, and to enforcement thereof.

4.1.4 The Owner and Design Consultant will not deal directly with any Subcontractor, Sub-subcontractor or Material Supplier. Communication will be made only through the Contractor. Subcontractor, Sub-subcontractors or Material Suppliers shall route requests for information or clarification through the Contractor to the Design Consultant.

4.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

4.2.1 The Contractor, in compliance with the requirements of the Contract Documents and within ten (10) days after the Notice to Proceed, shall furnish in writing to the Owner the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner to reply within a reasonable time shall constitute notice of no reasonable objection. The Contractor understands and agrees that no contractual agreement exists for any part of the Work under this Contract between the Owner and any of the Contractor's Subcontractors or Sub-subcontractors. Further, the Contractor understands and agrees that he alone is responsible to the Owner for the Work under this Contract and that any review of Subcontractors or Sub-subcontractors by the Owner will not in any way make the Owner responsible to any Subcontractor, nor responsible for the actions or failures of any Subcontractor or Sub-subcontractor.

4.2.1.1 The Contractor shall identify in the list of names of the Subcontractors proposed, those Subcontractors that are Historically Underutilized Businesses (HUB's) and indicate the portion of the Work that each Subcontractor will perform.

4.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner has made reasonable objection under the provisions of Paragraph 4.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

4.2.3 If the Owner has reasonable objection to any proposed person or entity under Paragraph 4.2.1, the Contractor shall name a substitute to whom the Owner has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued, subject to an audit of said difference by the Owner; provided, however, that no increase in the

Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required by Paragraph 4.2.1 and the original proposed Subcontractor was: (i) able to carry out his work under his proposed subcontract, (ii) able to comply with all applicable laws, (iii) was an ongoing business in the field of his proposed subcontract, and (iv) had a labor force, capital and a means of supply compatible with the scope of his proposed subcontract.

4.2.4 If the Owner requires a change of any proposed Subcontractor or person or organization previously accepted by him on the Project, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued, subject to an audit by Owner.

4.2.5 The Contractor shall notify the Owner and the Design Consultant of any substitution for any Subcontractor identified in accordance with Subparagraph 4.2.1.1. The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner or the Design Consultant makes reasonable objection to such substitution. Also, Contractor may make no substitution of Subcontractors in violation of applicable law.

4.2.6 If during the duration of the Project, the Contractor effects a substitution for any Subcontractor per Paragraph 5.2.5, or if additional subcontract opportunities become available, the Contractor shall make a good faith effort to utilize Historically Underutilized Businesses (HUB's).

4.3 SUBCONTRACTUAL RELATIONS

4.3.1 By an appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Contract Documents, assumes toward the Owner. Said agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the agreement between the Contractor and Subcontractor, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Section 4.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Contract Documents available to his Sub-subcontractors.

4.3.2 The provisions herein regarding Subcontractor approvals shall in no way affect the liability of the Contractor to the Owner regarding performance of all obligations by or payment of Subcontractors. Approval to subcontract with any given Subcontractor shall not to any degree relieve the Contractor of his obligation to perform or have performed to the full satisfaction of the Owner the Work required by this Contract.

4.3.3 The Contractor shall submit Notice to the Owner of any Claims by Subcontractors for which the Owner is believed to be responsible, in strict conformance with the same time requirements and other procedures established for the submission of the Contractor's Claims to the Owner.

4.4 QUALIFICATION SUBMITTALS

4.4.1 Specific qualification submittals may be required of Subcontractors, installers and suppliers for certain critical items of the Work. Required qualification submittals are set forth in detail in the Specifications and shall be collected and submitted by the Contractor for review and approval by the Design Consultant. All information required of a single Subcontractor, installer or supplier shall be contained in a single, complete submittal. The Contractor shall submit the required qualification information within ten (10) days after receipt of the Design Consultant's request.

4.4.2 The Owner and Design Consultant shall reject any proposed Subcontractor, installer or supplier, or any

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qualification submittals related thereto, for the following reasons:

.1 The Contractor's failure to submit requested information within the specified time; or

.2 The Contractor's failure to provide all of the requested information; or

.3 The Contractor's submission of a Subcontractor, installer or supplier, or qualifications thereof, which are unacceptable in the judgment of the Owner or Design Consultant.

4.4.3 Should the Owner or Design Consultant have reasonable objection to any proposed Subcontractor, installer or supplier, the Contractor shall submit another person or firm who are reasonably acceptable to the Owner and Design Consultant.

4.5 PREPARATORY WORK

4.5.1 Before starting a portion of the Work, the Contractor and the responsible Subcontractor shall carefully examine all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to proper contours, planes and levels. He shall promptly notify the Contractor and the Design Consultant of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of his work. Absence of such notification will be construed as an acceptance of preparatory work and later Claims of defects therein will not be recognized.

4.5.2 Under no conditions shall a portion of the Work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials rests solely with the Contractor, who shall maintain coordination control at all times.

END OF ARTICLE 4

## ARTICLE 5

## WORK BY OWNER OR BY SEPARATE CONTRACTORS

5.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

5.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract.

5.2 MUTUAL RESPONSIBILITY

5.2.1 Should the Contractor cause damage to the work or property of the Owner or of any separate contractor on the Project, or to other work on the Site, or delay or interfere with the Owner's work on ongoing operations or facilities or adjacent facilities or said separate contractor's work, the Contractor shall be liable for the same; and, in the case of another contractor, the Contractor shall attempt to settle said claim with such other contractor prior to such other contractor's institution of litigation or other proceedings against the Contractor.

5.2.2 Should a separate contractor cause damage to the Work or to the property of the Contractor or cause delay or interference with the Contractor's performance of the Work, the Contractor shall present directly to said separate contractor any claims it may have as a result of such damage, delay or interference (with an information copy to the Owner) and shall attempt to settle its claim against said separate contractor prior to the institution of litigation or other proceedings against said separate contractor.

5.2.3. In no event shall the Contractor seek to recover from the Owner or the Design Consultant, and the Contractor

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hereby waives any claims against the Owner and Design Consultant relating to any costs, expenses (including, but not limited to, attorney's fees) or damages or other losses incurred by the Contractor as a result of any damage to the Work or property of the Contractor or any delay or interference caused by any separate contractor.

5.3 COORDINATION OF THE WORK

5.3.1 By entering into this contract, Contractor acknowledges that there may be other contractors on the site whose work will be coordinated with that of his own. Contractor expressly warrants and guarantees that he will cooperate with other contractors and will do nothing to delay, hinder or interfere with the work of other separate contractors, the Owner or Design Consultant. Contractor also expressly agrees that, in the event his work is hindered, delayed, interfered with or otherwise affected by a separate contractor, his sole remedy will be a direct action against the separate contractor as described in this Article 5. Contractor will have no remedy, and hereby expressly waives any remedy, against the Owner and/or the Design Consultant on account of delay, hindrance, interference or other event caused by a separate contractor.

END OF ARTICLE 5

## ARTICLE 6

## MISCELLANEOUS PROVISIONS

6.1 GOVERNING LAW

6.1.1 This contract shall be governed by the law of the State of North Carolina. The Contractor and Owner agree that the county where the Project is located shall be the proper venue for any litigation arising out of this Agreement.

6.1.2 Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly or fully inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

6.2 CLAIMS AND DAMAGES

6.2.1 Should the Contractor or any of its Subcontractors suffer injury or damage to person or property because of any act or omission of the Owner or Design Consultant, or of any of their employees, agents or others for whose acts either is legally liable, the claim on behalf of the Contractor or its subcontractors shall be made in writing to the Owner within 10 days after the first observance of such injury or damage; otherwise, the Contractor shall have waived any and all rights he may have against the Owner or the Design Consultant, or their employees, representatives and agents. The Contractor shall indemnify, defend and hold the Owner harmless from any claim by a Subcontractor that is waived because it is not filed in strict conformance with this paragraph or any other provision of this Agreement regarding claims.

6.4 RIGHTS AND REMEDIES

6.4.1 The duties and obligations of the Contractor imposed by the Contract Documents and the rights and remedies of the Owner available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

6.4.2 Except as may be specifically agreed in writing, the failure of the Owner or the Design Consultant to insist in any one or more instances upon the strict performance of any one or more of the provisions of this Contract, or to exercise any right herein contained or provided by law, shall not be construed as a waiver or relinquishment of the performance of such provisions or right(s) or of the right to subsequently demand such

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strict performance or exercise such right(s), and the rights shall continue unchanged and remain in full force and effect.

6.4.3 The Contractor agrees that he can be adequately compensated by money damages for any breach of this Contract which may be committed by the Owner and hereby agrees that no default, act, or omission of the Owner or the Design Consultant, except for failure to make progress payments as required by the Contract Documents, shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the provisions of this Contract or (unless the Owner shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. The Contractor hereby waives any and all rights and remedies to which he might otherwise be or become entitled, save only his right to money damages.

6.4.4 Contractor and Owner acknowledge that the Contract Documents shall not be construed against Owner due to the fact that they may have been drafted by Owner. For purposes of construing the Contract Documents, both Contractor and Owner shall be considered to have jointly drafted the Contract Documents.

6.4.5 In the event that Owner incurs attorney's fees or litigation expenses in connection with enforcing or protecting its rights under the Contract Documents or defending any claim or lawsuit brought against it arising out of the Work or the Contract Documents, Contractor shall reimburse Owner for such reasonable attorney's fees and expenses.

6.5 TESTS AND INSPECTIONS

6.5.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested, or approved, the Contractor shall give the Owner timely notice of its readiness so the Design Consultant and the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.

6.5.2 Unless otherwise stipulated in other Contract Documents, the Contractor shall pay for all utilities required for testing of installed equipment of all of his work and work of each Subcontractor. Boiler fuel other than gas shall be provided by Subcontractor furnishing boilers. Labor and supervision required for making such tests shall be provided at no additional cost to the Owner.

6.5.3 If the Design Consultant or the Owner determines that any Work requires special inspection, testing, or approval which Subparagraph 6.51 does not include, the Owner will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 6.51. If such special inspection or testing reveals a failure of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including compensation for the Design Consultant's and Owner's additional construction management expenses made necessary by such failure.

6.6 UNENFORCEABILITY OF ANY PROVISION

6.6.1 If any provision of this Contract is held as a matter of law to be unenforceable or unconscionable, the remainder of the Contract shall be enforceable without such provision.

6.7 ATTORNEYS' FEES AND OTHER EXPENSES

6.7.1 The Contractor hereby agrees that he will not submit, assert, litigate or otherwise pursue any frivolous or unsubstantiated claims or claims he has specifically waived under the terms of the Contract Documents. In the event that the Contractor's or its Subcontractor's claims, or any separate item of a claim, is without substantial justification, the Contractor shall reimburse the Owner or Design Consultant for all costs and expenses associated with defending such claim or separate item, including but not limited to, attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional Design Consultant expenses, additional construction

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management expenses, or services and any other consultant costs.

6.7.2 If the Contractor breaches any obligation under the Contract Documents, the Contractor shall reimburse the Owner and Design Consultant for all costs and expenses incurred by the Owner relating to such breach, including but not limited to attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional Design Consultant expenses, additional construction management expenses, and any other consultant costs.

6.7.3 If the Owner or Design Consultant prevails in a claim brought against the Contractor, including but not limited to, claims for fraud or misrepresentation, overpayment, defective work, delay damages, and recovery of termination expenses, the Contractor shall reimburse the Owner and Design Consultant for all costs and expenses incurred by them relating to such claim, including but not limited to attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional Design Consultant expenses, additional construction management expenses, and any other consultant costs.

6.8 SUCCESSORS AND ASSIGNS

6.8.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner and the Contractor's Surety.

END OF ARTICLE 6

## ARTICLE 7

## TIME

7.1 DEFINITIONS

7.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial and Final Completion of the Work, as defined in Subparagraph 7.1.3 and 7.1.4, including any allowances and alternates. The Contractor shall complete his Work within Contract Time, unless the Contract Time is modified.

7.1.2 The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein. The Contractor shall not commence Work or store materials or equipment on site until written Notice to Proceed is issued or until the Contractor otherwise receives the Owner's written consent.

7.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Design Consultant and the Owner when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so the Owner can fully occupy and utilize the Work or designated portion thereof for the use for which it is intended, with all of the Project's parts and systems operable as required by the Contract Documents. Only incidental corrective work and any final cleaning beyond that needed for the Owner's full use may remain for final completion. The issuance of a temporary or final certificate of occupancy shall not, in itself, constitute Substantial Completion. Educational operational systems such as voice, data, security cameras, security card readers, security motion detection systems and building automation systems including functional graphics at the site are required for Substantial Completion.

7.1.4 The date of Final Completion of the work is the date certified by the Design Consultant and the Owner when the Work is totally complete, to include punch list work, in accordance with the Contract Documents and the Owner may fully occupy and utilize the work for the use for which it is intended. The issuance of a temporary or final certificate of occupancy shall not, in itself, constitute Final Completion.

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7.2 DELAYS AND EXTENSIONS OF TIME

7.2.1 The time during which the Contractor or any of its subcontractors delayed in the performance of the Work by the acts or omissions of the Owner, Design Consultant or their employees or agents, acts of God, unusually severe and abnormal climatic conditions, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotions or freight embargoes, or other conditions beyond the Contractor's or its subcontractors' control and which the Contractor or its subcontractors could not reasonably have foreseen and provided against, shall be added to the time for completion of the Work (i.e., the Contract Time) stated in the Agreement; provided, however, that no claim by the Contractor for an extension of time for delays will be considered unless made in strict compliance with the requirements of this Article and other provisions of the Contract Documents.

7.2.1.1 For excessive inclement weather, the Contract time will not be extended due to reasonably anticipated inclement weather or for delays in the aftermath of inclement weather, reasonably anticipated or excessive. The time for performance of this Contract, as stated in the Contract Documents, includes an allowance for calendar days which may not be available for construction out-of-doors; for the purposes of this Contract, the Contractor agrees that the number of calendar days per month based on a five-year average shall be considered reasonably anticipated inclement weather and planned for in the construction schedule per the Contract. Unless the Contractor can substantiate to the satisfaction of the Owner that there was greater than the reasonably anticipated inclement weather considering the time from the Notice to Proceed until the date established for substantial completion using data from the national weather service station noted in the Supplemental General Conditions or a weather station acceptable to the Owner and that such alleged greater than reasonably anticipated inclement weather actually delayed the Work or portions thereof which had an effect upon the Contract time, the Contractor shall not be entitled to an extension of time.

Also, the Contractor agrees that the calculation of the number of excessive inclement weather days shall be the number of days in excess of the five-year average for each month, in which precipitation exceeded one tenth (.10) inch, or in which the highest temperature was 32 degrees For less as recorded at the approved weather station. Rain days from hurricanes and tropical storms not causing damage in the county where the Project is located shall be deemed inclement weather days.

If the total accumulated number of calendar days lost to excessive inclement weather, from the Notice to Proceed until the date established for substantial completion, exceeds the total accumulated number to be reasonably anticipated for the same period from the table above, time for completion will be extended by the number of calendar days needed to include the excess number of calendar days lost. No extension of time will be made for days due to excessive inclement weather occurring after the date established for substantial completion. No change in Contract sum will be authorized because of adjustment of Contract time due to excessive inclement weather.

7.2.2 Should a time extension be granted for Substantial Completion the date for Final Completion shall be appropriately adjusted unless specifically stated otherwise.

7.2.3 Neither the Owner nor the Design Consultant shall be obligated or liable to the Contractor or its Subcontractors for, and the Contractor hereby expressly waives any claims against the Owner and the Design Consultant on account of any indirect or direct damages, costs or expenses of any nature which the Contractor, its Subcontractors, or Sub-subcontractors or any other person may incur as a result of any delays, interferences, changes in sequence or the like, which are reasonable, foreseeable, contemplated, or avoidable by Contractor, and it is understood and agreed that the Contractor's sole and exclusive remedy in any such events shall be an extension of the Contract Time in accordance with the Contract Documents, unless the delays, interferences, changes in sequence or the like arise solely from or out of any act or omission of the Owner or the Design Consultant, or their agents, employees, consultants or independent. The Contractor shall not be entitled to any damages pursuant to this section if there are any concurrent delays for which the Owner and/or the Design Consultant are not solely responsible.

7.2.4 Subject to other provisions of the Contract, the Contractor may be entitled to an extension of the Contract Time (but no increase in the Contract Sum) for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, his Subcontractors or suppliers, unless caused solely by the

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Owner or Design Consultant.

7.2.5 The Contractor and its subcontractors shall not be entitled to and hereby expressly waives any extension of time resulting from any condition or cause unless said claim for extensions of time is made in writing to the Owner within ten (10) days of the first instance of delay.

END OF ARTICLE 7

## ARTICLE 8

## PAYMENTS AND COMPLETION

8.1 SCHEDULE OF VALUES

8.1.1 Before the first Application for Payment, the Contractor shall submit to the Owner a schedule of values allocated to the various portions of the Work.

8.2 APPLICATIONS FOR PAYMENT

8.2.1 Prior to the date for each progress payment established in the Owner-Contractor Agreement, the Contractor, shall submit to the Owner an itemized Application for Payment including a completed Contractor's Sales Tax Report (attached hereto as Appendix A) for all items provided by the Contractor or any Subcontractors included in the application. The Contractor shall also certify that he has paid all due and payable amounts for which previous certificates for payment were issued and payments received from the Owner and that the work for which payment is requested has been completed.

8.2.2 The Owner will retain funds from each progress payment to the maximum extent allowed by N.C. General Statute 143-134.1 until the Work is finally completed and accepted, whether or not the Owner has occupied any or all of the Project before such time. If a reduction in retainage has been made or the Owner stops withholding retainage for any reason, the Owner may increase or commence the retainage as authorized by N.C. Gen. Stat. 143-134.1.

8.2.3 Owner will be under no obligation to make payment to the Contractor on account of materials or equipment not incorporated in the Work. Materials once paid for by the Owner become the property of the Owner and may not be removed from the work site without the Owner's written permission.

8.2.4 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 8 as "liens".

8.2.5 All invoices shall show the following:

.1 Total amount of contract
.2 Amount of change orders
.3 Total value of completed work
.4 Amount retained by Owner
.5 Amount due Contractor

8.3 CERTIFICATES FOR PAYMENT

8.3.1 By signing a Certificate for Payment, the Design Consultant shall not thereby be deemed to represent that it has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that it has reviewed the construction means, methods, techniques, sequences, or procedures, or that it has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

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8.4 PROGRESS PAYMENTS

8.4.1 The Contractor shall promptly pay each Subcontractor (including suppliers, laborers, and material-men) performing labor or furnishing material for the Work, upon receipt of payment from the Owner.

8.4.2 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

8.4.3 The Contractor shall not submit more than one pay application during any 30-day period.

8.5 PAYMENTS WITHHELD

8.5.1 The Design Consultant may decline to certify payment and may withhold their Certificate in whole or in part, to the extent the Design Consultant deems necessary to reasonably protect the Owner from loss associated with unsatisfactory job progress, defective construction, disputed work, claims or any other similar issue. If the Design Consultant is unable to make representations to the Owner and to certify payment in the amount of the Application, it will notify the Contractor as provided herein. The Design Consultant may also decline to certify payment because of subsequently discovered evidence or subsequent observations that may nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary in its opinion to protect the Owner from loss.

8.6 FAILURE OF PAYMENT

8.6.1 Payments due and unpaid under the Contract Documents shall not bear interest.

8.7 SUBSTANTIAL COMPLETION

8.7.1 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Design Consultant and Owner when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so Owner can fully occupy and utilize the Work for the use for which it is intended, with all of the Project's parts and systems operable as required by the Contract Documents. Only incidental corrective work and any final cleaning beyond that needed for Owner's full use may remain for Final Completion. The Contractor shall be solely responsible for the cost to repair or replace any work damaged or destroyed prior to the Date of Substantial Completion.

8.7.2 When the Design Consultant and the Owner on the basis of an inspection jointly determine that the Work or designated portion thereof is substantially complete, they will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Contractor shall provide operation & maintenance manuals, and operation training to the Owner as required by the Contract Documents prior to Substantial Completion. The Owner's occupancy of incomplete work shall not alter the Contractor's responsibilities pursuant to this section.

8.7.3 The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor and its Subcontractors except those previously made in writing and identified by the Contractor as unsettled at the time the Contractor submits the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance. The Contractor shall indemnify and hold the Owner harmless against any claims by its Subcontractors that are waived because they were not made in writing and identified by the Contractor as unsettled when the Contractor submitted the Application for Payment for Substantial Completion.

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8.7.4 The issuance of the Certificate of Substantial Completion does not indicate final acceptance of the project by the Owner, and the Contractor is not relieved of any responsibility for the project except as specifically stated in the Certificate of Substantial Completion.

8.7.5 There will be two inspections by the Design Consultant at Substantial Completion:

.1 To generate a list of items to be completed or corrected before Owner takes possession of the Work.
.2 To check that the list of items has been completed before issuing Final Payment.

Any additional inspections by the Design Consultant requested by Contractor to complete the Punch List shall result in money being withheld from the Final Payment to cover the cost of these additional inspections

8.8 FINAL COMPLETION AND FINAL PAYMENT

8.8.1 When the Design Consultant and the Owner find the Work acceptable under the Contract Documents and the Contract fully performed, they will approve a final Certificate of Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable, except for an amount mutually agreed upon for any work remaining incomplete or uncorrected for which the Owner is entitled a credit under the Contract Documents. If the Design Consultant and the Owner find the Work to be incomplete or unacceptable, the costs of reinspections shall be paid by the Contractor.

8.8.2 Final Payment shall not become due until the Contractor provides to the Design Consultant and Owner: three (3) copies of any of the following required:

.1 Final Change Order
.2 Final Application for Payment
.3 Consent of Surety to Final Payment - AIA G707(if applicable)
.4 Contractor’s Affidavit of Release of Liens - AIA G706A
.5 Contractor’s Affidavit of Payment of Debts and Claims - AIA G706;
.6 Certificate of Occupancy (if applicable)
.7 Contractor’s Warranty, notarized
.8 Warranty Summary Sheet with Original Warranties (if not included in O & M Manuals)
.9 Certification Letter from Contractor that no Asbestos-Containing Materials were used on the project
.10 Final List of Subcontractors (name, address, phone, fax nos.)
.11 Record Drawings (As-Built) - 1 set
.12 Operation and Maintenance Manuals - 3 sets
.13 Other project close-out submittals, as required by the Contract Documents.

8.8.3 Neither the final payment nor the remaining retained percentage shall become due until the Work is free and clear of any and all liens and the Contractor submits to the Owner:

.1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied;

.2 if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner; and

.3 As-built drawings, and other project closeout submittals, as required by the Owner.

8.8.4 The making of final payment shall constitute a waiver of all claims by the Owner against the Contractor except those arising from:

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.1 unsettled liens, and claims against the Owner or the Design Consultant, or their employees, agents, or representatives,

.2 faulty, defective or non-conforming Work discovered or appearing after Substantial or Final Completion,

.3 failure of the Work to comply with the requirements of the Contract Documents,

.4 terms of any warranties contained in or required by the Contract Documents,

.5 damages incurred by the Owner resulting from lawsuits brought against the Owner, the Design Consultant, or their agents, employees or representatives because of failures or actions on the part of the Contractor, his Subcontractors, Sub-subcontractors, or any of their employees, agents or representatives, or

.6 fraud or bad faith committed by the Contractor or any subcontractor or supplier during performance of work but discovered by Owner after Final Payment.

8.8.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment

8.9 LIQUIDATED DAMAGES

8.9.1 Should the Contractor fail to substantially complete the Work on or before the date stipulated for Substantial Completion (or such later date as may result from extension of time granted by Owner), he shall pay the Owner, as Substantial Completion liquidated damages the daily amount stated in the Supplementary Conditions for each consecutive calendar day that terms of the contract remain unfulfilled beyond the date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages which the Owner will sustain per day by failure of the Contractor to complete work within time as stipulated; it being recognized by the Owner and the Contractor that the injury to the Owner which could result from a failure of the Contractor to complete on schedule is uncertain and cannot be computed exactly. In no way shall costs for liquidated damages be construed as a penalty on the Contractor.

8.9.2 For each consecutive calendar day that the Work remains incomplete after the date established for Final Completion, the Contractor shall pay or Owner will retain the daily amount stated in the Supplementary Conditions as Final Completion Liquidated Damages from the compensation otherwise to be paid to the Contractor. This amount is the minimum measure of damages the Owner will sustain due to the delay in the completion of all remedial work, the delay in the correction of the deficient work, the disruption to the school and the learning environment, the cost of contract management time and resources, administration time, and the inability to use the facilities fully. This amount is in addition to the liquidated damages prescribed above for Substantial Completion.

8.9.3 The amount of liquidated damages set forth above and in the corresponding Supplementary Conditions shall be assessed cumulatively. The items of cost included in the assessment of liquidated damages are as defined in the General Conditions. This provision for liquidated damages does not bar Owner's right to enforce other rights and remedies against Contractor, including but not limited to, specific performance or injunctive relief.

8.10 OWNER'S RIGHT TO OCCUPY INCOMPLETE WORK

8.10.1 Should the Project, or any portion thereof, be incomplete for Substantial or Final Completion at the scheduled date or dates, the Owner shall have the right to occupy any portion of the Project. In such an event, the Contractor shall not be entitled to any extra compensation on account of said occupancy by the Owner or by the Owner's normal full use of the Project, nor shall the Contractor interfere in any way with said normal full use of the Project. Further, in such an event, the Contractor shall not be entitled to any extra compensation on account of the Owner's occupancy and use of the Project, nor shall the Contractor be relieved of any

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responsibilities of the Contract including the required times of completion. Such occupancy by the Owner shall not, in itself, constitute Substantial or Final Completion.

END OF ARTICLE 8

## ARTICLE 9

## INSURANCE AND BONDS

9.1.1 CONTRACTOR'S INSURANCE AND BONDS

The Contractor shall purchase and maintain in companies properly licensed by the Insurance Department of the State of North Carolina and acceptable to the Owner such insurance as will protect him, the Owner, and the Owner's agents, representatives, and employees from claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall include:

9.1.1.1 Worker's Compensation including Occupational Disease and Employer's Liability Insurance

.1 Statutory - Amount and coverage as required by State of North Carolina Worker's Compensation laws

.2 Employer's Liability
$1,000,000 Each Accident
$1,000,000 Policy Limit
$1,000,000 Each Employee

9.1.1.2 Commercial General Liability (Occurrence Form) - The Contractor shall provide during the life of this Contract such Commercial General Liability (Occurrence Form) Insurance as shall protect Contractor and any Subcontractor performing work under this Contract from claims for damages for Bodily Injury including accidental death, as well as from claims for Property Damage which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by either of them. This insurance shall be on the Standard Insurance Services Office, Inc. (ISO) Commercial Liability Occurrence Form. The Contractor shall procure insurance coverage for direct operations, sublet work, elevators, contractual liability and completed operations with limits not less than those stated below:

A Combined Single Limit for Bodily Injury, Property Damage and Personal Injury of:

| | |
|---|---|
| $2,000,000 | General Aggregate (except Products - Completed Operations) Limit |
| $2,000,000 | Products - Completed Operations Aggregate Limit |
| $1,000,000 | Personal and Advertising Injury Limit |
| $1,000,000 | Each Occurrence Limit |
| $ 5,000 | Medical Expense |

9.1.1.3 Property Damages, including Broad Form Property Damage and Explosion, Collapse, Underground property damage coverages, and blasting, where necessary.

9.1.1.4 Completed Operations Liability: Continuous coverage in force for one year after completion of Work.

9.1.1.5 Commercial Automobile Insurance, including coverage for owned, non-owned and hired vehicles - with limits not less than a Combined Single Limit for Bodily Injury and Property Damage of $1,000,000.

9.1.1.6 Umbrella Liability Insurance: Policy to 'pay on behalf of the Insured' with Limits of Liability: $1,000,000.

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9.2 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the Owner. Failure to provide such notice shall not limit the liability of the Insurer, its agents or representatives.

9.3 All insurance policies required in this Article, except Worker's Compensation and Commercial Automobile, shall name the Owner as additional named insured for the insurance. The Owner shall be included in the definition of "insured" in the Commercial Automobile Policy.

9.4 Contractor shall not commence work under this Contract until he has obtained all the insurance and bonds required under Article 5 of this Contract and until such insurance and bonds have been approved by the Owner, nor shall Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Approval of the insurance by Owner shall not relieve or decrease the liability of Contractor hereunder.

9.5 The Commercial General Liability and Workers Compensation Policies provided by Contractor shall have endorsements waiving subrogation against Owner.

9.6 PROPERTY INSURANCE. Contractor shall provide the following property insurance:

9.6.1 Unless stated otherwise in the Supplemental Conditions, Contractor shall purchase and at all times maintain such insurance as will protect Contractor, Owner, Subcontractors and Sub-subcontractors from loss or damage to Work or property in the course of construction, including all machinery, materials and supplies on the premises or in transit thereto and intended to become a part of the finished work until Final Completion. This insurance shall be in the form of 'Builder's Risk Covered Cause of Loss Form' to include, but not limited to, theft, collapse, earth movement and flood. Any deductible provision in such insurance shall not exceed $5,000.00. Notwithstanding any such deductible provision, Contractor shall remain solely liable for the full amount of any item covered by such insurance.

9.6.2 If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed to by Owner and Contractor, and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy or use. Consent of Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

9.7 Owner shall be under no obligation to review any Certificates of Insurance provided by Contractor, or to check or verify Contractor's compliance with any and all requirements regarding insurance imposed by the Contract Documents. Contractor 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 Contractor not comply with any and all requirements regarding insurance imposed by the Contract Documents.

9.8 All insurance companies providing the above insurance shall be licensed by the Insurance Department of the State of North Carolina and maintain a rating by AM Best or a similar rating company with a minimum of an "A-" rating.

9.9 PERFORMANCE AND PAYMENT BONDS

"If required by law, or in the Supplemental Conditions or the Contract Documents, Contractor must provide performance and payment bonds each in the amount of the Contract Sum. Such bonds shall be on forms acceptable to Owner and issued by surety companies licensed to do business in North Carolina and having a rating of at least AM Best "A" rating. Contractor may, at its option, make deposit in the form of certified check with Owner in lieu of the performance and payment bonds in an amount equal to the Contract Sum for each such bond, for a total of 200% of the Contract Sum."

END OF ARTICLE 9

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## ARTICLE 10

## CHANGES IN THE WORK

10.1 CHANGE ORDERS

10.1.1 The Owner may, at any time, by written order designated or indicated to be a Change Order, make any change or modification in the Work or add to the Work within the general scope of the Contract.

10.2 OWNER DIRECTED CHANGES REQUIRING AN INCREASE IN CONTRACT SUM.

10.2.1 If the Change in the Work will result in an increase in the Contract Sum, the Owner shall have the right to require the performance thereof on a lump sum basis, a unit price basis or a time and material basis, all as hereinafter more particularly described (the right of the Owner as aforesaid shall apply with respect to each such Change in the Work).

If the Owner elects to have the Change in the Work performed on a lump sum basis, its election shall be based on a lump sum Proposal which shall be submitted by the Contractor to the Owner within seven (7) days of the Contractor's receipt of a request therefore (but the Owner's request for a lump sum Proposal shall not be deemed an election by the Owner to have the Change in the Work performed on a lump sum basis). The Contractor's Proposal shall be itemized and segregated by labor and materials for the various components of the Change in the Work (no aggregate labor total will be acceptable) and shall be accompanied by signed Proposals of any Subcontractors who will perform any portion of the Change in the Work and of any persons who will furnish materials or equipment for incorporation therein. The Proposal shall also include the Contractor's estimate of the time required to perform said changes. The Contractor shall provide any documentation that may be requested by the Owner or Architect to support the change proposal, including but not limited to payroll records, insurance rates, material quotes, and rental quotes. The Change Proposal Forms attached as Appendix B shall be used to submit change proposals on the Project.

The portion of the Proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors, may include reasonably anticipated gross wages of job site labor, including foremen, who will be directly involved in the Change in the Work (for such time as they will be so involved), plus payroll costs (including premium costs of overtime time, if overtime is anticipated, Social Security, Federal or State unemployment insurance taxes and fringe benefits required by collective bargaining agreements entered into by the Contractor or any such Subcontractor in connection with such labor) and up to fifteen percent (15%) of such anticipated gross wages, but not payroll costs, as overhead and profit for the Contractor or any such Subcontractor, as applicable (said overhead and profit to include all supervision except foremen). Payroll costs are limited to 39% of the net pay of the worker.

The portion of the Proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or to any of its Subcontractors of materials to be purchased for incorporation in the Change in the Work, plus transportation and applicable sales and use taxes and up to fifteen percent (15%) of said direct material costs as overhead and profit for the Contractor or any such Subcontractor (said overhead and profit to include all small tools), and may further include the Contractor's and any of its Subcontractor's reasonably anticipated rental costs in connection with the Change in the Work (either actual or discounted local published rates), plus up to eight percent (8%) thereof as overhead and profit for the Contractor or any such Subcontractors, as applicable. The Contractor shall provide an itemized breakdown of all transportation and shipping costs, including receipts documenting the expenses. Notwithstanding the above, overhead and profit shall not be applied to any sales tax paid for any purpose or to any transportation or shipping costs incurred by the Contractor or any subcontractor. If any of the items included in the lump sum Proposal are covered by unit prices contained in the Contract Documents, the Owner may, if it requires the Change in the Work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum Proposal, in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices.

The lump sum Proposal may include up to eight percent (8%) of the amount which the Contractor will pay to any of its Subcontractors for Changes in the Work as overhead and profit for the Contractor. The Contractor shall not be reimbursed for the costs of the Subcontractors' Payment and Performance Bonds, as such bonding is not required by the Owner.

10.2.2 In the event that the Contractor fails to submit his Proposal within the designated period, the Owner may order the Contractor to proceed with the Change to the Work and the Contractor shall so proceed. The Owner shall unilaterally determine the reasonable cost and time to perform the Work in question, which determination shall be final and binding upon the Contractor. The Contractor may dispute such action in accordance with the Article 15.

10.2.3 In the event that the parties are unable to agree as to the reasonable cost and time to perform the Change in the Work based upon the Contractor's Proposal and the Owner does not elect to have the Change in the Work performed on a time and material basis, the Owner may choose to make a determination of the reasonable cost and time to perform the Change in the Work, based upon its own estimates, the Contractor's submission or a combination thereof. A Construction Change Directive shall be issued in this case for the amounts of cost and time determined by the Owner and shall become final and binding upon the Contractor, subject to Contractor's right to dispute such action in accordance with Article 10.9. Owner has the right to direct by Construction Change Directive a Change in the Work, which is the subject of such Change Order. Failure of the parties to reach agreement regarding the cost and time of the performing the Construction Change Directive, shall not relieve the Contractor from performing the Change in the Work promptly and expeditiously.

10.2.3.1 The Owner reserves the right to reject the Contractor's Proposal for a Change in the Work and to elect to perform said Work using a Separate Contractor. Under such circumstances, all provisions of Article 6 shall be in force.

10.2.4 If the Owner elects to have the Change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-subcontractors, at actual cost to the entity performing the Change in the Work (without any charge for administration, clerical expense, supervision or superintendence of any nature whatsoever, including foremen, or the cost, use or rental of tools or plant), plus fifteen percent (15%) thereof as the total overhead and profit (except that said fifteen percent (15%) shall not be applied against any payroll costs, as set forth in Paragraph 10.2.1.) The Contractor shall submit to the Owner daily time and material tickets, on a daily basis to include the identification number assigned to the Change in the Work, the location and description of the Change in the Work, the classification of labor employed (and names and social security numbers), the materials used, the equipment rented (not tools) and such other evidence of cost as the Owner may require. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose. The failure of the Contractor to secure any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the Contractor of any Claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the Owner shall not constitute an acknowledgment by the Owner that the items thereon were reasonably required for the Change in the Work.

10.2.5 No overhead and profit will be paid by the Owner on account of a Change in the Work except as specifically provided in Section 10.2. Overhead and profit, as allowed under Section 10.2, shall be deemed to include all costs and expenses which the Contractor or any of its Subcontractors may incur in the performance of a Change in the Work and which are not otherwise specifically recoverable by them pursuant to Section 10.2.

10.3 CONTRACTOR NOTICE OF CHANGE

10.3.1 If the Contractor or any of its Subcontractors asserts that any event or occurrence has caused a change in or addition to the Work which change causes an increase or decrease in the Contractor's or its Subcontractors' cost or the time required for the performance of any part of the Work under the Contract, including Work not affected directly by the change, the Contractor shall, within ten (10) days of such event, give the Owner written

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notice as herein required. Said notice shall include the instructions or circumstances that are the basis of the claim and the Contractor's best estimate of the cost and time involved.

10.3.2 If the Contractor intends to assert a claim under this Article, he must, within ten (10) days after receipt of a written Change Order under Subparagraph 10.2.1 above or the furnishing of a written notice under Subparagraph 10.3.1, submit to the Owner a written statement setting forth the specific nature and cost of such claim, unless this period is extended by the Owner. The statement of claim hereunder may be included in the notice under Subparagraph 10.3.1 above. The statement of claim shall include all direct, indirect and impact costs associated with the change, as well as the Contractor's estimate of the schedule impact of the change, if any. The Contractor and its subcontractors shall not be entitled to reimbursement for any claims that are not filed in strict conformance with this Article. The Contractor shall indemnify and hold the Owner harmless against any claims by Subcontractors that are waived because they are not filed in strict conformance with this Article.

10.3.3 If the parties are unable to agree to the reasonable cost and time to perform the Change, or are unable to agree as to whether a change occurred, the Owner shall make a unilateral determination as described in Article 10.2.2. The Contractor shall proceed pursuant to the provisions of that Article.

10.4 GENERAL PROVISIONS RELATED TO CHANGES

10.4.1 The Contractor shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called "impact" costs, labor inefficiency, wage, material or other escalations beyond the prices upon which the proposal is based and to which the parties have agreed pursuant to the provisions of Article 10, and which the Contractor, its Subcontractors or Sub-subcontractors or any other person may incur as a result of delays, interferences, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all changes in the Work performed pursuant to this Article 10, unless the delay is caused solely by the Owner or its agent. It is understood and agreed that the Contractor's sole and exclusive remedy in such event shall be recovery of his direct costs as compensable hereunder and an extension of the Contract Time, but only in accordance with the provisions of the Contract Documents. The phrase “Owner or its agent” as used in this Agreement, does not include the Prime Contractors or their Subcontractors.

10.4.2 No claim by the Contractor hereunder shall be allowed if asserted after final payment under this Contract. No claim relating to or flowing from a particular change shall be allowed after execution of the Change Order relating to that change or commencement of the change by the Contractor.

10.5 CHANGES REQUIRING A DECREASE IN CONTRACT SUM.

10.5.1 If the Change in the Work will result in a decrease in the Contract Sum, the Owner may request a quotation by the Contractor of the amount of such decrease for use in preparing a Change Order. The Contractor's quotation shall be forwarded to the Owner within ten (10) days of the Owner's request and, if acceptable to the Owner, shall be incorporated in the Change Order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the Contract Documents and/or on such other basis as the parties may mutually determine. If the parties are unable to so agree, the amount of such decrease shall be the total of the estimated reduction in actual cost of the Work, as determined by the Owner in its reasonable judgment, plus fifteen percent (15%) thereof as overhead and profit.

10.6 DISPUTES REGARDING CHANGES.

10.6.1 If any dispute should arise between the parties with respect to an increase or decrease in the Contract Sum or an expansion or contraction in the Contract Time as a result of a Change in the Work, the Contractor shall not suspend performance of a Change in the Work or the Work itself unless otherwise so ordered by the Owner in writing. The Owner shall, however, pay to the Contractor up to the Owner's reasonable estimated value of the Change in the Work, regardless of the dispute, if said Change in the Work results in an increase in the Contract Sum; and the Owner shall have the right to decrease the Contract Sum up to the Owner's reasonable estimated

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value of the Change in the Work, regardless of the dispute, if said Change in the Work results in a decrease in the Contract Sum.

10.7 MINOR CHANGES IN THE WORK

10.7.1 The Owner shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

10.7.2 The Contractor shall not perform any changes in the Work unless authorized in writing by the Design Consultant or Owner.

10.8 DIFFERING SITE CONDITIONS

10.8.1 Should the Contractor encounter subsurface and/or latent conditions at the site materially differing from those shown on the drawings or indicated in the specifications or differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract, he shall immediately give notice to the Owner of such conditions before they are disturbed. The Owner and the Design Consultant shall thereupon promptly investigate the conditions and if they find that they materially differ from those shown on the drawings or indicated in the specifications, they shall at once make such changes in the drawings and/or specifications as they may find necessary. Any increase or decrease of cost resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional work and changes. However, neither the Owner nor the Design Consultant shall be liable or responsible for additional work, costs or changes to the work due to material differences between actual conditions and any geotechnical, soils and other reports, surveys and analyses made available for the Contractor's review.

10.9 CLAIMS AND DISPUTE RESOLUTION

10.9.1 Definition. A Claim is a demand or assertion by the Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question from the Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the Contractor.

10.9.2 Time Limits on Claims. Claims by Contractor must be initiated within 10 days occurrence of the event giving rise to such Claim or within 10 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Design Consultant (if there is one) and the other party.

10.9.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as otherwise provided in the Contract Documents, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments in accordance with the Contract Documents.

10.9.4 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property when the giving of such notice would increase the risk of injury or damage to persons or property.

10.9.5 Claims for Additional Time. If the Contractor wishes to make Claim for an extension of the dates set for Substantial or Final Completion, written notice as provided herein shall be given. The Contractor’s Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Contractor bears the burden of proving it is entitled to an extension of time. Unless Contractor meets this burden, Liquidated Damages shall be assessed automatically.

10.9.6 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the relevant period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

10.9.7 Resolution of Claims and Disputes. Claims, including those alleging an error or omission by the Design Consultant, shall be referred initially to the Design Consultant for decision, if there is a Design Consultant with Contract Administration duties which include Claims resolution; otherwise, such Claims by Contractor shall initially be referred to the Owner. An initial decision by such Design Consultant (or Owner as applicable) shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Design Consultant (or Owner as applicable) with no decision having been rendered. The Design Consultant (or Owner as applicable) will not decide disputes between the Contractor and persons or entitles other than the Owner.

10.9.8 The Design Consultant (or Owner as applicable) will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Design Consultant is unable to resolve the Claim if the Design Consultant lacks sufficient information to evaluate the merits of the Claim or if the Design Consultant concludes that, in the Design Consultant's sole discretion, it would be inappropriate for the Design Consultant to resolve the Claim.

10.9.9 Upon receipt of the response or supporting data, if any, the Design Consultant (or Owner as applicable) will either reject or approve the Claim in whole or in part.

10.9.10 The Design Consultant (or Owner as applicable) will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties or any change in the Contract Sum or Contract Time, or both. The approval or rejection of a Claim by the Design Consultant (or Owner as applicable) shall be final and binding on the parties but subject to mediation and litigation.

10.9.11 When a written decision of the Design Consultant (or Owner as applicable) states that (1) the decision is final but subject to mediation and litigation and (2) a demand for mediation of a Claim (if required by Owner's Dispute Resolution Procedures) or the commencement of a lawsuit (if mediation is not required as a pre-condition to litigation in Owner's Dispute Resolution Procedures) covered by such decision must be made or done within 30 days after the date on which the party making the demand (or filing the lawsuit) receives the final written decision, then failure to demand mediation in writing (if required) or file the lawsuit within said 30 days' period shall result in the Design Consultant's (or Owner's as applicable) decision becoming final and binding upon the Owner and Contractor. If the Design Consultant (or Owner as applicable) renders a decision after litigation proceedings have been initiated, such decision may be entered as evidence, but shall not supersede litigation proceedings unless the decision is acceptable to all parties concerned.

10.9.12 In the event of a dispute, the Owner, Contractor, and other parties involved in the Project shall utilize the Dispute Resolution Procedures adopted by Owner pursuant to N.C.G.S. §143-128(g), if applicable. Owner's Dispute Resolution Procedures are as follows:

These Procedures are applicable to the resolution of disputes with amounts in controversy in excess of $15,000.00 arising between or among any parties involved in Owner's construction and repair Projects, including the Design Consultant and the Contractors, and the first and lower tier subcontractors, on Claims arising out of the contract or construction process. In no event shall the Owner be subject to arbitration proceedings pursuant to these Procedures. Unless otherwise specified in these Procedures, if there is any conflict between these Procedures and the other provisions of the Contract Documents, the terms of these Procedures control.

Any Claim as defined in the Contract Documents or any dispute between parties to a construction contract involving the Project, other than the Owner's claims, except those Claims which are waived shall be subject to nonbinding mediation as a condition precedent to the institution of legal proceedings by any party, except that any party may institute legal proceedings in order to meet any applicable statute of limitations or similar deadlines prior to engaging in nonbinding mediation.

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The parties shall endeavor to resolve their claims by nonbinding mediation, which, unless the parties mutually agree otherwise, shall be in accordance with rules established by Owner if Owner is a party to the mediation. If Owner is not a party to the mediation, the mediation shall be conducted in accordance with rules established by the parties to the mediation. The parties to the mediation shall share the cost of mediation equally. The mediation shall be held in the place where the project is located unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10.9.13 All suits in law or equity between the Owner and the Contractor arising out of the Contract shall be heard in the appropriate court of justice in the county where the Project is located.

END OF ARTICLE 10

## ARTICLE 11

## CORRECTION OF WORK

11.1 CORRECTION OF WORK

11.1.1 The Contractor shall promptly reconstruct, replace or correct all Work rejected by the Design Consultant as defective or as failing to conform to the Contract Documents or as not in accordance with the guarantees and warranties specified in the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Design Consultant's and the Owner's additional construction management services made necessary thereby.

11.1.2 The Contractor, unless removal is waived by the Owner, shall remove from the site all portions of the Work which are defective or non-conforming, or if permitted or required, he shall correct such work in place at his own expense promptly after receipt of notice, and such rejected Work shall not thereafter be tendered for acceptance unless the former rejection or requirement for correction is disclosed.

11.1.3 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Owner, the Owner may either (1) by separate contract or otherwise replace or correct such Work and charge the Contractor the cost occasioned the Owner thereby and remove and store the materials or equipment at the expense of the Contractor, or (2) terminate this Contract for default as provided in Paragraph 12.3. If the Contractor does not pay the cost of such replacement or correction and the removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for additional services of the Design Consultant and the Owner made necessary thereby. If such proceeds of sale do not cover all costs, which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

11.1.4 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.

11.1.5 Nothing contained in this Paragraph 11.1 shall be construed to establish a period of limitation with respect to any other obligation, which the Contractor might have under the Contract Documents, including Paragraph 3.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced,

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nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

END OF ARTICLE 11

## ARTICLE 12

## TERMINATION OF THE CONTRACT

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon seven (7) additional days' written notice to the Owner and the Design Consultant, terminate the Contract and recover from the Owner payment on a quantum merit basis, for all Work executed. The Contractor shall not be entitled to collect and hereby expressly waives, any profit on work not performed or any damages related to that portion of the Contract, which has been terminated.

12.2 TERMINATION FOR CONVENIENCE OF THE OWNER

12.2.1 The Owner may, at any time upon ten (10) days' written notice to the Contractor which notice shall specify that portion of the Work to be terminated and the date said termination is to take effect, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the work for the convenience of the Owner. The Contractor's sole remedy, in the event of such termination, will be the allowable termination costs permitted by Article 12.4. Contractor shall include termination clauses identical to Article 12 in each of his Subcontracts.

12.3 DEFAULT TERMINATION

12.3.1 Subject to the provisions of Paragraph 2.3.1, ten (10) days after written notice is mailed to the Contractor, the Owner may terminate (without prejudice to any right or remedy of the Owner or any subsequent buyer of any portion of the Work) the employment of the Contractor and his right to proceed either as to the whole or any portion of the Work required by the Contract Documents and may take possession of the Work and complete the Work by contract or otherwise in any one of the following circumstances:

.1 if the Contractor refuses or fails to prosecute the work or any separable part thereof with such diligence as will ensure the Substantial or Final Completion of the Work within the Contract Time or fails to complete the Work or remedy a default within said period;

.2 if the Contractor is in material default in carrying out any provisions of the Contract for a cause within his control;

.3 if the Contractor fails to supply a sufficient number of properly skilled workmen or proper equipment or materials;

.4 if the Contractor fails to make prompt payment to Subcontractors or for materials or labor, unless he otherwise provides the Owner satisfactory evidence that payment is not legally due;

.5 if the Contractor disregards laws, permits, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to follow the instructions of the Owner;

.6 if the Contractor substantially violates any provisions of the Contract Documents; or

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.7 if the Contractor refuses or fails to properly schedule, plan, coordinate and execute the Work, as specified herein, so as to perform the Work within the specified Milestone and Completion dates, or to provide scheduling or related information, revisions and updates as required by the Contract Documents.

12.3.2 If, after the Contractor has been terminated for default pursuant to Paragraph 12.3, it is determined that none of the circumstances set forth in Subparagraph 12.3.1 exist, then such termination shall be considered a termination for convenience pursuant to Paragraph 12.2 In such case, the Contractor's sole remedy will be the costs permitted by Article 12.4.

12.3.3 If the Owner so terminates the employment of the Contractor, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the compensation is to be paid to the Contractor hereunder shall exceed the expense of so completing the Work (including compensation for additional managerial, administrative, consultant and inspection services and any damages for delay) such excess shall be paid to the Contractor.

12.3.4 If such expenses shall exceed the unpaid balance, the Contractor shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the Work is partially or fully terminated, the Owner may take possession of and utilize in completing the Work such materials, appliances, supplies, plant and equipment as may be on the site of the terminated portion of the Work and necessary for the completion of the Work. If the Owner does not fully terminate the right of the Contractor to proceed, the Contractor shall continue to perform the part of the work that is not terminated.

12.4 ALLOWABLE TERMINATION COSTS

12.4.1 If the Owner terminates the whole or any portion of the Work pursuant to Paragraph 12.2, then the Owner shall only be liable to the Contractor for those costs reimbursable to the Contractor in accordance with Subparagraph 12.4.2, plus a markup of ten percent for profit and overhead on the actual fully accounted costs recovered under 12.4.2; provided however, that if there is evidence that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed hereunder and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.

12.4.1.1 After receipt of a Notice of Termination, the Contractor shall submit to the Owner his termination claim, in the form and with certification prescribed by the Owner. Such claim shall be submitted promptly but in no event later than three (3) months from the effective date of termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such three (3) month period or authorized extension thereof. However, if the Owner determines that the facts justify such action, he may receive and evaluate any such termination claim at any time after such three (3) month period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Owner may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination.

12.4.2 If the Owner terminates the whole or any portion of the Work pursuant to Paragraph 12.2, the Owner shall pay the Contractor the amounts determined by the Owner as follows:

.1 an amount for supplies, services, or property accepted by the Owner pursuant to Clause 12.5.1.6 or sold or acquired pursuant to Clause 12.5.1.7 and not heretofore paid for, and to the extent provided in the Contract such amount shall be equivalent to the aggregate price for such supplies or services computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges; and

.2 the total of:

(1) the cost incurred in the performance of the Work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under Clauses 12.4.2.1 or 12.4.2.2.(2);

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(2) the cost of settling and paying claims arising out of the termination of Work under Subcontracts or orders, pursuant to Clause 12.5.1.5, which are properly chargeable to the terminated portion of the Work (exclusive of amounts paid or payable on account of completed items of equipment delivered or services furnished by Subcontractors or vendors prior to the effective date of the notice of termination), which amounts shall be included in the costs payable under (1) above; and

(3) the reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Work and for the termination and settlement of Subcontracts thereunder, together with reasonable storage, transportation and other costs incurred in connection with the protection or disposition of property allocable to the Contract.

.3 Provided, however, that neither the Owner nor the Design Consultant will be liable for payments to subcontractors pursuant to Article 12.4.2.2 unless each subcontract contains termination provisions identical to those set forth in Article 12. The Owner and the Design Consultant will not be liable to the Contractor or any of his subcontractors for any costs associated with termination if the subcontract of the party involved does not include the proper termination clauses.

12.4.3 In arriving at any amount due the Contractor pursuant to Paragraph 12.4, there shall be deducted the following:

.1 all unliquidated advance or other payments on account theretofore made to the Contractor applicable to the terminated portion of the Contract;

.2 any claim which the Owner may have against the Contractor;

.3 such amount as the Owner determines to be necessary to protect the Owner against loss because of outstanding or potential liens or claims; and

.4 the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of Clause 12.5.1.7, and not otherwise recovered by or credited to the Owner.

12.4.4 The total sum to be paid to the Contractor under Paragraph 12.4 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made or to be made for Work not terminated and as otherwise permitted by the Contract. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor, as provided in Subparagraph 12.4.2, the fair value, as determined by the Owner, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to Clause 12.5.1.7.

12.4.5 If the Owner terminates the whole or any part of the Work pursuant to Paragraph 12.3, the Owner may procure, upon such terms and in such manner as the Owner may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Owner for any excess costs for such similar supplies or services. The Contractor shall continue the performance of the Contract to the extent not terminated hereunder.

12.5 GENERAL TERMINATION PROVISIONS

12.5.1 After receipt of a notice of termination from the Owner, pursuant to Paragraph 12.2 or 12.3, and except as otherwise directed by the Owner, the Contractor shall:

.1 stop Work under the Contract on the date and to the extent specified in the notice of termination;

.2 place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;

.3 terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination;

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.4 at the option of the Owner, assign to the Owner in the manner, at the times and to the extent directed by the Owner, all of the rights in the contracts so terminated, in which case the Owner shall have the right, at his discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

.5 settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts, with the approval or ratification of the Owner, to the extent he may require, which approval or ratification shall be final for all the purposes of this Article;

.6 transfer title and deliver to the entity or entities designated by the Owner, in the manner, at the times and to the extent directed by the Owner to the extent specifically produced or specifically acquired by the Contractor for the performance of such portion of the Work as had been terminated, the following:

(1) the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated by the notice of termination; and

(2) the completed or partially completed plans, drawings, information, releases, manuals and other property related to the Work and which, if the Contract had been completed, would have been required to be furnished to the Owner;

.7 use his best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Owner, any property of the types referred to in Clause 12.5.1.6; provided, however, that the Contractor:

(1) shall not be required to extend credit to any buyer, and

(2) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under the Contract or shall otherwise be credited to the Contract Sum covered by the Contract or paid in such other manner as the Owner may direct;

.8 complete performance of such part of the Work as shall not have been terminated by the notice of termination; and

.9 take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to the Contract, which is in the possession of the Contractor, and in which the Owner has or may acquire an interest.

12.5.2 The Contractor shall, from the effective date of termination until the expiration of three (3) years after final settlement under the Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, but without direct charge to the Owner, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the Work terminated hereunder, or, to the extent approved by the Owner, photographs, micro-photographs or other authentic reproductions thereof.

12.5.3 If the termination, pursuant to Paragraph 12.2, be partial, the Contractor may file with the Owner a claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this Subparagraph must be asserted within six (6) months from the effective date of the notice of termination.

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12.5.4 The Contractor shall refund to the Owner any amounts paid by the Owner to the Contractor in excess of costs reimbursable under Paragraph 12.4.

12.5.5 The Contractor shall be entitled to only those damages and that relief from termination by the Owner as specifically provided in Article 12.

END OF ARTICLE 12
END OF GENERAL CONDITIONS

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# CONTRACTOR'S SALES TAX REPORT
# N.C. STATE & LOCAL SALES TAXES PAID

**OWNER:** _____ **PROJECT:** _____
**CONTRACTOR:** _____ **FOR PERIOD FROM:** _____
**ADDRESS:** _____ **TO:** _____

| VENDOR TAX WAS PAID TO | MATERIAL PURCHASED | ADDRESS | INVOICE NUMBER | DATE | INVOICE AMOUNT | TAXABLE AMOUNT | N.C. TAX | COUNTY TAX | NAME OF COUNTY |
|---|---|---|---|---|---|---|---|---|---|
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| | | | | | | | | | |
| | | | | **TOTAL** | | | | | |

I hereby certify that, during the period stated above, all North Carolina sales and use taxes have been paid for the materials, supplies, fixtures, and equipment purchased during that period which have become a part of, or annexed to, a building or structure erected, altered or repaired for the Owner. I further certify that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina sales and use taxes paid thereon, and the cost of property withdrawn from warehouse stock and North Carolina sales or use taxes paid thereon are as set forth above during the time period noted above.

Sworn to and subscribed before me,

This the ____ day of _____, 20____

Signed: _____

Print Name: _____

Seal

___ _____
Notary Public

Title: _____

My Commission Expires: _____

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**CHANGE PROPOSAL FORM**
**Time and Material / Unit Price Estimate**

**Project:** _____ **Proposal #:** _____
**Contract:** _____ **Project #:** _____
**Contractor:** _____ **Contractor #:** _____

**Description of change:**

| | |
|---|---|
| **Materials & Labor**<br>Estimated cost of labor & materials including shipping, overtime, payroll taxes and insurance, and overhead and profit.<br>Maintain accurate records for billing purposes. | **SUBTOTALS** |
| **Unit Price Work**<br>Estimated quantity of units required less allowance units not used, times the established unit cost.<br>Maintain accurate records for billing purposes. Third party records may be required. | |
| **Equipment Rental**<br>Estimated cost of equipment rental including shipping, taxes and overhead and profit.<br>Maintain accurate records for billing purposes. | |
| **Subcontractors**<br>Estimated cost of subcontracts including all subcontractor expenses.<br>Maintain accurate records for billing purposes. | |
| **Subtotal of Proposal** | |

*** TOTAL NOT TO EXCEED CHANGE PROPOSAL ESTIMATE** _____

Time Extension Requests: ____day(s) Schedule Activity # Affected: _____

The Contractor agrees to perform the work outlined in this change proposal for an amount that shall not exceed the amount stated above and in accordance with the Contract documents if the work is authorized by the Owner. If the price to perform the work is expected to exceed the above stated amount, a new change proposal form for the additional work is required.

* Actual amount paid will be based on actual documented expenses.

**Contractor's Signature: _____** **Date: _____**

**Approval Recommended by Design Consultant: _____** **Date: _____**

**Owner's Representative Approval: _____** **Date: _____**

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# CHANGE PROPOSAL FORM

**Project:** _____ **Proposal #:** _____

**Contract:** _____ **Project #:** _____

**Contractor:** _____ **Contractor #:** _____

**Description of change:**

| | | SUBTOTALS |
|---|---|---|
| **Materials** (Attach list with Qty, Item, Unit $, Unit mh, Total mh, OT mh, Total $) | | |
| 1 Total Direct Cost of Materials | | |
| 2 Overhead & Profit on Item 1. (15% maximum, includes small tools & consumables) | | |
| 3 Sales Tax | | |
| 4 Shipping & Transportation | | |
| **Labor** | | |
| 5 Total Manhours: ____ MH @ ___ /hr. | | |
| 6 Overhead & Profit on Item 5. (15% maximum on straight labor cost, not premium portion) (O & P includes supervisor's time) | | |
| 7 Payroll Taxes & Insurance ___ % | | |
| **Equipment Rental** (Include quotes) | | |
| 8 Equipment Rental | | |
| 9 Overhead & Profit on Item 8 (6% maximum). | | |
| **Subcontractors** (Include quotes with material & equipment backup) | | |
| 10 Subcontractors | | |
| 11 Overhead & Profit on Item 10 (6% maximum). | | |
| **Subtotal of Proposal** | | |

**TOTAL OF CHANGE PROPOSAL** _____

Time Extension Requests: ____ day(s) Schedule Activity # Affected: _____

The Contractor agrees to perform the work outlined in this change proposal for the amount specified above and in accordance with the Contract documents if the work is authorized by the Owner.

**Contractor's Signature: _____** **Date: _____**

**Approval Recommended by Design Consultant: _____** **Date: _____**

**Owner's Representative Approval: _____** **Date: _____**

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# SECTION SC

## SUPPLEMENTAL CONDITIONS

GENERAL CONDITIONS

Document GC, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION, constitutes the General Conditions of this Contract, and is hereinafter called "General Conditions." The General Conditions are further revised and supplemented by the provisions of these Supplemental Conditions. The General Conditions and the Supplemental Conditions are applicable to all of the Work under this contract and shall apply to the Contractor and all Subcontractors and Sub-subcontractors.

SUPPLEMENTS:

The following supplements modify, change, delete, or add to the General Conditions. Where any article of the General Conditions is modified or any paragraph deleted, subparagraph or clause thereof is modified, or deleted by these supplements, the unaltered provisions of such article, paragraph, subparagraph or clause shall remain in effect. If there is a discrepancy between the General Conditions and these Supplemental Conditions, the Supplemental Conditions shall control.

### ARTICLE 3 – CONTRACTOR

ADD THE FOLLOWING TO PARAGRAPH 3.21:

3.21 The Owner's policies are available for review at www. bcswan.net.

### ARTICLE 7 – TIME

ADD THE FOLLOWING TO THE END OF THE FIRST PARAGRAPH IN 7.2.1.1:

The Parties agree that the weather station applicable to this Project shall be the one located at Wilmington, NC.

### ARTICLE 8 – PAYMENTS AND COMPLETION

ADD THE FOLLOWING TO PARAGRAPH 8.9:

8.9.1 Substantial Completion Liquidated Damages shall be the sum of five hundred dollars ($500) per calendar day, and this amount shall be assessed in accordance with Subparagraph 8.9.1 of the General Conditions.

8.9.2 Final Completion Liquidated Damages shall be the sum of five hundred dollars ($500) per calendar day, and this amount shall be assessed in accordance with Subparagraph 8.9.2 of the General Conditions.

ADD THE FOLLOWING PARAGRAPH 8.11:

8.11.1 The schedule below contains certain specific dates in addition to date of Notice to Proceed and Time for Completion. These dates shall be adhered to and are the last acceptable dates unless modified by mutual agreement between the Contractor and the Owner. All dates indicate midnight unless otherwise stipulated. The only exceptions to this schedule are defined in the General Conditions under Paragraph 7.2 DELAYS AND EXTENSIONS OF TIME.

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Notice of Intent to Award – March 25, 2021
Return of Owner Contractor Agreement by Contractor – March 31, 2021
Notice to Proceed – May 18, 2021
Substantial Completion -August 30, 2021
Completion of all Commissioning –September 7, 2021

8.11.2 The Owner reserves the right to withhold the issuance of Notice to Proceed by up to forty-five (45) days. For each day that Notice to Proceed is withheld pursuant to this Subparagraph, the dates established for Substantial Completion and Final Completion shall be adjusted. The contractor shall not be entitled to additional compensation if the owner withholds the issuance of Notice to Proceed pursuant to this Subparagraph.

## ARTICLE 9 – INSURANCE AND BONDS

ADD THE FOLLOWING TO PARAGRAPH 9.9:

9.9 Separate performance and payment bonds in the total amount of the Contract are required for Contract amounts in excess of $300,000.

## ARTICLE 10 – CHANGES IN WORK

ADD THE FOLLOWING NEW PARAGRAPH 10.9.14:

10.9.14 Additional services and dispute resolution services by the Design Consultant shall be paid by the Contractor at the rate of two hundred twenty dollars ($220) per hour.

ADD THE FOLLOWING NEW PARAGRAPH 10.9.15:

10.9.15 The Owner's Dispute Resolution Policy required by N.C.G.S. § 143-128(f1) is contained in Policy 9020 (www.bcswan.net). The Dispute Resolution Policy is also included in the bid and contract documents

END OF SUPPLEMENTAL CONDITIONS

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# OWNER-CONTRACTOR AGREEMENT

SCHOOL NAME: **Southport Elementary**

THIS AGREEMENT, made this 25th day of March, Two Thousand and Twenty-One by and between County of Brunswick, North Carolina (herein referred to as the "Owner"), whose mailing address is 30 Government Center Dr., NE, Bolivia, NC 28422 and AAR of North Carolina, Inc., (herein referred to as the "Contractor"), whose mailing address is 655 Peddycord Rd., Kernersville, NC 27284. Correspondence, submittals, and notices relating to or required under this Contract shall be sent in writing to the above addresses; unless either party is notified in writing by the other, of a change in address.

WITNESSETH:

WHEREAS, it is the intent of the Owner to obtain the services of the Contractor in connection with the roof replacement at Southport Elementary (hereinafter referred to as the "Project" or the "Work"); and

WHEREAS, the Contractor desires to perform such construction in accordance with the terms and conditions of this Agreement,

NOW, THEREFORE, in consideration of the promises made herein and other good and valuable consideration, the following terms and conditions are hereby mutually agreed to, by and between the Owner and Contractor:

## Article 1

## DEFINITIONS

1.1 All terms in this Agreement which are defined in the Information for Bidders and the General Conditions shall have the meanings designated therein.

1.2 The Contract Documents are as defined in the General Conditions. Such documents form the Contract, and all are as fully a part thereof as if attached to this Agreement or repeated herein.

## Article 2

## STATEMENT OF THE WORK

2.1 The Project is the Work identified in the plans and specifications prepared by REI Engineers dated February 12, 2021 for Brunswick County Board of Education, Southport Elementary Roof Replacement, including the following addenda:

Addendum 1 dated March 5, 2021

A listing of the plans and specifications included in the Contract Documents is attached as Exhibit A.

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2.2 The Parties agree that the Project shall include the following alternates:

Alternate No. 1: Provide roof replacement as specified on Roof Area F - $216,750

2.3 The Parties agree to the following modifications to the Project's plans and specifications, including the noted value engineering items:

*None*

2.4 The Parties agree that the following allowances are included in the Contract Sum in Section 5.1 below:

| | |
|---|---|
| Contingency Allowance | $25,000.00 |

Repair 5,000 SF of Corroded Steel Deck with Coating

Repair 500 SF of Steel Deck with Steel Plates

Repair 200 SF of deteriorated steel deck with new steel deck

Replace 600 BF of deteriorated wood blocking

Replace 200 SF of deteriorated plywood

Provide 100 LF of additional manufacturer's walk pad material

2.5 The Contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work, as required by the Contract Documents.

2.6 The Contractor shall further provide and pay for all related facilities described in any of the Contract Documents, including all work expressly specified therein and such additional work as may be reasonably inferred therefrom, saving and excepting only such items of work as are specifically stated in the Contract Documents not to be the obligation of the Contractor. The totality of the obligations imposed upon the contractor by this Article and by all other provisions of the Contract Documents, as well as the structures to be built and the labor to be performed, is herein referred to as the "Work".

## Article 3

## DESIGN CONSULTANT

3.1 The Design Consultant (as defined in the General Conditions) shall be REI Engineers whose address is 1927 JN Pease Place, Ste 201, Charlotte, NC 28262, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by

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designating a different person or organization to act as its Design Consultant and so advising the Contractor in writing, at which time the person or organization so designated shall be the Design Consultant for purposes of this Contract.

Article 4

TIME OF COMMENCEMENT AND COMPLETION

4.1 The Contractor shall commence the Work promptly upon the date established in the Notice to Proceed. If there is no Notice to Proceed, the date of commencement of the Work shall be the date of this Agreement or such other date as may be established herein.

4.2 Time is of the essence. The Contractor shall achieve Final Completion, as defined in the General Conditions on or before the date established for Final Completion in the Supplemental Conditions.

4.3 The Supplemental Conditions contains certain specific dates that shall be adhered to and are the last acceptable dates unless modified in writing by mutual agreement between the Contractor and the Owner. All dates indicate midnight unless otherwise stipulated. The only exceptions to this schedule are defined in the General Conditions under 7.2 DELAYS AND EXTENSIONS OF TIME.

4.4 Should the Contractor fail to complete the Work on or before the dates stipulated for Substantial Completion and/or Final Completion, or such later date as may result from an extension of time granted by the Owner, he shall pay the Owner, as liquidated damages the sums set forth in the General and Supplemental Conditions.

Article 5

CONTRACT SUM

5.1 Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Modification or as otherwise provided in the Contract Documents, the Owner shall pay to the Contractor, in current funds and at the time and in the installments hereinafter specified, the sum of Eight hundred sixty-four thousand, seven hundred fifty Dollars ($864,750) herein referred to as the "Contract Sum". This amount includes the base bid and the Alternates in Section 2.2

5.2 The Contract Sum includes the value engineering items and other contract modifications noted in Section 2.3 above that total $0.00.

5.3 Unit Prices are established as follows for the Project:

| | | |
|---|---|---|
| Unit Price No. 1 | Steel roof deck repair and securement- coating | $3.00SF |
| Unit Price No. 2 | Steel Roof Deck Repair and securement – steel plates | $6.50SF |

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| | | |
|---|---|---|
| Unit Price No. 3 | Deteriorated Steel Deck with New Steel Deck | $7.00SF |
| Unit Price No. 4 | Rough Carpentry- Blocking | $4.00BF |
| Unit Price No. 5 | Rough Carpentry - Plywood | $4.00SF |
| Unit Price No. 6 | Additional manufacturer's walk pa material | $12.00LF |

Article 6

PROGRESS PAYMENTS

6.1 The Contractor hereby agrees that on or about the First day of the month for every month during the performance of the Work he will deliver to the Owner's Project Manager an Application for Payment in accordance with the provisions of Article 8 of the General Conditions. This date may be changed upon mutual agreement, stated in writing, between the Owner and Contractor. Payment under this Contract shall be made as provided in the General Conditions. Payments due and unpaid under the Contract Documents shall not bear interest.

Article 7

OTHER REQUIREMENTS

7.1 The Contractor shall submit the Performance Bond, Labor and Material Payment Bond and Certification of Insurance as required by the Contract Documents.

7.2 The Owner shall furnish to the Contractor one **(1)** set of drawings and one (**1**) set of specifications, at no extra cost, for use in the Construction of the Work. Additional sets of drawings or specifications may be obtained by the Contractor by paying the Owner for the costs of reproduction, handling and mailing.

7.3 The Contractor shall make a good faith effort to utilize Historically Underutilized Businesses (HUB's) per N.C. Gen. Stat. 143-128.2, and as described in the construction documents.

7.4 The General Conditions, Supplemental Conditions and the plans and specifications, including any addenda, are incorporated herein by reference.

7.5 This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing

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electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

IN WITNESS WHEREOF, County of Brunswick, North Carolina (hereinbefore called the "Owner") has caused these presents to be signed and its corporate seal to be hereunto affixed, attested by its Chairperson and Secretary, and AAR of North Carolina, Inc. (here in before called "Contractor") has caused these presents to be signed by its President and its Corporate seal to be hereunto affixed, as hereinafter attested, all as of the day and year first above written.

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**COUNTY OF BRUNSWICK, NORTH CAROLINA**

APPROVED AS TO FORM

Bryan W. Batton

Bryan W. Batton, Asst. County Attorney
Brunswick County, NC

_____(Seal)

Chairman, Board of Commissioners

ATTEST:

_____(Seal)

Clerk to the Board of Commissioners

[Seal]

This contract was approved by the Board on the 3rd day of May, 2021.

**AAR of North Carolina, Inc.**

By: Brad Kurth

Brad Kurth (Print Name), Vice-President

ATTEST:

Corporate Secretary [Corporate Seal]

| This Instrument Has Been Pre-audited In The Manner Required By The School Budget And Fiscal Control Act | This Instrument Has Been Pre-audited In The Manner Required By The Local Government Budget And Fiscal Control Act |
|---|---|
| Freyja Cahill | Julie A. Miller |
| Freyja Cahill, Finance Officer<br>Brunswick County Schools | Julie A. Miller, Director Of Fiscal Operations, County of Brunswick, North Carolina |

4.9003.696.529.336.838.00

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# SECTION GC

# GENERAL CONDITIONS
# OF THE
# CONTRACT FOR CONSTRUCTION

# FOR ROOFING PROJECTS

## TABLE OF ARTICLES

1. CONTRACT DOCUMENTS
2. OWNER
3. CONTRACTOR
4. SUBCONTRACTORS
5. WORK BY OWNER OR BY SEPARATE CONTRACTORS
6. MISCELLANEOUS PROVISIONS
7. TIME
8. PAYMENTS AND COMPLETION
9. INSURANCE
10. CHANGES IN THE WORK
11. UNCOVERING AND CORRECTION
12. TERMINATION OF THE CONTRACT

APPENDIX A – Contractor's Sales Tax Report
APPENDIX B-1 – Change Proposal Form (Time & Materials or Unit Price)
APPENDIX B-2 – Change Proposal Form (Fixed Price)

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## ARTICLE 1

## CONTRACT DOCUMENTS

1.1 GENERAL

1.1.1 The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order issued pursuant to the provisions of Article 10, (3) a written interpretation issued by the Design Consultant, or (4) a written order for a minor change in the Work issued pursuant to this contract.

1.1.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.1.3 All Drawings, Specifications and copies thereof furnished by the Design Consultant are and shall remain his property. They are to be used only with respect to this Project and are not to be used on any other project.

1.1.4 The Contractor will be furnished with one set of drawings and specifications at no cost. Additional copies may be purchased.

END OF ARTICLE 1

## ARTICLE 2

## OWNER

2.1 INFORMATION, SERVICES AND RIGHTS OF THE OWNER

2.1.1 The Owner shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.

2.1.2 The Owner shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. This requirement applies continuously throughout contract performance and is not limited to regular working hours.

2.1.3 The Owner will have authority to require special inspection or testing of the work whether or not such Work is then fabricated, installed, or completed. However, neither the Owner's authority to act under Subparagraph 2.2.4, nor any decision made by the Owner in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Owner to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.1.4 The Owner shall have the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors, and the Design Consultant, to discuss such matters as procedures, progress, problems, and scheduling.

2.1.5 The Owner and Design Consultant shall not be responsible or liable to Contractor for the acts, errors or omission of the Contractor, any separate Subcontractor, any separate contractor or any contractor's or subcontractor's agents or employees, or any other persons performing any of the Work.

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2.1.6 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid unreasonable delay in the orderly progress of the Work.

2.1.7 The parties acknowledge that the Owner may perform all or part of its obligations pursuant to this Agreement through the Superintendent or his designee.

2.1.8 The foregoing rights are in addition to other rights of the Owner enumerated herein and those provided by law.

2.2 OWNER'S RIGHT TO STOP OR TO SUSPEND THE WORK

2.2.1 If the Contractor fails to correct defective Work or fails to carry out the Work or supply labor and materials in accordance with the Contract Documents, the Owner by a written order may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

2.2.2 The Owner may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as he may determine to be appropriate for the convenience of the Owner.

2.2.3 If the performance of all or any part of the Work (including the work of the Contractor and its subcontractors) is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Owner or the Design Consultant in the administration of this Contract, or by failure of any one of them to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for an increase in the actual time required for performance of the Work by the Contractor, due solely to such unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no claim shall be made under this Subparagraph for any suspension, delay, or interruption pursuant to Subparagraph 2.3.1, or for which claim is provided or excluded under any other provision of this Contract. No claim under this Subparagraph shall be allowed on behalf of the Contractor or its subcontractors, unless within 10 days after the act or failure to act involved, and for continuing or ongoing acts or failures to act within 10 days of the first day of the act or failure to act the Contractor submits to the Owner a written statement setting forth, as fully as then practicable, the extent of such claim, and unless the claim is asserted in writing within 20 days after the termination of such suspension, delay, or interruption. For continuing or ongoing acts or failures to act, the Contractor shall update its written statement every 15 days until the suspension, delay or interruption is terminated. The Contractor shall waive any and all claims not filed in strict conformance with this paragraph. The Contractor shall indemnify, defend and hold the Owner harmless from any claim by a Subcontractor that is waived because it is not filed in strict conformance with this paragraph or any other provision of this Agreement regarding claims.

2.2.4 In the event of a suspension of work or delay or interruption of work, the Contractor will and will cause his subcontractors to protect carefully his, and their, materials and work against damage or injury from the weather and maintain completed and uncompleted portions of the work as required by the Contract Documents. If, in the opinion of the Owner, any work or material shall have been damaged or injured by reason of failure on the part of the Contractor or any of his subcontractors to so protect same, such work and materials shall be removed and replaced at the expense of the Contractor.

2.2.5 No claim by the Contractor shall be allowed if asserted after final payment under this Contract or if it is not asserted in strict conformance with Subparagraph 2.2.

2.3 OWNER'S RIGHT TO CARRY OUT THE WORK

2.3.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within ten days after the date written notice is mailed by the Owner to commence and continue remedy of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedy he may have, make good such deficiencies and may further elect to complete all Work thereafter through such means as the Owner may select, including the use of a new contractor. In such case the Owner shall issue a Change Order deducting from the payments then or thereafter due the Contractor the cost of correcting such

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deficiencies, including compensation for the Design Consultant's additional services made necessary by such default, neglect or failure. Such action by the Owner and the amount charged to the Contractor are both subject to the prior approval of the Design Consultant. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner. Notwithstanding the Owner's right to carry out a portion of the work, warranty, maintenance and protection of the work remains the Contractor's responsibility. Further, the provisions of this paragraph do not affect the Owner's right to require the correction of defective or non-conforming work in accordance with this contract.

END OF ARTICLE 2

## ARTICLE 3

## CONTRACTOR

3.1 DEFINITION

3.1.1 This entire Contract is not one of agency by the Contractor for Owner but one in which Contractor is engaged independently in the business of providing the services and performing the Work herein described as an independent contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS

3.2.1 Before placing his proposal to the Owner, and continuously after execution of the Contract, the Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency or omission he may discover, including any requirement which may be contrary to any law, ordinance, rule, regulation or order of any public authority bearing on the performance of the Work. If the Contractor has reported in writing an error, inconsistency or omission, has promptly stopped the affected work until otherwise instructed, and has otherwise followed the instructions of the Owner, the Contractor shall not be liable to the Owner or the Design Consultant for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall perform no portion of the Work at any time without Contract Documents and, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

3.2.2 All designs, drawings, specifications, design calculations, notes and other works provided for this contract are the sole property of the Owner and may not be used on any other design or construction project. The use of the design, including tracings and specifications, by any person or entity, for the purpose other than the Project, shall be at the full risk of such person or entity

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and all statutory or legal requirements. This requirement applies continuously throughout contract performance and is not limited to regular working hours.

3.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and Sub- subcontractors, suppliers, their agents and employees, and other persons performing any of the Work and for their compliance with each and every requirement of the Contract Documents, in the same manner as if they were directly employed by the Contractor.

3.3.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the acts, failures to act or duties of the Owner or the Design Consultant in their

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administration of the Contract, or by inspections, tests or approvals (or the lack thereof) required or performed under Paragraph 6.5 by persons other than the Contractor.

3.3.4 The Contractor shall verify all grades, lines, levels and dimensions as indicated and shown on the plans and specifications prior to beginning the work and shall immediately report in writing any errors or inconsistencies to the Design Consultant before commencing the work.

3.3.5 Contractor shall protect existing surfaces, finishes and adjacent facilities from damage during construction. Any damage shall be repaired by Contractor at his own expense prior to completion of the Project. Prior to construction start, Contractor and Owner shall perform an inspection to record existing conditions, damaged and undamaged.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, supplies, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary or proper for or incidental to the execution and completion of the Work required by and in accordance with the Contract Documents and any applicable code or statute, whether specifically required by the Contract Documents or whether their provision may reasonably be inferred as necessary to produce the intended results, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Final payment will not be made until the Work is so completed.

3.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. The Owner may, by notice in writing, require the Contractor to remove from the work any employee the Owner deems incompetent, careless or otherwise objectionable. All agents and workers of the contractor and its subcontractors shall wear identification badges provided by the Contractor at all times they are on the Owner's property. The identification badges shall at a minimum display the company name, telephone number and employee's picture and name and must be worn in plain view at all times. Additionally, once school staff occupies the building, all contractors and their respective subcontractors shall be required to sign in and out of the visitor's log each day they are performing services. They must also wear a visitor's pass which will indicate to staff that they have met this requirement which applies to anyone performing services anywhere on the school property.

3.4.3 The Contractor shall be responsible for ensuring that the work is completed in a skillful and workmanlike manner.

3.4.4 All equipment, apparatus and/or devices of any kind to be incorporated into the work that are shown or indicated on the drawings or called for in the specifications or required for the completion of the work shall be entirely satisfactory to the Owner and the Design Consultant as regards operations, capacity and/or performance. No approval, either written or verbal, of any drawings, descriptive data or samples of such equipment, apparatus and/or device shall relieve the Contractor of his responsibility to turn over the same in good working order for its intended purpose at the completion of the Work in complete accordance with the Contract Documents. Any equipment, apparatus and/or device not fulfilling these requirements shall be removed and replaced by proper and acceptable equipment, etc. or put in good working order satisfactory to the Owner and Design Consultant without additional cost to the Owner.

3.4.5 All materials and Work shall meet North Carolina Building Codes. Should there be any discrepancies between design and code, the more stringent requirement shall apply. All materials shall comply with standards (or approved products) as set by the specifications. Unless otherwise specified, NO ASBESTOS CONTAINING MATERIALS SHALL BE INSTALLED. BY DEFINITION, INSTALLATION OF ASBESTOS MATERIALS WILL BE CONSIDERED CONTRACTOR'S NEGLIGENCE AND THE CONTRACTOR SHALL PERFORM ALL NECESSARY WORK TO REMOVE THE ASBESTOS AND RESTORE THE SITE TO THE 'PRE-CONTRACT' CONDITION. Contractor shall assume all facilities built prior to 1979 have lead-based paint. Any paint removal shall be in accordance with OSHA standard pertaining to lead (29 CFR 1915.1025).

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3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and the Design Consultant that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all workmanship will be of first class quality, free from faults and defects and in conformance with the Contract Documents and all other warranties and guaranties specified therein. Where no standard is specified for such workmanship or materials, they shall be the best of their respective kinds. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner or the Design Consultant, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 11.

3.5.2 The warranties set forth in this Paragraph 3.5 and elsewhere in the Contract Documents shall survive Final Completion of the Work.

3.5.3 If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective, not in accordance with the Contract Documents, or not in accordance with the guarantees and warranties specified in the Contract documents, the Contractor shall correct it within five (5) working days or such other period as mutually agreed, after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice with reasonable promptness after discovery of the condition. For items, which remain incomplete or uncorrected on the date of Substantial Completion, the one-year warranty shall begin on the date of Final Completion of the Work. If the Contract Documents include painting work, the one year warranty period in this section shall be extended to two years.

3.5.4 If at any time deficiencies in the Work are discovered which are found to have resulted from fraud or misrepresentation, or an intent or attempt to or conspiracy to defraud the Owner by the Contractor, any Subcontractor or Supplier, the Contractor will be liable for replacement or correction of such Work and any damages which Owner has incurred related thereto, regardless of the time limit of any guarantee or warranty.

3.5.5 The Contractor shall bear the cost of making good all work of the Owner, separate contractors or others, destroyed or damaged by such correction or removal required under this Article 3, Article 11 or elsewhere in the Contract Documents.

3.6 TAXES

3.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

3.6.2 The Contractor shall provide a completed Contractor's Sales Tax Report (attached hereto as Appendix A) with each application for payment for all items provided by the Contractor or any Sub-Contractors and incorporated into this project. The Contractor shall account for at least 2% of the total contract amount in sales tax or provide justification satisfactory to the Owner that the actual sales tax paid is less than 2%. In the event the Contractor does not provide adequate justification to support the shortfall, the Contractor shall pay the Owner the difference between the amount accounted for and the 2% minimum. Such compensation shall not be deemed a penalty, but reimbursement of funds the Owner would otherwise be entitled to recover from the State.

3.6.3 Sales and Use Tax. Contractor shall be responsible for complying with any applicable sales and use tax obligations imposed by Chapter 105, Article 5 of the North Carolina General Statutes. Where Contractor has been contracted with to oversee "new construction" or "reconstruction" as defined in G.S. 105-164.4H, Contractor shall be responsible for issuing and maintaining an Affidavit of Capital Improvement.

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3.7 PERMITS, FEES AND NOTICES

3.7.1 The Contractor shall secure and pay for the building permit and for all other permits and governmental fees necessary for the proper execution and completion of the Work. Costs for service and final service connections by public utilities will be reimbursed to the Contractor by the Owner. The Owner shall not be responsible for the cost of any temporary utilities.

3.7.2 Each Contractor will pay for his own license and reinspection fees for his part of the work necessary for the proper execution and completion of the work.

3.7.3 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

3.8 PROGRESS SCHEDULE

3.8.1 The Contractor shall prepare and submit to the Owner for the Owner's review and approval an estimated progress schedule for the Work. This schedule shall be in accordance with any general requirements included in the specifications for this project.

3.9 RESPONSIBILITY FOR COMPLETION

3.9.1 The Contractor shall furnish such manpower, materials, facilities and equipment and shall work such hours, including night shifts, overtime operations and Sundays and holidays, as may be necessary to ensure the performance of the Work within the Milestone and Completion dates specified in the Owner-Contractor Agreement.

3.9.2 If the actions taken by the Contractor are not satisfactory, the Design Consultant or Owner may direct the Contractor to take any and all actions necessary to ensure completion within the required Milestone and Completion dates, without additional cost to the Owner. In such event, the Contractor shall continue to assume responsibility for his performance and for completion within the required dates.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

3.10.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be delivered to the Owner upon completion of the Work.

3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.11.1 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data, Manuals and Samples required by the Contract Documents.

3.11.2 Do not order materials until receipt of written approval. Furnish materials equal in every respect to approved samples.

3.11.3 By approving and submitting Shop Drawings, Product Data, Manuals and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Contractor shall adhere to any supplementary processing and scheduling instructions pertaining to Shop Drawings, which may be issued by the Design Consultant.

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3.11.4 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Design Consultant's review of Shop Drawings, Product Data, Samples or Manuals under unless the Contractor has specifically informed the Design Consultant in writing of such deviation at the time of submission and the Design Consultant has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, Samples, or Manuals by the Design Consultant's review thereof.

3.11.5 The Contractor shall make corrections required by the Design Consultant and shall resubmit the required number of corrected copies of Shop Drawings or new Product Data or Samples. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Design Consultant on previous submittals. Resubmittals necessitated by required corrections due to Contractor's errors or omissions shall not be cause for extension of Contract Time, and any costs associated with the processing of these resubmittals shall be paid by the Contractor.

3.11.6 No portion of the Work requiring submission of Shop Drawings, Product Data, Samples or Manuals shall be commenced until the submittal has been approved by the Design Consultant. All such portions of the Work shall be in accordance with approved submittals.

3.12 EQUAL PRODUCTS AND SUBSTITUTIONS

3.12.1 All materials, supplies and articles furnished under this Contract shall, whenever specified and otherwise practicable, be the standard products of recognized, reputable manufacturers. Unless otherwise specifically provided in the Contract Documents, the naming of a certain brand, make, manufacturer or article, device, product, material, fixture or type of construction shall convey the general style, type, character and standard of quality of the article desired and shall not be construed as limiting competition. The Contractor, in such cases, may with Owner approval, use any brand, make, manufacturer, article, device, product, material, fixture, form or type of construction which in the judgment of the Design Consultant is equal to that specified. An item may be considered equal to the item so named or described if, in the opinion of the Owner and Design Consultant (1) it is at least equal in quality, durability, appearance, strength, and design; (2) it will perform at least equally the specific function imposed by the general design for the work being contracted for or the material being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the specifications. Approval by the Owner and Design Consultant will be granted based upon considerations of quality, workmanship, economy of operation, suitability for the purpose intended, and acceptability for use on the Project.

3.12.2 Contractor must provide evidence that proposed substitution does not require revisions to the Contract Documents, that is consistent with Contract Documents, and will produce the indicated results, and is comparable with other portions of the Work. Contractor must provide a detailed comparison of significant qualities or proposed substitution with those of the Work Specified, including but not limited to the following significant qualities: performance, weight, size, durability, visual effect, sustainable design features, warranties, and any specific features and requirements indicated in Contract Documents. An annotated copy of applicable Specification Section and point-by-point comparison between specified product and the proposed substitution describing each point of compliance, non-compliance, and variance between the specified and proposed product shall be provided.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, easements, right-of- way agreements and the Contract Documents. The Contractor shall not unreasonably encumber the site, in the opinion of the Owner, with any materials, equipment or trailers nor shall he block the entrances or otherwise prevent reasonable access to the site, other working and parking areas, completed portions of the Work and/or properties, storage areas, areas of other facilities that are adjacent to the worksite. If the Contractor fails or refuses to move said material, equipment or trailers within 24 hours of notification by the Owner, to so do, the Owner shall have the right, without further notice, to remove, at the Contractor's expense, any material, equipment and/or trailers which the Owner deems are in violation of this paragraph.

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3.14 CUTTING AND PATCHING OF WORK

3.14.1 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation.

3.14.2 Existing structures and facilities including but not limited to building, utilities, topography, streets, curbs, walks, etc., that are damaged or removed due to required excavations or other construction work, shall be patched, repaired or replaced by the Contractor to satisfaction of the Design Consultant and the Owner of such structures and facilities and authorities having jurisdiction.

3.15 CLEANING UP

3.15.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. If the Contractor fails to clean up during or at the completion of the Work, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 INDEMNIFICATION

3.16.1 To the fullest extent permitted by law, the Contractor shall, at his sole cost and expense, indemnify, defend, and hold harmless the Owner and the Design Consultant and their agents, representatives, and employees from and against all claims, actions, judgments, costs, liabilities, penalties, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or caused by any negligent act, error or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The above 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 Paragraph 3.16. The parties agree that this indemnification clause is an “evidence of indebtedness” for purpose of N.C. Gen. Stat. § 6-21.2. The parties also specifically acknowledge that the Owner is a public body and it is the intent of the parties that the Owner not incur any expenses when the Contractor is solely responsible for the claims.

3.16.2 In any and all claims against the Owner or the Design Consultant or any of their agents, representatives, or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 3.16 shall not be limited in any way by Contractor’s insurance coverage required herein.

3.16.3 No provision of this Paragraph 3.16 shall give rise to any duties on the part of the Design Consultant or the Owner, or any of their agents, representatives, or employees.

3.18 CONDITIONS AFFECTING THE WORK

3.18.1 The Contractor shall be responsible for taking all steps necessary to ascertain the nature and location of the Work and the general and local conditions, which can affect the Work or the cost thereof. The Owner assumes no responsibility for any understanding or representation about conditions affecting the Work made by any of his officers, employees, representatives, or agents prior to the execution of the Contract, unless such understandings or representations are expressly stated in the Contract Documents.

3.19 MISCELLANEOUS.

3.19.1 The Contractor shall provide documentation acceptable to the Owner showing the amount of MBE participation (including a complete list of all subcontractors and their final subcontract amounts) and sales tax paid by the Contractor and its subcontractors for materials purchased for Projects completed under this contract.

3.20 APPLICABLE LAWS.

3.20.1 This Contract and the relationship of the parties shall be governed by the laws of the state of North Carolina.

3.20.2 Contractor shall comply with all applicable laws and regulations in providing services under this Contract. Contractor shall not employ any individuals to provide services to the Owner who are not authorized

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by federal law to work in the United States. Contractor represents and warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Contract by any governmental department or agency. Contractor must notify Owner within thirty (30) days if debarred by any government entity during this Contract. The Contractor represents that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system. The Contractor further warrants that it will use the E-Verify system to verify employment eligibility of all its employees throughout the term of this Contract, and that it will remain in compliance with all I-9 requirements throughout the term of this Contract. The Contractor shall also ensure that any subcontractors use the E-Verify system at all times while providing subcontracted services in connection with this Contract. Contractor is responsible for providing affordable health care coverage to all of its full-time employees providing services to the school system. The definitions of "affordable coverage" and "full-time employee" are governed by the Affordable Care Act and accompanying IRS and Treasury Department regulations.

3.20.3 The Contractor also acknowledges that G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. The Contractor shall conduct or arrange to have conducted, at its own expense, sexual offender registry checks on each of its employees, agents, ownership personnel, or contractors ("contractual personnel") who will engage in any service on or delivery of goods to school system property or at a school-system sponsored event, except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at: (1) the administrative office, provided that such office is not located at a school site; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites. The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the Registries"). For the Contractor's convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at http://www.nsopw.gov/. The Contractor shall provide certification on the Sexual Offender Registry Check Certification Form that the registry checks were conducted on each of its contractual personnel providing services or delivering goods under this Agreement prior to the commencement of such services or the delivery of such goods. The Contractor shall conduct a current initial check of the registries (a check done more than 30 days prior to the date of this Agreement shall not satisfy this contractual obligation). In addition, the Contractor agrees to conduct the registry checks and provide a supplemental certification form before any additional contractual personnel are used to deliver goods or provide services pursuant to this Agreement. The Contractor further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. The Contractor shall not assign any individual to deliver goods or provide services pursuant to this Agreement if said individual appears on any of the listed registries. The Contractor agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents to the Owner upon request. The Contractor specifically acknowledges that the Owner retains the right to audit these records to ensure compliance with this section at any time in the Owner's sole discretion. Failure to comply with the terms of this provision shall be deemed a material breach of the Agreement. In addition, the Owner may conduct additional criminal records checks at the Owner's expense. If the Owner exercises this right to conduct additional criminal records checks, the Contractor agrees to provide within seven (7) days of request the full name, date of birth, state of residency for the past ten years, and any additional information requested by the Owner for all contractual personnel who may deliver goods or perform services under this Agreement. The Contractor further agrees that it has an ongoing obligation to provide the Owner with the name of any new contractual personnel who may deliver goods or provide services under the Agreement. The Owner reserves the right to prohibit any contractual personnel of the Contractor from delivering goods or providing services under this Agreement if the Owner determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others.

3.20.4 Anti-Nepotism. Contractor warrants that, to the best of its knowledge and in the exercise of due diligence, none of its corporate officers, directors, or trustees and none of its employees who will directly provide services under this Agreement are immediate family members of any member of the Board of Education or of any principal or central office staff administrator employed by the Board. For purposes of this provision, "immediate family" means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law

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relationships. Should Contractor become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Agreement, Contractor shall immediately disclose the family relationship in writing to the Superintendent of the Schools. Unless formally waived by the Board, the existence of a family relationship covered by this Agreement is grounds for immediate termination by Owner without further financial liability to Contractor.

3.20.5 Restricted Companies Lists. Contractor represents that as of the date of this Contract, Contractor is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Contractor also represents that as of the date of this Contract, Contractor is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.

3.21 COMPLIANCE WITH BOARD POLICIES AND PROCEDURES

The Contractor agrees to comply with the all of the Owner's policies at all times that the Contractor, its subcontractors and employees are on the Owner's property. The Contractor acknowledges that Board policies are available for review at the Owner's website and agrees to comply with the policies. The Contractor also agrees to comply with the following provisions:

3.21.1 The Contractor, its Subcontractors and employees shall not possess or carry, whether openly or concealed, any gun, rifle, pistol, or explosive on any property owned by the Owner. This includes firearms locked in containers, vehicles or firearm racks within vehicles. The Contractor, its Subcontractors and employees shall not cause, encourage or aid a minor, who is less than 18 years old to possess or carry, whether openly or concealed, any weapons on any property owned by the Owner.

3.21.2 The Contractor, its Subcontractors and employees, are prohibited from profane, lewd, obscene or offensive conduct or language, including engaging in sexual harassment.

3.21.3 The Contractor and its Subcontractors shall not manufacture, transmit, conspire to transmit, possess, use or be under the influence of any alcoholic or other intoxicating beverage, narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana or anabolic steroids, or possess, use, transmit or conspire to transmit drug paraphernalia on any property owned by the Owner.

3.21.4 The Contractor and its Subcontractors may not at any time use or display tobacco or nicotine-containing products, including but not limited to electronic cigarettes (e-cigarettes), on school premises, both indoor and outdoor. The prohibition of the display of tobacco or nicotine products shall not extend to a display that has a legitimate instructional or pedagogical purpose. For purposes of this Contract, "tobacco product" is defined to include cigarettes, cigars, blunts, bidis, pipes, chewing tobacco, snuff, and any other items containing or reasonably resembling tobacco, tobacco products, or any facsimile thereof. "Tobacco use" includes smoking, chewing, dipping, or any other use of tobacco products.

3.21.5 The Contractor, its Subcontractors and employees shall not solicit from or sell to students or staff within the Owner's facilities or campuses, and shall not give gifts of any value to school system employees.

3.21.6 Operators of all commercial vehicles on any property owned by the Owner shall be subject to post-accident, random, reasonable suspicion and follow-up testing for drugs and alcohol.

3.21.7 The Contractor, its Subcontractors and employees are prohibited from using access to the site pursuant to this Agreement as a means to date, court, or enter into a romantic or sexual relationship with any student enrolled in the School System. The Contractor agrees to indemnify the Owner for claims against the Owner resulting from relationships which have occurred or may occur between a student and an employee of the Contractor or Subcontractor.

END OF ARTICLE 3

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## ARTICLE 4

## SUBCONTRACTORS

4.1 DEFINITION

4.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor may be referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term Subcontractor does not include any Separate Contractor or his subcontractors.

4.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site or who contracts to perform or supply any of the Work under the scope of a Subcontractor's subcontract. The term Sub-subcontractor may be referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.

4.1.3 Nothing contained in the Contract Documents is intended to, nor shall it create, any contractual relationship between the Owner, the Design Consultant, or any of their agents, consultants, employees, independent contractors, or representatives and any Subcontractor, Sub-subcontractor, Supplier or Vendor of the Contractor, except the relationship between Owner and Contractor, but the Owner shall be entitled to performance of all obligations intended for his benefit, and to enforcement thereof.

4.1.4 The Owner and Design Consultant will not deal directly with any Subcontractor, Sub-subcontractor or Material Supplier. Communication will be made only through the Contractor. Subcontractor, Sub-subcontractors or Material Suppliers shall route requests for information or clarification through the Contractor to the Design Consultant.

4.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

4.2.1 The Contractor, in compliance with the requirements of the Contract Documents and within ten (10) days after the Notice to Proceed, shall furnish in writing to the Owner the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner to reply within a reasonable time shall constitute notice of no reasonable objection. The Contractor understands and agrees that no contractual agreement exists for any part of the Work under this Contract between the Owner and any of the Contractor's Subcontractors or Sub-subcontractors. Further, the Contractor understands and agrees that he alone is responsible to the Owner for the Work under this Contract and that any review of Subcontractors or Sub-subcontractors by the Owner will not in any way make the Owner responsible to any Subcontractor, nor responsible for the actions or failures of any Subcontractor or Sub-subcontractor.

4.2.1.1 The Contractor shall identify in the list of names of the Subcontractors proposed, those Subcontractors that are Historically Underutilized Businesses (HUB's) and indicate the portion of the Work that each Subcontractor will perform.

4.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner has made reasonable objection under the provisions of Paragraph 4.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

4.2.3 If the Owner has reasonable objection to any proposed person or entity under Paragraph 4.2.1, the Contractor shall name a substitute to whom the Owner has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued, subject to an audit of said difference by the Owner; provided, however, that no increase in the

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Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required by Paragraph 4.2.1 and the original proposed Subcontractor was: (i) able to carry out his work under his proposed subcontract, (ii) able to comply with all applicable laws, (iii) was an ongoing business in the field of his proposed subcontract, and (iv) had a labor force, capital and a means of supply compatible with the scope of his proposed subcontract.

4.2.4 If the Owner requires a change of any proposed Subcontractor or person or organization previously accepted by him on the Project, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued, subject to an audit by Owner.

4.2.5 The Contractor shall notify the Owner and the Design Consultant of any substitution for any Subcontractor identified in accordance with Subparagraph 4.2.1.1. The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner or the Design Consultant makes reasonable objection to such substitution. Also, Contractor may make no substitution of Subcontractors in violation of applicable law.

4.2.6 If during the duration of the Project, the Contractor effects a substitution for any Subcontractor per Paragraph 5.2.5, or if additional subcontract opportunities become available, the Contractor shall make a good faith effort to utilize Historically Underutilized Businesses (HUB's).

4.3 SUBCONTRACTUAL RELATIONS

4.3.1 By an appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Contract Documents, assumes toward the Owner. Said agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the agreement between the Contractor and Subcontractor, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Section 4.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Contract Documents available to his Sub-subcontractors.

4.3.2 The provisions herein regarding Subcontractor approvals shall in no way affect the liability of the Contractor to the Owner regarding performance of all obligations by or payment of Subcontractors. Approval to subcontract with any given Subcontractor shall not to any degree relieve the Contractor of his obligation to perform or have performed to the full satisfaction of the Owner the Work required by this Contract.

4.3.3 The Contractor shall submit Notice to the Owner of any Claims by Subcontractors for which the Owner is believed to be responsible, in strict conformance with the same time requirements and other procedures established for the submission of the Contractor's Claims to the Owner.

4.4 QUALIFICATION SUBMITTALS

4.4.1 Specific qualification submittals may be required of Subcontractors, installers and suppliers for certain critical items of the Work. Required qualification submittals are set forth in detail in the Specifications and shall be collected and submitted by the Contractor for review and approval by the Design Consultant. All information required of a single Subcontractor, installer or supplier shall be contained in a single, complete submittal. The Contractor shall submit the required qualification information within ten (10) days after receipt of the Design Consultant's request.

4.4.2 The Owner and Design Consultant shall reject any proposed Subcontractor, installer or supplier, or any

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qualification submittals related thereto, for the following reasons:

.1 The Contractor's failure to submit requested information within the specified time; or

.2 The Contractor's failure to provide all of the requested information; or

.3 The Contractor's submission of a Subcontractor, installer or supplier, or qualifications thereof, which are unacceptable in the judgment of the Owner or Design Consultant.

4.4.3 Should the Owner or Design Consultant have reasonable objection to any proposed Subcontractor, installer or supplier, the Contractor shall submit another person or firm who are reasonably acceptable to the Owner and Design Consultant.

4.5 PREPARATORY WORK

4.5.1 Before starting a portion of the Work, the Contractor and the responsible Subcontractor shall carefully examine all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to proper contours, planes and levels. He shall promptly notify the Contractor and the Design Consultant of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of his work. Absence of such notification will be construed as an acceptance of preparatory work and later Claims of defects therein will not be recognized.

4.5.2 Under no conditions shall a portion of the Work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials rests solely with the Contractor, who shall maintain coordination control at all times.

END OF ARTICLE 4

## ARTICLE 5

## WORK BY OWNER OR BY SEPARATE CONTRACTORS

5.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

5.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract.

5.2 MUTUAL RESPONSIBILITY

5.2.1 Should the Contractor cause damage to the work or property of the Owner or of any separate contractor on the Project, or to other work on the Site, or delay or interfere with the Owner's work on ongoing operations or facilities or adjacent facilities or said separate contractor's work, the Contractor shall be liable for the same; and, in the case of another contractor, the Contractor shall attempt to settle said claim with such other contractor prior to such other contractor's institution of litigation or other proceedings against the Contractor.

5.2.2 Should a separate contractor cause damage to the Work or to the property of the Contractor or cause delay or interference with the Contractor's performance of the Work, the Contractor shall present directly to said separate contractor any claims it may have as a result of such damage, delay or interference (with an information copy to the Owner) and shall attempt to settle its claim against said separate contractor prior to the institution of litigation or other proceedings against said separate contractor.

5.2.3. In no event shall the Contractor seek to recover from the Owner or the Design Consultant, and the Contractor

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hereby waives any claims against the Owner and Design Consultant relating to any costs, expenses (including, but not limited to, attorney's fees) or damages or other losses incurred by the Contractor as a result of any damage to the Work or property of the Contractor or any delay or interference caused by any separate contractor.

5.3 COORDINATION OF THE WORK

5.3.1 By entering into this contract, Contractor acknowledges that there may be other contractors on the site whose work will be coordinated with that of his own. Contractor expressly warrants and guarantees that he will cooperate with other contractors and will do nothing to delay, hinder or interfere with the work of other separate contractors, the Owner or Design Consultant. Contractor also expressly agrees that, in the event his work is hindered, delayed, interfered with or otherwise affected by a separate contractor, his sole remedy will be a direct action against the separate contractor as described in this Article 5. Contractor will have no remedy, and hereby expressly waives any remedy, against the Owner and/or the Design Consultant on account of delay, hindrance, interference or other event caused by a separate contractor.

END OF ARTICLE 5

## ARTICLE 6

## MISCELLANEOUS PROVISIONS

6.1 GOVERNING LAW

6.1.1 This contract shall be governed by the law of the State of North Carolina. The Contractor and Owner agree that the county where the Project is located shall be the proper venue for any litigation arising out of this Agreement.

6.1.2 Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly or fully inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

6.2 CLAIMS AND DAMAGES

6.2.1 Should the Contractor or any of its Subcontractors suffer injury or damage to person or property because of any act or omission of the Owner or Design Consultant, or of any of their employees, agents or others for whose acts either is legally liable, the claim on behalf of the Contractor or its subcontractors shall be made in writing to the Owner within 10 days after the first observance of such injury or damage; otherwise, the Contractor shall have waived any and all rights he may have against the Owner or the Design Consultant, or their employees, representatives and agents. The Contractor shall indemnify, defend and hold the Owner harmless from any claim by a Subcontractor that is waived because it is not filed in strict conformance with this paragraph or any other provision of this Agreement regarding claims.

6.4 RIGHTS AND REMEDIES

6.4.1 The duties and obligations of the Contractor imposed by the Contract Documents and the rights and remedies of the Owner available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

6.4.2 Except as may be specifically agreed in writing, the failure of the Owner or the Design Consultant to insist in any one or more instances upon the strict performance of any one or more of the provisions of this Contract, or to exercise any right herein contained or provided by law, shall not be construed as a waiver or relinquishment of the performance of such provisions or right(s) or of the right to subsequently demand such

strict performance or exercise such right(s), and the rights shall continue unchanged and remain in full force and effect.

6.4.3 The Contractor agrees that he can be adequately compensated by money damages for any breach of this Contract which may be committed by the Owner and hereby agrees that no default, act, or omission of the Owner or the Design Consultant, except for failure to make progress payments as required by the Contract Documents, shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the provisions of this Contract or (unless the Owner shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. The Contractor hereby waives any and all rights and remedies to which he might otherwise be or become entitled, save only his right to money damages.

6.4.4 Contractor and Owner acknowledge that the Contract Documents shall not be construed against Owner due to the fact that they may have been drafted by Owner. For purposes of construing the Contract Documents, both Contractor and Owner shall be considered to have jointly drafted the Contract Documents.

6.4.5 In the event that Owner incurs attorney's fees or litigation expenses in connection with enforcing or protecting its rights under the Contract Documents or defending any claim or lawsuit brought against it arising out of the Work or the Contract Documents, Contractor shall reimburse Owner for such reasonable attorney's fees and expenses.

6.5 TESTS AND INSPECTIONS

6.5.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested, or approved, the Contractor shall give the Owner timely notice of its readiness so the Design Consultant and the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.

6.5.2 Unless otherwise stipulated in other Contract Documents, the Contractor shall pay for all utilities required for testing of installed equipment of all of his work and work of each Subcontractor. Boiler fuel other than gas shall be provided by Subcontractor furnishing boilers. Labor and supervision required for making such tests shall be provided at no additional cost to the Owner.

6.5.3 If the Design Consultant or the Owner determines that any Work requires special inspection, testing, or approval which Subparagraph 6.51 does not include, the Owner will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 6.51. If such special inspection or testing reveals a failure of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including compensation for the Design Consultant's and Owner's additional construction management expenses made necessary by such failure.

6.6 UNENFORCEABILITY OF ANY PROVISION

6.6.1 If any provision of this Contract is held as a matter of law to be unenforceable or unconscionable, the remainder of the Contract shall be enforceable without such provision.

6.7 ATTORNEYS' FEES AND OTHER EXPENSES

6.7.1 The Contractor hereby agrees that he will not submit, assert, litigate or otherwise pursue any frivolous or unsubstantiated claims or claims he has specifically waived under the terms of the Contract Documents. In the event that the Contractor's or its Subcontractor's claims, or any separate item of a claim, is without substantial justification, the Contractor shall reimburse the Owner or Design Consultant for all costs and expenses associated with defending such claim or separate item, including but not limited to, attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional Design Consultant expenses, additional construction

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management expenses, or services and any other consultant costs.

6.7.2 If the Contractor breaches any obligation under the Contract Documents, the Contractor shall reimburse the Owner and Design Consultant for all costs and expenses incurred by the Owner relating to such breach, including but not limited to attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional Design Consultant expenses, additional construction management expenses, and any other consultant costs.

6.7.3 If the Owner or Design Consultant prevails in a claim brought against the Contractor, including but not limited to, claims for fraud or misrepresentation, overpayment, defective work, delay damages, and recovery of termination expenses, the Contractor shall reimburse the Owner and Design Consultant for all costs and expenses incurred by them relating to such claim, including but not limited to attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional Design Consultant expenses, additional construction management expenses, and any other consultant costs.

6.8 SUCCESSORS AND ASSIGNS

6.8.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner and the Contractor's Surety.

END OF ARTICLE 6

## ARTICLE 7

## TIME

7.1 DEFINITIONS

7.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial and Final Completion of the Work, as defined in Subparagraph 7.1.3 and 7.1.4, including any allowances and alternates. The Contractor shall complete his Work within Contract Time, unless the Contract Time is modified.

7.1.2 The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein. The Contractor shall not commence Work or store materials or equipment on site until written Notice to Proceed is issued or until the Contractor otherwise receives the Owner's written consent.

7.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Design Consultant and the Owner when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so the Owner can fully occupy and utilize the Work or designated portion thereof for the use for which it is intended, with all of the Project's parts and systems operable as required by the Contract Documents. Only incidental corrective work and any final cleaning beyond that needed for the Owner's full use may remain for final completion. The issuance of a temporary or final certificate of occupancy shall not, in itself, constitute Substantial Completion. Educational operational systems such as voice, data, security cameras, security card readers, security motion detection systems and building automation systems including functional graphics at the site are required for Substantial Completion.

7.1.4 The date of Final Completion of the work is the date certified by the Design Consultant and the Owner when the Work is totally complete, to include punch list work, in accordance with the Contract Documents and the Owner may fully occupy and utilize the work for the use for which it is intended. The issuance of a temporary or final certificate of occupancy shall not, in itself, constitute Final Completion.

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7.2 DELAYS AND EXTENSIONS OF TIME

7.2.1 The time during which the Contractor or any of its subcontractors delayed in the performance of the Work by the acts or omissions of the Owner, Design Consultant or their employees or agents, acts of God, unusually severe and abnormal climatic conditions, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotions or freight embargoes, or other conditions beyond the Contractor's or its subcontractors' control and which the Contractor or its subcontractors could not reasonably have foreseen and provided against, shall be added to the time for completion of the Work (i.e., the Contract Time) stated in the Agreement; provided, however, that no claim by the Contractor for an extension of time for delays will be considered unless made in strict compliance with the requirements of this Article and other provisions of the Contract Documents.

7.2.1.1 For excessive inclement weather, the Contract time will not be extended due to reasonably anticipated inclement weather or for delays in the aftermath of inclement weather, reasonably anticipated or excessive. The time for performance of this Contract, as stated in the Contract Documents, includes an allowance for calendar days which may not be available for construction out-of-doors; for the purposes of this Contract, the Contractor agrees that the number of calendar days per month based on a five-year average shall be considered reasonably anticipated inclement weather and planned for in the construction schedule per the Contract. Unless the Contractor can substantiate to the satisfaction of the Owner that there was greater than the reasonably anticipated inclement weather considering the time from the Notice to Proceed until the date established for substantial completion using data from the national weather service station noted in the Supplemental General Conditions or a weather station acceptable to the Owner and that such alleged greater than reasonably anticipated inclement weather actually delayed the Work or portions thereof which had an effect upon the Contract time, the Contractor shall not be entitled to an extension of time.

Also, the Contractor agrees that the calculation of the number of excessive inclement weather days shall be the number of days in excess of the five-year average for each month, in which precipitation exceeded one tenth (.10) inch, or in which the highest temperature was 32 degrees For less as recorded at the approved weather station. Rain days from hurricanes and tropical storms not causing damage in the county where the Project is located shall be deemed inclement weather days.

If the total accumulated number of calendar days lost to excessive inclement weather, from the Notice to Proceed until the date established for substantial completion, exceeds the total accumulated number to be reasonably anticipated for the same period from the table above, time for completion will be extended by the number of calendar days needed to include the excess number of calendar days lost. No extension of time will be made for days due to excessive inclement weather occurring after the date established for substantial completion. No change in Contract sum will be authorized because of adjustment of Contract time due to excessive inclement weather.

7.2.2 Should a time extension be granted for Substantial Completion the date for Final Completion shall be appropriately adjusted unless specifically stated otherwise.

7.2.3 Neither the Owner nor the Design Consultant shall be obligated or liable to the Contractor or its Subcontractors for, and the Contractor hereby expressly waives any claims against the Owner and the Design Consultant on account of any indirect or direct damages, costs or expenses of any nature which the Contractor, its Subcontractors, or Sub-subcontractors or any other person may incur as a result of any delays, interferences, changes in sequence or the like, which are reasonable, foreseeable, contemplated, or avoidable by Contractor, and it is understood and agreed that the Contractor's sole and exclusive remedy in any such events shall be an extension of the Contract Time in accordance with the Contract Documents, unless the delays, interferences, changes in sequence or the like arise solely from or out of any act or omission of the Owner or the Design Consultant, or their agents, employees, consultants or independent. The Contractor shall not be entitled to any damages pursuant to this section if there are any concurrent delays for which the Owner and/or the Design Consultant are not solely responsible.

7.2.4 Subject to other provisions of the Contract, the Contractor may be entitled to an extension of the Contract Time (but no increase in the Contract Sum) for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, his Subcontractors or suppliers, unless caused solely by the

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Owner or Design Consultant.

7.2.5 The Contractor and its subcontractors shall not be entitled to and hereby expressly waives any extension of time resulting from any condition or cause unless said claim for extensions of time is made in writing to the Owner within ten (10) days of the first instance of delay.

END OF ARTICLE 7

## ARTICLE 8

## PAYMENTS AND COMPLETION

8.1 SCHEDULE OF VALUES

8.1.1 Before the first Application for Payment, the Contractor shall submit to the Owner a schedule of values allocated to the various portions of the Work.

8.2 APPLICATIONS FOR PAYMENT

8.2.1 Prior to the date for each progress payment established in the Owner-Contractor Agreement, the Contractor, shall submit to the Owner an itemized Application for Payment including a completed Contractor's Sales Tax Report (attached hereto as Appendix A) for all items provided by the Contractor or any Subcontractors included in the application. The Contractor shall also certify that he has paid all due and payable amounts for which previous certificates for payment were issued and payments received from the Owner and that the work for which payment is requested has been completed.

8.2.2 The Owner will retain funds from each progress payment to the maximum extent allowed by N.C. General Statute 143-134.1 until the Work is finally completed and accepted, whether or not the Owner has occupied any or all of the Project before such time. If a reduction in retainage has been made or the Owner stops withholding retainage for any reason, the Owner may increase or commence the retainage as authorized by N.C. Gen. Stat. 143-134.1.

8.2.3 Owner will be under no obligation to make payment to the Contractor on account of materials or equipment not incorporated in the Work. Materials once paid for by the Owner become the property of the Owner and may not be removed from the work site without the Owner's written permission.

8.2.4 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 8 as "liens".

8.2.5 All invoices shall show the following:

.1 Total amount of contract
.2 Amount of change orders
.3 Total value of completed work
.4 Amount retained by Owner
.5 Amount due Contractor

8.3 CERTIFICATES FOR PAYMENT

8.3.1 By signing a Certificate for Payment, the Design Consultant shall not thereby be deemed to represent that it has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that it has reviewed the construction means, methods, techniques, sequences, or procedures, or that it has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

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8.4 PROGRESS PAYMENTS

8.4.1 The Contractor shall promptly pay each Subcontractor (including suppliers, laborers, and material-men) performing labor or furnishing material for the Work, upon receipt of payment from the Owner.

8.4.2 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

8.4.3 The Contractor shall not submit more than one pay application during any 30-day period.

8.5 PAYMENTS WITHHELD

8.5.1 The Design Consultant may decline to certify payment and may withhold their Certificate in whole or in part, to the extent the Design Consultant deems necessary to reasonably protect the Owner from loss associated with unsatisfactory job progress, defective construction, disputed work, claims or any other similar issue. If the Design Consultant is unable to make representations to the Owner and to certify payment in the amount of the Application, it will notify the Contractor as provided herein. The Design Consultant may also decline to certify payment because of subsequently discovered evidence or subsequent observations that may nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary in its opinion to protect the Owner from loss.

8.6 FAILURE OF PAYMENT

8.6.1 Payments due and unpaid under the Contract Documents shall not bear interest.

8.7 SUBSTANTIAL COMPLETION

8.7.1 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Design Consultant and Owner when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so Owner can fully occupy and utilize the Work for the use for which it is intended, with all of the Project's parts and systems operable as required by the Contract Documents. Only incidental corrective work and any final cleaning beyond that needed for Owner's full use may remain for Final Completion. The Contractor shall be solely responsible for the cost to repair or replace any work damaged or destroyed prior to the Date of Substantial Completion.

8.7.2 When the Design Consultant and the Owner on the basis of an inspection jointly determine that the Work or designated portion thereof is substantially complete, they will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Contractor shall provide operation & maintenance manuals, and operation training to the Owner as required by the Contract Documents prior to Substantial Completion. The Owner's occupancy of incomplete work shall not alter the Contractor's responsibilities pursuant to this section.

8.7.3 The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor and its Subcontractors except those previously made in writing and identified by the Contractor as unsettled at the time the Contractor submits the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance. The Contractor shall indemnify and hold the Owner harmless against any claims by its Subcontractors that are waived because they were not made in writing and identified by the Contractor as unsettled when the Contractor submitted the Application for Payment for Substantial Completion.

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8.7.4 The issuance of the Certificate of Substantial Completion does not indicate final acceptance of the project by the Owner, and the Contractor is not relieved of any responsibility for the project except as specifically stated in the Certificate of Substantial Completion.

8.7.5 There will be two inspections by the Design Consultant at Substantial Completion:

.1 To generate a list of items to be completed or corrected before Owner takes possession of the Work.
.2 To check that the list of items has been completed before issuing Final Payment.

Any additional inspections by the Design Consultant requested by Contractor to complete the Punch List shall result in money being withheld from the Final Payment to cover the cost of these additional inspections

8.8 FINAL COMPLETION AND FINAL PAYMENT

8.8.1 When the Design Consultant and the Owner find the Work acceptable under the Contract Documents and the Contract fully performed, they will approve a final Certificate of Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable, except for an amount mutually agreed upon for any work remaining incomplete or uncorrected for which the Owner is entitled a credit under the Contract Documents. If the Design Consultant and the Owner find the Work to be incomplete or unacceptable, the costs of reinspections shall be paid by the Contractor.

8.8.2 Final Payment shall not become due until the Contractor provides to the Design Consultant and Owner: three (3) copies of any of the following required:

.1 Final Change Order
.2 Final Application for Payment
.3 Consent of Surety to Final Payment - AIA G707(if applicable)
.4 Contractor’s Affidavit of Release of Liens - AIA G706A
.5 Contractor’s Affidavit of Payment of Debts and Claims - AIA G706;
.6 Certificate of Occupancy (if applicable)
.7 Contractor’s Warranty, notarized
.8 Warranty Summary Sheet with Original Warranties (if not included in O & M Manuals)
.9 Certification Letter from Contractor that no Asbestos-Containing Materials were used on the project
.10 Final List of Subcontractors (name, address, phone, fax nos.)
.11 Record Drawings (As-Built) - 1 set
.12 Operation and Maintenance Manuals - 3 sets
.13 Other project close-out submittals, as required by the Contract Documents.

8.8.3 Neither the final payment nor the remaining retained percentage shall become due until the Work is free and clear of any and all liens and the Contractor submits to the Owner:

.1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied;

.2 if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner; and

.3 As-built drawings, and other project closeout submittals, as required by the Owner.

8.8.4 The making of final payment shall constitute a waiver of all claims by the Owner against the Contractor except those arising from:

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.1 unsettled liens, and claims against the Owner or the Design Consultant, or their employees, agents, or representatives,

.2 faulty, defective or non-conforming Work discovered or appearing after Substantial or Final Completion,

.3 failure of the Work to comply with the requirements of the Contract Documents,

.4 terms of any warranties contained in or required by the Contract Documents,

.5 damages incurred by the Owner resulting from lawsuits brought against the Owner, the Design Consultant, or their agents, employees or representatives because of failures or actions on the part of the Contractor, his Subcontractors, Sub-subcontractors, or any of their employees, agents or representatives, or

.6 fraud or bad faith committed by the Contractor or any subcontractor or supplier during performance of work but discovered by Owner after Final Payment.

8.8.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment

8.9 LIQUIDATED DAMAGES

8.9.1 Should the Contractor fail to substantially complete the Work on or before the date stipulated for Substantial Completion (or such later date as may result from extension of time granted by Owner), he shall pay the Owner, as Substantial Completion liquidated damages the daily amount stated in the Supplementary Conditions for each consecutive calendar day that terms of the contract remain unfulfilled beyond the date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages which the Owner will sustain per day by failure of the Contractor to complete work within time as stipulated; it being recognized by the Owner and the Contractor that the injury to the Owner which could result from a failure of the Contractor to complete on schedule is uncertain and cannot be computed exactly. In no way shall costs for liquidated damages be construed as a penalty on the Contractor.

8.9.2 For each consecutive calendar day that the Work remains incomplete after the date established for Final Completion, the Contractor shall pay or Owner will retain the daily amount stated in the Supplementary Conditions as Final Completion Liquidated Damages from the compensation otherwise to be paid to the Contractor. This amount is the minimum measure of damages the Owner will sustain due to the delay in the completion of all remedial work, the delay in the correction of the deficient work, the disruption to the school and the learning environment, the cost of contract management time and resources, administration time, and the inability to use the facilities fully. This amount is in addition to the liquidated damages prescribed above for Substantial Completion.

8.9.3 The amount of liquidated damages set forth above and in the corresponding Supplementary Conditions shall be assessed cumulatively. The items of cost included in the assessment of liquidated damages are as defined in the General Conditions. This provision for liquidated damages does not bar Owner's right to enforce other rights and remedies against Contractor, including but not limited to, specific performance or injunctive relief.

8.10 OWNER'S RIGHT TO OCCUPY INCOMPLETE WORK

8.10.1 Should the Project, or any portion thereof, be incomplete for Substantial or Final Completion at the scheduled date or dates, the Owner shall have the right to occupy any portion of the Project. In such an event, the Contractor shall not be entitled to any extra compensation on account of said occupancy by the Owner or by the Owner's normal full use of the Project, nor shall the Contractor interfere in any way with said normal full use of the Project. Further, in such an event, the Contractor shall not be entitled to any extra compensation on account of the Owner's occupancy and use of the Project, nor shall the Contractor be relieved of any

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responsibilities of the Contract including the required times of completion. Such occupancy by the Owner shall not, in itself, constitute Substantial or Final Completion.

END OF ARTICLE 8

## ARTICLE 9

## INSURANCE AND BONDS

9.1.1 CONTRACTOR'S INSURANCE AND BONDS

The Contractor shall purchase and maintain in companies properly licensed by the Insurance Department of the State of North Carolina and acceptable to the Owner such insurance as will protect him, the Owner, and the Owner's agents, representatives, and employees from claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall include:

9.1.1.1 Worker's Compensation including Occupational Disease and Employer's Liability Insurance

.1 Statutory - Amount and coverage as required by State of North Carolina Worker's Compensation laws

.2 Employer's Liability
$1,000,000 Each Accident
$1,000,000 Policy Limit
$1,000,000 Each Employee

9.1.1.2 Commercial General Liability (Occurrence Form) - The Contractor shall provide during the life of this Contract such Commercial General Liability (Occurrence Form) Insurance as shall protect Contractor and any Subcontractor performing work under this Contract from claims for damages for Bodily Injury including accidental death, as well as from claims for Property Damage which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by either of them. This insurance shall be on the Standard Insurance Services Office, Inc. (ISO) Commercial Liability Occurrence Form. The Contractor shall procure insurance coverage for direct operations, sublet work, elevators, contractual liability and completed operations with limits not less than those stated below:

A Combined Single Limit for Bodily Injury, Property Damage and Personal Injury of:

| | |
|---|---|
| $2,000,000 | General Aggregate (except Products - Completed Operations) Limit |
| $2,000,000 | Products - Completed Operations Aggregate Limit |
| $1,000,000 | Personal and Advertising Injury Limit |
| $1,000,000 | Each Occurrence Limit |
| $ 5,000 | Medical Expense |

9.1.1.3 Property Damages, including Broad Form Property Damage and Explosion, Collapse, Underground property damage coverages, and blasting, where necessary.

9.1.1.4 Completed Operations Liability: Continuous coverage in force for one year after completion of Work.

9.1.1.5 Commercial Automobile Insurance, including coverage for owned, non-owned and hired vehicles - with limits not less than a Combined Single Limit for Bodily Injury and Property Damage of $1,000,000.

9.1.1.6 Umbrella Liability Insurance: Policy to 'pay on behalf of the Insured' with Limits of Liability: $1,000,000.

9.2 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the Owner. Failure to provide such notice shall not limit the liability of the Insurer, its agents or representatives.

9.3 All insurance policies required in this Article, except Worker's Compensation and Commercial Automobile, shall name the Owner as additional named insured for the insurance. The Owner shall be included in the definition of "insured" in the Commercial Automobile Policy.

9.4 Contractor shall not commence work under this Contract until he has obtained all the insurance and bonds required under Article 5 of this Contract and until such insurance and bonds have been approved by the Owner, nor shall Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Approval of the insurance by Owner shall not relieve or decrease the liability of Contractor hereunder.

9.5 The Commercial General Liability and Workers Compensation Policies provided by Contractor shall have endorsements waiving subrogation against Owner.

9.6 PROPERTY INSURANCE. Contractor shall provide the following property insurance:

9.6.1 Unless stated otherwise in the Supplemental Conditions, Contractor shall purchase and at all times maintain such insurance as will protect Contractor, Owner, Subcontractors and Sub-subcontractors from loss or damage to Work or property in the course of construction, including all machinery, materials and supplies on the premises or in transit thereto and intended to become a part of the finished work until Final Completion. This insurance shall be in the form of 'Builder's Risk Covered Cause of Loss Form' to include, but not limited to, theft, collapse, earth movement and flood. Any deductible provision in such insurance shall not exceed $5,000.00. Notwithstanding any such deductible provision, Contractor shall remain solely liable for the full amount of any item covered by such insurance.

9.6.2 If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed to by Owner and Contractor, and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy or use. Consent of Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

9.7 Owner shall be under no obligation to review any Certificates of Insurance provided by Contractor, or to check or verify Contractor's compliance with any and all requirements regarding insurance imposed by the Contract Documents. Contractor 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 Contractor not comply with any and all requirements regarding insurance imposed by the Contract Documents.

9.8 All insurance companies providing the above insurance shall be licensed by the Insurance Department of the State of North Carolina and maintain a rating by AM Best or a similar rating company with a minimum of an "A-" rating.

9.9 PERFORMANCE AND PAYMENT BONDS

"If required by law, or in the Supplemental Conditions or the Contract Documents, Contractor must provide performance and payment bonds each in the amount of the Contract Sum. Such bonds shall be on forms acceptable to Owner and issued by surety companies licensed to do business in North Carolina and having a rating of at least AM Best "A" rating. Contractor may, at its option, make deposit in the form of certified check with Owner in lieu of the performance and payment bonds in an amount equal to the Contract Sum for each such bond, for a total of 200% of the Contract Sum."

END OF ARTICLE 9

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## ARTICLE 10

## CHANGES IN THE WORK

10.1 CHANGE ORDERS

10.1.1 The Owner may, at any time, by written order designated or indicated to be a Change Order, make any change or modification in the Work or add to the Work within the general scope of the Contract.

10.2 OWNER DIRECTED CHANGES REQUIRING AN INCREASE IN CONTRACT SUM.

10.2.1 If the Change in the Work will result in an increase in the Contract Sum, the Owner shall have the right to require the performance thereof on a lump sum basis, a unit price basis or a time and material basis, all as hereinafter more particularly described (the right of the Owner as aforesaid shall apply with respect to each such Change in the Work).

If the Owner elects to have the Change in the Work performed on a lump sum basis, its election shall be based on a lump sum Proposal which shall be submitted by the Contractor to the Owner within seven (7) days of the Contractor's receipt of a request therefore (but the Owner's request for a lump sum Proposal shall not be deemed an election by the Owner to have the Change in the Work performed on a lump sum basis). The Contractor's Proposal shall be itemized and segregated by labor and materials for the various components of the Change in the Work (no aggregate labor total will be acceptable) and shall be accompanied by signed Proposals of any Subcontractors who will perform any portion of the Change in the Work and of any persons who will furnish materials or equipment for incorporation therein. The Proposal shall also include the Contractor's estimate of the time required to perform said changes. The Contractor shall provide any documentation that may be requested by the Owner or Architect to support the change proposal, including but not limited to payroll records, insurance rates, material quotes, and rental quotes. The Change Proposal Forms attached as Appendix B shall be used to submit change proposals on the Project.

The portion of the Proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors, may include reasonably anticipated gross wages of job site labor, including foremen, who will be directly involved in the Change in the Work (for such time as they will be so involved), plus payroll costs (including premium costs of overtime time, if overtime is anticipated, Social Security, Federal or State unemployment insurance taxes and fringe benefits required by collective bargaining agreements entered into by the Contractor or any such Subcontractor in connection with such labor) and up to fifteen percent (15%) of such anticipated gross wages, but not payroll costs, as overhead and profit for the Contractor or any such Subcontractor, as applicable (said overhead and profit to include all supervision except foremen). Payroll costs are limited to 39% of the net pay of the worker.

The portion of the Proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or to any of its Subcontractors of materials to be purchased for incorporation in the Change in the Work, plus transportation and applicable sales and use taxes and up to fifteen percent (15%) of said direct material costs as overhead and profit for the Contractor or any such Subcontractor (said overhead and profit to include all small tools), and may further include the Contractor's and any of its Subcontractor's reasonably anticipated rental costs in connection with the Change in the Work (either actual or discounted local published rates), plus up to eight percent (8%) thereof as overhead and profit for the Contractor or any such Subcontractors, as applicable. The Contractor shall provide an itemized breakdown of all transportation and shipping costs, including receipts documenting the expenses. Notwithstanding the above, overhead and profit shall not be applied to any sales tax paid for any purpose or to any transportation or shipping costs incurred by the Contractor or any subcontractor. If any of the items included in the lump sum Proposal are covered by unit prices contained in the Contract Documents, the Owner may, if it requires the Change in the Work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum Proposal, in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices.

The lump sum Proposal may include up to eight percent (8%) of the amount which the Contractor will pay to any of its Subcontractors for Changes in the Work as overhead and profit for the Contractor. The Contractor shall not be reimbursed for the costs of the Subcontractors' Payment and Performance Bonds, as such bonding is not required by the Owner.

10.2.2 In the event that the Contractor fails to submit his Proposal within the designated period, the Owner may order the Contractor to proceed with the Change to the Work and the Contractor shall so proceed. The Owner shall unilaterally determine the reasonable cost and time to perform the Work in question, which determination shall be final and binding upon the Contractor. The Contractor may dispute such action in accordance with the Article 15.

10.2.3 In the event that the parties are unable to agree as to the reasonable cost and time to perform the Change in the Work based upon the Contractor's Proposal and the Owner does not elect to have the Change in the Work performed on a time and material basis, the Owner may choose to make a determination of the reasonable cost and time to perform the Change in the Work, based upon its own estimates, the Contractor's submission or a combination thereof. A Construction Change Directive shall be issued in this case for the amounts of cost and time determined by the Owner and shall become final and binding upon the Contractor, subject to Contractor's right to dispute such action in accordance with Article 10.9. Owner has the right to direct by Construction Change Directive a Change in the Work, which is the subject of such Change Order. Failure of the parties to reach agreement regarding the cost and time of the performing the Construction Change Directive, shall not relieve the Contractor from performing the Change in the Work promptly and expeditiously.

10.2.3.1 The Owner reserves the right to reject the Contractor's Proposal for a Change in the Work and to elect to perform said Work using a Separate Contractor. Under such circumstances, all provisions of Article 6 shall be in force.

10.2.4 If the Owner elects to have the Change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-subcontractors, at actual cost to the entity performing the Change in the Work (without any charge for administration, clerical expense, supervision or superintendence of any nature whatsoever, including foremen, or the cost, use or rental of tools or plant), plus fifteen percent (15%) thereof as the total overhead and profit (except that said fifteen percent (15%) shall not be applied against any payroll costs, as set forth in Paragraph 10.2.1.) The Contractor shall submit to the Owner daily time and material tickets, on a daily basis to include the identification number assigned to the Change in the Work, the location and description of the Change in the Work, the classification of labor employed (and names and social security numbers), the materials used, the equipment rented (not tools) and such other evidence of cost as the Owner may require. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose. The failure of the Contractor to secure any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the Contractor of any Claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the Owner shall not constitute an acknowledgment by the Owner that the items thereon were reasonably required for the Change in the Work.

10.2.5 No overhead and profit will be paid by the Owner on account of a Change in the Work except as specifically provided in Section 10.2. Overhead and profit, as allowed under Section 10.2, shall be deemed to include all costs and expenses which the Contractor or any of its Subcontractors may incur in the performance of a Change in the Work and which are not otherwise specifically recoverable by them pursuant to Section 10.2.

10.3 CONTRACTOR NOTICE OF CHANGE

10.3.1 If the Contractor or any of its Subcontractors asserts that any event or occurrence has caused a change in or addition to the Work which change causes an increase or decrease in the Contractor's or its Subcontractors' cost or the time required for the performance of any part of the Work under the Contract, including Work not affected directly by the change, the Contractor shall, within ten (10) days of such event, give the Owner written

notice as herein required. Said notice shall include the instructions or circumstances that are the basis of the claim and the Contractor's best estimate of the cost and time involved.

10.3.2 If the Contractor intends to assert a claim under this Article, he must, within ten (10) days after receipt of a written Change Order under Subparagraph 10.2.1 above or the furnishing of a written notice under Subparagraph 10.3.1, submit to the Owner a written statement setting forth the specific nature and cost of such claim, unless this period is extended by the Owner. The statement of claim hereunder may be included in the notice under Subparagraph 10.3.1 above. The statement of claim shall include all direct, indirect and impact costs associated with the change, as well as the Contractor's estimate of the schedule impact of the change, if any. The Contractor and its subcontractors shall not be entitled to reimbursement for any claims that are not filed in strict conformance with this Article. The Contractor shall indemnify and hold the Owner harmless against any claims by Subcontractors that are waived because they are not filed in strict conformance with this Article.

10.3.3 If the parties are unable to agree to the reasonable cost and time to perform the Change, or are unable to agree as to whether a change occurred, the Owner shall make a unilateral determination as described in Article 10.2.2. The Contractor shall proceed pursuant to the provisions of that Article.

10.4 GENERAL PROVISIONS RELATED TO CHANGES

10.4.1 The Contractor shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called "impact" costs, labor inefficiency, wage, material or other escalations beyond the prices upon which the proposal is based and to which the parties have agreed pursuant to the provisions of Article 10, and which the Contractor, its Subcontractors or Sub-subcontractors or any other person may incur as a result of delays, interferences, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all changes in the Work performed pursuant to this Article 10, unless the delay is caused solely by the Owner or its agent. It is understood and agreed that the Contractor's sole and exclusive remedy in such event shall be recovery of his direct costs as compensable hereunder and an extension of the Contract Time, but only in accordance with the provisions of the Contract Documents. The phrase “Owner or its agent” as used in this Agreement, does not include the Prime Contractors or their Subcontractors.

10.4.2 No claim by the Contractor hereunder shall be allowed if asserted after final payment under this Contract. No claim relating to or flowing from a particular change shall be allowed after execution of the Change Order relating to that change or commencement of the change by the Contractor.

10.5 CHANGES REQUIRING A DECREASE IN CONTRACT SUM.

10.5.1 If the Change in the Work will result in a decrease in the Contract Sum, the Owner may request a quotation by the Contractor of the amount of such decrease for use in preparing a Change Order. The Contractor's quotation shall be forwarded to the Owner within ten (10) days of the Owner's request and, if acceptable to the Owner, shall be incorporated in the Change Order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the Contract Documents and/or on such other basis as the parties may mutually determine. If the parties are unable to so agree, the amount of such decrease shall be the total of the estimated reduction in actual cost of the Work, as determined by the Owner in its reasonable judgment, plus fifteen percent (15%) thereof as overhead and profit.

10.6 DISPUTES REGARDING CHANGES.

10.6.1 If any dispute should arise between the parties with respect to an increase or decrease in the Contract Sum or an expansion or contraction in the Contract Time as a result of a Change in the Work, the Contractor shall not suspend performance of a Change in the Work or the Work itself unless otherwise so ordered by the Owner in writing. The Owner shall, however, pay to the Contractor up to the Owner's reasonable estimated value of the Change in the Work, regardless of the dispute, if said Change in the Work results in an increase in the Contract Sum; and the Owner shall have the right to decrease the Contract Sum up to the Owner's reasonable estimated

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value of the Change in the Work, regardless of the dispute, if said Change in the Work results in a decrease in the Contract Sum.

10.7 MINOR CHANGES IN THE WORK

10.7.1 The Owner shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

10.7.2 The Contractor shall not perform any changes in the Work unless authorized in writing by the Design Consultant or Owner.

10.8 DIFFERING SITE CONDITIONS

10.8.1 Should the Contractor encounter subsurface and/or latent conditions at the site materially differing from those shown on the drawings or indicated in the specifications or differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract, he shall immediately give notice to the Owner of such conditions before they are disturbed. The Owner and the Design Consultant shall thereupon promptly investigate the conditions and if they find that they materially differ from those shown on the drawings or indicated in the specifications, they shall at once make such changes in the drawings and/or specifications as they may find necessary. Any increase or decrease of cost resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional work and changes. However, neither the Owner nor the Design Consultant shall be liable or responsible for additional work, costs or changes to the work due to material differences between actual conditions and any geotechnical, soils and other reports, surveys and analyses made available for the Contractor's review.

10.9 CLAIMS AND DISPUTE RESOLUTION

10.9.1 Definition. A Claim is a demand or assertion by the Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question from the Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the Contractor.

10.9.2 Time Limits on Claims. Claims by Contractor must be initiated within 10 days occurrence of the event giving rise to such Claim or within 10 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Design Consultant (if there is one) and the other party.

10.9.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as otherwise provided in the Contract Documents, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments in accordance with the Contract Documents.

10.9.4 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property when the giving of such notice would increase the risk of injury or damage to persons or property.

10.9.5 Claims for Additional Time. If the Contractor wishes to make Claim for an extension of the dates set for Substantial or Final Completion, written notice as provided herein shall be given. The Contractor’s Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Contractor bears the burden of proving it is entitled to an extension of time. Unless Contractor meets this burden, Liquidated Damages shall be assessed automatically.

10.9.6 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the relevant period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

10.9.7 Resolution of Claims and Disputes. Claims, including those alleging an error or omission by the Design Consultant, shall be referred initially to the Design Consultant for decision, if there is a Design Consultant with Contract Administration duties which include Claims resolution; otherwise, such Claims by Contractor shall initially be referred to the Owner. An initial decision by such Design Consultant (or Owner as applicable) shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Design Consultant (or Owner as applicable) with no decision having been rendered. The Design Consultant (or Owner as applicable) will not decide disputes between the Contractor and persons or entitles other than the Owner.

10.9.8 The Design Consultant (or Owner as applicable) will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Design Consultant is unable to resolve the Claim if the Design Consultant lacks sufficient information to evaluate the merits of the Claim or if the Design Consultant concludes that, in the Design Consultant's sole discretion, it would be inappropriate for the Design Consultant to resolve the Claim.

10.9.9 Upon receipt of the response or supporting data, if any, the Design Consultant (or Owner as applicable) will either reject or approve the Claim in whole or in part.

10.9.10 The Design Consultant (or Owner as applicable) will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties or any change in the Contract Sum or Contract Time, or both. The approval or rejection of a Claim by the Design Consultant (or Owner as applicable) shall be final and binding on the parties but subject to mediation and litigation.

10.9.11 When a written decision of the Design Consultant (or Owner as applicable) states that (1) the decision is final but subject to mediation and litigation and (2) a demand for mediation of a Claim (if required by Owner's Dispute Resolution Procedures) or the commencement of a lawsuit (if mediation is not required as a pre-condition to litigation in Owner's Dispute Resolution Procedures) covered by such decision must be made or done within 30 days after the date on which the party making the demand (or filing the lawsuit) receives the final written decision, then failure to demand mediation in writing (if required) or file the lawsuit within said 30 days' period shall result in the Design Consultant's (or Owner's as applicable) decision becoming final and binding upon the Owner and Contractor. If the Design Consultant (or Owner as applicable) renders a decision after litigation proceedings have been initiated, such decision may be entered as evidence, but shall not supersede litigation proceedings unless the decision is acceptable to all parties concerned.

10.9.12 In the event of a dispute, the Owner, Contractor, and other parties involved in the Project shall utilize the Dispute Resolution Procedures adopted by Owner pursuant to N.C.G.S. §143-128(g), if applicable. Owner's Dispute Resolution Procedures are as follows:

These Procedures are applicable to the resolution of disputes with amounts in controversy in excess of $15,000.00 arising between or among any parties involved in Owner's construction and repair Projects, including the Design Consultant and the Contractors, and the first and lower tier subcontractors, on Claims arising out of the contract or construction process. In no event shall the Owner be subject to arbitration proceedings pursuant to these Procedures. Unless otherwise specified in these Procedures, if there is any conflict between these Procedures and the other provisions of the Contract Documents, the terms of these Procedures control.

Any Claim as defined in the Contract Documents or any dispute between parties to a construction contract involving the Project, other than the Owner's claims, except those Claims which are waived shall be subject to nonbinding mediation as a condition precedent to the institution of legal proceedings by any party, except that any party may institute legal proceedings in order to meet any applicable statute of limitations or similar deadlines prior to engaging in nonbinding mediation.

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The parties shall endeavor to resolve their claims by nonbinding mediation, which, unless the parties mutually agree otherwise, shall be in accordance with rules established by Owner if Owner is a party to the mediation. If Owner is not a party to the mediation, the mediation shall be conducted in accordance with rules established by the parties to the mediation. The parties to the mediation shall share the cost of mediation equally. The mediation shall be held in the place where the project is located unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10.9.13 All suits in law or equity between the Owner and the Contractor arising out of the Contract shall be heard in the appropriate court of justice in the county where the Project is located.

END OF ARTICLE 10

## ARTICLE 11

## CORRECTION OF WORK

11.1 CORRECTION OF WORK

11.1.1 The Contractor shall promptly reconstruct, replace or correct all Work rejected by the Design Consultant as defective or as failing to conform to the Contract Documents or as not in accordance with the guarantees and warranties specified in the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Design Consultant's and the Owner's additional construction management services made necessary thereby.

11.1.2 The Contractor, unless removal is waived by the Owner, shall remove from the site all portions of the Work which are defective or non-conforming, or if permitted or required, he shall correct such work in place at his own expense promptly after receipt of notice, and such rejected Work shall not thereafter be tendered for acceptance unless the former rejection or requirement for correction is disclosed.

11.1.3 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Owner, the Owner may either (1) by separate contract or otherwise replace or correct such Work and charge the Contractor the cost occasioned the Owner thereby and remove and store the materials or equipment at the expense of the Contractor, or (2) terminate this Contract for default as provided in Paragraph 12.3. If the Contractor does not pay the cost of such replacement or correction and the removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for additional services of the Design Consultant and the Owner made necessary thereby. If such proceeds of sale do not cover all costs, which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

11.1.4 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.

11.1.5 Nothing contained in this Paragraph 11.1 shall be construed to establish a period of limitation with respect to any other obligation, which the Contractor might have under the Contract Documents, including Paragraph 3.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced,

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nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

END OF ARTICLE 11

## ARTICLE 12

## TERMINATION OF THE CONTRACT

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon seven (7) additional days' written notice to the Owner and the Design Consultant, terminate the Contract and recover from the Owner payment on a quantum merit basis, for all Work executed. The Contractor shall not be entitled to collect and hereby expressly waives, any profit on work not performed or any damages related to that portion of the Contract, which has been terminated.

12.2 TERMINATION FOR CONVENIENCE OF THE OWNER

12.2.1 The Owner may, at any time upon ten (10) days' written notice to the Contractor which notice shall specify that portion of the Work to be terminated and the date said termination is to take effect, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the work for the convenience of the Owner. The Contractor's sole remedy, in the event of such termination, will be the allowable termination costs permitted by Article 12.4. Contractor shall include termination clauses identical to Article 12 in each of his Subcontracts.

12.3 DEFAULT TERMINATION

12.3.1 Subject to the provisions of Paragraph 2.3.1, ten (10) days after written notice is mailed to the Contractor, the Owner may terminate (without prejudice to any right or remedy of the Owner or any subsequent buyer of any portion of the Work) the employment of the Contractor and his right to proceed either as to the whole or any portion of the Work required by the Contract Documents and may take possession of the Work and complete the Work by contract or otherwise in any one of the following circumstances:

.1 if the Contractor refuses or fails to prosecute the work or any separable part thereof with such diligence as will ensure the Substantial or Final Completion of the Work within the Contract Time or fails to complete the Work or remedy a default within said period;

.2 if the Contractor is in material default in carrying out any provisions of the Contract for a cause within his control;

.3 if the Contractor fails to supply a sufficient number of properly skilled workmen or proper equipment or materials;

.4 if the Contractor fails to make prompt payment to Subcontractors or for materials or labor, unless he otherwise provides the Owner satisfactory evidence that payment is not legally due;

.5 if the Contractor disregards laws, permits, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to follow the instructions of the Owner;

.6 if the Contractor substantially violates any provisions of the Contract Documents; or

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.7 if the Contractor refuses or fails to properly schedule, plan, coordinate and execute the Work, as specified herein, so as to perform the Work within the specified Milestone and Completion dates, or to provide scheduling or related information, revisions and updates as required by the Contract Documents.

12.3.2 If, after the Contractor has been terminated for default pursuant to Paragraph 12.3, it is determined that none of the circumstances set forth in Subparagraph 12.3.1 exist, then such termination shall be considered a termination for convenience pursuant to Paragraph 12.2 In such case, the Contractor's sole remedy will be the costs permitted by Article 12.4.

12.3.3 If the Owner so terminates the employment of the Contractor, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the compensation is to be paid to the Contractor hereunder shall exceed the expense of so completing the Work (including compensation for additional managerial, administrative, consultant and inspection services and any damages for delay) such excess shall be paid to the Contractor.

12.3.4 If such expenses shall exceed the unpaid balance, the Contractor shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the Work is partially or fully terminated, the Owner may take possession of and utilize in completing the Work such materials, appliances, supplies, plant and equipment as may be on the site of the terminated portion of the Work and necessary for the completion of the Work. If the Owner does not fully terminate the right of the Contractor to proceed, the Contractor shall continue to perform the part of the work that is not terminated.

12.4 ALLOWABLE TERMINATION COSTS

12.4.1 If the Owner terminates the whole or any portion of the Work pursuant to Paragraph 12.2, then the Owner shall only be liable to the Contractor for those costs reimbursable to the Contractor in accordance with Subparagraph 12.4.2, plus a markup of ten percent for profit and overhead on the actual fully accounted costs recovered under 12.4.2; provided however, that if there is evidence that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed hereunder and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.

12.4.1.1 After receipt of a Notice of Termination, the Contractor shall submit to the Owner his termination claim, in the form and with certification prescribed by the Owner. Such claim shall be submitted promptly but in no event later than three (3) months from the effective date of termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such three (3) month period or authorized extension thereof. However, if the Owner determines that the facts justify such action, he may receive and evaluate any such termination claim at any time after such three (3) month period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Owner may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination.

12.4.2 If the Owner terminates the whole or any portion of the Work pursuant to Paragraph 12.2, the Owner shall pay the Contractor the amounts determined by the Owner as follows:

.1 an amount for supplies, services, or property accepted by the Owner pursuant to Clause 12.5.1.6 or sold or acquired pursuant to Clause 12.5.1.7 and not heretofore paid for, and to the extent provided in the Contract such amount shall be equivalent to the aggregate price for such supplies or services computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges; and

.2 the total of:

(1) the cost incurred in the performance of the Work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under Clauses 12.4.2.1 or 12.4.2.2.(2);

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(2) the cost of settling and paying claims arising out of the termination of Work under Subcontracts or orders, pursuant to Clause 12.5.1.5, which are properly chargeable to the terminated portion of the Work (exclusive of amounts paid or payable on account of completed items of equipment delivered or services furnished by Subcontractors or vendors prior to the effective date of the notice of termination), which amounts shall be included in the costs payable under (1) above; and

(3) the reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Work and for the termination and settlement of Subcontracts thereunder, together with reasonable storage, transportation and other costs incurred in connection with the protection or disposition of property allocable to the Contract.

.3 Provided, however, that neither the Owner nor the Design Consultant will be liable for payments to subcontractors pursuant to Article 12.4.2.2 unless each subcontract contains termination provisions identical to those set forth in Article 12. The Owner and the Design Consultant will not be liable to the Contractor or any of his subcontractors for any costs associated with termination if the subcontract of the party involved does not include the proper termination clauses.

12.4.3 In arriving at any amount due the Contractor pursuant to Paragraph 12.4, there shall be deducted the following:

.1 all unliquidated advance or other payments on account theretofore made to the Contractor applicable to the terminated portion of the Contract;

.2 any claim which the Owner may have against the Contractor;

.3 such amount as the Owner determines to be necessary to protect the Owner against loss because of outstanding or potential liens or claims; and

.4 the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of Clause 12.5.1.7, and not otherwise recovered by or credited to the Owner.

12.4.4 The total sum to be paid to the Contractor under Paragraph 12.4 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made or to be made for Work not terminated and as otherwise permitted by the Contract. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor, as provided in Subparagraph 12.4.2, the fair value, as determined by the Owner, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to Clause 12.5.1.7.

12.4.5 If the Owner terminates the whole or any part of the Work pursuant to Paragraph 12.3, the Owner may procure, upon such terms and in such manner as the Owner may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Owner for any excess costs for such similar supplies or services. The Contractor shall continue the performance of the Contract to the extent not terminated hereunder.

12.5 GENERAL TERMINATION PROVISIONS

12.5.1 After receipt of a notice of termination from the Owner, pursuant to Paragraph 12.2 or 12.3, and except as otherwise directed by the Owner, the Contractor shall:

.1 stop Work under the Contract on the date and to the extent specified in the notice of termination;

.2 place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;

.3 terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination;

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.4 at the option of the Owner, assign to the Owner in the manner, at the times and to the extent directed by the Owner, all of the rights in the contracts so terminated, in which case the Owner shall have the right, at his discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

.5 settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts, with the approval or ratification of the Owner, to the extent he may require, which approval or ratification shall be final for all the purposes of this Article;

.6 transfer title and deliver to the entity or entities designated by the Owner, in the manner, at the times and to the extent directed by the Owner to the extent specifically produced or specifically acquired by the Contractor for the performance of such portion of the Work as had been terminated, the following:

(1) the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated by the notice of termination; and

(2) the completed or partially completed plans, drawings, information, releases, manuals and other property related to the Work and which, if the Contract had been completed, would have been required to be furnished to the Owner;

.7 use his best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Owner, any property of the types referred to in Clause 12.5.1.6; provided, however, that the Contractor:

(1) shall not be required to extend credit to any buyer, and

(2) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under the Contract or shall otherwise be credited to the Contract Sum covered by the Contract or paid in such other manner as the Owner may direct;

.8 complete performance of such part of the Work as shall not have been terminated by the notice of termination; and

.9 take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to the Contract, which is in the possession of the Contractor, and in which the Owner has or may acquire an interest.

12.5.2 The Contractor shall, from the effective date of termination until the expiration of three (3) years after final settlement under the Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, but without direct charge to the Owner, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the Work terminated hereunder, or, to the extent approved by the Owner, photographs, micro-photographs or other authentic reproductions thereof.

12.5.3 If the termination, pursuant to Paragraph 12.2, be partial, the Contractor may file with the Owner a claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this Subparagraph must be asserted within six (6) months from the effective date of the notice of termination.

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12.5.4 The Contractor shall refund to the Owner any amounts paid by the Owner to the Contractor in excess of costs reimbursable under Paragraph 12.4.

12.5.5 The Contractor shall be entitled to only those damages and that relief from termination by the Owner as specifically provided in Article 12.

END OF ARTICLE 12
END OF GENERAL CONDITIONS

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# CONTRACTOR'S SALES TAX REPORT
# N.C. STATE & LOCAL SALES TAXES PAID

**OWNER:** _____ **PROJECT:** _____
**CONTRACTOR:** _____ **FOR PERIOD FROM:** _____
**ADDRESS:** _____ **TO:** _____

| VENDOR TAX WAS PAID TO | MATERIAL PURCHASED | ADDRESS | INVOICE NUMBER | DATE | INVOICE AMOUNT | TAXABLE AMOUNT | N.C. TAX | COUNTY TAX | NAME OF COUNTY |
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| | | | | **TOTAL** | | | | | |

I hereby certify that, during the period stated above, all North Carolina sales and use taxes have been paid for the materials, supplies, fixtures, and equipment purchased during that period which have become a part of, or annexed to, a building or structure erected, altered or repaired for the Owner. I further certify that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina sales and use taxes paid thereon, and the cost of property withdrawn from warehouse stock and North Carolina sales or use taxes paid thereon are as set forth above during the time period noted above.

Sworn to and subscribed before me,

This the ____ day of _____, 20____

Signed: _____

Print Name: _____

___ _____ Seal
Notary Public

Title: _____

My Commission Expires: _____

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**CHANGE PROPOSAL FORM**
**Time and Material / Unit Price Estimate**

**Project:** _____ **Proposal #:** _____
**Contract:** _____ **Project #:** _____
**Contractor:** _____ **Contractor #:** _____

**Description of change:**

| | |
|---|---|
| **Materials & Labor**<br>Estimated cost of labor & materials including shipping, overtime, payroll taxes and insurance, and overhead and profit.<br>Maintain accurate records for billing purposes. | **SUBTOTALS** |
| **Unit Price Work**<br>Estimated quantity of units required less allowance units not used, times the established unit cost.<br>Maintain accurate records for billing purposes. Third party records may be required. | |
| **Equipment Rental**<br>Estimated cost of equipment rental including shipping, taxes and overhead and profit.<br>Maintain accurate records for billing purposes. | |
| **Subcontractors**<br>Estimated cost of subcontracts including all subcontractor expenses.<br>Maintain accurate records for billing purposes. | |
| **Subtotal of Proposal** | _____ |

*** TOTAL NOT TO EXCEED CHANGE PROPOSAL ESTIMATE** _____

Time Extension Requests: ____day(s) Schedule Activity # Affected: _____

The Contractor agrees to perform the work outlined in this change proposal for an amount that shall not exceed the amount stated above and in accordance with the Contract documents if the work is authorized by the Owner. If the price to perform the work is expected to exceed the above stated amount, a new change proposal form for the additional work is required.

* Actual amount paid will be based on actual documented expenses.

**Contractor's Signature: _____** **Date: _____**

**Approval Recommended by Design Consultant: _____** **Date: _____**

**Owner's Representative Approval: _____** **Date: _____**

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# CHANGE PROPOSAL FORM

**Project:** _____ **Proposal #:** _____

**Contract:** _____ **Project #:** _____

**Contractor:** _____ **Contractor #:** _____

**Description of change:**

| | | SUBTOTALS |
|---|---|---|
| **Materials** (Attach list with Qty, Item, Unit $, Unit mh, Total mh, OT mh, Total $) | | |
| 1 Total Direct Cost of Materials | | |
| 2 Overhead & Profit on Item 1. (15% maximum, includes small tools & consumables) | | |
| 3 Sales Tax | | |
| 4 Shipping & Transportation | | |
| **Labor** | | |
| 5 Total Manhours: ____ MH @ ___ /hr. | | |
| 6 Overhead & Profit on Item 5. (15% maximum on straight labor cost, not premium portion) (O & P includes supervisor's time) | | |
| 7 Payroll Taxes & Insurance ___ % | | |
| **Equipment Rental** (Include quotes) | | |
| 8 Equipment Rental | | |
| 9 Overhead & Profit on Item 8 (6% maximum). | | |
| **Subcontractors** (Include quotes with material & equipment backup) | | |
| 10 Subcontractors | | |
| 11 Overhead & Profit on Item 10 (6% maximum). | | |
| **Subtotal of Proposal** | | |

**TOTAL OF CHANGE PROPOSAL** _____

Time Extension Requests: ____ day(s) Schedule Activity # Affected: _____

The Contractor agrees to perform the work outlined in this change proposal for the amount specified above and in accordance with the Contract documents if the work is authorized by the Owner.

**Contractor's Signature: _____** **Date: _____**

**Approval Recommended by Design Consultant: _____** **Date: _____**

**Owner's Representative Approval: _____** **Date: _____**

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# SECTION SC

## SUPPLEMENTAL CONDITIONS

GENERAL CONDITIONS

Document GC, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION, constitutes the General Conditions of this Contract, and is hereinafter called "General Conditions." The General Conditions are further revised and supplemented by the provisions of these Supplemental Conditions. The General Conditions and the Supplemental Conditions are applicable to all of the Work under this contract and shall apply to the Contractor and all Subcontractors and Sub-subcontractors.

SUPPLEMENTS:

The following supplements modify, change, delete, or add to the General Conditions. Where any article of the General Conditions is modified or any paragraph deleted, subparagraph or clause thereof is modified, or deleted by these supplements, the unaltered provisions of such article, paragraph, subparagraph or clause shall remain in effect. If there is a discrepancy between the General Conditions and these Supplemental Conditions, the Supplemental Conditions shall control.

### ARTICLE 3 – CONTRACTOR

ADD THE FOLLOWING TO PARAGRAPH 3.21:

3.21 The Owner's policies are available for review at www. bcswan.net.

### ARTICLE 7 – TIME

ADD THE FOLLOWING TO THE END OF THE FIRST PARAGRAPH IN 7.2.1.1:

The Parties agree that the weather station applicable to this Project shall be the one located at Wilmington, NC

### ARTICLE 8 – PAYMENTS AND COMPLETION

ADD THE FOLLOWING TO PARAGRAPH 8.9:

8.9.1 Substantial Completion Liquidated Damages shall be the sum of five hundred dollars ($500) per calendar day, and this amount shall be assessed in accordance with Subparagraph 8.9.1 of the General Conditions.

8.9.2 Final Completion Liquidated Damages shall be the sum of five hundred dollars ($500) per calendar day, and this amount shall be assessed in accordance with Subparagraph 8.9.2 of the General Conditions.

ADD THE FOLLOWING PARAGRAPH 8.11:

8.11.1 The schedule below contains certain specific dates in addition to date of Notice to Proceed and Time for Completion. These dates shall be adhered to and are the last acceptable dates unless modified by mutual agreement between the Contractor and the Owner. All dates indicate midnight unless otherwise stipulated. The only exceptions to this schedule are defined in the General Conditions under Paragraph 7.2 DELAYS AND EXTENSIONS OF TIME.

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Notice of Intent to award – March 25, 2021
Return of Owner Contractor Agreement by Contractor – March 31, 2021
Notice to Proceed – May 18, 2021
Substantial Completion – August 30, 2021
Completion of all Commissioning – September 7, 2021

8.11.2 The Owner reserves the right to withhold the issuance of Notice to Proceed by up to forty-five (45) days. For each day that Notice to Proceed is withheld pursuant to this Subparagraph, the dates established for Substantial Completion and Final Completion shall be adjusted. The contractor shall not be entitled to additional compensation if the owner withholds the issuance of Notice to Proceed pursuant to this Subparagraph.

## ARTICLE 9 – INSURANCE AND BONDS

ADD THE FOLLOWING TO PARAGRAPH 9.9:

9.9 Separate performance and payment bonds in the total amount of the Contract are required for Contract amounts in excess of $300,000.

## ARTICLE 10 – CHANGES IN WORK

ADD THE FOLLOWING NEW PARAGRAPH 10.9.14:

10.9.14 Additional services and dispute resolution services by the Design Consultant shall be paid by the Contractor at the rate of two hundred twenty dollars ($220) per hour.

ADD THE FOLLOWING NEW PARAGRAPH 10.9.15:

10.9.15 The Owner's Dispute Resolution Policy required by N.C.G.S. § 143-128(f1) is contained in Policy 9020 (www.bcswan.net). The Dispute Resolution Policy is also included in the bid and contract documents

END OF SUPPLEMENTAL CONDITIONS

# Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
## May 3, 2021

**Action Item # V. - 2.**
Administration - National Safe Boating Week Proclamation

**From:**
Andrea White

**Issue/Action Requested:**
Request that the Board of Commissioners approve a Proclamation recognizing May 22 - 28, 2021 as National Safe Boating Week.

**Background/Purpose of Request:**
A request was received from Mr. Rich O'Donnell - Public Affairs Officer, Division 054-10 Southeastern North Carolina (Southport/Oak Island/Shallotte, NC Flotilla 10-05) United States Coast Guard Auxiliary, for a proclamation recognizing May 22- 28, 2021 as National Safe Boating Week.

**Fiscal Impact:**
Not Applicable

**Approved By County Attorney:**
Yes

**County Manager's Recommendation:**
Recommend the Board of Commissioners approve a Proclamation recognizing May 22 - 28, 2021 as National Safe Boating Week.

**ATTACHMENTS:**

Description

- 2021 Proclamation - National Safe Boating Week

*County of Brunswick*

*Office of the County Commissioners*

**PROCLAMATION**
**NATIONAL SAFE BOATING WEEK**

For nearly 100 million Americans, boating continues to be a popular recreational activity. From coast to coast, and everywhere in between, people are taking to the water and enjoying time together boating, sailing, paddling and fishing. During National Safe Boating Week, the U.S. Coast Guard and its federal, state, and local safe boating partners encourage all boaters to explore and enjoy America's beautiful waters responsibly.

Safe boating begins with preparation. The Coast Guard estimates that human error accounts for most boating accidents and that life jackets could prevent nearly 86 percent of boating fatalities. Through basic boating safety procedures – carrying lifesaving emergency distress and communications equipment, wearing life jackets, attending safe boating courses, participating in free boat safety checks, and staying sober when navigating – we can help ensure boaters on America's coastal, inland, and offshore waters stay safe throughout the season.

National Safe Boating Week is observed to bring attention to important life-saving tips for recreational boaters so that they can have a safer, more fun experience out on the water throughout the year.

**WHEREAS**, on average, 600 people die each year in boating-related accidents in the U.S.; 79 percent of these are fatalities caused by drowning; and

**WHEREAS**, the vast majority of these accidents are caused by human error or poor judgment and not by the boat, equipment or environmental factors; and

**WHEREAS**, a significant number of boaters who lose their lives by drowning each year would be alive today had they worn their life jackets.

**NOW, THEREFORE, BE IT PROCLAIMED** that the Brunswick County Board of Commissioners does herby support the goals of the Safe Boating Campaign and proclaim **May 22-28, 2021 as National Safe Boating Week** and the start of the year-round effort to promote safe boating.

This 3rd day of May, 2021.

_____
Randy Thompson, Chair
Brunswick County Commissioners

Attest:

_____
Andrea White, NCCCC
Clerk to the Board

# Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
## May 3, 2021

**Action Item # V. - 3.**
Clerk to the Board - Meeting Minutes

**From:**
Andrea White

**Issue/Action Requested:**
Request that the Board of Commissioners approve the draft minutes from the April 19, 2021 Regular Meeting.

**Background/Purpose of Request:**

**Fiscal Impact:**
Reviewed By Director of Fiscal Operations

**Approved By County Attorney:**
Yes

**County Manager's Recommendation:**
Recommend the Board of Commissioners approve the draft minutes from the April 19, 2021 Regular Meeting.

**ATTACHMENTS:**

Description

- Draft Minutes - 2021-04-19 Regular Meeting

**BRUNSWICK COUNTY BOARD OF COMMISSIONERS**
**OFFICIAL MINUTES**
**REGULAR MEETING**
**APRIL 19, 2021**
**6:00 P.M.**

**The Brunswick County Board of Commissioners met in Regular Session on the above date at 6:00 p.m., Commissioners' Chambers, David R. Sandifer Administration Building, County Government Center, Bolivia, North Carolina.**

| | |
|---|---|
| PRESENT: | Commissioner Mike Forte, Vice-Chairman<br>Commissioner J. Martin Cooke<br>Commissioner Pat Sykes<br>Commissioner Frank Williams |
| ABSENT: | Commissioner Randy Thompson, Chairman |
| STAFF: | Randell Woodruff, County Manager<br>Bob Shaver, County Attorney<br>Steve Stone, Deputy County Manager<br>David Stanley, Deputy County Manager<br>Julie Miller, Finance Director<br>Andrea White, Clerk to the Board<br>Jared Galloway, Deputy Clerk to the Board<br>Neal Galloway, MIS<br>Meagan Kascsak, Communications Director |

**Board Action, containing all items in this set of minutes, is filed within the Clerk to the Board's office.**

## I. CALL TO ORDER

Vice-Chairman Forte called the meeting to order at 6:00 p.m. and announced the absence of Chairman Thompson due to a family matter.

## II. INVOCATION/PLEDGE OF ALLEGIANCE

Commissioner Williams gave the Invocation and led the Pledge of Allegiance.

## III. ADJUSTMENTS/APPROVAL OF AGENDA

Vice-Chairman Forte asked for adjustments to the agenda.

Commissioner Williams requested the addition of a Special Presentation as item IV as part of his motion to approve the agenda as amended. The motion was seconded by Commissioner Cooke and passed unanimously (4 to 0 – Chairman Thompson being absent).

Commissioner Williams requested Commissioner Sykes to join him at the podium.

## IV. SPECIAL PRESENTATION *(Added under Adjustments/Approval of Agenda)*

Commissioner Sykes joined Commissioner Williams at the podium to receive a Resolution honoring her for her efforts establishing the Charters of Freedom settings in Brunswick County. Commissioner Williams noted that the resolution would be framed once signed by the Chairman.

Following the reading, Commissioner Williams moved to approve the resolution honoring Commissioner Sykes. The motion was seconded by Vice-Chairman Forte and passed unanimously (4 to 0 – Chairman Thompson being absent).

Commissioner Sykes expressed her enthusiasm while working on this educational project and hopes that the settings will benefit the citizens/students of Brunswick County.

**RESOLUTION HONORING COMMISSIONER PAT SYKES FOR HER EFFORTS ESTABLISHING THE CHARTERS OF FREEDOM SETTINGS IN BRUNSWICK COUNTY**

**WHEREAS**, the Charters of Freedom prominently displays full size replicas of our nation's founding documents: the Declaration of Independence, the United States Constitution, and the Bill of Rights; and

**WHEREAS**, the Charters of Freedom settings are an invaluable historic, educational, and civic resource for the people of Brunswick County to enjoy and learn about their nation's foundations and freedoms for decades to come; and

**WHEREAS**, Commissioner Pat Sykes spent countless hours over the past four years forming plans and organizing the placement of the Charters of Freedom settings in Brunswick County; and

**WHEREAS**, Commissioner Pat Sykes helped raise tens of thousands of dollars to ensure that the Charters of Freedom would be on permanent display in Brunswick County; and

**WHEREAS**, Commissioner Pat Sykes fostered partnerships and worked with business and civic organizations countywide to bring the Charters of Freedom to Brunswick County; and

**WHEREAS**, the Charters of Freedom settings in front of the Brunswick County Courthouse were officially dedicated Friday, April 16th, 2021, becoming the 34th Charters of Freedom settings installed outside of the U.S. National Archives in Washington, D.C.

**NOW, THEREFORE,** the Brunswick County Board of Commissioners honors Commissioner Pat Sykes for her passion and success in bringing the Charters of Freedom to Brunswick County.

This the 19th day of April, 2021.

Randy Thompson, Chairman
Brunswick County Commissioners

Attest:
Andrea White, NCCCC
Clerk to the Board

## V. PUBLIC COMMENTS

Vice-Chairman Forte briefly reviewed the Public Comments Policy and called those who had signed up to speak. The following individuals addressed the Board:

1. Peggy Traugh, resident of Oak Island, spoke regarding beach renourishment and requested that tourism revenue be reinvested in the Town's beaches.
2. Nancy McMurray, resident of Oak Island, spoke regarding beach renourishment and requested that the County assist all oceanfront communities with beach renourishment.
3. Kerri McCullough, resident of Oak Island and representing the Oak Island Involved Citizens group, spoke regarding the 20-year, $40 million beach renourishment project and inquired as to why funding is not received from the County and where funding can be found to maintain and protect the beaches.

Vice-Chairman Forte noted that Yasin Holland, representing Coastal Horizons' Rape Crisis Center, was in attendance for Presentations and signed up for public comments in error.

## VI. APPROVAL OF CONSENT AGENDA

Commissioner Williams moved to approve the Consent Agenda as presented. The motion was seconded by Commissioner Cooke and passed unanimously (4 to 0 – Chairman Thompson being absent). The following items were approved:

1. **Administration - Brunswick County Schools Leland Middle School HVAC Upgrade**
   Approved and authorized the Chairman to sign the Schneider Electric contract for Leland Middle School HVAC Upgrade in the amount of $1,996,000, subject to County Attorney approval of the final contract.

2. **Clerk to the Board - Meeting Minutes**
   Approved the draft minutes from the April 5, 2021 Regular Meeting.

3. **Code Administration - City of Boiling Spring Lakes Interlocal Agreement**
   Approved an interlocal agreement with the City of Boiling Spring Lakes for the County to provide all necessary building code administration, plan review, and enforcement services ("Services") to the Municipality for a construction and renovation project at South Brunswick High School and South Brunswick Middle School in accordance with all applicable laws, rules, and regulations.

4. **Communications Department - Amendment to FY22 Mission, Vision, Goals, and Focus Areas**

Approved an amendment to the Respect value currently in the adopted Fiscal Year 2021-2022 Mission, Vision, Goals, and Focus Areas to include the protection and preservation of our residents' personal rights and freedoms at every level of government.

5. **County Attorney - Declaration of Surplus Property**
Declared Parcel 142CE010, obtained by the County through tax foreclosure, as surplus property to be placed on the County website for possible future purchase:

6. **County Attorney - Northern Lights, Phase 2 DOD**
Accepted the Deed of Dedication for water and sewer infrastructure in Northern Lights, Phase 2.

7. **Finance - Fiscal Items**
Approved the following Budget Amendments, Capital Project Ordinances, and Fiscal Items of a routine nature:

- **Brunswick Community College Foundation Grant Budget Amendment**
Transferred $15,312 of Commissioner's contingency for the Brunswick Guarantee Administrative and Marketing costs for academic year 2020-2021 over the $350,000 budgeted amount.

- **Spring 2021 Lockwood Folly Inlet Dredging Project Budget Amendment**
Appropriated $34,382 of local shared revenues from Town of Holden Beach and Town of Oak Island and transferred $34,383 to Lockwood Folly and Shallow Inlet Dredging line for the Lockwood Folly Inlet Spring 2021 dredging project match.

- **FY22 JCPC Certification & Annual County Plan**
Approved the FY2021-22 JCPC Certification, Annual Plan, Program Agreements, and the FY2021-22 Funding Allocation for the Juvenile Crime Prevention Council funded by and to include needed resources from the Department of Public Safety, Juvenile Justice and Delinquency Prevention:

  Brunswick County Juvenile Crime Prevention Council (JCPC) needed County Commissioner approval for programs funded annually. Programs recommended for funding for FY2021-22 were Brunswick County Restitution Program $63,125, Providence Home $20,441, Guiding Good Choices (GGC) & Systematic Training for effective Parenting (STEP) by Coastal Horizons $47,289, Teen Court 13th District by Communities in Schools $59,141, A.R.T. by Coastal Horizons $44,990 and JCPC Administration $7,500; a total annual funding plan of $242,486.

- **Operations Services Position Transfer Budget Amendment**
Transferred vacant Equipment Operator II position from Operation Services to Solid Waste as Landfill Equipment Operator. The construction crew had consistently supplemented landfill staff and this transfer moved the position to Solid Waste where the position was needed.

- **Financial Statements for March 2021 (unaudited)**
Included Summary Information for General and Enterprise Funds, key indicators of Revenues and Expenditures and Cash and Investments. All reports provided at http://brunswickcountync.gov/finance/reports.

8. **Health and Human Services - Health Services - AA-543 ELC Enhanced Detection Activities (Revision 2)**
Approved the revised agreement addendum for Activity 543 and authorized the Health Director's executing signature on the form.

9. **Health and Human Services - Health Services - Trailers of the East Coast Goods and Services Agreement**
Ratified the County Manager's signature on the goods and services agreement for the purchase of a mobile command office trailer to be used for administration of COVID-19 vaccination sites.

10. **Health and Human Services - Public Housing Execution of Annual Civil Rights Certification**
Reviewed and executed the Annual Civil Rights Certification for Public Housing.

11. **Tax Administration - April 2021 Releases**
Approved the April 2021 releases.

## VII. PRESENTATION

1. **Presentation - Proclamation Designating April 2021 as Sexual Assault Awareness Month (Yasin Holland, Victims Advocate, Rape Crisis Center of Coastal Horizons)**
Request that the Board of Commissioners receive a presentation from the Rape Crisis Center of Coastal Horizons and issue a Proclamation designating the month of April 2021 as Sexual Assault Awareness Month in Brunswick County.

Mr. Holland presented the Sexual Assault Awareness month proclamation issued by the Rape Crisis Center of Coastal Horizons and revealed the theme of this year's campaign as "We Can Build Safe Online Spaces." The campaign calls on individuals to create online spaces that are built on the foundational values of practicing consent, keeping kids safe, and supporting survivors.

Following the reading of the proclamation, Vice-Chairman Forte read the County's Proclamation Designating April as Sexual Assault Awareness Month.

Commissioner Williams moved to approve the Sexual Assault Awareness Month Proclamation as presented. The motion was seconded by Commissioner Sykes and passed unanimously (4 to 0 – Chairman Thompson being absent).

**PROCLAMATION**
**SEXUAL ASSAULT AWARENESS MONTH**

**WHEREAS**, Sexual Assault Awareness Month calls attention to sexual violence and its impacts to people in this community; and

**WHEREAS**, rape, sexual assault, and sexual harassment harm our community; and

**WHEREAS**, child sexual abuse prevention must be a priority; and

**WHEREAS,** we must work together to educate our community about sexual violence prevention, supporting survivors, and speaking out against harmful attitudes and actions; and

**WHEREAS,** prevention is possible when everyone gets involved. The first step is increasing education, awareness, and community involvement.

**NOW, THEREFORE, BE IT PROCLAIMED THAT** the Brunswick County Board of Commissioners does hereby proclaim April as Sexual Assault Awareness Month and encourages all citizens to join advocates and communities across the country in taking action to prevent sexual violence. Each day of the year is an opportunity to create change for the future.

This the 19th day of April, 2021.

Mike Forte, Vice-Chairman
Brunswick County Commissioners

Attest:
Andrea White, NCCCC
Clerk to the Board

2. **Presentation - Proclamation Recognizing 2021 National County Government Month (Meagan Kascsak, Communications Director)**
Request the Board of Commissioners issue a proclamation recognizing 2021 National County Government Month.

Ms. Kascsak presented a proclamation recognizing April as National County Government Month, celebrating more than 3,000 counties and the services they provide. The theme for 2021 is "Counties Matter."

Following a reading of the proclamation, Commissioner Cooke moved to approve the National County Government Month proclamation as presented. The motion was seconded by Commissioner Sykes and passed unanimously (4 to 0 – Chairman Thompson being absent).

It was the consensus of the Board, upon request of Commissioner Williams, that the proclamation be sent to the media to educate others on the services counties provide.

**PROCLAMATION**
**NATIONAL COUNTY GOVERNMENT MONTH - APRIL 2021**

**WHEREAS**, the nation's 3,069 counties, parishes and boroughs serving more than 300 million Americans provide essential services to create healthy, safe and vibrant communities; and

**WHEREAS**, counties provide public health services, administer justice, keep communities safe, deliver essential water and wastewater services, foster economic opportunities and much more; and

**WHEREAS**, Brunswick County and all counties take pride in our responsibility to protect and enhance the health, wellbeing and safety of our residents in efficient and cost-effective ways; and

**WHEREAS**, both Brunswick County and the National Association of Counties are committed to demonstrating how counties matter, especially in supporting residents and businesses during the coronavirus pandemic; and

**WHEREAS**, each year since 1991 the National Association of Counties has encouraged counties across the country to elevate awareness of county responsibilities, programs and services; and

**WHEREAS**, Brunswick County is a team of more than 1,000 public service professionals serving one of the nation's fastest growing counties with more than 140,000 residents, 19 municipalities, and numerous businesses, industries, tourists, students, and community partners with essential services to support opportunities for success and to sustain a high quality of life.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Brunswick County Board of Commissioners does hereby proclaim April 2021 as National County Government Month.

This the 19th day of April, 2021.

Mike Forte, Vice-Chairman
Brunswick County Commissioners

ATTEST:
Andrea White, NCCCC
Clerk to the Board

3. **Presentation - Utilities - Project Updates (John Nichols, Public Utilities Director)**
Request that the Board of Commissioners receive information regarding the status of various key Utilities projects.

Mr. Nichols provided an update on several major utilities projects to include the Northeast Wastewater Treatment Plant (NEWWTP), Northwest Water Treatment Plant, 74/76 MAP/ILP Industrial Park Sewer, and Shallotte Water Transmission Main projects.

- The NEWWTP Expansion ($41.6M project) is approximately 70% to 75% complete and is scheduled to be in service in January or February of 2022.
- The Northwest WTP Expansion ($129.1M project) to provide additional capacity and advanced treatment low pressure reverse osmosis is approximately 20% complete and the reverse osmosis beneficial use is scheduled for June 2023.
- The 74/76 Industrial Park Sewer project is anticipated to be complete prior to the construction of any of the buildings that require the use of sewer.
- The Shallotte Water Transmission Main project will provide a secondary water feed to the southwest area and is anticipated to be complete in early 2022.

No action was taken.

## VIII. PUBLIC HEARING

1. **Health and Human Services - Public Housing - Public Hearing to Review Program Goals and Objectives (Catherine Lytch, Social Services Director)**
Request that the Board of Commissioners conduct a Public Hearing to receive comments or suggestions on the Public Housing Agency goals, objectives, and policies.

Ms. Lytch explained that each year the US Department of Housing and Urban Development requires Public Housing agencies to hold a public hearing to discuss the goals of the agency. The hearing was advertised, and no comments were received by the department. Ms. Lytch requested that a public hearing be held to receive comments.

Vice-Chairman Forte opened the Public Hearing at 6:39 p.m. and asked those wishing to comment on the Program Goals and Objectives to come forward.

There were no comments.

Vice-Chairman Forte closed the Public Hearing at 6:40 p.m.

No action was taken.

## IX. ADMINISTRATIVE REPORT

1. **Utilities - Grant Acceptance and WithersRavenel Task Order (John Nichols, Public Utilities Director)**
Request that the Board of Commissioners accept the Clean Water State Reserve Fund grant in the amount of $2,852,818 and Drinking Water State Revolving Fund principal forgiveness loan in the amount of $2,218,967 to repair the recently acquired Navassa utility system. Also request that the Board approve the proposed Task Order No. 1 with WithersRavenel in the amount of $20,000 and Task Order No. 2 in the amount of $20,000 to provide engineering services associated with the preparation of Engineering Reports required to secure each of the above funds.

Mr. Nichols announced receipt of a grant and principal forgiveness loan totaling over $5M to rehabilitate the Town of Navassa's water and wastewater systems. The Town merged with the County approximately one year ago. Mr. Nichols recognized Brent Lockamy, Project Manager, and Rhonda Olson, Project Coordinator, for their efforts in obtaining the grant, and expressed his appreciation of the State Revolving Fund. Mr. Nichols requested that the Board accept the grant funds and principal forgiveness loan, along with an amount of $40,000 for an Engineering Report with WithersRavenel.

Commissioner Sykes moved to approve the request as presented. The motion was seconded by Commissioner Cooke and passed unanimously (4 to 0 – Chairman Thompson being absent).

## X. OTHER BUSINESS/INFORMAL DISCUSSION

No items were brought forth.

## XI. CLOSED SESSION

1. **Closed Session**
Request that the Board of Commissioners enter into Closed Session pursuant to N.C.G.S. 143-318.11(a)(1) to approve closed session minutes and 143-318.11(a)(3) to consult with its attorney.

Mr. Shaver noted that the statutory requirements were included in the agenda with the purpose to approve closed session minutes and consult with the attorney.

Commissioner Cooke moved to enter Closed Session as stated at 6:45 p.m. The motion passed unanimously (4 to 0 – Chairman Thompson being absent).

Vice-Chairman Forte called the Regular Session to order at 8:00 p.m. Nothing was reported from Closed Session.

## XII. ADJOURNMENT

Commissioner Williams moved to adjourn the meeting at 8:00 p.m. The motion was seconded by Commissioner Sykes and passed unanimously (4 to 0 – Chairman Thompson being absent).

_____
Mike Forte, Vice-Chairman
Brunswick County Board of Commissioners

Attest:

_____
Andrea White, NCCCC
Clerk to the Board

## Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
### May 3, 2021

**Action Item # V. - 4.**
County Attorney - Sea Breeze Campground Deed of Dedication

**From:**
Bryan Batton

**Issue/Action Requested:**
Consider accepting the Deed of Dedication for water infrastructure in Sea Breeze Campground.

**Background/Purpose of Request:**
All-In, LLC has submitted a Deed of Dedication for water infrastructure in Sea Breeze Campground. The lines have been tested and approved and are ready to be incorporated into our utility system.

**Fiscal Impact:**
Reviewed By Director of Fiscal Operations
$ 9,000.00 for water

**Approved By County Attorney:**
Yes

**County Attorney's Recommendation:**
Accept the Deed of Dedication for water infrastructure for Sea Breeze Campground.

**County Manager's Recommendation:**
Recommend the Board consider accepting the Deed of Dedication for water infrastructure in Sea Breeze Campground.

**ATTACHMENTS:**

Description

- Sea Breeze Campgound DOD

**Prepared by: Mack L. Hewett, Jr., Hewett Law Firm, PLLC, 712 Village Rd., Suite 205, Shallotte, NC 28470**

**STATE OF NORTH CAROLINA**

**COUNTY OF BRUNSWICK** **DEED OF DEDICATION**

**THIS DEED OF DEDICATION** made and entered into this the 25th day of March, 2021, by and between All-In, LLC, with an office and place of business in Brunswick County, North Carolina, party of the first part, hereinafter referred to as "Developer"; and Brunswick County, a government entity created and existing under laws of the State of North Carolina, party of the second part, hereinafter referred to as Grantee; whose mailing address is PO Box 249, Bolivia, NC 28422.

**WITNESSETH:**

That whereas Developer is the owner and developer of a tract or parcel located in Lockwood Folly Township, Brunswick County, North Carolina, as more particularly described as follows:

Being all of Tract One containing 25.28 acres, more or less, and all of Tract Two, containing 24.57 acres, more or less, as more particularly described in a survey plate dated 27 October 2017 entitled "Combination Survey for All In, LLC," prepared by Christopher D. Stanley, PLS and recorded in Map Cabinet 103 at page 95, Brunswick County Registry, to which reference is hereby made for greater certainty of description.

**WHEREAS** Developer has caused to be installed water distribution lines under and along the road rights of way hereinafter described and referenced; and

**WHEREAS** Developer wishes to obtain water from Grantee for the above described lots, and make water from Grantee's system available to the aforementioned properties; and

**WHEREAS,** Grantee has adopted through appropriate resolution stated policies regarding subdivision water distribution systems under the terms of which, among other things, in order to obtain water for said subdivision, Developer must convey title to the water distribution system to Grantee through an instrument of dedication acceptable to Grantee;

Now, therefore, Developer, in consideration of Grantee accepting said water lines and making water available to said subdivision, has conveyed and by these presents does hereby convey to Grantee, its lawful successors and assigns, the following described property:

All of the water distribution lines and equipment located under, along and within the road, street, and cul-de-sac rights of way shown on a plat thereof being more particularly described as follows:

As shown on a Water System As-Builts Titled, "Utility Plan-Water As-Built, Sea Breeze RV Park, Holden Beach, NC 130, Brunswick County, North Carolina," a reproducible copy which is on file with the County of Brunswick to which reference is made for a more particular description.

**TO HAVE AND TO HOLD** said water lines and easements above described together with the privileges and appurtenances thereto Grantee forever.

Non-exclusive easements over, along and upon the entire area of the streets and cul-de-sacs depicted on the plats and serving the areas referenced in Item One, above, for purposes of entry into the campground for maintenance, repair and upkeep of the water distribution systems and for connecting the same individual campground lots developed lying adjacent to said streets and cul-de-sacs; reserving unto Developer, its successors and assigns, equal rights of easements and access over, in, along and upon said streets and cul-de-sacs for purpose of installing and maintaining such utilities as may be required for development of said campground, including, but not limited to water, electric, gas, telephone, cable, and sewer.

And DEVELOPER does hereby convent that it is sized of said water lines and easement described above in fee simple and has the right to convey the same in fee

simple, that the same are free and clear of encumbrances, and that it will warrant and defend the title to the same against all person whomsoever.

Developer warrants to Grantee that the system herein conveyed is of good quality and free from faults and defects, and conforms to as-built drawings. Developer warrants said system for a period of one (1) year from the date of recording of the Deed of Dedication in the office of the Brunswick County Register of Deed.

**IN WITNESS WHEREOF,** the parties have hereunto set their hands and seals, or if corporate, have caused this instrument to be signed in its corporate name by its duly authorized officer.

All-In, LLC

Sammy Varnam

By: Sammy Varnam (Managing Member)

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I, the undersigned Notary Public of the County and State aforesaid, certify that Sammy Varnam personally came before me this day and acknowledged that _he is the managing member of All-In, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of such entity, _he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal this 25 day of March, 2021.

(stamp or seal)

My Commission Expires: 10/19/2025

Leilani M Emile

LEILANI M EMILE
NOTARY
PUBLIC
BRUNSWICK COUNTY, N.C.

ACCEPTANCE OF DEED

This Deed of Dedication and accompanying Affidavit for All-In, LLC was accepted by the Brunswick County Board of Commissioners on the ____ day of _____, 2021.

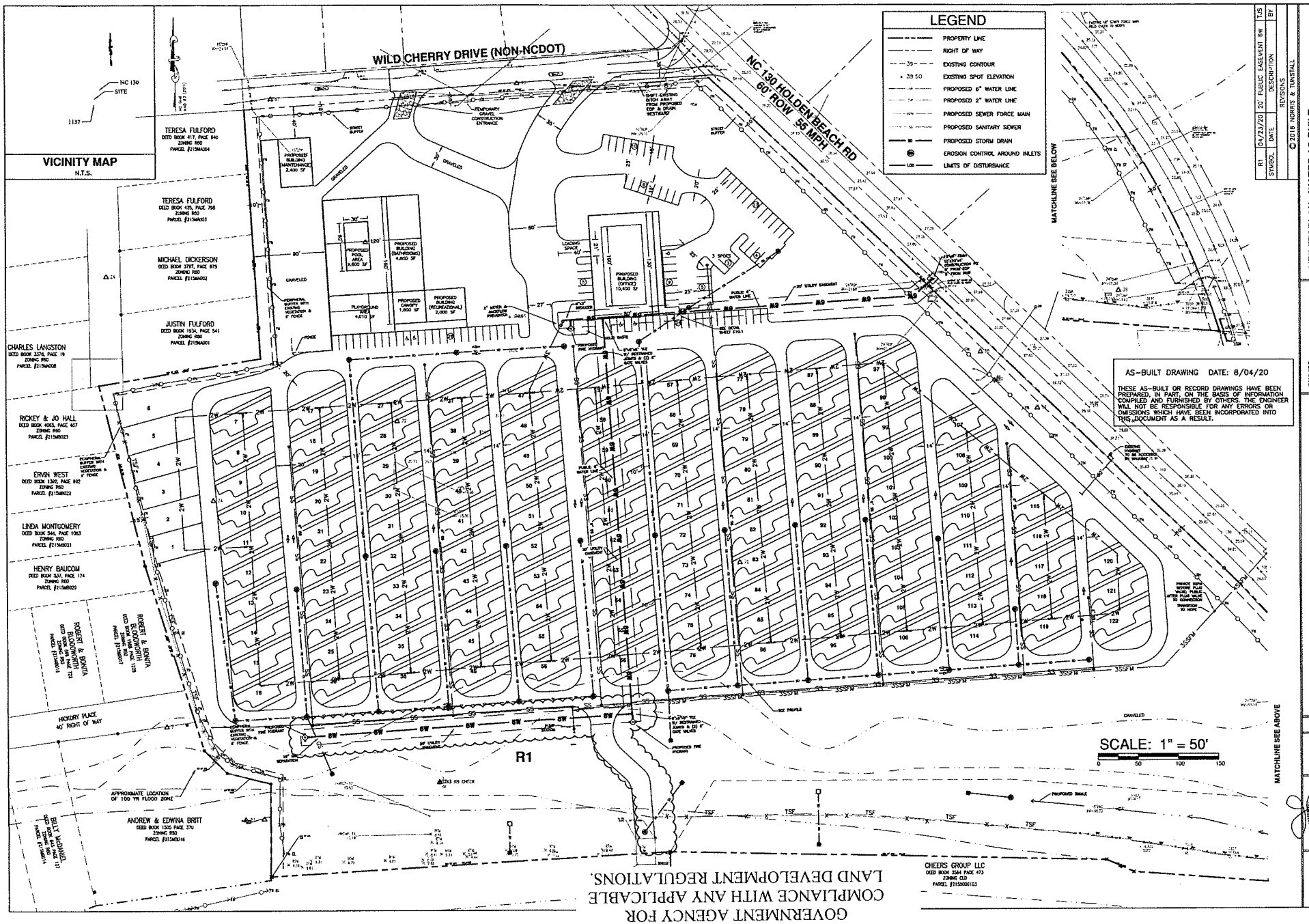
Brunswick County Board of Commissioners

_____

By: Randy Thompson, Chairman

_____

Andrea White
Clerk to the Board

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| SYMBOL | DATE | DESCRIPTION | BY |
|---|---|---|---|
| R1 | 04/23/20 | 20' PUBLIC EASEMENT SW | TJS |
| | | REVISIONS | |
| | | © 2018 NORRIS & TUNSTALL | |

**UTILITY PLAN - WATER AS-BUILT**
**SEA BREEZE RV PARK**
**HOLDEN BEACH - NC 130**
**BRUNSWICK COUNTY, NORTH CAROLINA**

OWNER:
ALL IN, LLC
1574 MONSTER BUCK EST
SUPPLY, NC 28462
910-443-4245

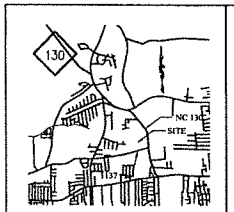

NORRIS & TUNSTALL
CONSULTING ENGINEERS P.C.
1500 EASTWOOD RD., SUITE #11
WILMINGTON, NC 28403
PHONE (910) 343 9653
1425 ASH-LITTLE RIVER RD. NW
ASH, NC 28420
PHONE (910) 287-5900
License #C-3641


18032

DES. JPN
DWG. JPN
DRWN. ZAC
DATE 08/04/20

NORTH CAROLINA PROFESSIONAL ENGINEER SEAL 19668 JOHN PHILLIP NORRIS

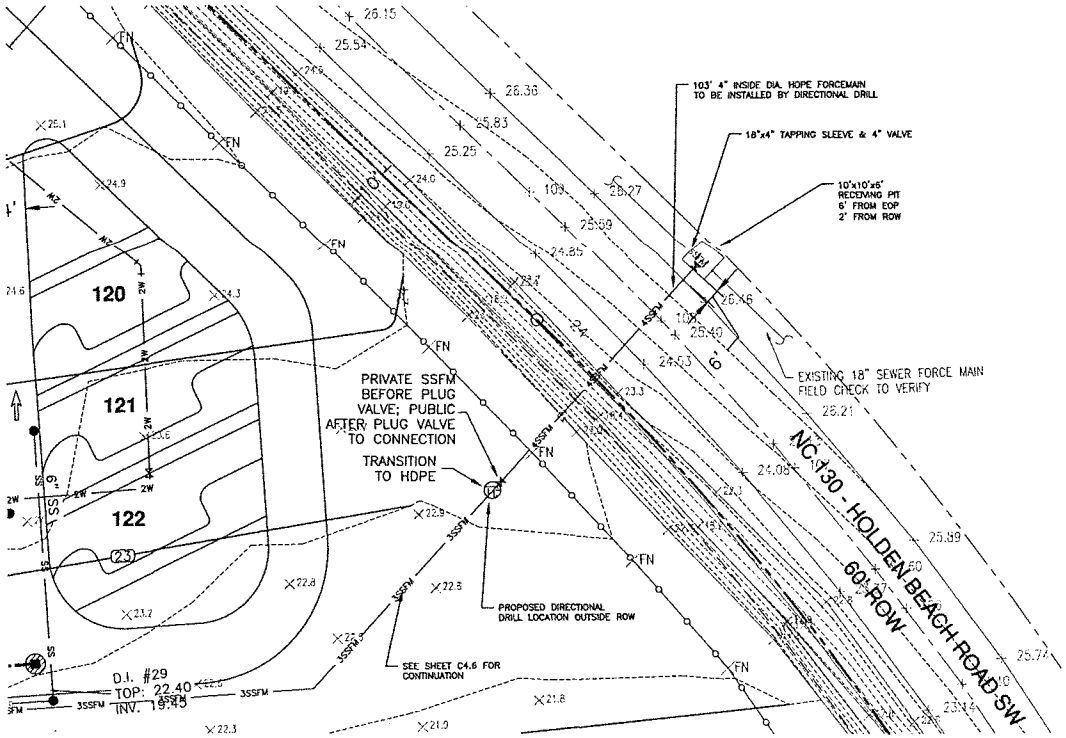
C4



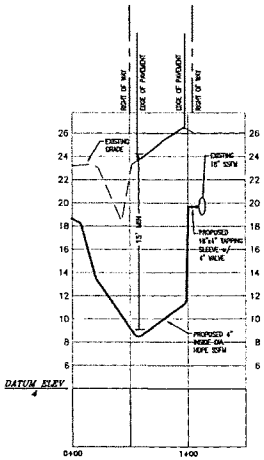

VICINITY MAP
N.T.S.

## LEGEND

- PROPERTY LINE
- RIGHT OF WAY
- 39 — EXISTING CONTOUR
- × 39.50 EXISTING SPOT ELEVATION
- PROPOSED 6" WATER LINE
- PROPOSED 2" WATER LINE
- PROPOSED SEWER FORCE MAIN
- PROPOSED SANITARY SEWER
- PROPOSED STORM DRAIN
- EROSION CONTROL AROUND INLETS
- LIMITS OF DISTURBANCE




PLAN
SCALE: 1"=20'




PROFILE
SCALES:
1" = 50' HOR.
1" = 5' VER.

AS-BUILT DRAWING DATE: 11/18/20

THESE AS-BUILT OR RECORD DRAWINGS HAVE BEEN PREPARED, IN PART, ON THE BASIS OF INFORMATION COMPILED AND FURNISHED BY OTHERS. THE ENGINEER WILL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS WHICH HAVE BEEN INCORPORATED INTO THIS DOCUMENT AS A RESULT.

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.

| SYMBOL | DATE | DESCRIPTION | BY |
|---|---|---|---|
| | | REVISIONS | |

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NCDOT ENCROACHMENT - WQ00040773
SEA BREEZE RV PARK
HOLDEN BEACH - NC 130
BRUNSWICK COUNTY, NORTH CAROLINA

OWNER:
ALL IN, LLC
1574 MONSTER BUCK EST
SUPPLY, NC 28462
910-443-4245

NORRIS & TUNSTALL
CONSULTING ENGINEERS P.C.
1900 EASTWOOD RD., SUITE #11
WILMINGTON, N.C. 28403
PHONE (910) 343-9563
1429 ASH LITTLE RIVER RD. NW
ASH, NORTH CAROLINA 28420
PHONE (910) 287-5960
Licence #C-3641

18032

DES. JPN
DRN. JPN
CHK. ZAC
DATE 03/19/19

NORTH CAROLINA PROFESSIONAL ENGINEER SEAL 043611 JOHN PHILLIP JOHNSON

NCDOT ENCROACHMENT

STATE OF NORTH CAROLINA

AFFIDAVIT

COUNTY OF BRUNSWICK

All-In, LLC, a North Carolina Limited Liability Company, with an office and place of business at 1574 Monster Buck Estates, Supply, North Carolina 28462 hereinafter referred to as Affiant, being first duly sworn, hereby deposes and says under oath as follows:

1. That is the owner of certain property located in Lockwood Folly Township, Brunswick County, North Carolina and more particularly described in a Deed of Dedication in favor of Brunswick County of even date herewith.
2. That it has caused to be installed water distribution lines under and along the road right of ways as described in a Deed of Dedication in favor of Brunswick County of even date herewith.
3. All the work which has been performed in the construction and installation of said water distribution lines described in paragraph 2, above, has been fully paid for and there are now no liens of any kind including any lien for labor or material against the subdivision property which would in any way jeopardized title of affiant to the property in said subdivision nor are there any legal actions pending against Affiant or any contractor arising out of any work performed in said subdivision or the water lines installed therein which would in any way jeopardize title to the subdivision or the water distribution lines located therein.

IN WITNESS WHEREOF, the Affiant has caused this instrument to be duly executed by its authorized officer, this 25 day of March, 2021

All-In, LLC

Sammy Varnam

By: Sammy Varnam, Manager

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

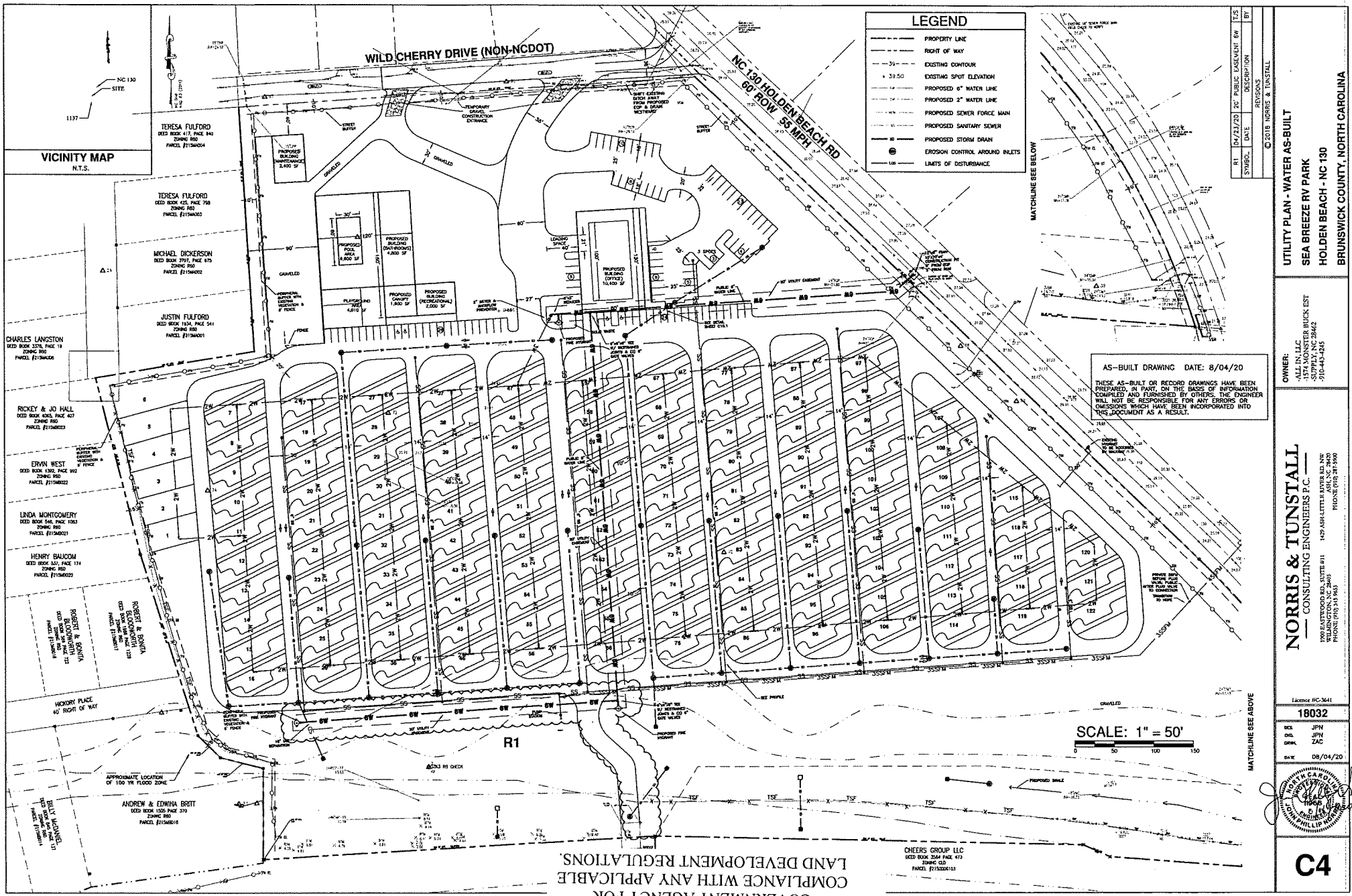
I, Leilani M Emile, a Notary Public of the County and State aforesaid, certify that Sammy Varnam, either being personally known to me or proven by satisfactory evidence by current state or federal identification with the principal's photograph in the form of a NC driver's license, personally came before me this day and acknowledged that he is Manager of All-In, LLC, a North Carolina limited liability company, and that he, as Manager, being authorized to do so, voluntarily executed the foregoing on behalf of said limited liability company for the purposes stated therein.

WITNESS my hand and official stamp or seal, this 25 day of March, 2021.

Leilani M Emile
Notary Public

My Commission Expires: 10/19/2025

LEILANI M EMILE
NOTARY
PUBLIC
BRUNSWICK COUNTY, N.C.




AS-BUILT DRAWING DATE: 8/04/20

THESE AS-BUILT OR RECORD DRAWINGS HAVE BEEN PREPARED, IN PART, ON THE BASIS OF INFORMATION COMPILED AND FURNISHED BY OTHERS. THE ENGINEER WILL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS WHICH HAVE BEEN INCORPORATED INTO THIS DOCUMENT AS A RESULT.

| SYMBOL | DATE | REVISIONS | BY |
|---|---|---|---|
| R1 | 04/23/20 | 20' PUBLIC EASEMENT & ROW DESCRIPTION | T.J.S |

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# UTILITY PLAN - WATER AS-BUILT
## SEA BREEZE RV PARK
## HOLDEN BEACH - NC 130
## BRUNSWICK COUNTY, NORTH CAROLINA

OWNER:
-ALL IN, LLC
-1574 MONSTER BUCK EST
SUPPLY, NC 28462
910-443-4245

NORRIS & TUNSTALL
CONSULTING ENGINEERS P.C.
1900 EASTWOOD RD, SUITE 411
WILMINGTON, NC 28403
PHONE (910) 343-9065
1429 ASH-LITTLE RIVER RD, NW
ASH, NC 28420
PHONE (910) 287-9060
Licence #C-3641

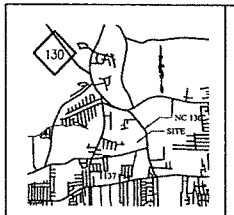
18032

DES. JPN
DRN. JPN
CHK'D. ZAC
DATE 08/04/20

NORTH CAROLINA
SEAL
19665
ENGINEER
JOHN PHILLIP NORRIS

C4

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.




VICINITY MAP
N.T.S.

## LEGEND

- PROPERTY LINE
- RIGHT OF WAY
- 39 EXISTING CONTOUR
- 39.50 EXISTING SPOT ELEVATION
- PROPOSED 6" WATER LINE
- PROPOSED 2" WATER LINE
- PROPOSED SEWER FORCE MAIN
- PROPOSED SANITARY SEWER
- PROPOSED STORM DRAIN
- EROSION CONTROL AROUND INLETS
- LOD LIMITS OF DISTURBANCE

| SYMBOL | DATE | DESCRIPTION | BY |
|---|---|---|---|
| | | REVISIONS | |

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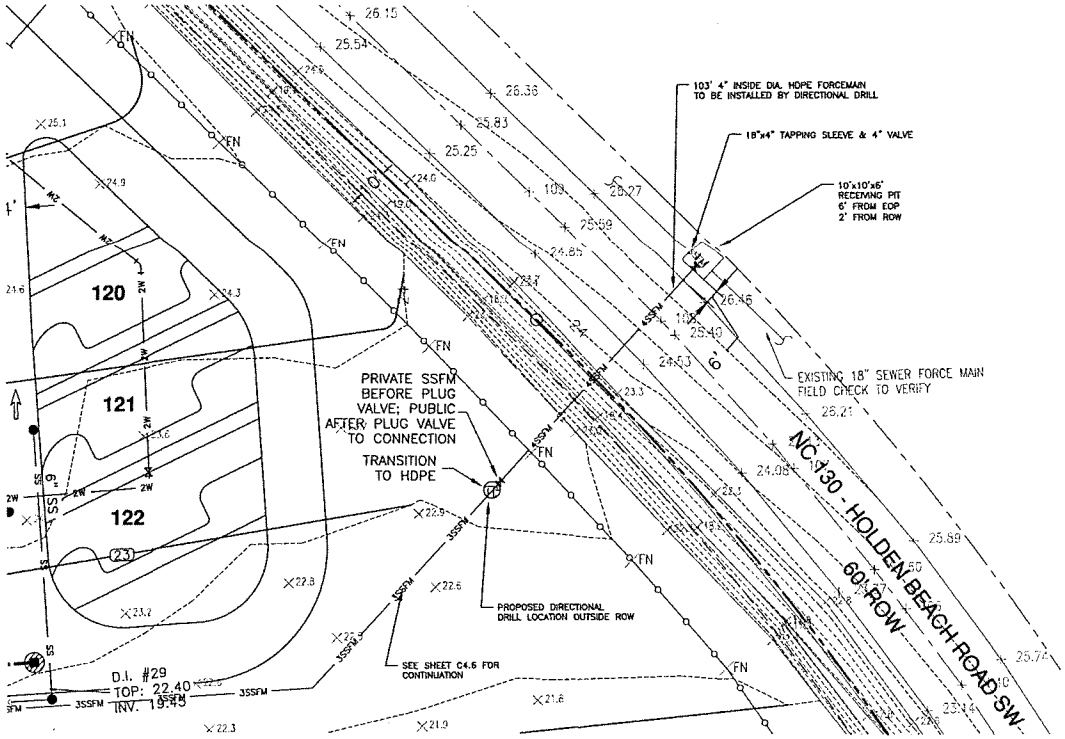
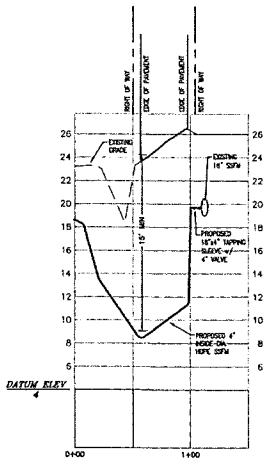



PLAN
SCALE: 1"=20'




PROFILE
SCALES:
1" = 50' HOR.
1" = 5' VER.

AS-BUILT DRAWING DATE: 11/18/20

THESE AS-BUILT OR RECORD DRAWINGS HAVE BEEN PREPARED, IN PART, ON THE BASIS OF INFORMATION COMPILED AND FURNISHED BY OTHERS. THE ENGINEER WILL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS WHICH HAVE BEEN INCORPORATED INTO THIS DOCUMENT AS A RESULT.

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.

NCDOT ENCROACHMENT - WQ0040773
SEA BREEZE RV PARK
HOLDEN BEACH - NC 130
BRUNSWICK COUNTY, NORTH CAROLINA

OWNER:
ALI IN, LLC
1574 MONSTER BUCK EST
STE 101, NC 28462
910.443.4436

NORRIS & TUNSTALL
CONSULTING ENGINEERS P.C.
1390 EASTWOOD RD., SUITE #11
WILMINGTON, NC 28403
PHONE (910) 343-9933
1420 ASH-LITTLE RIVER RD., NW
ASH, NC 28420
PHONE (910) 287-5900
Licence #C-3641

18032

DES. JPN
DR'N. JPN
CH'K'D ZAC
DATE 03/19/19

NORTH CAROLINA PROFESSIONAL ENGINEER SEAL 049866 JOHN PHILLIP NORRIS

NCDOT ENCROACHMENT

# Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
## May 3, 2021

**Action Item # V. - 5.**
County Attorney - Shingletree, Parcel A - Deed of Dedication

**From:**
Bryan Batton

**Issue/Action Requested:**
Consider accepting the Deed of Dedication for water and sewer infrastructure for Shingletree, Parcel A, Tract 1.

**Background/Purpose of Request:**
Pulte Home Company, LLC has submitted a Deed of Dedication for water and sewer infrastructure for Shingletree, Parcel A, Tract 1. The lines have been tested and approved and are ready to be incorporated into our utility system.

**Fiscal Impact:**
Reviewed By Director of Fiscal Operations
$ 350,240.00 for water
$ 1,403,395.00 for sewer

**Approved By County Attorney:**
Yes

**County Attorney's Recommendation:**
Accept the Deed of Dedication for water and sewer infrastructure from Pulte Home Company, LLC.

**County Manager's Recommendation:**
Recommend the Board consider accepting the Deed of Dedication for water and sewer infrastructure for Shingletree, Parcel A, Tract 1.

**ATTACHMENTS:**

Description

- Shingletree, Parcel A, Tract 1 DOD

Prepared by:
Pulte Home Company, LLC - Graham Hawkins
1225 Crescent Green Drive, Suite 110
Cary, North Carolina 27518

# DEED OF DEDICATION

STATE OF NORTHCAROLINA

COUNTY OF BRUNSWICK

THIS DEED OF DEDICATION, made and entered into this the twenty third day of March, 2021 by and between Pulte Home Company, LLC, a Michigan limited liability company, with an office and place of business in Brunswick County, North Carolina, party of the first part, hereinafter referred to as "Developer", and BRUNSWICK COUNTY, a governmental entity created and existing under the laws of the State of North Carolina, party of the second part, hereinafter referred to as Grantee; whose mailing address is PO Box 249, Bolivia, NC 28422.

WITNESSETH:

That whereas Developer is the owner and developer of a tract or parcel located in Shallotte Township, Brunswick County, North Carolina, known as Shingletree, Parcel A, Tract 1.

And whereas Developer has caused to be installed water distribution lines and sewer lines under and along the road rights-of-way hereinafter described and referenced; And whereas Developer wishes to obtain water and sewer from Grantee for the property and to make water and sewer from Grantee's system available to individual owners.

And whereas Grantee has adopted through appropriate resolution stated policy regarding water distribution and sewer systems under the terms of which, among other things, in order to obtain water and sewer for said subdivision Developer must

convey title to the water and sewer distribution system to Grantee through an instrument of dedication acceptable to Grantee;

NOW, THEREFORE, Developer, in consideration of Grantee accepting said water and sewer lines and making water and sewer available to said subdivision, has conveyed by these presents does hereby convey to Grantee, its lawful successors and assigns, the following described property:

All water and sewer lines and related facilities and improvements located in the following street rights-of-way: **Eagle Claw Drive** (50' Public Right-of-Way); **Eagle Ridge Drive** (50' Public Right-of-Way); **Barnstormer Drive** (50' Public Right-of-Way); and **Hawks Run Drive** (50' Public Right-of-Way), as shown on a map entitled "PRELIMINARY PLAT OF SHINGLETREE, PARCEL A, TRACT-1 (133 LOT SUBDIVISION) TOWN OF CAROLINA SHORES, SHALLOTTE TOWNSHIP, Brunswick County, North Carolina prepared for PULTE HOME COMPANY, LLC" recorded in Book 0126, Page 0094, Brunswick County, Register of Deeds.

TO HAVE AND TO HOLD said water and sewer lines and equipment above described together with the privileges and appurtenances thereto belonging to Grantee forever.

Non-exclusive easements over, along and upon the entire area of the streets and cul-de-sacs depicted on the maps and serving the areas referenced above for purposes of entry into the subdivision for maintenance, repair and upkeep of the water and sewer distribution systems and for connecting the same to the individual lots developed or to be developed lying adjacent to said streets and cul-de-sacs reserving unto Developers, its successor and assigns, equal rights of easement and easement over, in, along and upon said streets and cul-de-sacs for purposes of installing and maintaining such utilities as may be required for the development of said subdivision, including, but not limited to, electric, gas, telephone, cable and sewer.

And Developer does hereby covenant that it is seized of said water and sewer lines and equipment described above in fee simple and has the right to convey the same in fee simple, that the same are free and clear of encumbrances, and that it will warrant and defend the title to the same against all persons whomsoever.

Developer warrants to Grantee that the system herein conveyed is of good quality and free from faults and defects and conforms to as-built drawings. Developer warrants said system for a period of one (1) year from the date of recording this Deed of Dedication in the office of the Brunswick County Register of Deeds.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly executed, the day and year first above written.

PULTE HOME COMPANY, LLC, a
Michigan limited liability company

By: _____
Vice President of, Division _____
Land Acquisition

STATE OF SOUTH CAROLINA §

COUNTY OF ~~CHARLESTON~~ Horry §

I, Earl R. Bailey, a Notary Public of the County and State aforesaid, do hereby certify that Graham Hawkins personally came before me this day, and he/she acknowledged that he/she is (Division President/Division Vice President, of Pulte Home Company, LLC, a Michigan limited liability company, and that he/she, as Division VP of Land Acq., being authorized to do so, executed the foregoing on behalf of such limited liability company.

Witness my hand and official seal, this the 23rd day of March, 2021.

(NOTARY SEAL)

Printed or Typed Name of Notary Public:

My Commission Expires: 2/21/27

Earl R. Bailey

ACCEPTANCE OF DEED

This Deed of Dedication and accompanying Affidavit for Pulte Home Company was accepted by the Brunswick County Board of Commissioners on the_____day of _____, 20____.

Brunswick County Board of Commissioners

_____
Frank Williams, Chairman

_____
Andrea White
Clerk to the Board

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK AFFIDAVIT

PULTE HOME COMPANY, LLC, a Michigan limited liability company, with an office and place of business in Wake County, Mecklenburg County, and multiple other counties in North Carolina, hereinafter referred to as Affiant, being first duly sworn, hereby deposes and says under oath as follows:

1. That it is the owner of certain property located in the Town of Carolina Shores, Shallotte Township, Brunswick County, North Carolina, known as Shingletree, Parcel A, Tract 1 (113 Lot Subdivision), containing lots numbered 101 through 146, inclusive, and 201-267, inclusive, as more particularly described in a Deed of Dedication in favor of Brunswick County of even date herewith.

2. That it has caused to be installed water distribution lines and sewer lines under and along the road right-of-ways property hereinafter described and referenced:

> **Eagle Claw Drive** (50' Public Right-of-Way); **Eagle Ridge Drive** (50' Public Right-of-Way); **Barnstormer Drive** (50' Public Right-of-Way); and **Hawks Run Drive** (50' Public Right-of-Way) as shown on a map entitled "PRELIMINARY PLAT OF SHINGLETREE, PARCEL A, TRACT-1 (133 LOT SUBDIVISION) TOWN OF CAROLINA SHORES, SHALLOTTE TOWNSHIP, Brunswick County, North Carolina prepared for PULTE HOME COMPANY, LLC" recorded in Book 0126, Page 0094, Brunswick County, Register of Deeds.

3. All the work which has been performed in the construction and installation of said water distribution lines and sewer lines described in paragraph 2, above, has been fully paid for and there are now no liens of any kind including any lien for labor or material against the subdivision property which would in any way jeopardizes title of Affiant to the property in said subdivision nor are there any legal actions pending against Affiant or any contractor arising out of any work performed in said subdivision or the water lines and sewer lines installed therein which would in any way jeopardize title to the subdivision or the water distribution lines and sewer lines located therein.

IN WITNESS WHEREOF, the Affiant has caused this instrument to be duly executed by its authorized officer(s), this 23rd day of March, 20 21.

PULTE HOME COMPANY, LLC, a
Michigan limited liability company

By: _____
Name: Graham Hawkins
Title: V.P. of Land Acquisition

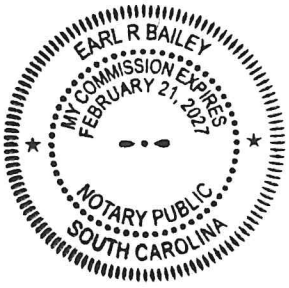
STATE OF SOUTH CAROLINA §
COUNTY OF ~~CHARLESTON~~ Horry §

Signed and sworn to (or affirmed) before me this day by Graham Hawkins.
(Name of Principal)

Date: March 23, 2021

Earl R. Bailey
Signature of Notary Public

(NOTARY SEAL)




Printed or Typed Name of Notary Public:

Earl R. Bailey

My Commission Expires: 2/21/27

# Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
## May 3, 2021

**Action Item # V. - 6.**
Finance - Fiscal Items

**From:**
Julie A. Miller

**Issue/Action Requested:**
Request that the Board of Commissioners approve Budget Amendments, Capital Project Ordinances and Fiscal Items of a routine nature on the consent agenda.

**-Environmental Health Additional State Revenues Budget Amendment**
Appropriate $4,814 of additional state revenues restricted funding for Food and Lodging program with the FY20-21 agreement addendum.

**-Water Anticipated Expenditures Budget Amendment**
Reduce the transfer to the water capital projects fund $355,000 for anticipated water funds expenditures 211 water plant chemicals $120,000, water construction tap on supplies $115,000, repair and maintenance vehicles $10,000, overtime $10,000 and $100,000 miscellaneous expense to authorize transfer within the water fund by the Fiscal Operations Director as needed to prevent a statutory exception of expenditures in excess of amounts budgeted at year end.

**-Wastewater Revenues Budget Amendment**
Appropriate $50,000 of Ocean Isle Beach wholesale wastewater sales for Operations and Maintenance reimbursements, $95,000 of West Regional wholesale wastewater sales for electricity, $80,000 of NE Brunswick Regional wholesale wastewater sales for chemicals, contracted services, water and $100,000 wastewater retail revenues to miscellaneous expense and authorize transfer within the wastewater fund by the Fiscal Operations Director as needed to prevent a statutory exception of expenditures in excess of amounts budgeted at year end.

**-General Fund Revenues Budget Amendment**
Appropriate $1,000,000 of Register of Deeds revenues and anticipated expenditures of $417,100, $208,372 of Solid Waste Revenues and anticipated expenditures of $192,000, Building Inspections Revenues $150,000 and increase anticipated expenditures legal $16,372, Board of Elections $33,550, law enforcement separation $11,100, emergency services $377,000, soil and water $5,118, fire inspections $41,200 and the remaining amount in Non-Departmental miscellaneous expense for projection of actual needs. Amounts in Non-Departmental is to authorize transfer within the general fund by the Fiscal Operations Director as needed to prevent a statutory exception of expenditures in excess of amounts budgeted at year end.

**-Excess Collections Schools Budget Amendment**
Appropriate estimated excess collections of Ad Valorem and Legislated Sales Tax in excess of budget for transfer to the schools capital reserve and to authorize the Fiscal Operations Director to adjust the budget for final collections as of June 30, 2021.

**-Water Capital Project Budget Amendment and CPO**

Appropriate $876,200 of transfer from water fund to the NW Plant Expansion project for reimbursement expenditures not debt proceeds eligible.

**-911 Emergency Telephone Ineligible Expenditures Budget Amendment**
Appropriate $145,288 Sales Tax Article 39 for transfer to the Emergency Telephone System Fund for expenditures deemed ineligible expenditures by the North Carolina 911 Board.

**-Airport Grant 36237.45.18.1 Budget Amendment and CPO**
Airport grant 36237.45.18.1 has been closed and $400 of expenditures has been deemed ineligible for grant reimbursement. Reduce the grant revenues $360 and transfer the $40 grant match to the county capital reserve undesignated closing grant 36237.45.18.1. Talbert and Bright has credited Brunswick County $400 for the ineligible expenditures.

**Background/Purpose of Request:**

**Fiscal Impact:**
Budget Amendment Required, Capital Project/Grant Ordinance Required, Reviewed By Director of Fiscal Operations

**Approved By County Attorney:**
Yes

**County Manager's Recommendation:**
Recommend the Board of Commissioners approve Budget Amendments, Capital Project Ordinances and Fiscal Items of a routine nature on the consent agenda.

**ATTACHMENTS:**

Description

- 20210503 Budget Amendment Environmental Health State Revenues.pdf
- 20210503 Budget Amendment Water Anticipated Expenditures.pdf
- 20210503 Budget Amendment Wastewater Revenues.pdf
- 20210503 Budget Amendment General Fund Revenues.pdf
- 20210503 Budget Amendment Excess Collections Schools GF.pdf
- 20210503 Budget Amendment Excess Collections Schools.pdf
- 20210503 CPO Brunswick County Schools.pdf
- 20210503 Budget Amendment Additional Funding 418289.pdf
- 20210503 CPO NW Plant Treatment Expansion.pdf
- 20210503 Budget Amendment 911 Telephone Ineligible 22 Fund.pdf
- 20210503 Budget Amendment 911 Telephone Ineligible Fund.pdf
- 20210503 Budget Amendment Airport Grant 36237.45.18.1.pdf
- 20210503 CPO Airport Grant Projects.pdf

| Request Info | |
|---|---|
| **Type** | Budget Amendment |
| **Description** | Additional State Revenues |
| **Justification** | Board Meeting 5/3/2021-Appropriate $4,814 of additional state revenues restricted funding for Food and Lodging program with the FY20-21 agreement addendum. |
| **Originator** | Tiffany Rogers |

| Items | | | | | | |
|---|---|---|---|---|---|---|
| Department | Object | Dept Desc | Object Desc | Amount | Incr/Decr | Dr/Cr |
| 135181 | 332000 | Environmental Health | State Revenues - Restricted | 4814 | Increase | Credit |
| 135181 | 423700 | Environmental Health | Laboratory Supplies | 600 | Increase | Debit |
| 135181 | 426000 | Environmental Health | Supplies and Materials | 1500 | Increase | Debit |
| 135181 | 432500 | Environmental Health | Postage | 1700 | Increase | Debit |
| 135181 | 435300 | Environmental Health | Repair and Maint - Vehicles | 614 | Increase | Debit |
| 135181 | 449100 | Environmental Health | Dues | 400 | Increase | Debit |

| Total | |
|---|---|
| **Grand Total:** | 9628 |

| Request Info | |
|---|---|
| **Type** | Budget Amendment |
| **Description** | Water Anticipated Expenditures |
| **Justification** | Board Meeting 05/03/2021-Reduce the transfer to the water capital projects fund $355,000 for anticipated water funds expenditures 211 water plant chemicals $120,000, water construction tap on supplies $115,000, repair and maintenance vehicles $10,000, overtime $10,000 and $100,000 miscellaneous expense to authorize transfer within the water fund by the Fiscal Operations Director as needed to prevent a statutory exception of expenditures in excess of amounts budgeted at year end. |
| **Originator** | Tiffany Rogers |

**Items**

| Department | Object | Dept Desc | Object Desc | Amount | Incr/Decr | Dr/Cr |
|---|---|---|---|---|---|---|
| 619800 | 498041 | Interfund Trans Water Fund | Transfer to Water Capital Proj | -355000 | Decrease | Credit |
| 617130 | 421300 | 211 Water Treatment Plant | Chemicals | 120000 | Increase | Debit |
| 617110 | 449900 | Water - Administration | Miscellaneous Expense | 100000 | Increase | Debit |
| 617180 | 435300 | Water - Construction Division | Repair and Maint - Vehicles | 10000 | Increase | Debit |
| 617180 | 412200 | Water - Construction Division | Salary and Wages-Overtime | 10000 | Increase | Debit |
| 617180 | 459601 | Water - Construction Division | Tap on Supplies | 115000 | Increase | Debit |

| Total | |
|---|---|
| **Grand Total:** | 0 |

| Request Info | |
|---|---|
| **Type** | Budget Amendment |
| **Description** | Wastewater Revenues |
| **Justification** | Board Meeting 05/03/2021-Appropriate $50,000 of Ocean Isle Beach wholesale wastewater sales for Operations and Maintenance reimbursements, $95,000 of West Regional wholesale wastewater sales for electricity, $80,000 of NE Brunswick Regional wholesale wastewater sales for chemicals, contracted services, water and $100,000 wastewater retail revenues to miscellaneous expense and authorize transfer within the wastewater fund by the Fiscal Operations Director as needed to prevent a statutory exception of expenditures in excess of amounts budgeted at year end. |
| **Originator** | Tiffany Rogers |

**Items**

| Department | Object | Dept Desc | Object Desc | Amount | Incr/Decr | Dr/Cr |
|---|---|---|---|---|---|---|
| 627210 | 371405 | Wastewater - Administration | Wastewater Sales-Retail | 100000 | Increase | Credit |
| 627210 | 449900 | Wastewater - Administration | Miscellaneous Expense | 100000 | Increase | Debit |
| 627250 | 371406 | Northeast Regional Wastewater | Wastewater Sales-Wholesale | 80000 | Increase | Credit |
| 627250 | 421300 | Northeast Regional Wastewater | Chemicals | 20000 | Increase | Debit |
| 627250 | 439900 | Northeast Regional Wastewater | Contract Services | 45000 | Increase | Debit |
| 627250 | 433400 | Northeast Regional Wastewater | Water | 15000 | Increase | Debit |
| 627320 | 371406 | West Regional Wastewater | Wastewater Sales-Wholesale | 95000 | Increase | Credit |
| 627320 | 433100 | West Regional Wastewater | Electricity | 95000 | Increase | Debit |
| 627340 | 371406 | Ocean Isle Beach WWTP | Wastewater Sales-Wholesale | 50000 | Increase | Credit |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 627340 | 449891 | Ocean Isle Beach WWTP | Ocean Isle Beach O and M | 50000 | Increase | Debit | |

| Total | |
|---|---|
| **Grand Total:** | 650000 |

| Request Info | |
|---|---|
| **Type** | Budget Amendment |
| **Description** | General Fund Revenues |
| **Justification** | Board Meeting 05/03/2021-Appropriate $1,000,000 of Register of Deeds revenues and anticipated expenditures of $417,100, $208,372 of Solid Waste Revenues and anticipated expenditures of $192,000, Building Inspections Revenues $150,000 and increase anticipated expenditures legal $16,372, Board of Elections $33,550, law enforcement seperation $11,100, emergency services $377,000, soil and water $5,118, fire inspections $41,200 and the remaining amount in Non-Departmental miscellaneous expense for projection of actual needs. Amounts in Non-Departmental is to authorize transfer within the general fund by the Fiscal Operations Director as needed to prevent a statutory exception of expenditures in excess of amounts budgeted at year end. |
| **Originator** | Tiffany Rogers |

**Items**

| Department | Object | Dept Desc | Object Desc | Amount | Incr/Decr | Dr/Cr |
|---|---|---|---|---|---|---|
| 104720 | 439900 | Solid Waste | Contract Services | 12000 | Increase | Debit |
| 104720 | 439904 | Solid Waste | Contract Service-Solid Waste | 180000 | Increase | Debit |
| 104150 | 412100 | Legal Department | Salary and Wages-Regular | 16000 | Increase | Debit |
| 104150 | 412700 | Legal Department | Salary and Wages-Longevity | 372 | Increase | Debit |
| 104720 | 334600 | Solid Waste | Solid Waste Fee | 208372 | Increase | Credit |
| 104930 | 439300 | Brunswick County Occupancy Tax | Collection Cost-Municipal | 1000 | Increase | Debit |
| 104930 | 439301 | Brunswick County Occupancy Tax | Collection Cost-Brunswick Cty | 2000 | Increase | Debit |
| 104930 | 465100 | Brunswick County Occupancy Tax | Contributions | 87000 | Increase | Debit |

| | | | | | | |
|---|---|---|---|---|---|---|
| 104930 | 327000 | Brunswick County Occupancy Tax | 1% Occupancy Tax-County | 40000 | Increase | Credit |
| 104930 | 327001 | Brunswick County Occupancy Tax | 1% Occupancy Tax-Municipal | 50000 | Increase | Credit |
| 104170 | 412100 | Board Of Elections | Salary and Wages-Regular | 3500 | Increase | Debit |
| 104170 | 412600 | Board Of Elections | Salary and Wages-Temp/Part | 13500 | Increase | Debit |
| 104170 | 418304 | Board Of Elections | Unemployment Insurance | 2450 | Increase | Debit |
| 104170 | 432500 | Board Of Elections | Postage | 9500 | Increase | Debit |
| 104170 | 426000 | Board Of Elections | Supplies and Materials | 4600 | Increase | Debit |
| 104180 | 466001 | Register Of Deeds | ROD-Excise Tax-St NC | 390000 | Increase | Debit |
| 104180 | 466002 | Register Of Deeds | ROD-Marriage-St NC | 1100 | Increase | Debit |
| 104180 | 466003 | Register Of Deeds | ROD - Floodplain Mapping | 15000 | Increase | Debit |
| 104180 | 466004 | Register Of Deeds | ROD - Deed-Cultural Resources | 11000 | Increase | Debit |
| 104317 | 412100 | Law Enforcement Separation | Salary and Wages-Regular | 10000 | Increase | Debit |
| 104317 | 418100 | Law Enforcement Separation | FICA | 1100 | Increase | Debit |
| 104332 | 412100 | Emergency Medical Services | Salary and Wages-Regular | -200000 | Decrease | Credit |
| 104332 | 412200 | Emergency Medical Services | Salary and Wages-Overtime | 577000 | Increase | Debit |
| 104355 | 412203 | Fire Inspections | Salary and Wages-Pgr on call | 9200 | Increase | Debit |
| 104355 | 412600 | Fire Inspections | Salary and Wages-Temp/Part | 32000 | Increase | Debit |
| 104960 | 412700 | Soil And Water | Salary and Wages-Longevity | 1968 | Increase | Debit |
| 104960 | 412100 | Soil And Water | Salary and Wages-Regular | 2200 | Increase | Debit |
| 104960 | 418200 | Soil And Water | Retirement | 750 | Increase | Debit |

| | | | | | | |
|---|---|---|---|---|---|---|
| 104960 | 418100 | Soil And Water | FICA | 200 | Increase | Debit |
| 104290 | 449900 | Non-Departmental | Miscellaneous Expense | 264932 | Increase | Debit |
| 104180 | 324000 | Register Of Deeds | ROD-Excise Tax | 1000000 | Increase | Credit |
| 104350 | 334300 | Bldg Inspections and CP | Building Permits | 150000 | Increase | Credit |

| Total | |
|---|---|
| **Grand Total:** | 2896744 |

| Request Info | |
|---|---|
| **Type** | Budget Amendment |
| **Description** | Excess Collections Schools GF |
| **Justification** | Board Meeting 05/03/2021-Appropriate estimated excess collections of Ad Valorem and Legislated Sales Tax in excess of budget for transfer to the schools capital reserve and to authorize the Fiscal Operations Director to adjust the budget for final collections as of June 30, 2021. |
| **Originator** | Tiffany Rogers |

| Items | | | | | | |
|---|---|---|---|---|---|---|
| Department | Object | Dept Desc | Object Desc | Amount | Incr/Decr | Dr/Cr |
| 100000 | 323202 | General Revenues | Local Op Sales Tax 1/2% 40 Sch | 838015 | Increase | Credit |
| 100000 | 323302 | General Revenues | Local Op Sales Tax 1/2% 42 Sch | 1969959 | Increase | Credit |
| 100000 | 311420 | General Revenues | Ad Valorem Taxes-2020 | 1552140 | Increase | Credit |
| 109800 | 498042 | Interfund Trans General Fund | Trans To School Cap Project | 4360114 | Increase | Debit |

| Total | |
|---|---|
| **Grand Total:** | 8720228 |

| Request Info | |
|---|---|
| **Type** | Budget Amendment |
| **Description** | Excess Collections Schools |
| **Justification** | Board Meeting 05/03/2021-Appropriate estimated excess collections of Ad Valorem and Legislated Sales Tax in excess of budget for transfer to the schools capital reserve and to authorize the Fiscal Operations Director to adjust the budget for final collections as of June 30, 2021. |
| **Originator** | Tiffany Rogers |

| Items | | | | | | |
|---|---|---|---|---|---|---|
| Department | Object | Dept Desc | Object Desc | Amount | Incr/Decr | Dr/Cr |
| 428006 | 398110 | School Capital Projects | Trans Frm General Fund | 4360114 | Increase | Credit |
| 428006 | 499104 | School Capital Projects | Sales Tax Contingency | 2807974 | Increase | Debit |
| 428006 | 499103 | School Capital Projects | Ad Valorem Contingency | 1552140 | Increase | Debit |

| Total | |
|---|---|
| **Grand Total:** | 8720228 |

**COUNTY OF BRUNSWICK, NORTH CAROLINA**
**CAPITAL PROJECT ORDINANCE**
**Brunswick County Schools Capital Project**
**(428006)**

Be it ordained by the Board of County Commissioners of Brunswick County that pursuant to Section 13.2 of the General Statutes of North Carolina, the following ordinance is hereby adopted:

Section 1. The following amounts are hereby appropriated in the Brunswick County Schools Capital Projects Fund:

| **Brunswick County Schools Capital Project** | | |
|---|---|---|
| Revenues: | | |
| NC Education Lottery | | 7,082,039 |
| Investment Earnings | | - |
| Transfer from General Fund | | 52,627,919 |
| Transfer from Special SCRS PRC495 | | 3,628,226 |
| Transfer SCRS PRC077 | | 13,832,255 |
| Fund Balance Appropriated | | 6,552,413 |
| **Total School Capital Project Fund Revenues** | **$** | **83,722,852** |
| | | |
| Expenditures: | | |
| PRC 495 Excess Ad Valorem | | 22,889,419 |
| PRC 077 Local Option Sales Tax | | 38,973,087 |
| GF Hold Harmless Medicaid Swap | | 372,871 |
| Proc NC Education Lottery Expense | | 7,082,039 |
| Astroturf Replacement Reserve | | 82,500 |
| PY Excess Ad Val Unavailable | | 803,000 |
| Transfer to General Fund | | 314,013 |
| Ad Valorem Contingency | | 6,879,916 |
| Sales Tax Contingency | | 6,326,007 |
| **Total School Capital Project Fund Expenditures** | **$** | **83,722,852** |

Section 2. It is estimated that the following revenues will be available in the Brunswick County General Fund:

| | | |
|---|---|---|
| Current Funds Appropriated | $ | 52,627,919 |

Section 3. The following amounts are hereby appropriated in the Brunswick County General Fund:

| | | |
|---|---|---|
| Contribution to Capital Project Fund | $ | 52,627,919 |

Section 4. This Capital Project Ordinance shall be entered into the minutes of the May 3, 2021 meeting of the Brunswick County Board of Commissioners.

| Request Info | |
|---|---|
| **Type** | Budget Amendment |
| **Description** | Additional Funding |
| **Justification** | Board Meeting 05/03/2021-Appropriate $876,200 of transfer from water fund to the NW Plant Expansion and Reverse Osmosis Treatment project for reimbursement expenditures not debt proceeds eligible. |
| **Originator** | Tiffany Rogers |

| Items | | | | | | |
|---|---|---|---|---|---|---|
| Department | Object | Dept Desc | Object Desc | Amount | Incr/Decr | Dr/Cr |
| 418289 | 398661 | NW Plant Exp and RO Treatment | Trans Frm Water Fund | 876200 | Increase | Credit |
| 418289 | 464002 | NW Plant Exp and RO Treatment | Construction | 876200 | Increase | Debit |

| Total | |
|---|---|
| **Grand Total:** | 1752400 |

**COUNTY OF BRUNSWICK, NORTH CAROLINA**
**CAPITAL PROJECT ORDINANCE**

**NW Plant Treatment Expansion 12MGD**
**(418289)**

Be it ordained by the Board of County Commissioners of Brunswick County that pursuant to Section 13.2 of the General Statutes of North Carolina, the following ordinance is hereby adopted:

Section 1. The following amounts are hereby appropriated in the Brunswick County Water Capital Projects Fund:

| | | |
|---|---|---|
| **Water Capital ProjectsFund:** | | |
| Revenues: | | |
| Proceeds from Revenue Bonds | | 152,065,000 |
| Revenue Bond Premium | | 15,280,190 |
| Transfer from Water Fund | | 876,200 |
| **Total Water Capital Project Revenues** | **$** | **168,221,390** |
| | | |
| Expenditures: | | |
| Salary and Wages Reimbursements | | 218,164 |
| Fringe Benefits Reimbursements | | 67,500 |
| Administration | | 995,625 |
| Arch/Eng/Legal | | 21,153,792 |
| Construction | | 130,068,170 |
| Capitalized Interest | | 9,698,507 |
| Contingency | | 6,019,632 |
| **Total Water Capital Project Expenditures** | **$** | **168,221,390** |

Section 2. It is estimated that the following revenues will be available in the Brunswick County Water Fund:

| | | |
|---|---|---|
| Current Funds Appropriated | $ | 876,200 |

Section 3. The following amounts are hereby appropriated in the Brunswick County Water Fund:

| | | |
|---|---|---|
| Contribution to Capital Project Fund | $ | 876,200 |

Section 4. This Capital Project Ordinance shall be entered into the minutes of the May 3, 2021 meeting of the Brunswick County Board of Commissioners.

| Request Info | |
|---|---|
| **Type** | Budget Amendment |
| **Description** | 911 Telephone Ineligible 22 Fund |
| **Justification** | Board Meeting 05/03/2021-Appropriate $145,288 Sales Tax Article 39 for transfer to the Emergency Telephone System Fund for expenditures deemed ineligible expenditures by the North Carolina 911 Board and reduce fund balance appropriated in the Emergency Telephone System Fund. |
| **Originator** | Tiffany Rogers |

| Items | | | | | | |
|---|---|---|---|---|---|---|
| Department | Object | Dept Desc | Object Desc | Amount | Incr/Decr | Dr/Cr |
| 224376 | 398110 | Emergency Telephone System | Trans Frm General Fund | 145288 | Increase | Credit |
| 224376 | 399100 | Emergency Telephone System | Fund Balance Appropriated | -145288 | Decrease | Debit |

| Total | |
|---|---|
| **Grand Total:** | 0 |

| Request Info | |
|---|---|
| **Type** | Budget Amendment |
| **Description** | 911 Telephone Ineligible Fund |
| **Justification** | Board Meeting 05/03/2021-Appropriate $145,288 Sales Tax Article 39 for transfer to the Emergency Telephone System Fund for expenditures deemed ineligible expenditures by the North Carolina 911 Board. |
| **Originator** | Tiffany Rogers |

**Items**

| Department | Object | Dept Desc | Object Desc | Amount | Incr/Decr | Dr/Cr |
|---|---|---|---|---|---|---|
| 100000 | 323100 | General Revenues | Local Op Sales Tax 1% 39 Co | 145288 | Increase | Credit |
| 109800 | 498022 | Interfund Trans General Fund | Trans To Emergency Tele Servic | 145288 | Increase | Debit |

**Total**

| | |
|---|---|
| **Grand Total:** | 290576 |

| Request Info | |
|---|---|
| **Type** | Budget Amendment |
| **Description** | 36237.45.18.1 Grant Close |
| **Justification** | Board Meeting 05/03/2021-Airport grant 36237.45.18.1 has been closed and $400 of expenditures has been deemed ineligible for grant reimbursement. Reduce the grant revenues $360 and transfer the $40 grant match to the county capital reserve undesignated closing grant 36237.45.18.1. Talbert and Bright has credited Brunswick County $400 for the ineligible expenditures. |
| **Originator** | Tiffany Rogers |

**Items**

| Department | Object | Dept Desc | Object Desc | Amount | Incr/Decr | Dr/Cr |
|---|---|---|---|---|---|---|
| 438157 | 331045 | Airport Grants | Fed Rev-36237.45.18.1 | -360 | Decrease | Debit |
| 438157 | 398110 | Airport Grants | Trans Frm General Fund | -40 | Decrease | Debit |
| 438157 | 449841 | Airport Grants | 36237.45.18.1 Exp | -400 | Decrease | Credit |
| 439801 | 398110 | Interfund Trans Co Cap Reserve | Trans Frm General Fund | 40 | Increase | Credit |
| 439801 | 464299 | Interfund Trans Co Cap Reserve | Undesignated Funds | 40 | Increase | Debit |

| Total | |
|---|---|
| **Grand Total:** | -720 |

**COUNTY OF BRUNSWICK, NORTH CAROLINA**
**CAPITAL PROJECT ORDINANCE**
**Airport Grants Program**
**Amended (438157)**

Be it ordained by the Board of County Commissioners of Brunswick County that pursuant to Section 13.2 of the General Statutes of North Carolina, the following ordinance is hereby adopted:

Section 1. The following amounts are hereby appropriated in the Brunswick County Airport Grants Capital Projects Fund:

| | | |
|---|---|---|
| **Airport Grant Project Fund:** | | |
| Revenues: | | |
| 36237.45.13.2 | | 3,031,885 |
| 36237.45.14.1 | | 449,252 |
| 36237.45.15.2 | | 899,841 |
| 36237.45.16.1 | | 21,508 |
| 36244.58.4.1 | | 62,000 |
| 36237.45.10.2 | | 513,265 |
| 36237.45.10.3 | | 409,235 |
| 36237.45.10.1 | | 150,000 |
| 36244.58.5.1 | | 2,853,811 |
| 36237.45.11.1 | | 288,401 |
| 36244.58.6.1 | | 2,814,516 |
| 36237.45.10.4 | | 172,359 |
| 36237.45.13.1 | | 229,592 |
| 36244.58.7.1 | | 85,000 |
| 36237.45.15.1 | | 201,656 |
| 46333.1.1 | | 111,000 |
| 46333.2.1 | | 251,281 |
| 36244.58.8.3 | | 448,107 |
| 36244.58.10.1 | | 1,276,182 |
| 36244.58.10.2 | | 2,000,000 |
| 36244.58.10.3 | | 1,168,447 |
| 36244.58.10.4 | | 277,446 |
| 36244.58.9.1 | | 1,105,950 |
| 36244.58.11.1 | | 309,454 |
| 36244.58.11.2 | | 1,492,037 |
| 36244.58.8.2 | | 225,000 |
| 36244.58.12.1 | | 297,810 |
| 36237.45.17.1 | | 127,892 |
| 36237.45.18.1 | | 390,244 |
| 36237.45.18.3 | | 69,000 |
| 46333.3.1 | | 192,646 |
| 36244.58.12.2 | | 350,000 |
| Transfer from General Fund | | 777,525 |
| **Total Airport Grant Capital Project Fund Revenues** | **$** | **23,052,342** |
| Expenditures: | | |
| 36237.45.13.2 | | 3,031,885 |
| 36237.45.14.1 | | 449,252 |
| 36237.45.15.2 | | 899,911 |
| 36237.45.16.1 | | 21,508 |
| 36244.58.4.1 | | 62,000 |
| 36237.45.10.2 | | 528,873 |
| 36237.45.10.3 | | 409,235 |
| 36237.45.10.1 | | 150,000 |
| 36244.58.5.1 | | 2,853,811 |
| 36237.45.11.1 | | 288,401 |
| 36244.58.6.1 | | 2,814,516 |
| 36237.45.10.4 | | 172,359 |
| 36237.45.13.1 | | 229,592 |
| 36244.58.7.1 | | 85,000 |

| | |
|---|---|
| 36237.45.15.1 | 209,467 |
| 46333.1.1 | 111,000 |
| 46333.2.1 | 251,281 |
| 36244.58.8.3 | 459,932 |
| 36244.58.10.1 | 1,345,248 |
| 36244.58.10.2 | 2,000,000 |
| 36244.58.9.1 | 1,326,412 |
| 36244.58.10.3 | 1,298,277 |
| 36244.58.10.4 | 308,273 |
| 36244.58.11.1 | 309,455 |
| 36244.58.8.2 | 250,000 |
| 36244.58.11.2 | 1,657,818 |
| 36244.58.12.1 | 330,901 |
| 36237.45.17.1 | 142,103 |
| 36237.45.18.1 | 433,603 |
| 36237.45.18.3 | 69,000 |
| 46333.3.1 | 192,646 |
| 36244.58.12.2 | 350,000 |
| Miscellaneous Expense | 10,583 |
| Land | - |
| **Total Airport Grant Capital Project Fund Expenditures** | **23,052,342** |

Section 2. It is estimated that the following revenues will be available in the Brunswick County General Fund:

| | | |
|---|---|---|
| Current Funds Appropriated | $ | 777,525 |

Section 3. The following amounts are hereby appropriated in the Brunswick County General Fund:

| | | |
|---|---|---|
| Contribution to Capital Project Fund | $ | 777,525 |

Section 4. This Capital Project Ordinance shall be entered into the minutes of the May 3, 2021 meeting of the Brunswick County Board of Commissioners.

# Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
## May 3, 2021

**Action Item # V. - 7.**

**From:**
David Stanley, Deputy County Manager for Health and Human Services

Health and Human Services - Brunswick Senior Resources Inc. Budget Revision #1 to HCCBG Funding

**Issue/Action Requested:**
Request that the Board of Commissioners approve the attached Revision #1 budget document for the Fiscal Year 2020-2021 Home and Community Care Block Grant for Older Adults.

**Background/Purpose of Request:**
Attached, please find the Home and Community Care Block Grant Budget Revision # 1 as well as the associated budget documents cumulative to "County Funding Plan" for Fiscal Year 2020 - 2021.

Budget Revision #1 consists of a request to move $65,000 in unused funds from Transportation to Senior Center Operations, and a request to move $25,790 from In-Home Aide-Level I to In-Home Aide-Level II.

There are no changes to the local match provided through funds previously committed, and paid to BSRI, through Brunswick County's Current Fiscal Year 2021 Budget. No additional County funding is required. This revision requires approval and execution by the Chairman of the Brunswick County Commissioners and County Finance Officer. Staff recommends approval of the Budget Revision # 1.

**Fiscal Impact:**
Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations

**Approved By County Attorney:**
Yes

**County Manager's Recommendation:**
Recommend the Board of Commissioners approve the attached Revision #1 budget document for the Fiscal Year 2020-2021 Home and Community Care Block Grant for Older Adults.

**ATTACHMENTS:**

Description

- BSRI-HCCBG-2020-2021 Revision#1 Request
- BSRI-HCCBG 2020-2021 Revision#1

# Mailed 3/30/21

Addressee:
Mr. David Stanley, Executive Director Health & Human Services.

Re:

1. 2020-2021 Home and Community Care Block Grant Budget to Brunswick County and its lead agency, BSRI, Revision 1, 3 copies.

Message:
Please review and forward as appropriate. Budget Revision 1 requires the signature of the County Finance Officer and the Chairman of the Board of Commissioners in various places. There are three originals, please have all sets signed.

As you know, any matching fund requests that occur with this AAA / HCCBG program services budget are covered by the concurrent year's County Allocation to BSRI.

David, attached to this cover letter is a reconciliation of form 731 showing the original budget numbers - green background , this revision 1 -beige background and the resulting funding allocations white columns.

Once signed, please return to me at
Judith Benson
PO Box 2470
Shallotte, NC 28451

Thank you for your assistance with this 2020/2021 budget revision.

Judith Gainey Benson, CPA, CFO
Brunswick Senior Resources, Inc.
jbenson@bsrinc.org

Brunswick Senior Resources, Inc.
Making a Difference

(910) 754-2300 x 1009
(910) 754-9269 (fax)
(910) 512-1301 (mobile)

J. BENSON

**Home and Community Care Block Grant for Older Adults**

**County Funding Plan**

**County Services Summary**

DAAS-731

County BRUNSWICK
July 1, 2020 through June 30, 2021

**731 RECONCILIATION SHEET**

| | A | | | | B | C | D | E | F | G | H | I | Original | Rev ! |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Block Grant Funding | | | | | | | | | | | | | |
| Services | Access | In-Home | Other | Total | Required Local Match | Net Service Cost | NSIP Subsidy | Total Funding | Projected HCCBG Units | Projected Reimbursement Rate | Projected HCCBG Clients | Projected Total Units | | |
| Congregate Nutrition | | | 250000 | \\\\\\\\\\ | 27778 | 277778 | 62625 | 340403 | 40332 | 6.8873 | 354 | 83500 | 250000 | |
| Home Delivered Meals | | 250000 | | \\\\\\\\\\ | 27778 | 277778 | 64500 | 342278 | 32755 | 8.4806 | 118 | 86000 | 250000 | |
| Senior Center Operation | | | 358449 | \\\\\\\\\\ | 39828 | 398277 | | 398277 | | 0 | | 0 | 293449 | 65000 |
| Transportation (General) | 15000 | | | \\\\\\\\\\ | 1667 | 16667 | | 16667 | 1163 | 14.3362 | 15 | 1930 | 80000 | -65000 |
| In-Home Aide-Level I - Home Management | | 16200 | | \\\\\\\\\\ | 1800 | 18000 | | 18000 | 1003 | 17.9446 | 7 | 1003 | 41990 | -25790 |
| In-Home Aide-Level II - Personal Care | | 151790 | | \\\\\\\\\\ | 16866 | 168656 | | 168656 | 9077 | 18.58 | 30 | 9077 | 126000 | 25790 |
| In-Home Aide-Level III - Personal Care | | 42010 | | \\\\\\\\\\ | 4668 | 46678 | | 46678 | 2512 | 18.582 | 8 | 2512 | 42010 | |
| | | | | \\\\\\\\\\ | 0 | 0 | | 0 | | | | | | |
| | | | | \\\\\\\\\\ | 0 | 0 | | 0 | | | | | | |
| | | | | \\\\\\\\\\ | 0 | 0 | | 0 | | | | | | |
| | | | | \\\\\\\\\\ | 0 | 0 | | 0 | | | | | | |
| | | | | \\\\\\\\\\ | 0 | 0 | | 0 | | | | | | |
| | | | | \\\\\\\\\\ | 0 | 0 | | 0 | | | | | | |
| | | | | \\\\\\\\\\ | 0 | 0 | | 0 | | | | | | |
| Total | 15000 | 460000 | 608449 | 1083449 | 120383 | 1203834 | 127125 | 1330959 | 86842 | \\\\\\\\\\\\ | 532 | 184022 | 1083449 | 0 |

DAAS-731 (Rev. 2/16)

**Home and Community Care Block Grant for Older Adults**

**County Funding Plan**

**County Services Summary**

County BRUNSWICK
July 1, 2020 through June 30, 2021

| | A | | | | B | C | D | E | F | G | H | I |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Block Grant Funding | | | | | | | | | | | |
| Services | Access | In-Home | Other | Total | Required Local Match | Net Service Cost | NSIP Subsidy | Total Funding | Projected HCCBG Units | Projected Reimbursement Rate | Projected HCCBG Clients | Projected Total Units |
| Congregate Nutrition | | | 250000 | \\\\\\\\\\ | 27778 | 277778 | 62625 | 340403 | 40332 | 6.8873 | 354 | 83500 |
| Home Delivered Meals | | 250000 | | \\\\\\\\\\ | 27778 | 277778 | 64500 | 342278 | 32755 | 8.4806 | 118 | 86000 |
| Senior Center Operation | | | 358449 | \\\\\\\\\\ | 39828 | 398277 | | 398277 | | 0 | | 0 |
| Transportation (General) | 15000 | | | \\\\\\\\\\ | 1667 | 16667 | | 16667 | 1163 | 14.3362 | 15 | 1930 |
| In-Home Aide-Level I - Home Management | | 16200 | | \\\\\\\\\\ | 1800 | 18000 | | 18000 | 1003 | 17.9446 | 7 | 1003 |
| In-Home Aide-Level II - Personal Care | | 151790 | | \\\\\\\\\\ | 16866 | 168656 | | 168656 | 9077 | 18.58 | 30 | 9077 |
| In-Home Aide-Level III - Personal Care | | 42010 | | \\\\\\\\\\ | 4668 | 46678 | | 46678 | 2512 | 18.582 | 8 | 2512 |
| | | | | \\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | \\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | \\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | \\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | \\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | \\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | \\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| Total | 15000 | 460000 | 608449 | 1083449 | 120383 | 1203834 | 127125 | 1330959 | 86842 | \\\\\\\\\\\\ | 532 | 184022 |

Signature, Chairman, Board of Commissioners Date

**Home and Community Care Block Grant for Older Adults**

BRUNSWICK SENIOR RESOURCES, INC.

PO Box 2470

Shallotte, NC 28459

**County Funding Plan**

**Provider Services Summary**

**DAAS-732**

**County:** BRUNSWICK

**Budget Period:** July 2020 through June 2021

**Revision #:** 1 **Date:** 3/30/2029

| Services | Serv. Delivery (Check One) Direct | Purchase | A Block Grant Funding Access | In-Home | Other | Total | B Required Local Match | C Net Service Cost | D NSIP Subsidy | E Total Funding | F Projected HCCBG Units | G Projected Reimburse Rate* | H Projected HCCBG Clients | I Projected Total Units |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Congregate Nutrition | X | | $ - | $ - | $ 250,000 | $ 250,000 | $ 27,778 | $ 277,778 | $ 62,625 | $ 340,403 | 40,332 | $ 6.8873 | 354 | 83,500 |
| Home Delivered Meals | X | | $ - | $ 250,000 | $ - | $ 250,000 | $ 27,778 | $ 277,778 | $ 64,500 | $ 342,278 | 32,755 | $ 8.4806 | 118 | 86,000 |
| Senior Center Operation | X | | $ - | $ - | $ 358,449 | $ 358,449 | $ 39,828 | $ 398,277 | $ - | $ 398,277 | - | $ - | | - |
| Transportation (General) | | X | $ 15,000 | $ - | $ - | $ 15,000 | $ 1,667 | $ 16,667 | $ - | $ 16,667 | 1,163 | $ 14.3362 | 15 | 1,930 |
| 0 | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | - | $ - | | - |
| 0 | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | - | $ - | | - |
| 0 | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | - | $ - | | - |
| 0 | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | - | $ - | | - |
| 0 | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | - | $ - | | - |
| 0 | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | - | $ - | | - |
| 0 | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | - | $ - | | - |
| 0 | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | - | $ - | | - |
| 0 | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | - | $ - | | - |
| 0 | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | - | $ - | | - |
| | | | | | | | | | | | | | | |
| Total | | | $ 15,000 | $ 250,000 | $ 608,449 | $ 873,449 | $ 97,051 | $ 970,500 | $ 127,125 | $ 1,097,625 | 74,249 | | 487 | 171,430 |

***Adult Day Care & Adult Day Health Care Proj. Service Cost/Rate**

| | ADC | ADHC |
|---|---|---|
| Daily Care | $33.07 | $ 40.00 |
| Administrative | | |
| Proj. Reimbursement Rate | $33.07 | $ 40.00 |
| Administrative % | 0.00% | 0.00% |

Certification of required minimum local match availability. Required local match will be expended simultaneously with Block Grant Funding.

President/CEO 3/30/21

Authorized Signature, Title — Date

Community Service Provider

Signature, County Finance Officer — Date

Signature, Chairman, Board of Commissioners — Date

**North Carolina Division of Aging and Adult Services**
**Service Cost Computation Worksheet**

DAAS-732A

Provider: BRUNSWICK SENIOR RESOURCES, INC.
County: BRUNSWICK
Budget Period: July 2020 through June 2021

| I. Projected Revenues | Grand Total | | Service: Congregate Nutrition 180 | Service: Home Delivered Meals 020 | Service: Senior Center Operation 170 | Service: Transportation (General) 250 | Service: 0 #N/A |
|---|---|---|---|---|---|---|---|
| A. Fed/State Funding From the Div. of Aging & Adult Svcs. | $ 873,449 | | $ 250,000 | $ 250,000 | $ 358,449 | $ 15,000 | $ - |
| Required Minimum Match - Cash | | | | | | | |
| 1) | $ 97,051 | | $ 27,778 | $ 27,778 | $ 39,828 | $ 1,667 | |
| 2) | $ - | | | | | | |
| 3) | $ - | | | | | | |
| Total Required Minimum Match - Cash | $ 97,051 | | $ 27,778 | $ 27,778 | $ 39,828 | $ 1,667 | $ - |
| Required Minimum Match - In-Kind | | | | | | | |
| 1) | $ - | | | | | | |
| 2) | $ - | | | | | | |
| 3) | $ - | | | | | | |
| Total Required Minimum Match - In-Kind | $ - | | $ - | $ - | $ - | $ - | $ - |
| B. Total Required Minimum Match (cash + in-kind) | $ 97,051 | | $ 27,778 | $ 27,778 | $ 39,828 | $ 1,667 | $ - |
| C. **Subtotal, Fed/State/Required Match Revenues** | $ 970,500 | | $ 277,778 | $ 277,778 | $ 398,277 | $ 16,667 | $ - |
| D. NSIP Cash Subsidy/Commodity Valuation | $ 127,125 | | $ 62,625 | $ 64,500 | $ - | $ - | $ - |
| E. **OAA Title V Worker Wages, Fringe Benefits and Costs** | $ - | | | | | | |
| Local Cash, Non-Match | | | | | | | |
| 1) Brunswick County | $ 1,921,622 | | $ 297,309 | $ 451,551 | $ 1,161,760 | $ 11,002 | |
| 2) | $ - | | | | | | |
| 3) | $ - | | | | | | |
| 4) | $ - | | | | | | |
| F. **Subtotal, Local Cash, Non-Match** | $ 1,921,622 | | $ 297,309 | $ 451,551 | $ 1,161,760 | $ 11,002 | $ - |
| Other Revenues, Non-Match | | | | | | | |
| 1) | $ - | | | | | | |
| 2) | $ - | | | | | | |
| 3) | $ - | | | | | | |
| G. **Subtotal, Other Revenues, Non-Match** | $ - | | $ - | $ - | $ - | $ - | $ - |
| Local In-Kind Resources (Includes Volunteer Resources) | | | | | | | |
| 1) | $ - | | | | | | |
| 2) | $ - | | | | | | |
| 3) | $ - | | | | | | |
| H. **Subtotal, Local In-kind Resources, Non-Match** | $ - | | $ - | $ - | $ - | $ - | $ - |
| I. **Client Cost Sharing** | $ - | | | | | | |
| J. **Total Projected Revenues (Sum I.C,D,E,F,G,H, & I)** | $ 3,019,247 | | $ 637,712 | $ 793,829 | $ 1,560,037 | $ 27,669 | $ - |

Division of Aging and Adult Services
Service Cost Computation Worksheet

| II. Line Item Expenses | Grand Total | Admin. Cost | Service: Congregate Nutrition 180 | Service: Home Delivered Meals 020 | Service: Senior Center Operation 170 | Service: Transportation (General) 250 | Service: 0 #N/A |
|---|---|---|---|---|---|---|---|
| Staff Salary From Labor Distribution Schedule | | | | | | | |
| 1) Full-time Staff (do not include Title V workers) | $ 927,744 | $ 102,071 | $ 195,381 | $ 244,182 | $ 373,228 | $ 12,882 | $ - |
| 2) Part-time staff (do not include Title V workers) | $ 53,684 | $ 5,460 | $ 18,652 | $ 18,652 | $ 16,380 | $ - | $ - |
| A. **Subtotal, Staff Salary** | $ 986,888 | **$ 107,531** | **$ 214,033** | **$ 262,834** | **$ 389,608** | **$ 12,882** | **$ -** |
| Fringe Benefits | | | | | | | |
| 1) FICA @ 7.65 % | $ 75,497 | $ 8,226 | $ 16,374 | $ 20,107 | $ 29,805 | $ 985 | $ - |
| 2) Health Insurance | $ 195,899 | $ 8,517 | $ 59,622 | $ 51,104 | $ 76,656 | | |
| 3) Retirement | $ 59,084 | $ 6,452 | $ 12,842 | $ 15,770 | $ 23,376 | $ 644 | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 4) Unemployment Insurance | $ 4,766 | $ 419 | $ 1,159 | $ 1,467 | $ 1,664 | $ 57 | | |
| 5) Worker's Compensation | $ 13,466 | $ 1,288 | $ 2,863 | $ 3,610 | $ 5,413 | $ 292 | | |
| 6) Other | $ - | | | | | | | |
| B. **Subtotal, Fringe Benefits** | $ 348,712 | $ 24,902 | $ 92,860 | $ 92,058 | $ 136,914 | $ 1,978 | $ - | |
| Local In-Kind Resources Non-Match | | | | | | | | |
| 1) | $ - | | | | | | | |
| 2) | $ - | | | | | | | |
| 3) | $ - | | | | | | | |
| C. **Subtotal, Local In-Kind Resources Non-Match** | $ - | $ - | $ - | $ - | $ - | $ - | $ - | |
| D. **OAA Title V Worker Wages, Fringe Benefits and Costs** | $ - | | | | | | | |
| Travel | | | | | | | | |
| 1) Per Diem | $ - | | | | | | | |
| 2) Mileage Reimbursement | $ - | | | | | | | |
| 3) Other Travel Cost | $ - | | | | | | | |
| E. **Subtotal, Travel** | $ - | $ - | $ - | $ - | $ - | $ - | $ - | |
| General Operating Expenses | | | | | | | | |
| 1) Non-Staff Program Cost (inc Food and related) | $ 715,900 | | $ 244,154 | $ 284,746 | $ 175,000 | $ 12,000 | | |
| 2) Meal Delivery Cost | $ 83,000 | | | $ 83,000 | | | | |
| 3) Repairs & Maintenace - Equipment | $ 119,000 | | $ 15,000 | $ 4,000 | $ 100,000 | | | |
| 4) Facility Rental, Repairs, & Maintenance | $ 309,000 | | $ 15,000 | $ 4,000 | $ 290,000 | | | |
| 5) Staff Training | $ 38,000 | | $ 9,000 | $ 9,000 | $ 20,000 | | | |
| 6) Outreach, Advertising, Supplies | $ 100,000 | | $ 5,000 | $ 5,000 | $ 90,000 | | | |
| 7) Utilities | $ 179,000 | | $ 12,000 | $ 12,000 | $ 155,000 | | | |
| 8) Property and General Liability Insurance | $ 23,000 | | $ 4,000 | $ 4,000 | $ 15,000 | | | |
| F. **Subtotal, General Operating Expenses** | $ 1,566,900 | $ - | $ 304,154 | $ 405,746 | $ 845,000 | $ 12,000 | $ - | |
| G. **Subtotal, Other Administrative Cost Not Allocated in Lines II.A through E** | $ - | | | | | | | |
| H. **Total Proj. Expenses Prior to Admin. Distribution** | **$ 2,902,500** | **$ 132,433** | **$ 611,047** | **$ 760,638** | **$ 1,371,522** | **$ 26,860** | **$ -** | |
| I. **Distribution of Admininistrative Cost** | **$ (249,180)** | | **$ (26,665)** | **$ (33,191)** | **$ (188,515)** | **$ (808)** | **$ -** | |
| J. **Total Proj. Expenses After Admin. Distribution** | **$ 3,019,247** | | **$ 637,712** | **$ 793,829** | **$ 1,560,037** | **$ 27,669** | **$ -** | |

| III. **Computation of Rates** | **Grand Total** | | **Service** Congregate Nutrition 180 | **Service** Home Delivered Meals 020 | **Service** Senior Center Operation 170 | **Service** Transportation (General) 250 | **Service** 0 #N/A | |
|---|---|---|---|---|---|---|---|---|
| A. **Computation of Unit Cost Rate:** | | | | | | | | |
| 1. Total Expenses (equals line II.J) | $ 3,019,247 | | $ 637,712 | $ 793,829 | $ 1,560,037 | $ 27,669 | $ - | |
| 2. Total Projected Units | | | 83,500 | 86,000 | | 1,930 | | |
| 3. Total Unit Cost Rate | | | $ 7.6373 | $ 9.2306 | $ - | $ 14.3362 | $ - | |
| B. **Computation of Reimbursement Rate:** | | | | | | | | |
| 1. Total Revenues (equals line I.J) | $ 3,019,247 | | $ 637,712 | $ 793,829 | $ 1,560,037 | $ 27,669 | $ - | |
| 2. Less: NSIP (equals line I.D) | $ 127,125 | | $ 62,625 | $ 64,500 | $ - | $ - | $ - | |
| Title V (equals line I.E less II.D) | $ - | | $ - | $ - | $ - | $ - | $ - | |
| Non Match In-Kind (equals line I.H less II.C) | $ - | | $ - | $ - | $ - | $ - | $ - | |
| 3. Revenues Subject to Unit Reimbursement | $ 2,892,122 | | $ 575,087 | $ 729,329 | $ 1,560,037 | $ 27,669 | $ - | |
| 4. Total Projected Units (equals line III.A.2) | | | 83,500 | 86,000 | - | 1,930 | - | |
| 5. Total Reimbursement Rate | | | $ 6.8873 | $ 8.4806 | $ - | $ 14.3362 | $ - | |
| C. **Units Reimbursed Through HCCBG** | | | **40,332** | **32,755** | **-** | **1,163** | **-** | |
| D. **Units Reimbursed Through Program Income*** | | | **-** | **-** | **-** | **-** | **-** | |
| E. **Units Reimbursed Through Remaining Revenues** | | | **43,168** | **53,245** | **-** | **767** | **-** | |
| F. **Total Units Reimbursed/Total Projected Units** | | | **83,500** | **86,000** | **-** | **1,930** | **-** | |

* The Division of Aging ARMS deducts reported program income from reimbursement paid to providers. Line III.D indicates the number of units that will have to be produced in addition to those stated on line III.C in order to earn the net revenues stated on line I.C.

**Certification:**

I certify to the best of my knowledge and belief that the information included in the cost computation above is accurate and complies with all laws and regulations. I also understand that material deviations in reported cost information could limit funding, and also result in return of funds if the error or omission results in a higher than actual reported cost.

Authorized Signature

President/CEO
Title

3/30/2021
Date

Information on this form (DAAS-732A) corresponds with information stated on the Provider Services Summary

NAME AND ADDRESS
COMMUNITY SERVICE PROVIDER
BAYADA HOME HEALTH
3205 Randall Parkway, Suite 205
Wilmingotn, NC 28403

**Home and Community Care Block Grant for Older Adults**

**County Funding Plan**

**Provider Services Summary**

**DAAS-732**
**County___BRUNSWICK_____**
**July 1, 2020 through June 30, 2021____**
**REVISION # 1, DATE : February 23, 2021**

| | | | A | | | | B | C | D | E | F | G | H | I |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Ser. Delivery (Check One) | | Block Grant Funding | | | | Required | Net* | NSIP | Total | Projected HCCBG | Projected Reimburse | Projected HCCBG | Projected Total |
| Services | Direct | Purch. | Access | In-Home | Other | Total | Local Match | Serv Cost | Subsidy | Funding | Units | Rate | Clients | Units |
| IHA LEVEL I | | X | | 16200 | | \\\\\\\\\\\\\\\\ | 1800 | 18000 | | 18000 | 1003 | 17.9446 | 7 | 1003 |
| IHA LEVEL II | | X | | 151790 | | \\\\\\\\\\\\\\\\ | 16866 | 168656 | | 168656 | 9077 | 18.5800 | 30 | 9077 |
| IHA Level III | | X | | 42010 | | \\\\\\\\\\\\\\\\ | 4668 | 46678 | | 46678 | 2512 | 18.582 | 8 | 2512 |
| | | | | | | \\\\\\\\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | | | \\\\\\\\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | | | \\\\\\\\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | | | \\\\\\\\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | | | \\\\\\\\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | | | \\\\\\\\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | | | \\\\\\\\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | | | \\\\\\\\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | | | \\\\\\\\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | | | \\\\\\\\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| | | | | | | \\\\\\\\\\\\\\\\ | 0 | 0 | | 0 | | | | |
| Total | \\\\\\\ | \\\\\\\ | 0 | 210000 | 0 | 210000 | 23334 | 233334 | 0 | 233334 | 12592 | \\\\\\\\\\\\ | 45 | 12592 |

*Adult Day Care & Adult Day Health Care Net Service Cost

| | ADC | ADHC |
|---|---|---|
| Daily Care | | |
| Transportation | | |
| Administrative | | |
| Net Ser. Cost Total | | |

Certification of required minimum local match availability. Required local match will be expended simultaneously with Block Grant Funding.

2-23-21

Authorized Signature, Title — Date
Community Service Provider

Signature, County Finance Officer — Date

Signature, Chairman, Board of Commissioners — Date

# Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
## May 3, 2021

**Action Item # V. - 8.**

**From:**
David Stanley, Deputy County Manager for Health and Human Services

Health and Human Services - Health Services - FY 21-22 State Consolidated Agreement Approval (Amendment 1)

**Issue/Action Requested:**
Request that the Board of Commissioners approve an amendment to the consolidated agreement for FY 21-22 between the State of North Carolina and Brunswick County Health Services.

**Background/Purpose of Request:**
The purpose of the annual consolidated agreement is to maintain and promote the advancement of public health in North Carolina. The provisions of the agreement constitute the terms and conditions applicable to all health service activities that receive funding from state and federal sources.

The amendment further defines reporting requirements for local health department revenues and expenditures through the Aid to County system.

Staff recommends approval of the amendment to the consolidated agreement for FY 21-22.

**Fiscal Impact:**
Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations

**Approved By County Attorney:**
Yes

**County Manager's Recommendation:**
Recommend the Board of Commissioners approve the amendment to the consolidated agreement for FY 21-22 between the State of North Carolina and Brunswick County Health Services.

**ATTACHMENTS:**

Description

- Consolidated Agreement (Amendment 1) - FY 21-22

**Amendment 1 to the FY 2022 Consolidated Agreement**

This Amendment 1 amends the Consolidated Agreement in force for the period from June 1, 2021 to May 31, 2022, that is between the **North Carolina Department of Health and Human Services, Division of Public Health** (hereinafter referred to as "**DPH**") and the **Brunswick County Health and Human Services** (herein after referred to as "**LHD**"). This Amendment 1 is hereby effective on June 1, 2021.

As provided for under the terms of this Agreement, DPH and the LHD agree to amend the following agreement provisions:

## A. LHD RESPONSIBILITIES

*Subparagraph a. Performance, item 9. is hereby deleted, and its item number is reserved.*

a. **Performance**

9. Deleted and reserved.

*Subparagraph b. Data/Reporting, item 4. is hereby deleted and replaced in its entirety:*

b. **Data/Reporting**

4. The LHD shall report client, service, encounter, and other data as specified by applicable program rules, Agreement Addenda for State-funded budgets, and by North Carolina Administrative Code. Data shall be reported through North Carolina's centralized reporting system known as the LHD Health Services Analysis.

## B. DPH RESPONSIBILITIES

*Subparagraph c. Data/Reporting, item 1.d) is hereby deleted and replaced in its entirety:*

c. **Data/Reporting**

1. DPH shall provide the following automated data and surveillance systems to collect DPH program-related data from client, service, encounter and other data on behalf of the LHDs and other public health programs. DPH shall provide business and technical support to the users of these systems. DPH shall notify LHDs as opportunities and/or timelines for improved or emerging technology systems occur.

d) Aid-to-Counties System for reporting and claiming State funds and any federal funds which are allocated by DPH.

## D. FISCAL CONTROL

*Subparagraph h. Local Appropriations Budget is hereby deleted and replaced in its entirety:*

h. **Local Appropriations Budget:**

1. The LHD shall prepare and maintain a Local Appropriations Budget (reflecting the plans to use local appropriations or earned fees) for each Agreement Addendum in a manner consistent with

instructions provided in funding-specific budgetary guidance from DPH and the specific guidance from the respective programs.

2. The LHD shall not reduce county appropriations for maternal and child health services provided by the local health departments because they have received State appropriations for this purpose, pursuant to NCGS §130A-4.1.(a) State funds for maternal and child health care/nonsupplanting.

3. The LHD shall budget and expend all income earned by the LHD for maternal and child health programs supported in whole or in part from State or federal funds, received from the Department, to further the objectives of the program that generated the income, pursuant to NCGS §130A-4.1.(b) State funds for maternal and child health care/nonsupplanting.

4. The LHD shall not reduce county appropriations for health promotion services provided by the local health departments because they have received State appropriations for this purpose, pursuant to §130A-4.2. State funds for health promotion/nonsupplanting.

*Subparagraph i. Local Earned Revenues Budgeting and Reporting, item 2. is hereby deleted and replaced in its entirety:*

i. **Local Earned Revenues Budgeting and Reporting:** The LHD shall observe the following conditions when budgeting and expending Local Earned Revenues:

2. All earned revenue (officially classified as local funds) must be budgeted and spent in the program that earned it except:

a) Revenue generated by Women's and Children's Health (WCH) Section Programs may be budgeted and expended in any WCH Section Program, unless a specific Agreement Addendum has a more restrictive requirement.

b) Deleted.

*Subparagraph j. Aid-to-Counties Database and Expenditure Reports, items 1., 2., and 3. are hereby deleted and replaced in their entirety:*

j. **Aid-to-Counties Database and Expenditure Reports**: The LHD shall submit a monthly report of actual State, federal, and local required match expenditures to the DHHS Controller's Office via the Aid-to-Counties Database (ATC).

1. Specific ATC instructions and training will be provided by LTATB to LHDs.

2. Deleted and reserved.

3. The LHD shall submit to the DHHS Controller's Office a monthly Expenditure Report of the pertinent month's actual expenditures for all programs via ATC. The Office of the Controller's Aid-to-Counties Expenditure Control Schedule, published annually in December for the next calendar year, provides the submission dates for these expenditures. This schedule allows the LHD at least seven days to enter the pertinent month's expenditures into the Aid-to-Counties Database. Failure to meet the reporting deadline will result in the exclusion of those expenditures for that month. The LHD must submit these monthly Expenditure Reports via the Aid-to-Counties Database consecutively throughout the Agreement period.

The health director and the finance officer will approve the monthly Expenditure Report in the Aid-to-Counties Database and the system will alert the staff in the DHHS Controller's Office that expenditures have been approved and certified. The "Certification" verifies that the total State and

federal expenditures reported are valid for the pertinent month's actual expenditures. Local required match expenditures are part of the Expenditure Report. Funding is based on an allocation method, not a contract method, and counties receive reimbursement for services provided during one month in the following month.

Attachment A, LHD Maintenance of Effort Schedule is hereby deleted in full and replaced with Attachment A, LHD Assurance of County Appropriations Maintenance (Nonsupplanting).

In witness whereof, the **LHD** and the **Division of Public Health** have executed this Amendment 1 to the Consolidated Agreement.

**Brunswick County Health and Human Services**

Health or Human Services Director Date

Finance Officer Date

County Official Date

(This Amendment 1 to the Consolidated Agreement requires the County Official signature if it was included on the Consolidated Agreement.)

**North Carolina Department of Health and Human Services, Division of Public Health**

Division Director Date

## ATTACHMENT A
## LHD Assurance of County Appropriations Maintenance (Nonsupplanting)

The LHD assures compliance with the following North Carolina General Statutes:

§ 130A-4.1. State funds for maternal and child health care/nonsupplanting.

(a) The Department shall ensure that local health departments do not reduce county appropriations for maternal and child health services provided by the local health departments because they have received State appropriations for this purpose.

(b) All income earned by local health departments for maternal and child health programs supported in whole or in part from State or federal funds, received from the Department, shall be budgeted and expended by local health departments to further the objectives of the program that generated the income. (1991, c. 689, s. 170; 1997-443, s. 11A.57.)

§ 130A-4.2. State funds for health promotion/nonsupplanting.

The Department shall ensure that local health departments do not reduce county appropriations for health promotion services provided by the local health departments because they have received State appropriations for this purpose. (1991, c. 689, s. 171; 1997-443, s. 11A.58.)

Acting officially in an authorized capacity on behalf of the LHD and with an understanding of the LHD's responsibilities under this Assurance, I assure the nonsupplantation of county appropriations as specified above.

All information provided with this Assurance is up-to-date and accurate. I am aware that false statements could be cause for invalidating this Assurance and may lead to other administrative or legal action.

**Brunswick County Health and Human Services**

Health or Human Services Director Date

Finance Officer Date

County Official Date

(This Amendment 1 to the Consolidated Agreement requires the County Official signature if it was included on the Consolidated Agreement.)

FY 2022 Consolidated Agreement – Amendment 1 – North Carolina Department of Health and Human Services, Division of Public Health

Approved as to Form

_____ _____

County Attorney/Assistant Attorney Date
Brunswick County, North Carolina

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

By: _____ _____

Julie Miller, Finance Officer Date
Brunswick County, North Carolina

**IN WITNESS WHEREOF**, the parties hereto have caused the execution of the foregoing instrument, by the authority duly given and in duplicate originals, effective the day and year first above written.

By: _____ _____

Randell Woodruff, County Manager Date
Brunswick County, North Carolina

By: _____ _____

Brunswick County Commissioners (If Required) Date

# Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
## May 3, 2021

**Action Item # V. - 9.**
Operation Services - Amended Resolution to Post-Disaster Debris Policy

**From:**
Stephanie Lewis, Operation Services Director

**Issue/Action Requested:**
Request that the Board of Commissioners approve an amended Resolution updating the county's post-disaster debris management policy.

**Background/Purpose of Request:**
A Resolution to Establish a Post-Disaster Debris Management Policy was approved on May 1, 2017. After recent events, it was requested that the previous post-disaster debris policy be updated. The policy has been amended to expand the policies and procedures for post-disaster debris planning including providing thresholds for disaster debris contract activations and detailing the areas of the county that will receive debris pick up in the event the disaster debris contracts are activated.

**Fiscal Impact:**
Reviewed By Director of Fiscal Operations

**Approved By County Attorney:**
Yes

**County Manager's Recommendation:**
Recommend the Board of Commissioners approve an amended Resolution updating the county's post-disaster debris management policy.

**ATTACHMENTS:**

Description

- Resolution to Amend the Post-Disaster Debris Policy

*County of Brunswick*

*Office of the County Commissioners*

## RESOLUTION TO AMEND THE POST-DISASTER DEBRIS POLICY

**WHEREAS,** the County of Brunswick, through its Commissioners, wishes to eliminate any immediate threats to lives, public health, and safety; and

**WHEREAS,** the County of Brunswick, through its Commissioners, may use a significant portion of the available capacity of the landfill to dispose of incident-related debris; and

**WHEREAS,** although the Federal Emergency Management Agency (FEMA) cannot provide public assistance funding for the value of the loss of landfill capacity due to incident-related debris; and

**WHEREAS,** tipping fees will continue to be paid by the residents of Brunswick County to cover the County's waste disposal, recycling and/or reduction cost; and

**WHEREAS,** when the disaster debris management and monitoring contracts and debris management sites are activated, FEMA provides public assistance funding for collection, disposal and/or processing of debris.

**NOW, THEREFORE BE IT RESOLVED** that the Brunswick County Board of Commissioners establish the following policies and procedures for post-disaster planning:

- Immediately following a significant disaster or debris event, debris management contractors will be directed to complete debris assessments of unincorporated areas.
- Activation of the County's disaster debris contracts should be dependent upon the initial debris assessments. The threshold for reimbursement by the state for an undeclared event is damages in excess of 1% of the County's overall annual budget. Federal declaration criteria based on NCEM county threshold is currently $3.68 per capita, which would equal an activation trigger of 26,000 cy's of debris based on current contract pricing and current population estimate.
- When disaster debris management and monitoring contracts are activated, temporary debris management sites will be required and tipping fees will remain in place for the Brunswick County Landfill.
- Landfill airspace utilized for debris disposal will not be eligible for funding.
- Municipalities that activate disaster debris management contracts or that perform disaster debris collections may be required to use a temporary debris site instead of the landfill due to traffic and volume constraints.

- Debris disposal, recycling and/or reduction completed at the Brunswick County Landfill will be considered normal operations and tipping fees will not be waived.
- Storm debris collections performed by the County's disaster debris contractors should include private and orphaned roads and gated communities in the unincorporated areas. Collections in gated communities will only be conducted upon request and if the debris is determined to be a public safety issue.
- When disaster debris management and monitoring contracts are activated for all unincorporated areas countywide, then the county will also initiate the Memorandum of Agreement with NCDOT for debris collection on state roads in order to minimize confusion and maximize efficiency for residents.

Adopted this 3rd day of May 2021.

_____

Randy Thompson, Chairman
Brunswick County Commissioners

Attest:

_____

Andrea White, NCCCC
Clerk to the Board

# Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
## May 3, 2021

**Action Item # V. - 10.**
Operation Services - Leland Fuel Site Upgrades

**From:**
Stephanie Lewis, Operation Services Director

**Issue/Action Requested:**
Request that the Board of Commissioners approve the contract with MECO, Inc. of Augusta to complete fuel site upgrades at the Leland EMS Site #2 Fuel Site which is located at 8605 Trade Street NE, Leland, NC.

**Background/Purpose of Request:**
To increase the fuel capacity and upgrade dispensers at the Leland Fuel Site, a request for proposals was released on February 15, 2021. The existing 3,000 gallon above ground diesel tank will be replaced with a 10,000 gallon tank and the existing 3,000 gallon above ground gas tank will be replaced with a 5,000 gallon tank. More reliable dispensers will be installed. Proposals were received from five contractors and the lowest responsible bidder was MECO, Inc. of Augusta with a cost of $209,001.45. Funds are budgeted in 104250-459000 and 617110-459000.

**Fiscal Impact:**
Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations
Funds available in the current budget

**Approved By County Attorney:**
Yes

**County Manager's Recommendation:**
Recommend the Board of Commissioners approve the contract with MECO, Inc. of Augusta to complete fuel site upgrades at the Leland EMS Site #2 Fuel Site which is located at 8605 Trade Street NE, Leland, NC.

**ATTACHMENTS:**

Description

- Leland Fuel Site Upgrades Bid Tabulation
- Services Agreement

**Leland Fuel Site Upgrades**
**Bid Tabulation**

| | Option 1 | Option 2 | |
|---|---|---|---|
| Guardian Fueling Technologies | 206,090.00 | 267,133.00 | did not meet proposal requiremer |
| JF Petroleum Group | 237,838.12 | 307,959.65 | |
| MECO of Augusta/Greenville | 209,001.45 | 269,786.65 | |
| SPATCO Energy Solutions | 236,286.00 | 312,517.00 | |
| UST Fuel Solutions | 324,697.00 | 438,340.00 | |

ıts

DocuSign Envelope ID: 1BF61F4C-16A3-4892-9DF2-AF18227E5934

**NORTH CAROLINA**

**SERVICES AGREEMENT**

**BRUNSWICK COUNTY**

**THIS SERVICES AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as "County"), party of the first part, and MECO, Inc. of Augusta, (hereinafter referred to as "Provider"), party of the second part.

**WITNESSETH:**

## 1. SERVICES; FEES

The services to be performed under this Agreement (hereinafter referred to collectively as "Services") are set forth in the Request for Proposal entitled: "Leland Fuel Site Upgrades," as published by Brunswick County on February 15, 2021, and any addenda thereto, and on Exhibit "A" attached hereto, all of which are hereby incorporated by reference. The agreed upon fees for said Services are set forth on Exhibit "A."

Any exhibits or attachments referenced herein are hereby incorporated by reference and made a part of this Agreement. Any conflict between the language in an exhibit or attachment and the main body of this Agreement shall be resolved in favor of the main body of this Agreement.

## 2. TERM OF AGREEMENT AND TERMINATION

The term of this Agreement begins on May 3, 2021 (the "Effective Date") and continues in effect until project completion, unless sooner terminated as provided for herein. The County may terminate this Agreement at any time without cause by giving sixty (60) days' written notice to Provider. As soon as practicable after receipt of a written notice of termination without cause, Provider shall submit a statement to County showing in detail the work performed under this Agreement through the effective date of termination. County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. Provider shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, County may terminate this Agreement immediately and without notice to Provider if Provider becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Provider, or has a receiver or trustee appointed for substantially all of its property, or if Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours. Contractor must begin performing services within thirty (30) days from date of agreement.

## 3. NONAPPROPRIATION

If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be

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obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Provider 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 the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

## 4. COMPENSATION

The County agrees to pay fees as specified in Exhibit "A" or as set out above for the Services satisfactorily performed in accordance with this Agreement. Unless otherwise specified, Provider shall submit monthly invoices to County and include detail of all Services delivered or performed under the terms of this Agreement. County shall pay all undisputed and properly completed invoices within thirty (30) days of receipt. Notwithstanding the foregoing, County will not pay late fees on any charges under this Agreement. If County disputes any portion of the charges on any invoice received from Provider, the County shall inform Provider in writing of the disputed charges. Once the dispute has been resolved, Provider shall re-invoice County for the previously disputed charges, and, per any resolution between County and Provider, the County shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by Provider under this Agreement.

## 5. INDEPENDENT CONTRACTOR

Both County and Provider agree that Provider shall act as an independent contractor and shall not represent itself as an agent or employee of the County for any purpose in the performance of its duties under this Agreement. Provider represents that it has or will secure, at its own expense, all personnel required in performing the Services under this Agreement. Accordingly, Provider shall be responsible for payment of all federal, state and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. Provider shall not be entitled to participate in any plans, arrangements or distributions by the County pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to County employees.

In the event the Internal Revenue Service should determine that Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then Provider hereby acknowledges that all payments hereunder are gross payments, and the Provider is responsible for all income taxes and social security payments thereon.

## 6. PROVIDER REPRESENTATIONS

a. Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;

b. Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

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

d. In connection with Provider's obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses;

e. Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;

f. Provider will perform all Services in conformity with the specifications and requirements of this Agreement;

g. The Services provided by Provider under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including, without limitation, non-compete agreements);

h. Provider shall exercise reasonable care and diligence when performing the Services hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said Services;

i. Provider acknowledges that if any specific licenses, certifications or related credentials are required in its performance of the Services, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and

j. Provider shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by the County with respect to rules, regulations, policies and security procedures applicable to work on the County's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

## 7. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

Provider shall be solely responsible for any damage to or loss of the County's equipment, facilities, property and/or data arising out of the negligent or willful act or omission of Provider or its subcontractors. In the event that Provider causes damage to the County's equipment or facilities, Provider shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to such damage.

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## 8. NON-ENDORSEMENT AND PUBLICITY

County is not endorsing Provider or its Services, and Provider is not permitted to reference this Agreement or County in any manner without the prior written consent of County. Notwithstanding the foregoing, the parties agree that Provider may list the County as a reference in response to requests for proposals and may identify County as a customer in presentations to potential customers.

## 9. NON-EXCLUSIVITY

Provider acknowledges that County is not obligated to contract solely with Provider for the Services covered under this Agreement.

## 10. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

Provider hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

## 11. DEBARMENT

Provider hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any governmental department or agency. Provider must notify County within thirty (30) days if debarred by any governmental entity during this Agreement.

## 12. INDEMNIFICATION

Provider shall defend, indemnify and hold harmless County, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind which may be brought or made against County or which County must pay and incur arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Provider, its employees or agents. Provider further agrees to investigate, handle, respond to, defend and dispose of same at its sole cost and expense. Provider shall be fully responsible to County for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

## 13. INSURANCE

Provider shall procure and maintain in full force and effect at all times and at its sole cost and expense Commercial General Liability, Commercial Automobile Liability, Professional Liability and Workers' Compensation insurance, if applicable, and any additional insurance as may be required by County with limits acceptable to County. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include County as an additional insured and as a certificate holder.

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Provider shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by County. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. Provider shall have no right of recovery or subrogation against County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.

**14. WORKERS' COMPENSATION**

To the extent required by law, Provider shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event Provider is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, Provider shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling Provider's obligations under this Agreement.

Provider agrees to furnish County proof of compliance with said Act or adequate medical/ accident insurance coverage upon request.

**15. REMEDIES**

a. **RIGHT TO COVER.** If Provider fails to meet any completion date or resolution time set forth, due to no fault of County, the County may take any of the following actions with or without terminating this Agreement, and in addition to, and without limiting, any other remedies it may have:

   i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and Provider is again able to resume performance under this Agreement; and

   ii. Deduct any and all expenses incurred by County in obtaining or performing the Services from any money then due or to become due Provider and, should the County's cost of obtaining or performing the Services exceed the amount due Provider, collect the amount due from Provider.

b. **RIGHT TO WITHHOLD PAYMENT.** County reserves the right to withhold any portion, or all, of a scheduled payment if Provider fails to perform under this Agreement until such breach has been fully cured.

c. **SETOFF.** Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.

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d. **OTHER REMEDIES.** Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.

e. **NO SUSPENSION.** In the event that County disputes in good faith an allegation of breach by Provider, notwithstanding anything to the contrary in this Agreement, Provider agrees that it will not terminate this Agreement or suspend or limit any Services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

**16. TAXES**

Provider shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Provider shall substantiate, on demand by the County, that all taxes and other charges are being properly paid.

**17. HEALTH AND SAFETY**

Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performing the Services. Provider shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees in connection with performing the Services and other persons who may be affected thereby.

**18. NON-DISCRIMINATION IN EMPLOYMENT**

Provider shall not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state or local law or other unlawful form of discrimination. Provider shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Provider is determined by the final order of an appropriate agency or court of competent jurisdiction to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be cancelled, terminated or suspended in whole or in part by County, and Provider may be declared ineligible for further County agreements.

**19. COMPLIANCE WITH E-VERIFY PROGRAM**

Pursuant to N.C.G.S. § 143-133.3, Provider understands that it is a requirement of this Agreement that Provider and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Provider agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland

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Security, and Provider shall require its subcontractors to do the same. Upon request, Provider agrees to provide County with an affidavit of compliance or exemption.

## 20. CONFIDENTIAL INFORMATION

For purposes of this Agreement, the party disclosing Confidential Information is the "Discloser," and the party receiving Confidential Information is the "Recipient." "Confidential Information" shall mean any nonpublic information concerning the parties' respective businesses including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of any agreement between the parties and the discussions, negotiations and proposals related thereto. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as "Confidential." Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

a. in the public domain through no fault of the Recipient;

b. within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;

c. lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;

d. independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;

e. disclosed with the prior written consent of the Discloser; or

f. required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser's sole expense.

## 21. OWNERSHIP OF WORK PRODUCT

Should Provider's performance under this Agreement generate documents or other work product that are specific to the Services hereunder, such documents or work product shall become

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the property of County and may be used by County on other projects without additional compensation to Provider.

**22. NO ASSIGNMENT WITHOUT CONSENT**

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void. An assignee shall acquire no rights, and County shall not recognize any assignment in violation of this provision.

**23. GOVERNING LAW AND VENUE**

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

**24. DISPUTE RESOLUTION**

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

**25. GOVERNMENTAL IMMUNITY**

County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

**26. NON-WAIVER**

Failure by County at any time to require the performance by Provider of any of the provisions of this Agreement shall in no way affect County's right hereunder to enforce the same, nor shall any waiver by County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

**27. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral. Notwithstanding the foregoing, all documents included Provider's submitted Proposal are incorporated herein by reference and made an integral part of this Agreement.

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**28. HEADINGS**

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

**29. SEVERABILITY**

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

**30. AMENDMENTS**

No amendments or changes to this Agreement, or additional Proposals or Statements of Work, shall be valid unless in writing and signed by authorized agents of both Provider and County.

**31. NOTICES**

a. **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.

b. **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.

c. **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

i. <u>For the County</u>: Brunswick County Manager
P. O. Box 249
Bolivia, NC 28422
Fax: 910-253-2022

ii. <u>For the Provider</u>: MECO, Inc. of Augusta
2312 River Road
Piedmont, SC 29673

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**32. SIGNATURES**

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

_____
Clerk to the Board

**BRUNSWICK COUNTY**

By: _____
Chairman, Board of Commissioners

[SEAL]

**MECO, INC. OF AUGUSTA**

By: Roger Stephens

Printed Name: Roger Stephens

Title: Industrial Sales & Service Specialist

Date: 4/27/2021

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."

Julie A. Miller
Julie A. Miller, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

Bryan W. Batton
Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney

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**EXHIBIT "A"**
**SCOPE OF SERVICES/FEES**

***Services***

Completion of fuel site upgrades at the Leland EMS Site #2 which is located at 8605 Trade Street NE, Leland, NC 28451. The project consists of removing the existing aboveground storage tanks (AST) and dispensers and replacing with larger tanks and upgraded dispensers. Scope of work shall be according to the request for proposals for Leland Fuel Site Upgrades

- Submit cut sheets for proposed equipment components including tank fabrication approval drawings.
- Prepare and submit required AST removal and installation permit applications.
- Contractor to remove residual product from two (2) existing 3,000 gallon gasoline and diesel ASTs, product piping, dispenser, sumps and fill lines and properly degas storage tanks for safe transportation. Brunswick County will remove product from tanks to <6" prior to execution of this project. Contractor responsible for disposal of all residual petroleum and rinse water generated during tank and pipe cleaning at a permitted off-site disposal facility including providing disposal manifests for the disposition of all residual liquids.
- Contractor to disconnect product piping from existing AST;s as necessary to allow for reuse of piping entering the underground transition sump and generator copper lines for reuse with new AST system. Piping to be neatly cut and removed to allow loading of tanks by Brunswick County for off-site transport. Brunswick County shall provide trailers for off-site disposal of existing ASTs.
- Contractor to sawcut existing concrete tank pad 10' from asphalt edge behind existing piping transition sump access manhole and remove a rear portion of existing 22' x 18' concrete tank pad. Contractor is responsible for any damage to existing transition sump and all piping within 2' of ground penetration scheduled for reuse on new AST system.
- Contractor to construct new concrete tank pad as shown on drawings. Brunswick County will provide for clearing of trees and vegetation to access grounds for construction of new AST tank pad prior to execution of a contract. Contractor to excavate soils as necessary for construction of pad as specified and stockpile excess soils on-site for disposition by Brunswick County.
- Contractor to provide equipment and personnel to offload, set, and install one (1) new 5,000 gallon AST and one (1) new 10,000 gallon AST, as determined by Brunswick County, on new concrete pad.
- Contractor to install all necessary tank appurtenances including overfill prevention valves, submersible pumps, vents, clock gauges with battery powered high level alarm as shown on drawings.
- Contractor to install new 50 GPM high flow ULSD dispenser adjacent to new aboveground storage tanks as shown on drawings including hose, nozzle and high hose retriever.
- Contractor to install new 22 GPM twin product dispenser in same location as existing dispenser and connect to existing underground lines in sump, conduit, and wiring including new hoses, nozzles and high hose retrievers.

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- Contractor to furnish and install all necessary piping and supports to connect new above ground piping to existing piping penetrations in concrete pad including new schedule 40 single wall black steel piping as shown on contract drawings.
- Contractor to re-connect existing copper generator tubing to new diesel AST including installation of drop pipes.
- Contractor to furnish and install electrical conduit control and power wiring from existing breaker panel in EMS building to new ASTs as shown on drawings including spare conduit(s).
- Contractor to make wiring connections for new dispenser at existing remote island including any wiring necessary to ensure functionality with existing Fuelmaster cardreader software system.
- Contractor to install concrete bumper posts in front of new ASTs and existing fueling island to protect remote spill containers and product dispensers.
- Contractor to paint all new above ground piping and fittings with Alkyd enamel coating.
- Contractor to furnish and install placards and warning signs at ASTs and dispensing areas per NC Fire and NFPA codes.
- Contractor to make up all final product piping connections and pressure testing per Brunswick County permit requirements including, without limitation, system startup. Brunswick County will provide gasoline and diesel fuel as necessary for startup testing.
- Contractor to provide all services to ensure communication and startup of new product dispensers to existing Fuelmaster card reader system.
- Contractor to provide one (1), eight (8)-hour day of training to Brunswick County for proper operation and maintenance of all new equipment.

***Fees***

Total lump sum for Contractor to complete the Services is $216,606.83, inclusive of taxes.

# Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
## May 3, 2021

**Action Item # V. - 11.**
Utilities - Comprehensive Water Master Plan 2021

**From:**
John Nichols, P.E.

**Issue/Action Requested:**
Request that the Board of Commissioners authorize the Chairman and Clerk to the Board to approve the Professional Services Agreement for Architectural, Engineering and/or Surveying Services with CDM Smith, Inc., in the amount of $243,900 for engineering services associated with the 2021 Comprehensive Water Treatment & Distribution System Master Plan and approve an associated budget amendment.

**Background/Purpose of Request:**
In an effort to better serve the community's water needs and allow staff to more efficiently manage resources, Brunswick County Public Utilities solicited engineering firms to produce a county-wide water master plan report. The project goal is to develop a master plan that enables the County to strategically plan and budget for the future operation, maintenance, and capital improvements necessary to keep the system up-to-date and functioning properly as the system and population grows. The project is to provide long-range planning for a 20-year period. The last county-wide master plan was conducted in 2006.

Requests for Qualifications were requested via County standard procedures and were received from the following firms: CDM Smith, Inc., Dewberry Engineering, Inc., WithersRavenel, Inc., and Timmons Group. The selection committee selected CDM Smith, Inc., based on qualifications and experience with similar projects. A final scope of work for the project has been negotiated and is attached.

Staff recommends approval of the proposed contract with CDM Smith, Inc., in the amount of $243,900.

**Fiscal Impact:**
Budget Amendment Required, Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations
Budget amendment reduces the transfer to water capital projects and increases professional service $243,900 for contract award.

**Approved By County Attorney:**
Yes

**Advisory Board Recommendation:**
Not Applicable

**County Manager's Recommendation:**
Recommend the Board of Commissioners authorize the Chairman and Clerk to the Board to approve the Professional Services Agreement for Architectural, Engineering and/or Surveying Services with CDM Smith, Inc., in the amount of $243,900 for engineering services associated with the 2021 Comprehensive Water Treatment & Distribution System Master Plan and approve an associated budget amendment.

**ATTACHMENTS:**

Description

- 20210503 Budget Amendment Water Master Plan.pdf
- Professional Services Agreement

| Request Info | |
|---|---|
| **Type** | Budget Amendment |
| **Description** | Water Master Plan |
| **Justification** | Board Meeting 05/03/2021-Reduce transfer to projects $243,900 and move to professional services for award of contract to CDM Smith, Inc. for 2021 Comprehensive Water Treatment and Distribution System Master Plan. |
| **Originator** | Tiffany Rogers |

| Items | | | | | | |
|---|---|---|---|---|---|---|
| Department | Object | Dept Desc | Object Desc | Amount | Incr/Decr | Dr/Cr |
| 619800 | 498041 | Interfund Trans Water Fund | Transfer to Water Capital Proj | -243900 | Decrease | Credit |
| 617110 | 419900 | Water - Administration | Prof Ser-Other | 243900 | Increase | Debit |

| Total | |
|---|---|
| **Grand Total:** | 0 |

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**NORTH CAROLINA**

**BRUNSWICK COUNTY**

**PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES (Mini-Brooks Act/Qualification Based Selection)**

**THIS PROFESSIONAL SERVICES AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as "County" or "Owner"), party of the first part and CDM Smith Inc., (hereinafter referred to as "Provider" or "Engineer"), party of the second part.

**WITNESSETH:**

## 1. SERVICES; FEES

Provider agrees to perform the services (hereinafter referred to as the "Services") in connection with the project (hereinafter referred to as the "Project"), as more fully set forth in the Request for Qualifications entitled: "Comprehensive Water Treatment & Distribution System Master Plan" published by Brunswick County on February 16, 2021, and any addenda thereto, and on Exhibit "A" and Exhibit "B" attached hereto.

Any exhibits or attachments referenced herein are hereby incorporated by reference and made a part of this Agreement. Any conflict between the language in an exhibit or attachment and the main body of this Agreement shall be resolved in favor of the main body of this Agreement.

## 2. TERM OF AGREEMENT; TIME OF COMPLETION

The term of this Agreement begins one (1) business day after approval by the Brunswick County Board of Commissioners (the "Effective Date") and continues in effect until 12/19/2022, unless extended or sooner terminated as provided for herein or in the General Conditions of the Contract. Notwithstanding the foregoing, Provider shall complete the Services in accordance with the schedule set forth on Exhibit "A" (the "Time of Completion"), unless extended as provided for in the General Conditions of the Contract.

## 3. TERMINATION

The County may terminate this Agreement at any time without cause by giving written notice to Provider. The County may set the effective date of termination at a time up to thirty (30) days following notice to Provider to allow Provider ample time to complete tasks for which value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks and/or to assemble Project materials in orderly files. As soon as practicable after receipt of a written notice of termination without cause, Provider shall submit a statement to County showing in detail the work performed under this Agreement through the effective date of termination. County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. Provider shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate

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termination of the Agreement. Notwithstanding the foregoing, County may terminate this Agreement immediately and without notice to Provider if Provider becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Provider, or has a receiver or trustee appointed for substantially all of its property, or if Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

## 4. BRUNSWICK COUNTY GENERAL CONDITIONS OF THE CONTRACT

This Agreement, in addition to any construction documents prepared hereunder, shall be subject to the Brunswick County, North Carolina General Conditions of the Contract (for construction contracts), unless the County directs otherwise. In the event of a conflict between the General Conditions of the Contract and this Agreement, this Agreement shall prevail.

## 5. NONAPPROPRIATION

If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Provider 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 the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

## 6. COMPENSATION

The County agrees to pay Provider as specified in the Exhibits attached hereto or as set out above for the Services satisfactorily performed in accordance with this Agreement. Unless otherwise specified, Provider shall submit monthly invoices to County and include detail of all Services delivered or performed under the terms of this Agreement. County shall pay all undisputed and properly completed invoices within forty-five (45) days of receipt. Notwithstanding the foregoing, County will not pay late fees on any charges under this Agreement. If County disputes any portion of the charges on any invoice received from Provider, the County shall inform Provider in writing of the disputed charges. Once the dispute has been resolved, Provider shall re-invoice County for the previously disputed charges, and, per any resolution between County and Provider, the County shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by Provider under this Agreement.

## 7. INDEPENDENT CONTRACTOR

Both County and Provider agree that Provider shall act as an independent contractor and shall not represent itself as an agent or employee of the County for any purpose in the performance of its duties under this Agreement. Provider represents that it has or will secure, at its own expense, all personnel required in performing the Services under this Agreement. Accordingly, Provider shall be responsible for payment of all federal, state and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security

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tax, unemployment insurance taxes and any other taxes or business license fees as required. Provider shall not be entitled to participate in any plans, arrangements or distributions by the County pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to County employees.

In the event the Internal Revenue Service should determine that Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then Provider hereby acknowledges that all payments hereunder are gross payments, and the Provider is responsible for all income taxes and social security payments thereon.

## 8. OPINIONS OF COST

If applicable, Provider shall provide opinions of probable construction costs, including but not limited to, designer fees, costs of construction, costs of equipment, furnishings, signage, permit fees and appropriate contingencies, at Project intervals determined by County. Such opinions of costs shall be representative of Provider's best judgment as an experienced and qualified professional generally familiar with the construction industry. The parties acknowledge that actual bids, proposals and costs may vary from Provider's opinions of costs based on the cost of labor, materials, equipment or services furnished by others, differing methods for determining prices, competitive bidding or other market conditions. When requested by County, Provider shall participate in rebidding, renegotiation and design adjustments to the extent such are necessary to reduce Project costs. Such services shall be performed by Provider without additional compensation.

## 9. ACCOUNTING RECORDS

Provider shall maintain accounting records in accordance with generally accepted accounting practices and shall make such records available for inspection by County upon reasonable request and during normal business hours for a period of three (3) years following completion of the Services.

## 10. PERMITS AND APPROVALS

Provider shall provide County with a schedule of all required approvals and the dates by which application for such approvals must be made in order to avoid any risk of delay to the Project. Provider shall prepare the necessary application forms, present documents requiring approval by County and submit documents with County approval to appropriate federal, state and local government or other agencies in a timely manner.

## 11. ENVIRONMENTAL CONDITIONS

County shall disclose to Provider the existence of all known and suspected hazardous substances, including, without limitation: asbestos; polychlorinated biphenyls (PCBs); petroleum; hazardous waste; or radioactive material located at or near the site where the Services are to be performed. If Provider discovers any undisclosed hazardous substances, or if investigative or remedial action or other professional services are necessary, Provider may, at its option and

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without liability for damages, suspend performance of the Services hereunder until County: (1) retains an appropriate specialist consultant or contractor to identify and, as appropriate, abate, remediate or remove the hazardous substances; and (2) warrants that the site where the Services are to be performed are in full compliance with applicable laws and regulations. Notwithstanding the foregoing, if the presence of any hazardous materials adversely affects the performance of Provider's duties under this Agreement, then Provider shall have the option of: (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause upon thirty (30) days' written notice to County.

**12. PROVIDER REPRESENTATIONS**

a. Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;

b. Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

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

d. In connection with Provider's obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses;

e. Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;

f. Provider has not engaged in corrupt, fraudulent or coercive practices in competing for or executing this Agreement;

g. Provider will perform all Services in conformity with the specifications and requirements of this Agreement;

h. The Services provided by Provider under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including, without limitation, non-compete agreements);

i. Provider shall exercise reasonable care and diligence when performing the Services hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said Services;

j. Provider shall be responsible for all errors, omissions or deficiencies in technical accuracy in any drawings, specifications or other documents prepared or services rendered by Provider, its subcontractors or consultants and shall correct, at no

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additional cost to County, any and all errors, omissions, discrepancies, ambiguities, mistakes, deficiencies or conflicts;

k. Provider acknowledges that if any specific licenses, certifications or related credentials are required in its performance of the Services, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and

l. Provider shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by the County with respect to rules, regulations, policies and security procedures applicable to work on the County's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

**13. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA**

Provider shall be solely responsible for any damage to or loss of the County's equipment, facilities, property and/or data arising out of the negligent or willful act or omission of Provider or its subcontractors or consultants. In the event that Provider causes damage to the County's equipment or facilities, Provider shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to such damage.

**14. NON-ENDORSEMENT AND PUBLICITY**

County is not endorsing Provider or its Services, and Provider is not permitted to reference this Agreement or County in any manner without the prior written consent of County. Notwithstanding the foregoing, the parties agree that Provider may list the County as a reference in response to requests for proposals and may identify County as a customer in presentations to potential customers.

**15. NON-EXCLUSIVITY**

Provider acknowledges that County is not obligated to contract solely with Provider for the Services covered under this Agreement.

**16. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL**

Provider hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

**17. DEBARMENT**

Provider hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this

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Agreement by any governmental department or agency. Provider must notify County within thirty (30) days if debarred by any governmental entity during this Agreement.

**18. INDEMNIFICATION**

Provider shall indemnify and hold harmless County, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind (collectively, "Claims") which may be brought or made against County or which County must pay and incur arising out of this Agreement should fault or negligence on the part of the Provider or its subcontractors or consultants be the proximate cause of such Claims. Provider shall be fully responsible to County for the acts and omissions of its subcontractors or consultants and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

**19. INSURANCE**

Provider shall procure and maintain in full force and effect at all times and at its sole cost and expense, and shall ensure that any of its consultants maintains in full force and effect at all times and at its sole cost and expense, Commercial General Liability, Commercial Automobile Liability, Professional Liability and Workers' Compensation insurance, if applicable, and any additional insurance as may be required by County with limits acceptable to County. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include County as an additional insured and as a certificate holder. Provider shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by County. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. Provider shall have no right of recovery or subrogation against County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.

**20. WORKERS' COMPENSATION**

To the extent required by law, Provider shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event Provider is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, Provider shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling Provider's obligations under this Agreement**.**

Provider agrees to furnish County proof of compliance with said Act or adequate medical/ accident insurance coverage upon request.

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## 21. REMEDIES

a. **RIGHT TO COVER.** If Provider fails to meet any completion date or resolution time set forth, due to no fault of County, the County may take any of the following actions with or without terminating this Agreement, and in addition to, and without limiting, any other remedies it may have:

   i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and Provider is again able to resume performance under this Agreement; and

   ii. Deduct any and all expenses incurred by County in obtaining or performing the Services from any money then due or to become due Provider and, should the County's cost of obtaining or performing the Services exceed the amount due Provider, collect the amount due from Provider.

b. **RIGHT TO WITHHOLD PAYMENT.** County reserves the right to withhold any portion, or all, of a scheduled payment if Provider fails to perform under this Agreement until such breach has been fully cured.

c. **SETOFF.** Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.

d. **OTHER REMEDIES.** Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.

e. **NO SUSPENSION.** In the event that County disputes in good faith an allegation of breach by Provider, notwithstanding anything to the contrary in this Agreement, Provider agrees that it will not terminate this Agreement or suspend or limit any Services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

## 22. TAXES

Provider shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Provider shall substantiate, on demand by the County, that all taxes and other charges are being properly paid.

## 23. HEALTH AND SAFETY

Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performing the Services. Provider shall take all

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necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees in connection with performing the Services and other persons who may be affected thereby.

**24. NON-DISCRIMINATION IN EMPLOYMENT**

Provider shall not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state or local law or other unlawful form of discrimination. Provider shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Provider is determined by the final order of an appropriate agency or court of competent jurisdiction to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be cancelled, terminated or suspended in whole or in part by County, and Provider may be declared ineligible for further County agreements.

**25. COMPLIANCE WITH E-VERIFY PROGRAM**

Pursuant to N.C.G.S. § 143-133.3, Provider understands that it is a requirement of this Agreement that Provider and its subcontractors or consultants must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Provider agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and Provider shall require its subcontractors and consultants to do the same. Upon request, Provider agrees to provide County with an affidavit of compliance or exemption.

**26. CONFIDENTIAL INFORMATION**

For purposes of this Agreement, the party disclosing Confidential Information is the "Discloser," and the party receiving Confidential Information is the "Recipient." "Confidential Information" shall mean any nonpublic information concerning the parties' respective businesses including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of any agreement between the parties and the discussions, negotiations and proposals related thereto. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as "Confidential." Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

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a. in the public domain through no fault of the Recipient;

b. within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;

c. lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;

d. independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;

e. disclosed with the prior written consent of the Discloser; or

f. required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser's sole expense.

**27. OWNERSHIP OF WORK PRODUCT**

a. All work product created by Provider pursuant to this Agreement, including, without limitation, design drawings, construction documents, photographs and models and any derivative works and compilations, and whether or not such work product is considered a "work made for hire" or an employment to invent (hereinafter referred to collectively as "Work Product") shall be the exclusive property of County. County and Provider agree that such original works of authorship are "works made for hire" of which County is the author within the meaning of the United States Copyright Act. To the extent that County is not the owner of the intellectual property rights in and to such Work Product, Provider hereby irrevocably assigns to County any and all of its rights, title and interest in and to all original Work Product created pursuant to this Agreement, whether arising from copyright, patent, trademark, trade secret or any other state or federal intellectual property law or doctrine. Upon County's request, Provider shall execute such further documents and instruments or obtain such documents from third parties, including consultants and subcontractors, if applicable, necessary to fully vest such rights in County. Provider forever waives any and all rights relating to original Work Product created pursuant to this Agreement, including without limitation, any and all rights arising under 17 U.S.C. § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

b. In the event the use of any of Provider's intellectual property, including any derivative work created with the use of third-party intellectual property, is necessary for the use of any Work Product, Provider hereby grants to County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the intellectual property for the purposes set forth in this Agreement and will ensure that any third-party grants the same.

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c. County may use Work Product for any other purpose and on any other project without additional compensation to Provider. Notwithstanding the foregoing, the use of Work Product by County for any purpose other than as set forth in this Agreement shall be at County's risk.

**28. NO ASSIGNMENT WITHOUT CONSENT**

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void. An assignee shall acquire no rights, and County shall not recognize any assignment in violation of this provision.

**29. GOVERNING LAW AND VENUE**

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

**30. DISPUTE RESOLUTION**

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

**31. GOVERNMENTAL IMMUNITY**

County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

**32. NON-WAIVER**

Failure by County at any time to require the performance by Provider of any of the provisions of this Agreement shall in no way affect County's right hereunder to enforce the same, nor shall any waiver by County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

**33. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral. Notwithstanding the foregoing, all documents included in the Request for Qualifications and the qualifications statement submitted

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by Provider, if applicable, including, but not necessarily limited to: General Conditions; Supplementary General Conditions; Scope of Work; Specifications; Addenda; Accepted Proposal; Notice to Proceed; Performance Bond; Payment Bond; MBE forms; Power of Attorney; Insurance Certificates; Approval by County Commissioners; Tax Statement and Certification; Notice of Substantial Completion; Notice of Final Completion and Acceptance; and Drawings are incorporated herein by reference and made an integral part of this Agreement. To the extent the terms of such documents conflict with the terms of this Agreement, the terms of this Agreement shall prevail.

**34. HEADINGS**

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

**35. SEVERABILITY**

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

**36. AMENDMENTS**

No amendments or changes to this Agreement, or additional Proposals or Statements of Work, shall be valid unless in writing and signed by authorized agents of both Provider and County.

**37. NOTICES**

a. **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.

b. **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.

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c. **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

i. For the County: Brunswick County Manager
P.O. Box 249
Bolivia, NC 28422
Fax: 910-253-2022

ii. For the Provider: CDM Smith Inc.
5400 Glenwood Avenue, Suite 400
Raleigh, NC 27612

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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**38. SIGNATURES**

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

**BRUNSWICK COUNTY**

_____
Clerk to the Board /
Deputy Clerk to the Board

By: _____
Chairman, Board of Commissioners

[SEAL]

**CDM SMITH INC.**

By: Reed M Barton

Printed Name: Reed M. Barton

Title: Client Service Leader

Date: 4/29/2021

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."

Julie A. Miller
Julie A. Miller, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

Robert V. Shaver, Jr.
Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney

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This is **EXHIBIT A,** consisting of 9 pages, referred to in and part of the **Professional Services Agreement** between Owner and Engineer to which it is attached.

**Engineer's Services**

The Professional Services Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Services in accordance with the Request for Qualifications, as applicable, and in accordance with the Basic and Additional Services as set forth below.

**PART 1 – BASIC SERVICES**

Brunswick County Utilities (County) provides water service to 45,940 retail customers and nine (9) wholesale customers from two water treatment plants. The County is anticipating significant growth over the next twenty (20) years and is seeking to develop a Master Plan to evaluate water supply, treatment, transmission, and distribution needs to support existing customers and future growth and a Capital Improvement Plan to guide the planning of water system projects.

This Scope of Services includes development of a comprehensive Water Treatment and Distribution System Master Plan including water demand projections, hydraulic model development and evaluation, water supply and treatment evaluation, and phased recommendations for future water infrastructure needs. This Scope of Services consists of the following major tasks:

Task 1 – Kickoff & Data Review

Task 2 – Hydraulic Model Updates & Calibration

Task 3 – Water Demand Projections

Task 4 – Hydraulic Evaluation & Identify Alternatives

Task 5 – Water Supply & Treatment Evaluation

Task 6 – Alternatives Analysis, Phasing & Capital Improvement Plan

Task 7 – Master Plan & Presentation

Task 8 – Project & Quality Management

***A1.01 Task 1 – Kickoff and Data Review***

**1.01.1 Data Collection and Review**

Engineer will obtain and review information from the County pertaining to existing water supply and demands, metered water usage, growth projections, existing water distribution system hydraulic model, GIS and other data needed to develop and update the hydraulic model of the water distribution system,

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and previous studies applicable to this master plan. A preliminary data request list will be provided to the County to identify data needed to complete the master plan.

### 1.01.2 Kickoff Meeting

Engineer will conduct a virtual kickoff meeting with County staff to define the goals, objectives and priorities to help focus the work effort to be accomplished. Data collection will also be discussed as well as schedule, communications, and risk management. Engineer will develop meeting minutes and distribute to all meeting attendees.

**Task 1 Deliverables:**

- Data Request List
- Kickoff Meeting Minutes
- List of project milestones with dates

## *A1.02 Task 2 – Hydraulic Model Updates and Calibration*

### 1.02.1 Hydraulic Model Updates

The County has an existing water distribution system model developed in WaterGEMS software. Engineer will evaluate the status of the existing model versus the County's GIS. Engineer will update the model to include any water system facilities constructed since the previous model update and work with the County to obtain as-built drawings to address inconsistencies between the existing model and GIS.

Modeled tanks, pumps and valves will be reviewed and updated based on manufacturer's curves, pump performance data, or as-built data provided by the County.

Engineer will meet with operators to discuss typical system operations and obtain information to set up the model to simulate the system operations for extended period simulation (EPS) model runs. One virtual meeting with operations staff to discuss these items is assumed.

### 1.02.2 Existing Demand Allocation

Engineer will allocate existing demands into the hydraulic model based on meter/billing records. Annual average demand for each customer (from meter/ billing data) will be geocoded by address or point and allocated to the nearest pipe in the hydraulic model. Based on review of historical data, peaking factors will be developed to simulate maximum and average demand days. Estimates of non-revenue water will also be included in system-wide demands. Estimates of water supplied from the County's system to outside municipalities or other wholesale users will be determined from meter data and input as demand nodes in the model.

After review of monthly meter/billing data, Engineer will request hourly data from the County's advanced metering infrastructure (AMI) system. Engineer will analyze the AMI data to determine diurnal demand patterns for key customers or customer types. If hourly data is not able to be provided by the County, Engineer will apply typical diurnal demand patterns based on Engineer's experience with water systems of similar size/customer base.

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### 1.02.3 Model Calibration

Engineer will calibrate the model for both hydraulics and extended period simulations using field and operational data. Activities include:

- Develop a plan for collecting field data and other data requirements for model calibration. Engineer will incorporate County's feedback on the proposed plan.
- Identify up to 15 proposed locations for collecting hydrant flow test data. It is assumed that County staff will conduct the hydrant flow tests and provide data to the Engineer. Engineer will provide one person for up to 1 day to assist with starting field data collection and witnessing hydrant flow test procedures.
- Review available system pressure logging data and identify proposed locations for collecting additional pressure data from temporary pressure loggers, if necessary, to verify modeled pressures. It is assumed County will provide the equipment and labor to collect pressure data and provide data to the Engineer.
- Run simulations to compare model results to field measured values. Model calibration will be accomplished using an iterative process where simulation results are compared to field measured values. Where there is disagreement, the model parameters will be adjusted and the model will be rerun and the results rechecked. This process continues until model results agree reasonably with field observations. Potential calibration issues will be summarized for discussion with County staff. Additional field investigation by County staff may be required, depending on the calibration results.
- Calibrate the model for extended period simulations by comparing pressures, flows and tank levels at known locations over a 24-hour period.

Engineer will conduct a virtual meeting with County staff to review the findings and results of the model updates and calibration. This meeting is assumed to also discuss the Task 3 water demand projections.

**Task 2 Deliverables:**

- Model calibration plan
- A copy of the final calibrated WaterGEMS hydraulic model will be provided at the completion of the project
- A copy of the model data exported to GIS format will be provided at the completion of the project
- Meeting minutes for model updates, calibration, and demand projections meeting

## *A1.03 Task 3 – Water Demand Projections*

Engineer will develop future water demand projections for three planning periods: near-term (approximately 5 years), mid-term (approximately 10 years), and long-term (approximately 20 years). Engineer will review and utilize population growth projections, developed by the County's wastewater master planning consultant, as a basis for the projections. This task relies upon growth projections developed for the wastewater master plan and does not include additional development of growth

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projections. One coordination meeting with the County's wastewater master planning consultant is included in this task. Water demands will be estimated by applying unit demand factors estimated from historical water billing data to the growth and population projections.

Engineer will consult with County staff to determine the timing and quantity of proposed water supply to wholesale water purchasers or other major users.

Seasonal peaking factors will be determined from historical data and applied to account for high-season and off-season population.

Engineer will conduct a virtual meeting with County staff to review and approve the draft water demand projections. This meeting is assumed to also discuss the Task 2 model updates and calibration.

**Task 3 Deliverables:**

- Summary tables and figures of the draft water demand projections for the County's review

### *A1.04 Task 4 – Hydraulic Evaluation and Identify Alternatives*

#### 1.04.1 Establish Criteria and Existing System Evaluation

In collaboration with the County, Engineer will establish criteria for system assessment and modeling including allowable pressure ranges, maximum velocities, allowable headloss, water age, fire flow requirements, resiliency, and other factors. The evaluation criteria will include the requirements of applicable state regulations.

Engineer will use the calibrated hydraulic model developed under Task 2 to perform extended period simulations to confirm that tanks can be refilled on maximum day demand scenarios, that minimum pressures are met under maximum day demands (which includes peak hour) and steady-state runs to check fire-flow availability throughout the existing system.

Engineer will review existing system operation and demands to determine if established hydraulic criteria are being met and to identify immediate action requirements.

#### 1.04.2 Evaluate Future System Improvements

Engineer will use the calibrated hydraulic model developed under Task 2 to perform a hydraulic evaluation and determine system improvements required to meet projected water demands at the defined planning periods. Activities include:

- Prior to complete calibration of the system, engineer will provide preliminary pipe sizing overview.
- Assign future demand projections to junctions in the model. Where necessary, proposed transmission mains will be extended to currently un-served areas to account for future development. Sizing of the new transmission mains will be evaluated. New transmission mains will be routed along roadways.

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- Review near-term, mid-term, and long-term system operation and demand scenarios in a similar fashion to the existing system analyses. System deficiencies with respect to the established criteria will be identified for each planning period.

- Evaluate system-wide storage needs through the planning horizon, considering diurnal demand fluctuation needs and fire-flow requirements.

- Identify improvements to address near-term through long-term system deficiencies. This activity will consider the potential sources of future water supply identified under Task 5. Infrastructure improvements may consist of new water mains, new pumps at existing pump stations, new booster pump stations, and new storage tanks. Potential changes to system operations will also be evaluated to address deficiencies.

**1.04.3 INTENTIONALLY OMITTED**

**1.04.4 Identify Alternatives**

Based on results of the hydraulic model evaluation (Task 4) and water supply evaluation (Task 5), Engineer will develop system-wide alternatives to address deficiencies and meet future demands from both the water supply and water distribution perspectives. Up to 5 alternatives will be developed. Engineer will identify potential implementation problems or other non-cost related factors for improvement alternatives, such as water quality impacts, permitting, constructability, expandability, environmental impacts, redundancy, and operational flexibility.

Conceptual cost estimates and phasing for the infrastructure improvement alternatives identified in Task 4 will be developed under Task 6.

Engineer will conduct an in-person workshop with County staff to review the hydraulic evaluation and alternatives. This workshop is assumed to also discuss the Task 5 water supply and treatment evaluation.

**Task 4 Deliverables:**

- Brief memorandum summarizing the initial evaluation and conclusions for the fast-track projects
- Conceptual map of possible future projects to serve future areas. Meeting minutes for hydraulic evaluation & alternatives and water supply & treatment evaluation workshop

***A1.05 Task 5 – Water Supply and Treatment Evaluation***

**1.05.1 Water Supply Capacity Evaluation**

The County's existing water treatment facilities include the Northwest Water Treatment Plant (NWTP) with water supply from the Cape Fear River and the 211 WTP with groundwater supply. Engineer will perform a gap analysis that compares the existing and future build-out capacity of the existing water supply sources and WTPs with the future water demand projections. Engineer will identify options for meeting the future water demands and will provide a conceptual evaluation to compare the identified alternatives with respect to the following:

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- Quantity of supply
- Water quality
- Treatability and cost of treatment
- Permitting requirements
- Sustainability
- Geographic location in relation to demands and demand growth
- Reliability and redundancy
- Transmission improvements needed to convey water

The evaluation of water supplies will be based on desktop information including existing reports and data about candidate supplies, experiences of other water systems which use those supplies, Engineer's experience with treatment technologies, discussions with regulatory agencies, and other pertinent information. This scope does not include any field testing. Recommendations will be provided for further testing as part of subsequent studies/design to confirm viability of source water supplies and treatment.

### 1.05.2 Water Treatment Improvements

Engineer will identify and evaluate capital projects needed to maintain, improve, and optimize the County's existing WTPs. These may include:

- Raw-water storage expansion, NWTP (potential future impoundment)
- Replacement of RO Membranes, NWTP
- Additional RO Membrane capacity, NWTP
- High-service pump replacements, both WTPs
- Aging facilities (e.g., chemicals, etc.), both WTPs
- Residuals handling improvements, both WTPs
- Wellfield maintenance, 211 WTP
- Addition of groundwater wells, NWTP

Engineer will provide conceptual evaluation of alternatives for the above improvements, including lifecycle costs where appropriate to compare alternatives (e.g. constructing new residuals dewatering vs. contract operations). Engineer will develop capital costs and phasing of the improvements to be included in the Capital Improvement Plan under Task 6.

Engineer will conduct an in-person workshop with County staff to review the water supply and treatment. This meeting is assumed to also discuss the Task 4 hydraulic evaluation and alternatives.

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### *A1.06 Task 6 – Alternatives Analysis, Phasing, and Capital Improvement Plan*

Engineer will review the alternatives for future water supply, treatment, and distribution developed under Tasks 4 and 5. Conceptual level capital cost estimates will be prepared for each alternative for comparison. Engineer will work with the County to identify the appropriate evaluation factors and rank the alternatives accordingly, and to recommend a preferred alternative to meet the overall planning objectives.

Engineer will develop a phased plan for implementation of the recommended improvements, including conceptual level cost estimates, to support a Capital Improvement Plan (CIP) for the County's water system. The CIP will include a list of prioritized projects with timing of implementation and cost. Engineer will develop project sheets for each project that include a map showing the project location, project assumptions, size, cost, and projected year of implementation.

Engineer will conduct a virtual meeting with County staff to review the draft CIP and will incorporate the County's comments into a final CIP.

**Task 6 Deliverables:**

- Draft and Final CIP including list of projects and cost estimates
- Meeting minutes for draft CIP meeting

### *A1.07 Task 7 – Master Plan and Presentation*

#### 1.07.1 Develop Master Plan Report

Engineer will develop a Water Treatment and Distribution System Master Plan report that summarizes the methodologies, results, and conclusions of the tasks included in this Scope of Services. The report will include the recommended CIP and an Executive Summary.

The Master Plan report will include detailed descriptions of each recommended improvement along with the key criteria driving the need for that improvement. This will allow the County flexibility to adjust improvements should changes be experienced in future growth or other conditions.

Engineer will provide a draft report to the County for review. One virtual meeting is included in this task to discuss the draft report. After the meeting, Engineer will address comments and prepare a final report for the County.

#### 1.07.2 Presentation to Board of Commissioners

Engineer will develop presentation materials and present the findings of the project at a meeting of the County Board of Commissioners.

**Task 7 Deliverables:**

- One electronic copy and two (2) hard copies of the Draft Master Plan report
- One electronic copy and seven (7) hard copies of the Final Master Plan report
- Presentation for the Board of Commissioners meeting

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### *A1.08 Task 8 – Project and Quality Management*

Engineer will perform activities involved with the planning and subsequent monitoring and control of the project throughout the duration of the project. Engineer will conduct regular communications with the County's project manager, prepare materials and facilitate meetings as listed in Tasks 1 through 7, and provide written progress reports to be submitted with monthly invoices. Engineer will undertake quality control activities in accordance with the Engineer's Quality management System that include monthly project status reporting, communication plans, and independent specialist reviews.

**Task 8 Deliverables:**

- Monthly progress reports and invoices

## ASSUMPTIONS AND EXCLUSIONS

The following list of exclusions is provided to clarify the assumptions used to create this Scope of Services. The following items are excluded:

- Any work not explicitly stated herein
- Providing equipment or labor for field testing for model calibration, beyond providing one person for up to 1 day to witness hydrant flow test procedures
- Development of population growth projections. These are assumed to be provided by the County's wastewater master plan consultant
- Field investigations for alternative water supply options (groundwater surveys, well installation and yield tests, etc.)
- Geotechnical, land survey, and subsurface utility exploration surveys
- Purchase of hydraulic modeling software
- Water rate studies

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## SCHEDULE

It is anticipated that this Project will take approximately fourteen (14) months to complete after receipt of the initial data request in accordance with the schedule included below. This schedule assumes the following:

- County will provide necessary data in a timely manner and will provide review comments on draft deliverables within two weeks.
- Population growth projection information is obtained from the wastewater master planning project within two (2) months of Notice to Proceed (NTP).
- Field testing data for model calibration will be provided by the County within three (3) months of NTP.

| | Months from Receipt of Initial Data | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| Task 1 – Kickoff & Data Review | ■ | | | | | | | | | | | | | |
| Task 2 – Hydraulic Model Updates & Calibration | | ■ | ■ | ■ | | | | | | | | | | |
| Task 3 – Water Demand Projections | | | ■ | ■ | | | | | | | | | | |
| Task 4 – Hydraulic Evaluation & Identify Alternatives | | | | | ■ | ■ | ■ | | | | | | | |
| Task 4.2 – Preliminary Sizing Evaluation | ■ | ■ | | | | | | | | | | | | |
| Task 5 – Water Supply & Treatment Evaluation | | | | | ■ | ■ | ■ | | | | | | | |
| Task 6 – Alternatives Analysis, Phasing & Capital Improvement Plan | | | | | | | ■ | ■ | ■ | | | | | |
| Task 7 – Master Plan & Presentation | | | | | | | | | | ■ | ■ | ■ | ■ | ■ |
| Task 8 – Project & Quality Management | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |

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This is **EXHIBIT B,** consisting of 2 pages, referred to in and part of the **Professional Services Agreement** between Owner and Engineer to which it is attached.

**Payments to Engineer for Services**
**Basic Services - Lump Sum**

The Professional Services Agreement is supplemented to include the following agreement of the parties.

*Compensation for Basic Services - Method of Payment*

A. Owner shall pay Engineer for Basic Services as follows:

1. A Lump Sum amount based on the following estimated distribution of compensation:

| | Amount | Duration |
|---|---|---|
| a. Study and Report Phase | | See schedule in Exhibit A |
| 1) Task 1 – Kickoff & Data Review | $ 11,800 | |
| 2) Task 2 – Existing System Model Updates & Calibration | $ 41,600 | |
| 3) Task 3 - Water Demand Projections | $ 11,200 | |
| 4) Task 4 - Hydraulic Evaluation & Identify Alternatives | $ 51,700 | |
| 5) Task 5 - Water Supply & Treatment Evaluation | $ 29,300 | |
| 6) Task 6 - Alternatives Analysis, Phasing & Capital Improvement Plan | $ 31,800 | |
| 7) Task 7 - Master Plan & Presentation | $ 41,400 | |
| 8) Task 8 - Project & Quality Management | $ 25,100 | |
| Basic Services Total | **$ 243,900** | |

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2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with Services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

5. The date for project completion shall be determined by adding the above noted Total Duration, as set forth in Exhibit A, also known as the "Time of Completion," to the date of the Notice to Proceed issued by Brunswick County.

# Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
## May 3, 2021

**Action Item # V. - 12.**
Utilities - Disaster Response Emergency On-Call Construction Services

**From:**
John Nichols, P.E.

**Issue/Action Requested:**
Request that the Board of Commissioners approve an amendment extending the term of the Disaster Response Emergency/On-Call Construction or Repair Agreement with State Utility Contractors, Inc.

**Background/Purpose of Request:**
In May of 2020, the Board of Commissioners approved an agreement with State Utility Contractors, Inc., to provide on-call construction services for a specific Work Task in the event of an emergency. The original agreement term was set at one year with an option to renew for either one or two years upon mutual written agreement of the parties. Both parties have agreed to renew the agreement for two additional years. Staff recommends an amendment with State Utility Contractors, Inc., to extend the existing agreement until May 4, 2023.

**Fiscal Impact:**
Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations
Extends the time not the amount of appropriation

**Approved By County Attorney:**
Yes

**Advisory Board Recommendation:**
Not Applicable

**County Manager's Recommendation:**
Recommend the Board of Commissioners approve an amendment extending the term of the Disaster Response Emergency/On-Call Construction or Repair Agreement with State Utility Contractors, Inc.

**ATTACHMENTS:**

Description

- Utilities - State Utilities Approved Board Action 5/4/20 - Attach 1
- Amendment extending term

APPROVED

# Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
## May 4, 2020

**Action Item # VII. - 3.**

**From:**
John Nichols, P.E.

Utilities - Disaster Response Emergency/On-Call Construction Services Contract Task One State Utility Contractors, Notice of Award, and Associated Budget Amendment (John Nichols, Director of Public Utilities)

**Issue/Action Requested:**
Request that the Board of Commissioners approve a budget amendment, Notice of Award, and authorize the Chairman and Clerk to the Board to execute the construction contract with State Utility Contractors, Inc., to perform construction services as defined in the Disaster Response Emergency/On-Call Construction Services Contract Work Task One contingent on the County Attorney's review and approval of the construction contract, performance bond, payment bond, NC E-Verify Affidavit of Compliance, and insurance certificates. Staff recommends award of the project for not to exceed amount of $250,000.00.

**Background/Purpose of Request:**
In order to be better prepared to respond to possible natural disasters and emergency repairs to the county's utility infrastructure, Brunswick County Public Utilities Department made the decision to procure a contract with a contractor to provide on-call construction services in the event of an emergency. The work under Task One includes items such as, but are not limited to, providing workforce and equipment for excavation and repair of pressure and gravity lines; handling and disposing of asbestos cement pipe, traffic control, operation of heavy equipment. On March 12, 2020, two bids were received by Brunswick County and subsequently a re-bid of the project was necessary to meet bidding requirements. The second round of bids were received on April 16, 2020. Two bids were received on that date. These are detailed in the attached bid tabulation. The county has reviewed the bid proposals and recommends that Task One work be awarded to the lowest, responsive bidder, State Utility Contractors, Inc.

Consequently, it is recommended that the Board approve the Notice of Award and authorize the Chairman and the Clerk to the Board to execute the construction contract with State Utility Contractors, Inc., not to exceed amount of $250,000.00.

**Fiscal Impact:**
Budget Amendment Required, Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations
Budget Amendment appropriates fund balance of $125,000 in each of the water and sewer funds for contract award.

**Approved By County Attorney:**
Yes

**Advisory Board Recommendation:**
Not Applicable

**County Manager's Recommendation:**
Recommend the Board of Commissioners approve a budget amendment, Notice of Award, and authorize the Chairman and Clerk to the Board to execute the construction contract with State Utility Contractors, Inc., to

perform construction services as defined in the Disaster Response Emergency/On-Call Construction Services Contract Work Task One contingent on the County Attorney's review and approval of the construction contract, performance bond, payment bond, NC E-Verify Affidavit of Compliance, and insurance certificates. Staff recommends award of the project for not to exceed amount of $250,000.00.

**ATTACHMENTS:**

Description

- Utilities - Certified Bid Tabulation Task One - Attach 1
- Utilities - Contractor Bid Forms Task One State Utility - Attach 2
- 20200504 Budget Amendment On-Call State Utility Services.pdf
- 20200504 Budget Amendment On-Call State Utility Services WW.pdf

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**NORTH CAROLINA** **CONSTRUCTION OR REPAIR AGREEMENT**
**[Federal, with FEMA Clauses]**

**BRUNSWICK COUNTY**

**THIS CONSTRUCTION OR REPAIR AGREEMENT** (hereinafter referred to as the "Agreement" or "Contract") is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as "County" or "Owner"), party of the first part, and State Utility Contractors, Inc., (hereinafter referred to as "Contractor"), party of the second part.

**WITNESSETH:**

## 1. PROJECT

Contractor shall furnish and deliver all materials and perform all work in the manner and form as provided by enumerated plans, specifications and documents, including, without limitation and as applicable: the Invitation to Bid; Notice to Bidders; Instructions to Bidders; General Conditions; Supplementary General Conditions; Specifications; Addenda; Accepted Form of Proposal; Notice to Proceed; Performance Bond; Payment Bond; MBE forms; Power of Attorney; Workers' Compensation, Public Liability, Property Damage and Builder's Risk Insurance Certificates; Approval by the Board of Commissioners; Tax Statement and Certification; Notice of Substantial Completion; Notice of Final Completion and Acceptance; and Drawings (hereinafter referred to collectively as the "Bid Documents") titled:

**Project: Disaster Response Emergency/On-Call Construction Services - Task 1**

The Bid Documents and final Scope of Work are incorporated by reference and made an integral part of this Agreement. To the extent the terms of such documents conflict with the terms of this Agreement, the terms of this Agreement shall prevail.

## 2. TERM OF AGREEMENT AND TERMINATION

The term of this Agreement begins upon issuance of the Notice of Award by Brunswick County (the "Effective Date") and continues in effect for an initial term of one (1) year, unless extended or sooner terminated as provided for in the Brunswick County General Conditions of the Contract. The term of this Agreement may be extended for an additional one (1) or two (2) years upon mutual written agreement of the parties. The duration of individual projects under a Work Task, as set forth in the Form of Proposal, shall be designated by written Task Orders issued under this Agreement, each of which shall be attached hereto and made an integral part hereof. The County may terminate this Agreement or any Task Order at any time without cause by giving sixty (60) days' written notice to Contractor. As soon as practicable after receipt of a written notice of termination without cause, Contractor shall submit a statement to County showing in detail the work performed under this Agreement and any Task Order through the effective date of termination. County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. Contractor shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, County may terminate this

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Agreement immediately and without notice to Contractor if Contractor becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Contractor, or has a receiver or trustee appointed for substantially all of its property, or if Contractor allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

## 3. BRUNSWICK COUNTY GENERAL CONDITIONS OF THE CONTRACT

This Agreement, in addition to any construction documents prepared hereunder, shall be subject to the Brunswick County, North Carolina General Conditions of the Contract (for construction contracts), unless the County directs otherwise. In the event of a conflict between the General Conditions of the Contract and this Agreement, this Agreement shall prevail.

## 4. NONAPPROPRIATION

If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Contractor 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 the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

## 5. COMPENSATION

The County agrees to pay Contractor payments based on actual unit price amounts as provided in the Form of Proposal submitted by Contractor during the bid process. Payment shall be subject to additions and deductions as provided in the specifications or Bid Documents. County shall make monthly progress payments to Contractor on the basis of a duly certified and approved estimate of work performed during a given calendar month, less five percent (5%) of the amount of such estimate which is to be retained by County until all work has been performed strictly in accordance with this Agreement and such work has been accepted by County. The County shall not require further retainage after fifty percent (50%) of the work has been satisfactorily completed on schedule as more fully set forth in the General Conditions included with the Bid Documents. County shall make full and final payment to Contractor within thirty (30) days after completion of the Project and acceptance of such work by County and upon Contractor's submittal of satisfactory evidence that all payrolls, material bills and other costs incurred in connection with the Project have been paid in full. Notwithstanding the foregoing, County will not pay late fees on any charges under this Agreement. If County disputes any portion of the charges, the County shall inform Contractor in writing of the disputed charges. In addition to the compensation set forth above and notwithstanding anything to the contrary contained herein or in the General Conditions of the Contract, County agrees to reimburse Contractor for the reasonable and actual costs of performance and payment bonds and any additional bond(s) which may be required by the North Carolina Department of Transportation for work performed in a right-of-way.

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## 6. INDEPENDENT CONTRACTOR

Both County and Contractor agree that Contractor shall act as an independent contractor and shall not represent itself as an agent or employee of the County for any purpose in the performance of its duties under this Agreement. Contractor represents that it has or will secure, at its own expense, all personnel required in performing the work under this Agreement. Accordingly, Contractor shall be responsible for payment of all federal, state and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. Contractor shall not be entitled to participate in any plans, arrangements or distributions by the County pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to County employees.

In the event the Internal Revenue Service should determine that Contractor is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then Contractor hereby acknowledges that all payments hereunder are gross payments, and the Contractor is responsible for all income taxes and social security payments thereon.

## 7. CONTRACTOR REPRESENTATIONS

(1) Contractor is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;

(2) Contractor has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

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

(4) Contractor shall not violate any agreement with any third party by entering into or performing the work under this Agreement;

(5) Contractor will perform all work in conformity with the specifications and requirements of this Agreement;

(6) Unless otherwise agreed by the parties, Contractor agrees that all materials will be new and of good quality;

(7) The work provided by Contractor under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including without limitation non-compete agreements);

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(8) Contractor will perform the work in a professional and workmanlike manner exercising reasonable care and diligence and will ensure that it adheres to the highest generally accepted standards in the industry when performing said work;

(9) Contractor acknowledges that if any specific licenses, certifications or related credentials are required in its performance of the work, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and

(10) Contractor shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by the County with respect to rules, regulations, policies and security procedures applicable to work on the County's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

**8. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS**

The parties acknowledge that FEMA financial assistance will be used to fund all or a portion of the Agreement. Contractor will comply with all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.

**9. NON-ENDORSEMENT AND PUBLICITY**

County is not endorsing Contractor or its work, and Contractor is not permitted to reference this Agreement or County in any manner without the prior written consent of County. Notwithstanding the foregoing, the parties agree that Contractor may list the County as a reference in response to requests for proposals and may identify County as a customer in presentations to potential customers.

**10. NON-EXCLUSIVITY**

Contractor acknowledges that County is not obligated to contract solely with Contractor for the work covered under this Agreement.

**11. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL**

Contractor hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

**12. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)**

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an

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employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

**13. PROCUREMENT OF RECOVERED MATERIALS**

(1) In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –

i. Competitively within a timeframe providing for compliance with the Agreement performance schedule;

ii. Meeting Agreement performance requirements; or

iii. At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

(3) Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**14. ACCESS TO RECORDS**

The following access to records requirements apply to this Agreement:

(1) Contractor agrees to provide County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

(4) In compliance with the Disaster Recovery Act of 2018, County and Contractor acknowledge and agree that no language in this Agreement is intended to prohibit

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audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**15. DHS SEAL, LOGO, AND FLAGS**

Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**16. SUSPENSION AND DEBARMENT**

(1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by County. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to FEMA and County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**17. FRAUD AND FALSE OR FRAUDULENT OR RELATED ACTS**

Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Agreement.

**18. NO OBLIGATION BY FEDERAL GOVERNMENT**

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-federal entity, Contractor, or any other party pertaining to any matter resulting from the Agreement.

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## 19. MINORITY BUSINESS ENTERPRISES

Contractor will make "good faith efforts" to utilize Minority Business Enterprises (MBEs), pursuant to 2 C.F.R. § 200.321, for subcontractors in the performance of this Agreement.

## 20. WORKERS' COMPENSATION

To the extent required by law, Contractor shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event Contractor is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, Contractor shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling Contractor's obligations under this Agreement. Contractor agrees to furnish County proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

## 21. REMEDIES

(1) **RIGHT TO COVER.** If Contractor fails to commence work on the Project within the time specified, fails to meet any completion date or resolution time specified, fails to perform the work with sufficient workmen, equipment and materials, discontinues the prosecution of the work, performs the work unsuitably, or if Contractor is otherwise in default under this Agreement, the County may take any of the following actions with or without terminating this Agreement, and in addition to, and without limiting, any other remedies it may have:

i. Require the surety to promptly take over and complete the Project in the manner and within the timeframe specified.

ii. If the surety fails to promptly take over and complete the Project in the manner specified and within fifteen (15) days of being notified by County to do so, County may employ such means as it may deem advisable and appropriate to perform itself or obtain the work from a third party until the matter is resolved and Contractor is again able to resume performance under this Agreement.

iii. Deduct any and all expenses incurred by County in obtaining or performing the work from any money then due or to become due Contractor and, should the County's cost of obtaining or performing the work exceed the amount due Contractor, collect the amount due from Contractor and surety.

(2) **RIGHT TO WITHHOLD PAYMENT.** County reserves the right to withhold any portion, or all, of a scheduled payment if Contractor fails to perform under this Agreement until such breach has been fully cured.

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(3) **SETOFF.** Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.

(4) **OTHER REMEDIES.** Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.

(5) **NO SUSPENSION.** In the event that County disputes in good faith an allegation of breach by Contractor, notwithstanding anything to the contrary in this Agreement, Contractor agrees that it will not terminate this Agreement or suspend or limit any work or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

**22. TAXES**

Contractor shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Contractor shall substantiate, on demand by the County, that all taxes and other charges are being properly paid.

**23. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Agreement, Contractor agrees as follows:

(1) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provisions shall not apply to instances in which the employee who has access to the compensation information of other employees or

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applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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## 24. COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT

(1) Contractor. Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3, as may be applicable, which are incorporated by reference into this Agreement.

(2) Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

## 25. COMPLIANCE WITH THE DAVIS-BACON ACT

(1) All transactions regarding this Agreement shall be done in compliance with 40 U.S.C. §§ 3141-3144 and 3146-3148 and the requirements of 29 C.F.R. Part 5. When applicable, Contractor shall comply with 40 U.S.C. §§ 3141-3144 and 3146-3148 as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 as applicable.

(2) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

(3) Additionally, Contractors are required to pay wages not less than once a week.

## 26. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the Project which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $27 for

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each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**27. CLEAN AIR ACT**

(1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) Contractor agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by FEMA.

**28. FEDERAL WATER POLLUTION CONTROL ACT**

(1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) Contractor agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by FEMA.

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## 29. COMPLIANCE WITH E-VERIFY PROGRAM

Pursuant to N.C.G.S. § 143-133.3, Contractor understands that it is a requirement of this Agreement that Contractor and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Contractor agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and Contractor shall require its subcontractors to do the same. Upon request, Contractor agrees to provide County with an affidavit of compliance or exemption.

## 30. CONFIDENTIAL INFORMATION

For purposes of this Agreement, the party disclosing Confidential Information is the "Discloser," and the party receiving Confidential Information is the "Recipient." "Confidential Information" shall mean any nonpublic information concerning the parties' respective businesses including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of any agreement between the parties and the discussions, negotiations and proposals related thereto. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as "Confidential." Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

(1) in the public domain through no fault of the Recipient;

(2) within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;

(3) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;

(4) independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;

(5) disclosed with the prior written consent of the Discloser; or

(6) required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives

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such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser's sole expense.

**31. NO ASSIGNMENT WITHOUT CONSENT**

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void. An assignee shall acquire no rights, and County shall not recognize any assignment in violation of this provision.

**32. GOVERNING LAW AND VENUE**

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

**33. DISPUTE RESOLUTION**

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation, as more fully set forth in the General Conditions of the Contract.

**34. GOVERNMENTAL IMMUNITY**

County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

**35. NON-WAIVER**

Failure by County at any time to require the performance by Contractor of any of the provisions of this Agreement shall in no way affect County's right hereunder to enforce the same, nor shall any waiver by County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

**36. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral, related specifically to the Project herein.

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**37. HEADINGS**

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

**38. SEVERABILITY**

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

**39. AMENDMENTS**

Amendments or changes to this Agreement shall not be valid unless in writing and signed by authorized agents of both Contractor and County.

**40. NOTICES**

(1) **DELIVERY OF NOTICES.** Unless otherwise specified in the General Conditions, any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.

(2) **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.

(3) **NOTICE ADDRESS.**

a. Communications that relate to any breach, default, termination, amendment or waiver of any provision of this Agreement shall be sent to:

For the County: Brunswick County Attorney
P.O. Box 249
Bolivia, NC 28422

With a copy to: John Nichols
Director of Public Utilities
P. O. Box 249
Bolivia, NC 28401

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b. Communications that relate to any delay in performance, prevention of performance, modification or extension of this Agreement shall be sent to:

For the County: John Nichols
Director of Public Utilities
P. O. Box 249
Bolivia, NC 28401

c. All communications to Contractor shall be sent to:

For the Contractor: State Utility Contractors, Inc.
4417 Old Charlotte Highway
Monroe, NC 28110

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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**41. SIGNATURES**

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

DocuSigned by:
Andrea White
E0D8C8FFE85F47E...
Clerk to the Board

**BRUNSWICK COUNTY**

By: DocuSigned by:
D84765B0180047B...
Frank Williams
Chairman

[SEAL]

**STATE UTILITY CONTRACTORS, INC.**

By: DocuSigned by:
Ron L. Brown
2FD5D7633BB74B6...

Printed Name: Ron L. Brown

Title: President

Date: 5/27/2020

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."

DocuSigned by:
Julie A. Miller
162299A18CD1418...
Julie A. Miller, Finance Director
Brunswick County, North Carolina

APPROVED AS TO FORM

DocuSigned by:
Bryan W. Batton
1495B13DEE5443...
Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney

End

Of

Original

**BRUNSWICK COUNTY PUBLIC UTILITIES** **Emergency On-Call Construction Service Contract**

**DATE:** **16-Apr-20** **3:00 PM**

**BID TABULATION FORM**

| Company Name | License Number | Bid Security | Task One (Lump Sum) | Task Two | Task Three | Total Bid $ | Addendum Acknowledgment |
|---|---|---|---|---|---|---|---|
| Carmichael Construction | 10584 | X | $505,058.00 | $4,691,000.00 | $1,634,895.00 | $6,830,953.00 | X |
| State Utility | 17793 | X | $415,475.00 | $3,596,500.00 | $2,083,700.00 | $6,095,675.00 | X |
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Opened By: _____ Witness: Bob Tweedy

Brent Lockamy, PE

# FORM OF PROPOSAL

To: **BRUNSWICK COUNTY ("Owner")**

From: *Bidder* State Utility Contractors, Inc.

*Address* P.O. Box 5019

Monroe, NC 28111-5019

*Tele./Fax* (704) 289-6400/(704) 282-0590

*Date of Bid* April 16, 2020

The undersigned, as Bidder (or Contractor), hereby declares that the only person or persons interested in this Proposal as principal or principals is or are named herein and that no other person than herein mentioned has any interest in this Proposal or in a contract to be entered into (hereinafter the "Contract" or "Agreement"); that this Proposal is made without connection with any other person, company, or parties making a bid or Proposal; and that it is in all respects fair and in good faith without collusion or fraud. The Bidder further declares that it has examined all bid documents, and has read all special provisions furnished prior to the opening of bids; that it has satisfied itself relative to the work to be performed.

The Bidder proposes and agrees that, if this Proposal is accepted and a contract is awarded by **Brunswick County**, Bidder will furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, supplies, labor, etc. necessary to complete:

**Disaster Response Emergency/On-Call Construction Services**

in full and complete accordance with the plans, specifications, Scope of Work and Contract Documents, to the full and entire satisfaction of **Brunswick County** and its representatives with a definite understanding that no money will be allowed for extra work except as set forth in the General Conditions and the Contract Documents.

## ATTACHED DOCUMENTS

The following documents are attached to and made a condition of this Bid:

- Bid Security
- Identification of Minority Business Participation form
- MBE Affidavit A (Listing of Good Faith Efforts) or Affidavit B (Intent to Perform Contract with Own Workforce)

## UNIT PRICES

Unit prices quoted and accepted shall apply throughout the life of the Contract, except as otherwise specifically noted. Unit prices shall be applied, as appropriate, to compute the total value of changes in the Scope of the Work all in accordance with the Contract Documents. Bidder acknowledges that quantities are approximate only and are given as the basis for comparison of bids. The Owner may increase or decrease the quantity of any item or portion of the work as may be deemed necessary or expedient. An increase or decrease in the quantity of any item will not be regarded as sufficient grounds for an increase or decrease in the unit prices, nor in the time allowed for the completion of the work,

except as provided for in the General Conditions. The quantities shown on the Proposal form are for the base bid only unless the Contract Documents specifically indicate that the item(s), or any portion thereof, are part of an alternate bid element. It is the responsibility of the Contractor to apportion the cost of unit price items to the base bid and any alternates listed in the Proposal using information in the Contract Documents. In the event that the Owner selects an alternate that clearly increases or decreases the estimated quantity of a unit price item shown on the Proposal form, after selection of the Contractor, the Contractor shall be provided an updated list of estimated unit price quantities reflective of the alternates chosen. This updated list shall be used in determining any variation between the actual quantities and the estimated quantities of the unit price work. An estimated unit price quantity shall be updated only in the event that the Contract Documents clearly indicate that the unit price item was indeed part of the Owner-selected alternate. The cost for all unit price items shall be included within either the base bid or an alternate, as applicable.

The Bidder further proposes and agrees hereby to commence work under a Contract on a date to be specified in a written Notice to Proceed issued by Brunswick County, unless otherwise specified, and shall fully complete all work thereunder within the timeframe specified by Brunswick County. Any applicable amounts for liquidated damages are stated in the General Conditions: "Time of Completion, Delays, Extension of Time."

Bidder agrees to perform all work described in the Bidding Documents for the unit prices set forth in the Bid tabulation. Work may be required to be performed at night, weekends or on holidays and no separate bid prices will distinguish for the time of work. *(Bid tabulation to be completed by Bidder can be found on subsequent pages).*

WORK TASK 1: BRUNSWICK COUNTY DISASTER RESPONSE EMERGENCY CONSTRUCTION SERVICES

1.Superintendent, previously approved by the Owner, to meet with the Owner within four (4) hours of notification by Owner, in order to assess the project situation with the Owner and establish the Task Order for the Contractor's scope of services and schedule for responding to the Owner's request.

$ 205.00 per hour Twenty-five (25) hours $ 5,125.00 sub-total

*SMALL CREW LINE ITEMS*

2. Mobilization within four (4) hours of issued Task Order and demobilization combined as one (1) lump sum price for a small crew consisting of a minimum of a superintendent/foreman, backhoe or excavator with operator, dump truck with operator, two (2) laborers, and miscellaneous equipment needed for typical utility work (i.e. pipe saws, rags, wrenches, trench box, ladder, road plates, PPE etc.). Crew and equipment provided shall be as determined by the Bidder, subject to the approval of Owner. Crews shall have the skill and ability to excavate and repair pressure and gravity lines **0 to 6 feet in depth**.

$ 3,300.00 lump sum Two (2) each $ 6,600.00 sub-total

3. Mobilization within four (4) hours of issued Task Order and demobilization combined as one (1) lump sum price for a small crew consisting of a minimum of a superintendent/foreman, backhoe or excavator with operator, dump truck with operator, two (2) laborers, and miscellaneous equipment needed for typical utility work (i.e. pipe saws, rags, wrenches, trench box, ladder, road plates, PPE etc.). Crew and equipment provided shall be as determined by the Bidder, subject to the approval of Owner. Crews shall have the skill and ability to excavate and repair pressure and gravity lines **6 to 10 feet in depth**.

$ 3,500.00 lump sum Two (2) each $ 7,000.00 sub-total

4. Hourly rate for a small crew consisting of a minimum of a superintendent, backhoe or excavator with operator, dump truck with operator, two (2) laborers, and miscellaneous equipment needed for typical utility work (i.e. pipe saws, rags, wrenches, trench box, ladder, road plates, PPE etc.). Crew and equipment provided shall be as determined by the Bidder, subject to the approval of Owner. Crews shall have the skill, ability and equipment needed to excavate and repair pressure and gravity lines **0 to 6 feet in depth.**

$ 850.00 per hour based on information above Twenty (20) hours $ 17,000.00 sub-total

5. Hourly rate for a small crew consisting of a minimum of a superintendent, excavator with operator, backhoe/loader or second excavator with operator, dump truck with operator, two (2) laborers, and miscellaneous equipment needed for typical utility work (i.e. pipe saws, rags, wrenches, trench box, PPE, ladders, road plates, other related equipment, etc. that may be required to complete project). Crew and equipment provided shall be as determined by the Bidder, subject to approval of Owner. Crews shall have the skill, ability and equipment to excavate and repair pressure and gravity lines **6 to 10 feet in depth.**

$ 875.00 per hour based on information above Twenty (20) hours $ 17,500.00 sub-total

*LARGE CREW LINE ITEMS*

6. Mobilization within four (4) hours of issued Task Order and demobilization combined as one (1) lump sum price for a large crew consisting of a superintendent, foreman, excavator with operator, backhoe/loader or second excavator with operator, dump truck with operator, four (4) laborers, and miscellaneous equipment needed for typical utility work (i.e. pipe saws, rags, wrenches, trench box, PPE, ladders, road plates, other related equipment, etc. that may be required to complete project). Crew and equipment provided shall be as determined by the Bidder, subject to approval of Owner. Crews shall have the skill and ability to excavate and repair pressure and gravity lines **0 to 6 feet in depth.**

$ 4,000.00 lump sum Two (2) each $ 8,000.00 sub-total

7. Mobilization within four (4) hours of issued Task Order and demobilization combined as one lump sum price for a large crew consisting of a superintendent, foreman, excavator with operator, backhoe/loader or second excavator with operator, dump truck with operator, four (4) laborers, and miscellaneous equipment needed for typical utility work (i.e. pipe saws, rags, wrenches, trench box, PPE, ladders, road plates, other related equipment, etc. that may be required to complete project). Crew and equipment provided shall be as determined by the Bidder, subject to approval of Owner. Crews shall have the skill and ability to excavate and repair pressure and gravity lines **6 to 10 feet in depth.**

$ 4,100.00 lump sum Two (2) each $ 8,200.00 sub-total

8. Mobilization within four (4) hours of issued Task Order and demobilization combined as one (1) lump sum price for a large crew consisting of a superintendent, foreman, excavator with operator, backhoe/loader or second excavator with operator, dump truck with operator, four (4) laborers, and miscellaneous equipment needed for typical utility work (i.e. pipe saws, rags, wrenches, trench box, PPE, ladders, road plates, other related equipment, etc. that may be required to complete project). Crew and equipment provided shall be as determined by the Bidder, subject to approval by Owner.

Crews shall have the skill and ability to excavate and repair pressure and gravity lines **10 to 14 feet in depth.**

$4,800.00 lump sum Two (2) each $9,600.00 sub-total

9. Mobilization within four (4) hours of issued Task Order and demobilization combined as one (1) lump sum price for a large crew consisting of a superintendent, foreman, excavator with operator, backhoe/loader or second excavator with operator, dump truck with operator, four (4) laborers, and miscellaneous equipment needed for typical utility work (i.e. pipe saws, rags, wrenches, trench box, PPE, ladders, road plates, other related equipment, etc. that may be required to complete project). Crew and equipment provided shall be as determined by the Bidder, subject to approval of Owner. Crews shall have the skill and ability to excavate and repair pressure and gravity lines **14 to 18 feet in depth.**

$6,500.00 lump sum Two (2) each $13,000.00 sub-total

10. Mobilization within four (4) hours of issued Task Order and demobilization combined as one lump sum price for a large crew consisting of a superintendent, foreman, excavator with operator, backhoe/loader or second excavator with operator, dump truck with operator, four (4) laborers, and miscellaneous equipment needed for typical utility work (i.e. pipe saws, rags, wrenches, trench box, PPE, ladders, road plates, other related equipment, etc. that may be required to complete project). Crew and equipment provided shall be as determined by the Bidder, subject to approval of Owner. Crews shall have the skill and ability to excavate and repair pressure and gravity lines **18 to 20 feet in depth.**

$7,500.00 lump sum One (1) each $7,500.00 sub-total

11. Hourly rate for a large crew consisting of a minimum of a superintendent, foreman, excavator with operator, backhoe/loader or second excavator with operator, dump truck with operator, four (4) laborers, and miscellaneous equipment needed for typical utility work (i.e. pipe saws, rags, wrenches, trench box, PPE, ladders, road plates, other related equipment, etc. that may be required to complete project). Crew and equipment provided shall be as determined by the Bidder, subject to approval of Owner. Crews shall have the skill, ability and equipment to excavate and repair pressure and gravity lines **0 to 6 feet in depth.**

$1,200.00 per hour based on information above Five (5) hours $6,000.00 sub-total

12. Hourly rate for a large crew consisting of a minimum of a superintendent, foreman, excavator with operator, backhoe/loader or second excavator with operator, dump truck with operator, four (4) laborers, and miscellaneous equipment needed for typical utility work (i.e. pipe saws, rags, wrenches, trench box, PPE, ladders, road plates, other related equipment, etc. that may be required to complete project). Crew and equipment provided shall be as determined by the Bidder, subject to approval of Owner. Crews shall have the skill, ability and equipment to excavate and repair pressure and gravity lines **6 to 10 feet in depth.**

$1,300.00 per hour based on information above Twenty (20) hours $26,000.00 sub-total

13. Hourly rate for a large crew consisting of a minimum of a superintendent, foreman, excavator with operator, backhoe/loader or second excavator with operator, dump truck with driver, four (4) laborers, and miscellaneous equipment needed for typical utility work (i.e. pipe saws, rags, wrenches, trench box, PPE, ladders, road plates, other related equipment, etc. that may be required to complete project). Crew and equipment provided shall be as determined by the Bidder, subject to approval of Owner. Crews shall

have the skill, ability and equipment to excavate and repair pressure and gravity lines **10 to 14 feet in depth.**

$1,400.00 per hour based on information above Twenty (20) hours $28,000.00 sub-total

14. Hourly rate for a large crew consisting of a minimum of a superintendent, foreman, excavator with operator, backhoe/loader or second excavator with operator, dump truck with driver, four (4) laborers, and miscellaneous equipment needed for typical utility work (i.e. pipe saws, rags, wrenches, trench box, PPE, ladders, road plates, other related equipment, etc. that may be required to complete project). Crew and equipment provided shall be as determined by the Bidder, subject to approval of Owner. Crews shall have the skill, ability and equipment to excavate and repair pressure and gravity lines **14 to 18 feet in depth.**

$1,500.00 per hour based on information above Twenty (20) hours $30,000.00 sub-total

15. Hourly rate for a large crew consisting of a minimum of a superintendent, foreman, excavator with operator, backhoe/loader or second excavator with operator, dump truck with driver, four (4) laborers, and miscellaneous equipment needed for typical utility work (i.e. pipe saws, rags, wrenches, trench box, PPE, ladders, road plates, other related equipment, etc. that may be required to complete project). Crew and equipment provided shall be as determined by the Bidder, subject to approval of Owner. Crews shall have the skill, ability and equipment to excavate and repair pressure and gravity lines **18 to 20 feet in depth.**

$2,000.00 per hour based on information above Five (5) hours $10,000.00 sub-total

16. Mobilization within four (4) hours of issued Task Order or notification of Brunswick County Public Utilities and demobilization combined as one lump sum price for acquiring, installing and maintaining any and all materials and equipment required to complete the task (pumps, discharge hose, intake hoses, well points, etc.).

$3,600.00 lump sum Two (2) each $6,000.00 sub-total

17. Dewatering: Rate shall be provided on a per day rate. Contractor shall be responsible for maintaining any and all labor, materials and equipment required to complete the task (pumps, discharge hose, intake hoses, well points, etc.). Daily rate will be paid for dewatering system and will stop at the time it is determined that it is no longer needed.

$2,000.00 per day Five (5) days $10,000.00 sub-total

18. Asbestos Cement Pipe: All individuals, either Contractor or a subcontractor, working on asbestos cement ("AC") pipe shall be fully certified and trained to work on, handle, and dispose of AC pipe. Documentation of each employee's training and certification shall be provided with bid package in accordance with Attachment A. The Contractor shall have on staff the number of workers required to perform the work described in the bid form that are trained and certified to work with AC pipe. If the Contractor does not have an adequately trained workforce a subcontractor may be used **(with express written permission by Brunswick County)** to provide the certified workers. Price shall include all costs associated with providing employees certified to work with AC pipe. AC pipe crews shall be mobilized within four (4) hours of issued Task Order.

$525.00 per hour based on information above Five (5) hours $2,625.00 sub-total

19. Dispose of Asbestos Cement Pipe: Price per linear foot to properly dispose of AC pipe in accordance with all applicable laws and regulations.

$ 90.00 per linear foot Twenty (20) L.F. $ 1,800.00 sub-total

20. Traffic Control: Contractor shall provide all signs, cones, barricades, and other related or required traffic control devices to meet the NCDOT standards of the MUTCD. Contractor is responsible for traffic control planning and approval by any jurisdictional regulating agency. Rate shall include all labor, traffic control devices, vehicles, trailers, etc. that may be required to transport install and remove the devices after the project is completed. Rate for traffic control shall be paid for on a unit price basis. A day will be measured as a twenty-four (24) hour period. If it is necessary for the Contractor to purchase a specific sign, Contractor shall invoice Brunswick County for the reasonable cost of same. Any such purchase must be approved by Brunswick County in advance. Purchased signs will be the property of Brunswick County and will be returned to Brunswick County when construction is completed. The early warning signs are incidental to the specific project.

A. Single lane closure on two (2) lane roads with posted speed limit less than 30 MPH.
$ 300.00 lump sum per day Ten (10) each $ 3,000.00 sub-total

B. Single lane closure on two (2) lane roads with posted speed limit greater than 30 MPH.
$ 375.00 lump sum per day Ten (10) each $ 3,750.00 sub-total

C. Road closures on two (2) lane roads from intersection to intersection with posted speed limit less than 30 MPH.
$ 450.00 lump sum per day Ten (10) each $ 4,500.00 sub-total

D. Road closure on two (2) lane roads from intersection to intersection with posted speed limit greater than 30 MPH.
$ 525.00 lump sum per day Ten (10) each $ 5,250.00 sub-total

E. Single or dual lane closure on four (4) lane road with existing turn lane(s) with posted speed limit less than 50 MPH.
$ 825.00 lump sum per day Ten (10) each $ 8,250.00 sub-total

F. Single or dual lane closure on four (4) lane road with existing turn lane(s) with posted speed limit greater than 50 MPH.
$ 900.00 lump sum per day One (1) each $ 900.00 sub-total

G. Closure of intersection, three (3) or less lanes at intersection with posted speed limit less than 30 MPH.
$ 450.00 lump sum per day Ten (10) each $ 4,500.00 sub-total

H. Closure of intersection, three (3) or less lanes at intersection with posted speed limit greater than 30 MPH.
$ 525.00 lump sum per day Five (5) each $ 2,625.00 sub-total

I. Closure of intersection, four (4) or more lanes in more than one direction at intersection with posted speed limit less than 30 MPH.
$ 825.00 lump sum per day Five (5 )each $ 4,125.00 sub-total

J. Closure of intersection, four (4) or more lanes in more than one direction at intersection with posted speed limit greater than 30 MPH.
$ 900.00 lump sum per day Five (5) each $ 4,500.00 sub-total

K. Price for Variable Message Board ("VMB") utilization to include delivery to work site, fuel or power maintenance requirements, transportation, setup and demobilization. Payment shall start when the VMB is installed and is operational as directed by the Brunswick County and payment shall stop at the completion of construction or when notified by Brunswick County that VMB is no longer required.
$ 675.00 per each unit each day Fifteen (15) each $ 10,125.00 sub-total

L. Light Tower utilization to include delivery to work site, fuel or power maintenance requirements, transportation, setup and demobilization. Payment shall start when the light tower is installed as directed by the Brunswick County and payment shall stop at the completion of construction or when notified by Brunswick County that light tower is no longer required.
$ 300.00 per each unit each day Five (5) each $ 1,500.00 sub-total

21. Additional equipment with operators (No Shared Operators):

A. Dump truck, single axle with operator.
$ 130.00 per hour Fifteen (15) hours $ 1950.00 sub-total

B. Dump truck, dual rear axle with operator.
$ 165.00 per hour Fifteen (15) hours $ 2,475.00 sub-total

C. Dump truck, tri rear axle with operator.
$ 180.00 per hour Five (5) hours $ 900.00 sub-total

D. Mobilization and demobilization as a combined lump sum for a rubber-tired backhoe with operator.
$ 1,200.00 lump sum One (1) each $ 1,200.00 sub-total

E. Rubber-tired backhoe with operator.
$ 150.00 per hour Five (5) hours $ 750.00 sub-total

F. Mobilization and demobilization as a combined lump sum for an excavator (approximately 50,000 lb. class) with operator.
$ 2,800.00 lump sum One (1) each $ 2,800.00 sub-total

G. Excavator (approximately 50,000 lb. class) with operator.
$ 180.00 per hour Five (5) hours $ 960.00 sub-total

H. Mobilization and demobilization as a combined lump sum for an excavator (approximately 70,000 lb. class) with operator.
$ 2,900.00 lump sum — One (1) each $ 2,900.00 sub-total

I. Excavator (approximately 70,000 lb. class) with operator.
$ 225.00 per hour — Five (5) hours $ 1,125.00 sub-total

J. Mobilization and demobilization as a combined lump sum for an excavator (approximately 100,000 lb. class) with operator.
$ 7,000.00 lump sum — One (1) each $ 7,000.00 sub-total

K. Walk-behind asphalt cutter (Lowest rental rate available per hour)
$ 90.00 per hour — Ten (10) hours $ 900.00 sub-total

L. Excavator (approximately 100,000 lb. class) with operator.
$ 400.00 per hour — Five (5) hours $ 2,000.00 sub-total

M. Broom tractor with operator.
$ 100.00 per hour — Fifteen (15) hours $ 1,500.00 sub-total

N. Superintendent, each
$ 205.00 per hour — Five (5) hours $ 1,025.00 sub-total

O. Foreman, each
$ 170.00 per hour — Five (5) hours $ 850.00 sub-total

P. Laborer, each
$ 75.00 per hour — Fifteen (15) hours $ 1,125.00 sub-total

Q. Equipment Operator, each
$ 120.00 per hour — Five (5) hours $ 600.00 sub-total

22. Materials:
A. It will be up to the discretion of Brunswick County what materials, if any, will be provided. Contractor will be responsible for providing all other materials in an amount not to exceed $50,000.00. Any purchase of materials in excess of $50,000.00 must be approved by Brunswick County in advance. Shipping/handling fee shall not exceed 10% of material cost. Contractor to invoice Brunswick County for reimbursement of materials.

B. It will be the Contractor's responsibility to remove and dispose of excavated materials. Contractor will bill Brunswick County for the cost of same.

23. It will be the Contractor's responsibility to maintain the safety and security of the work area at all times.

24. Mobilization within 4 hours of issued Task Order or notification of Brunswick County Public Utilities, demobilization, and the first 8 hours of by-pass pumping time combined as one lump sum price for acquiring, installing and maintaining any and all materials and equipment required to complete the task (pumps, discharge hose, intake hoses, etc.). Standard pump assumes open discharge up to 12" discharge piping.

$5,500.00 lump sum 5 each $27,500.00 sub-total

25. By-Pass Pumping: Rate shall be provided on a per day rate. Contractor shall be responsible for maintaining any and all labor, materials and equipment required to complete the task (pumps, discharge hose, intake hoses, etc.) Daily rate will be paid for by-pass pumping system and will stop at the time it is determined that it is no longer needed. Standard pump assumes open discharge up to 12" discharge piping.

$4,500.00 per day 5 days $22,500.00 sub-total

26. Mobilization within 4 hours of issued Task Order or notification of Brunswick County Public Utilities, demobilization, and the first 8 hours of by-pass pumping time combined as one lump sum price for acquiring, installing and maintaining any and all materials and equipment required to complete the task (pumps, discharge hose, intake hoses, etc.). Assume High pressure and high flow situation. Up to 12" discharge piping.

$6,500.00 lump sum 5 each $32,500.00 sub-total

27. By-Pass Pumping: Rate shall be provided on a per day rate. Contractor shall be responsible for maintaining any and all labor, materials and equipment required to complete the task (pumps, discharge hose, intake hoses, etc.) Daily rate will be paid for by-pass pumping system and will stop at the time it is determined that it is no longer needed. Assume High pressure and high flow situation. Up to 12" discharge piping.

$6,000.00 per day 5 days $30,000.00 sub-total

**Emergency Service Repairs: (add sub-totals for Work Task #1):**

Work Task #1 Four hundred fifteen thousand, Four hundred Seventy Five and 00/100 Dollars ($) 415,475.00

WORK TASK 2: EMERGENCY REPAIR OF 48-INCH PCCP RAW WATER MAIN

1. Large crew and equipment to remove and replace 48" prestressed concrete cylinder pipe ("PCCP") raw water main with new 48" ductile iron pipe ("DIP") water main. Include joints and fittings.
   $23,000.00 L.F. 80 L.F. $1,840,000.00 sub-total

2. Line Stop with 30" high-density polyethylene ("HDPE") by-pass
   $500,000.00 each Two (2) each $1,000,000.00 sub-total
   $6,500.00 L.F. of 30" One (1) L.F. $6,500.00 sub-total

3. Point repair by installing PCCP temporary repair clamp (to be provided by Brunswick County)
   $750,000.00 each One (1) each $750,000.00 sub-total

**Emergency Service Repairs of 48-Inch PCCP Raw Water Main: (add sub-totals for Work Task #2):**
Work Task #2 Three Million, Five hundred ninety six thousand, Five Hundred and 00/100 Dollars ($) 3,596,500.00

WORK TASK 3: WATER/SEWER SERVICES AND SEWER GRINDER STATION ON-CALL INSTALLATION

Water services:

1. Short side 1" water service and tap (includes connection to main, up to 50' of 1" copper tube size ("CTS") pipe Installed within R/W or easement by open trench methods including all parts and box with landscaping. (Meter to be supplied by Brunswick County). (Short side is the same side of the roadway that the water main is on). *Water services installations will be assigned to the contractor in an amount of no less than five (5) installations at a time.*

   $3,910.00 lump sum  Five (5) each $19,550.00 sub-total

2. Long side 1" water service and tap (includes connection to main, up to 60' of 1" CTS pipe installed within R/W or easement by dry bore or wet bore methods including all parts and box with landscaping. (Meter to be supplied by Brunswick County). (Long side is the other side of the roadway that the Water main is on). *Water services installations will be assigned to the contractor in an amount of no less than five (5) installations at a time.*

   $7,250.00 lump sum  Five (5) each $36,250.00 sub-total

3. Extra L.F. price if short side 1" Water Service and Tap goes over 51'.
   $45.00 L.F.  100 L.F. $4,500.00 sub-total

4. Extra L.F. price if Long side 1" Water Service and Tap goes over 6 1'.
   $70.00 L.F.  100 L.F. $7,000.00 sub-total

Sewer services:

*If Contractor supplies Grinder Pump Stations:*

5. Residential Simplex Grinder Pump Station (includes connection to force main, up to 40' of 2" or smaller piping within R/W or easement by open trench or bore methods including valves/valve boxes, and up to 200' of piping from R/W or easement to grinder pump station with panel box with electrical components and landscaping. *Grinder installations will be assigned to the contractor in an amount of no less than five (5) installations at a time.*

   $15,000.00 Each  Five (5) Each $75,000.00 sub-total

6. Residential High Head Simplex Grinder Pump Station (includes connection to force main, up to 40' of 2" or smaller piping within R/W or easement by open trench or bore methods including valves/valve boxes, And up to 200' of piping from R/W or easement to grinder pump station with panel box with electrical components and landscaping. *Grinder installations will be assigned to the contractor in an amount of no less than five (5) installations at a time.*

   $16,000.00 Each  Five (5) Each $80,000.00 sub-total

*If Brunswick County supplies Grinder Pump Stations:*

7. Residential Simplex Grinder Pump Station (includes connection to force main, up to 40' of 2" or smaller piping within R/W or easement by open trench or bore methods including valves/valve boxes, And up to 200' of piping from R/W or easement to grinder pump station with panel box with

electrical components and landscaping. *Grinder installations will be assigned to the contractor in an amount of no less than five (5) installations at a time.*

$ 8,600.00 Each Five (5) Each $ 43,000.00 sub-total

8. Residential High Head Simplex Grinder Pump Station (includes connection to force main, up to 40' of 2" or smaller piping within R/W or easement by open trench or bore methods including valves/valve boxes, And up to 200' of piping from R/W or easement to grinder pump station with panel box with electrical components and landscaping. *Grinder installations will be assigned to the contractor in an amount of no less than five (5) installations at a time.*

$ 8,700.00 Each Five (5) Each $ 43,500.00 sub-total

9. 4" Near-side Residential Gravity Service Tap (includes connection to gravity main or vacuum pit, "nearside" piping installed within R/W or easement by open trench methods and cleanout up to 5' excavation)

$ 6,200.00 Each Five (5) Each $ 31,000.00 sub-total

10. Near-side Residential Gravity Service Tap 4" Over 5' excavation per vertical foot.

$ 170.00 /L.F. Ten (10) L.F. $ 1,700.00 sub-total

11. Far-side Gravity Service Tap - 4" Far-side residential taps (includes connection to gravity main or vacuum pit, "farside" piping installed within R/W or easement by open trench methods and cleanout and asphalt repair to meet existing roadway up to 5' excavation)

$ 12,000.00 Each Five (5) Each $ 60,000.00 sub-total

12. Far-side Residential Gravity Service Tap 4" Over 5' excavation per vertical foot.

$ 600.00 /L.F. Ten (10) L.F. $ 6,000.00 sub-total

13. Sod

$ 35.00 /Sq. Yd. 100 Sq. Yd. $ 3,500.00 sub-total

14. **Horizontal Directional Drill (C900 Pipe).** All directional drilling shall be paid per linear foot as indicated on the bid form. The price per linear foot shall include all labor, material, site work, transitions, transition fittings, appurtenances, equipment, and piping as indicated from boring pit to recovery pit. Contractor shall field verify all directional drill lengths as required for complete installation. Pay item shall also include all clearing, all trenching and excavation work (including all rock excavation), disposal of excess materials, temporary shoring and bracing, dewatering, furnishing and installing all pipe, jointing materials, joint restraints, pipe embedment, final backfill, pipe collars, concrete anchors, thrust blocking, warning tape, and tracer wire. The price shall also include fittings as required to transition between different pipe materials and sizes as required for a complete installation of the main. Cost shall include all testing, chlorination and Bac-T samples. Measurement for pipe length shall be by horizontal distance along the centerline of the pipe. Pipe lengths for main lines will be measured without deduction for valves or fittings.

$ 160.00 /L.F. of 6" C900 Pipe 1000 L.F. $ 160,000.00 sub-total
$ 175.00 /L.F. of 8" C900 Pipe 1000 L.F. $ 175,000.00 sub-total
$ 200.00 /L.F. of 10" C900 Pipe 1000 L.F. $ 200,000.00 sub-total
$ 220.00 /L.F. of 12" C900 Pipe 1000 L.F. $ 220,000.00 sub-total

| | | | |
|---|---|---|---|
| $ 300.00 | /L.F. of 16" C900 Pipe | 1000 L.F. $ 300,000.00 | sub-total |
| $ 520.00 | /L.F. of 24" C900 Pipe | 1000 L.F. $ 520,000.00 | sub-total |
| $ 2,000.00 | /EA of 6" GV | 1 EA $ 2,000.00 | sub-total |
| $ 3,200.00 | /EA of 8" GV | 1 EA $ 3,200.00 | sub-total |
| $ 4,500.00 | /EA of 12" GV | 1 EA $ 4,500.00 | sub-total |
| $ 10,000.00 | /EA of 16" GV | 1 EA $ 10,000.00 | sub-total |
| $ 25,000.00 | /EA of 24" GV | 1 EA $ 25,000.00 | sub-total |
| $ 6,500.00 | /EA of 16" BV | 1 EA $ 6,500.00 | sub-total |
| $ 14,000.00 | /EA of 24" BV | 1 EA $ 14,000.00 | sub-total |
| $ 13.00 | /LBS D.I. MJ Fittings | 1,500LBS $ 19,500.00 | sub-total |
| $ 13,000.00 | /Abandon Existing line LS | 1 LS $ 13,000.00 | sub-total |

**On-Call Installation: (add sub-totals for Work Task #3):**

Work Task #3 Two million, Eighty three thousand, Seven hundred and 00/100 Dollars ($) 2,083,700.00

The above unit prices shall include all costs to the Contractor including, without limitation, fuel, travel, transport, hauling, permits, overhead, profit, taxes, insurance, lube, and service requirements, etc.

All Work covered in the Contract Documents:
Bidders shall write out the total amounts in both word format and number format.

**Total Of All Work Tasks:**

Six million, and ninety five thousand, six hundred seventy five and 00/100 Dollars ($) 6,095,675.00

The parties agree to negotiate in good faith for any amounts that exceed those stated herein which are solely attributable to unanticipated conditions.

Each Bidder must show evidence that it is licensed as a contractor under Chapter 87 of the North Carolina General Statutes. The Bidder must have the following NC General Contractor's license to be qualified to perform the work associated with this bid:
Limitation: Unlimited
Classification(s): Unclassified

Each Bidder must acknowledge that subcontractors are only to be used with the express written permission of Brunswick County.

Contractors shall be responsible for providing the minimum required personnel and equipment at all times during project as indicated in each bid item. If the Contractor is unable to meet the minimum requirements, the bid item will not be paid at the approved rate. The rate may be paid at a proportional amount based on the percentage of equipment/personnel actually provided.

Brunswick County reserves the right to award the contract for each Work Task to one Bidder or multiple contracts to multiple Bidders based on the bid totals for each distinctive Work Task above (3 total).

## MINORITY BUSINESS PARTICIPATION REQUIREMENTS:

*Provide with the bid* - Under NCGS 143-128.2(c) the undersigned Bidder shall identify **on its bid** (Identification of Minority Business Participation Form) the minority businesses that it will use on the project with the total dollar value of the bids that will be performed by the minority businesses. **Also** list the good faith efforts (Affidavit **A**) made to solicit minority participation in the bid effort.

> **NOTE**: A Contractor that performs all of the work with its own workforce may submit an Affidavit **B** to that effect in lieu of Affidavit **A** required above. The Minority Business Participation Form must still be submitted even if there is zero participation.

*After the bid opening* - The Owner will consider all bids and alternates and determine the lowest responsible, responsive bidder. Upon notification of being the apparent low Bidder, the Bidder shall then file within seventy-two (72) hours of the notification of being the apparent lowest Bidder, the following:

An Affidavit **C** that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total Contract price, which is equal to or more than the goal established as indicated in the Notice to Bidders. This affidavit shall give rise to the presumption that the Bidder has made the required good faith effort and Affidavit **D** is not necessary;

**OR**

If less than the goal, Affidavit **D** of its good faith effort to meet the goal shall be provided. The document must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations, and other specific actions demonstrating recruitment and selection of minority businesses for participation in the Contract.

**Note**: Bidders must always submit **with their bid** the Identification of Minority Business Participation Form listing all Minority Business contractors, vendors, and suppliers that will be used. If there is no Minority Business participation, then enter none or zero on the form. Affidavit A **or** Affidavit B, as applicable, also must be submitted with the bid. Failure to file a required affidavit or documentation with the bid or after being notified apparent low Bidder is grounds for rejection of the bid.

## Proposal Signature Page

The undersigned further agrees that in the case of failure on his part to execute the said Contract, provide performance and payment bonds, and certificates of insurance within ten (10) consecutive calendar days after being given written notice of the award of Contract, the certified check, cash, or bid bond accompanying this bid shall be paid into the funds of the Owner's account set aside for the project, as liquidated damages for such failure; otherwise the certified check, cash, or bid bond accompanying this Proposal shall be returned to the undersigned.

Respectfully submitted this day of April 16, 2020

State Utility Contractors, Inc.
(Name of Firm or Corporation Making Bid)

WITNESS:

By: Ronald L. Brown
Signature

(Proprietorship, Partnership, or LLC)

Name: Ronald L. Brown
Print or Type

Title: President
(Owner/Co-Partner/President/Vice President/Manager)

Address: P.O. Box 5019

Monroe, NC 28111-5019

ATTEST:

By: R. Scott Little
R. Scott Little

Title: Asst. Secretary
(Corp. Sec. or Asst. Sec. only)

License No. 17793

Federal I.D. No. 56-1444827

(CORPORATE SEAL)

STATE UTILITY CONTRACTORS, INC. CORPORATE SEAL NORTH CAROLINA

Addendum received and used in computing bid:

Addendum No. 1 ✓ Addendum No. 3 _____ Addendum No. 5 _____ Addendum No. 7 _____

Addendum No. 2 _____ Addendum No. 4 _____ Addendum No. 6 _____ Addendum No. 8 _____

STATE UTILITY CONTRACTORS, INC.
UNANIMOUS WRITTEN CONSENT TO INFORMAL
ACTION OF THE BOARD OF DIRECTORS WITHOUT MEETING

The undersigned, being all of the members of the Board of Directors of State Utility Contractors, Inc., a North Carolina corporation (hereinafter referred to as the "Corporation") pursuant to the provisions of Section 55-29 of the North Carolina General Statutes, do hereby waive any and all requirements for the holding of a meeting or meetings of the Board of Directors of the Corporation and do hereby take the following action and adopt the following preambles and resolutions by signing our written consent hereto:

WHEREAS, the Board of Directors of the Corporation deems it desirable and practical to conduct the day-to-day operations of the Corporation in an efficient manner and without an undue amount of meetings and consultation, and

WHEREAS, the corporate charter and by-laws require the President and such other officers as are required or deemed appropriate to sign certain official documents on behalf of the Corporation.

NOW, THEFEFORE, BE IT RESOLVED, that the President of the Corporation be and he is hereby authorized and directed to take such action and sign such documents as he deems appropriate and prudent to conduct the operations of the Corporation in an efficient manner. Such direction includes, but is not necessarily limited to, entering into and executing contracts; entering into and executing loans from banks or other financial institutions or individuals; overseeing investment of cash funds; buying and selling, leasing or renting equipment and supplies; entering into and executing contracts for insurance of any and all nature necessary; and entering into and executing such other contracts as may be appropriate to the efficient and prudent operations of the Corporation

AND, we do hereby unanimously consent to all of the action described in the foregoing preambles and resolution and that said action and resolution shall have the same force and effect as if taken at a duly constituted meeting of the Board of Directors of the Corporation and that this document shall be filed with the Secretary of the Corporation and shall be made a part of the minutes of the Corporation.

WITNESS, our hands and seals, this action to be effective as of the 6th day of April, 2015.

Bill F. Norwood

Ronald L. Brown

Charles K. Morgan

Michael L. McLamb

Steve H. Brown

License Year

2020

License No.

17793

# North Carolina

## Licensing Board for General Contractors

This is to Certify That:

State Utility Contractors, Inc.
Monroe, NC

is duly registered and entitled to practice

## General Contracting

Limitation: Unlimited
Classification: Unclassified

until

December 31, 2020

when this Certificate expires.

Witness our hands and seal of the Board.

Dated, Raleigh, N.C.

January 1, 2020

This certificate may not be altered.

LICENSING BOARD FOR GENERAL CONTRACTORS
MAY 20, 1775
NORTH CAROLINA

Chairman

C. Frank Wiesner

Secretary-Treasurer

# FORM OF BID BOND

**BIDDER** *(Name and Address)*:
State Utility Contractors, Inc.
4417 Old Charlotte Hwy.
Monroe, NC 28110

**SURETY** *(Name and Address of Principal Place of Business)*:
Hartford Accident and Indemnity Company
Bond Claim Dept., One Hartford Plaza, T-4
Hartford, CT 06155-0001

**Owner**:
**Brunswick County**
**P. O. Box 249**
**Bolivia, NC 28422**

**BID**
BID DUE DATE: April 16, 2020
PROJECT *(Brief Description Including Location)*:
Disaster Response Emergency/On-Call Construction Services

**BOND**
BOND NUMBER: Bid Bond
DATE: *(Not Later than Bid Due Date)*: April 16, 2020
PENAL SUM: Five Percent of Amount Bid - - - (5%)

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the terms of the Contract Documents, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative. THE CONDITION OF THE ABOVE OBLIGATION is such, that if the Bidder shall be awarded the Contract for which the bid is submitted and shall execute the Contract and give bond for the faithful performance thereof within ten (10) days after the award of same to the Bidder, then this obligation shall be null and void; but if the Bidder fails to so execute such Contract and give performance bond as required by NCGS 143-129, the Surety shall, upon demand, forthwith pay to the Owner the penal sum amount set forth above. Provided further, that the bid may be withdrawn as provided by NCGS 143-129.1

| BIDDER | SURETY |
|---|---|
| State Utility Contractors, Inc. (Seal) | Hartford Accident and Indemnity Company (Seal) |
| Bidder's Name and Corporate Seal | Surety's Name and Corporate Seal |
| By: Ronald L. Brown | By: Debra S. Ritter |
| Signature and Title Ronald L. Brown, President | Signature and Title Debra S. Ritter, Attorney-in-Fact (Attach Power of Attorney) |
| Attest: R. Scott Little | Attest: Sam Ritter |
| Signature and Title R. Scott Little, Asst. Secretary | Signature and Title Sam Ritter, Witness |

STATE UTILITY CONTRACTORS, INC. CORPORATE SEAL NORTH CAROLINA

Note: (1) Above addresses are to be used for giving required notice.
(2) Any singular reference to Bidder, Surety, Owner, or other party shall be considered plural where applicable.

# POWER OF ATTORNEY

*Direct Inquiries/Claims to:*
THE HARTFORD
BOND, T-12
One Hartford Plaza
Hartford, Connecticut 06155
Bond.Claims@thehartford.com
*call:* 888-266-3488 *or fax:* 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

**Agency Name:** MARSH & MCLENNAN AGENCY LLC
**Agency Code:** 22-271157

- [X] **Hartford Fire Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- [X] **Hartford Casualty Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- [X] **Hartford Accident and Indemnity Company**, a corporation duly organized under the laws of the State of Connecticut
- [ ] **Hartford Underwriters Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- [ ] **Twin City Fire Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- [ ] **Hartford Insurance Company of Illinois**, a corporation duly organized under the laws of the State of Illinois
- [ ] **Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana
- [ ] **Hartford Insurance Company of the Southeast**, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, ***up to the amount of*** Unlimited :

Margaret Clark, H. Thomas Dawkins, Raymond J. Garruto, Brad W. Gibson, Carole Holland, Wendy E. Lahm, Martin Pallazza, Debra S. Ritter, Linda Shaw, Jenny Snell, Robert C. Tresher, Angela M. Yount of CHARLOTTE, North Carolina

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**In Witness Whereof,** and as authorized by a Resolution of the Board of Directors of the Companies on May 6, 2015 the Companies have caused these presents to be signed by its Senior Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.

John Gray, Assistant Secretary

M. Ross Fisher, Senior Vice President

**STATE OF CONNECTICUT**
**COUNTY OF HARTFORD** } ss. Hartford

On this 5th day of January, 2018, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Senior Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.

Kathleen T. Maynard
Notary Public
My Commission Expires July 31, 2021

**CERTIFICATE**

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of April 16, 2020.

Signed and sealed at the City of Hartford.

Kevin Heckman, Assistant Vice President

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid

# Identification of Minority Business Participation

I, State Utility Contractors, Inc.
(Name of Bidder)

do hereby certify that on this project, we will use the following Minority Business Enterprises (MBE) as construction subcontractors, vendors, suppliers, or providers of professional services.

| Firm Name, Address, and Phone # | Work Type | *Minority Category |
|---|---|---|
| N/A | | |
| | | |
| | | |
|

# Brunswick County AFFIDAVIT A – Listing of Good Faith Efforts

Affidavit of State Utility Contractors, Inc. (Name of Bidder)

I have made a good faith effort to comply under the following areas checked:

**Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive.** (1 NC Administrative Code 30 I.0101)

☑ **1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the Contractor, or available on State or local government-maintained lists, at least ten (10) days before the bid date and notified them of the nature and scope of the work to be performed.

☑ **2 – (10 pts)** Made the construction plans, specifications, and requirements available for review by prospective minority businesses, or providing these documents to them at least ten (10) days before the bids are due.

☑ **3 – (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.

☐ **4 – (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses that provide assistance in recruitment of minority businesses.

☑ **5 – (10 pts)** Attended pre-bid meetings scheduled by the owner.

☐ **6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for Subcontractors.

☑ **7 – (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.

☐ **8 – (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the Bidder's suppliers in order to help minority businesses in establishing credit.

☐ **9 – (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.

☐ **10 – (20 pts)** Provided quick pay agreements and policies to enable minority Contractors and suppliers to meet cash-flow demands.

☐ **11 – (20 pts)** A minimum of two (2) or all, if only one (1) is indicated, of the MBE firms indicated on the "Identification of Minority Business Participation" form are **Brunswick County** based.

The undersigned, if apparent low Bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of Contract to be executed with the Owner. Substitution of Contractors must be in accordance with NCGS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the Contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the Bidder to the commitment herein set forth.

Date: 4-16-2020 Name of Authorized Officer: Ronald L. Brown

Signature: Ronald L Brown

Title: President

LISA W WILLIAMSON NOTARY PUBLIC UNION COUNTY, NC SEAL

State of NC, County of Union

Subscribed and sworn to before me this 16th day of April 20 20

Notary Public Lisa W Williamson

My commission expires 9-5-2021

| Request Info | |
|---|---|
| **Type** | Budget Amendment |
| **Description** | On-Call Services State Utility Water |
| **Justification** | Board Meeting 05/04/2020-Appropriate $125,000 of expendable net assets for the award of construction contract to State Utility Contractors for on-call construction services in the event of an emergency. |
| **Originator** | Tiffany Rogers |

**Items**

| Department | Object | Dept Desc | Object Desc | Amount | Incr/Decr | Dr/Cr |
|---|---|---|---|---|---|---|
| 619800 | 399200 | Interfund Trans Water Fund | Expendable Net Assets Appropr | 125000 | Increase | Credit |
| 617110 | 439905 | Water - Administration | Contract Services Restricted | 125000 | Increase | Debit |

| Total | |
|---|---|
| **Grand Total:** | 250000 |

| Request Info | |
|---|---|
| **Type** | Budget Amendment |
| **Description** | On-Call Services State Utility Wastewater |
| **Justification** | Board Meeting 05/04/2020-Appropriate $125,000 of expendable net assets for the award of construction contract to State Utility Contractors for on-call construction services in the event of an emergency. |
| **Originator** | Tiffany Rogers |

**Items**

| Department | Object | Dept Desc | Object Desc | Amount | Incr/Decr | Dr/Cr |
|---|---|---|---|---|---|---|
| 629800 | 399200 | Interfund Trans Wastewater Fnd | Expendable Net Assets Appropr | 125000 | Increase | Credit |
| 627210 | 439905 | Wastewater - Administration | Contract Services Restricted | 125000 | Increase | Debit |

| Total | |
|---|---|
| **Grand Total:** | 250000 |

DocuSign Envelope ID: 6ADC159C-6EEC-4BDD-919B-354B622D6D53

# AMENDMENT TO CONSTRUCTION OR REPAIR AGREEMENT

THIS AMENDMENT TO CONSTRUCTION OR REPAIR AGREEMENT (the "Amendment") is made and entered into the 3rd day of May, 2021, by and between Brunswick County (hereinafter referred to as "County") and State Utility Contractors, Inc. (hereinafter referred to as "Contractor").

**WITNESSETH:**

WHEREAS, County and Contractor entered into a Construction or Repair Agreement (the "Agreement") effective May 5, 2020, under which Contractor would provide Disaster Response Emergency/On-Call Construction Services for Task 1, as defined in the Agreement, on an as-needed basis upon issuance of a Task Order by County; and

WHEREAS, the initial term of the Agreement was set to expire on May 4, 2021; and

WHEREAS, pursuant to Section 2 of the Agreement, the initial term may be extended for an additional one (1) or two (2) years by mutual written agreement of the parties; and

WHEREAS, the parties wish to extend the term of the Agreement for an additional two (2) years until May 4, 2023.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Section 2 – The term of the Agreement is hereby extended for an additional two (2) years until May 4, 2023;

2. Except as otherwise amended herein, all other terms of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto execute this Amendment by their duly authorized representatives.

ATTEST:

_____
Clerk to the Board

[SEAL]

**BRUNSWICK COUNTY**

By: _____
Chairman, Board of Commissioners

**STATE UTILITY CONTRACTORS, INC.**

By: Ron L. Brown

Printed Name: Ron L. Brown

Title: President

Date: 4/28/2021

APPROVED AS TO FORM

Bryan W. Batton

Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Asst. County Attorney
Brunswick County, NC

# Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
## May 3, 2021

**Action Item # V. - 13.**
Utilities - Water Week Resolution

**From:**
John Nichols, P.E.

**Issue/Action Requested:**
Request that the Board of Commissioners approve a resolution regarding recognizing Drinking Water Week.

**Background/Purpose of Request:**
In 1988, the American Water Works Association brought Drinking Water Week to the attention of the U.S. Government and formed a coalition along with the League of Women Voters, the Association of State Drinking Water Administrators, and the US Environmental Protection Agency.
Rep. Robert Roe and Sen. Dennis DeConcini subsequently sponsored a resolution to name the first week of May as Drinking Water Week, and the week-long observance was declared in a joint congressional resolution signed by then President Ronald Reagan.

For more than 40 years the American Water Works Association and its members have used Drinking Water Week as a unique opportunity for both water professionals and the communities they serve to recognize the vital role water plays in our daily lives.

This year's recognition will be May 2-8, 2021.

Staff recommends approval of the resolution.

**Fiscal Impact:**
Not Applicable

**Approved By County Attorney:**
Yes

**Advisory Board Recommendation:**
Not Applicable

**County Manager's Recommendation:**
Recommend the Board of Commissioners approve a resolution regarding recognizing Drinking Water Week.

**ATTACHMENTS:**

Description

- Resolution Recognizing Drinking Water Week

*County of Brunswick*

*Office of the County Commissioners*

## RESOLUTION RECOGNIZING DRINKING WATER WEEK

**WHEREAS**, the Board of Commissioners for Brunswick County (County) wishes to provide and promote the importance of safe drinking water in Brunswick County; and

**WHEREAS**, Brunswick County Public Utilities (BCPU) serves not only the unincorporated areas of the County; but also within the municipalities of Boiling Spring Lakes, Bolivia, Calabash, Carolina Shores, Caswell Beach, parts of Leland, Navassa, Northwest, parts of Oak Island, St. James, Sandy Creek, parts of Southport, Sunset Beach, and Varnamtown; and

**WHEREAS**, for nearly four decades, Brunswick County Public Utilities has faithfully provided water to other utilities (wholesale customers) including Ocean Isle Beach, Holden Beach, Oak Island, Bald Head Island, Southport, Shallotte, Leland, and H2GO; and

**WHEREAS**, the County recognizes that water is our most valuable natural resource, and that access to safe drinking water is a necessity; and

**WHEREAS**, Brunswick County Public Utilities operates a premier drinking water system that has been awarded the NC American Water Works Association Water Large Distribution System of the Year Award five consecutive years, and safeguards public health by producing and distributing drinking water to citizens throughout Brunswick County; and

**WHEREAS**, the County's water system also provides fire protection, supports the continued growth essential to the economic health of the region, and enhances the quality of life for all citizens of the County; and

**WHEREAS**, the County has taken extraordinary steps to provide sufficient water quantity and to safeguard the health and economic future of its residents and customers by undertaking construction of an expansion of the Northwest Water Treatment Plant and the addition of a Low Pressure Reverse Osmosis to remove emerging contaminants in its source water; and

**WHEREAS**, the County calls upon the residents and businesses of our County, the regulatory agencies tasked with source water protection, and all residents and visitors within the state that impact the upstream river system, to protect our source waters from pollution, to practice water conservation, and to support efforts to provide high quality drinking water for the residents and visitors of Brunswick County.

**NOW, THEREFORE BE IT RESOLVED**, by the Chairman and the Board of Commissioners of Brunswick County that the first full week of May is proclaimed as Drinking Water Week.

**THEREFORE, BE IT FURTHER RESOLVED**, that a copy of this resolution be recorded in the permanent minutes of this Board.

Adopted this 3rd day of May 2021.

_____
Randy Thompson, Chairman
Brunswick County Commissioners

Attest:

_____
Andrea White, NCCCC
Clerk to the Board

# Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
## May 3, 2021

**Action Item # VI. - 1.**

**From:**
Andrea White

Presentation - Health and Human Services - Trillium Health Resources Annual Report (Dennis Williams, Southern Regional Director)

**Issue/Action Requested:**
Request that the Board of Commissioners receive the Trillium Annual Report.

**Background/Purpose of Request:**
Mr. Dennis Williams, Southern Regional Director, Trillium Health Resources, requested an opportunity to present the Trillium Annual Report to the Board of Commissioners.

**Fiscal Impact:**
Reviewed By Director of Fiscal Operations

**Approved By County Attorney:**
Yes

**County Manager's Recommendation:**
Recommend the Board of Commissioners receive the Trillium Annual Report.

**ATTACHMENTS:**

Description

- Annual Report Presentation

# TRILLIUM HEALTH RESOURCES
# ANNUAL REPORT BRUNSWICK COUNTY
# FISCAL YEAR 2019 - 2020

*DENNIS WILLIAMS*
*SOUTHERN REGIONAL DIRECTOR*

Transforming Lives

Trillium HEALTH RESOURCES

# TRILLIUM UPDATE

Trillium's mission:  Transforming lives and building community well-being through partnership and proven solutions.

- Who We Are
- Medicaid Transformation Changes
- Organizational changes- Call centers, Contracts, Care Management
- County Data

# Who We Are - Numbers

- 26 Counties
- 1,469,101 total population
- 266,000 Medicaid Eligible
- Served 58,452 individuals from mild to severe mental health needs
  - 70% with MH needs
  - 20% with SUD
  - 10% with IDD
- Approximately 500 Providers
- $475,921,857.00 spent on services last year
- Smallest County- Tyrrell 3,665- Largest County -New Hanover 239,272
- Cover over 12,000 square miles

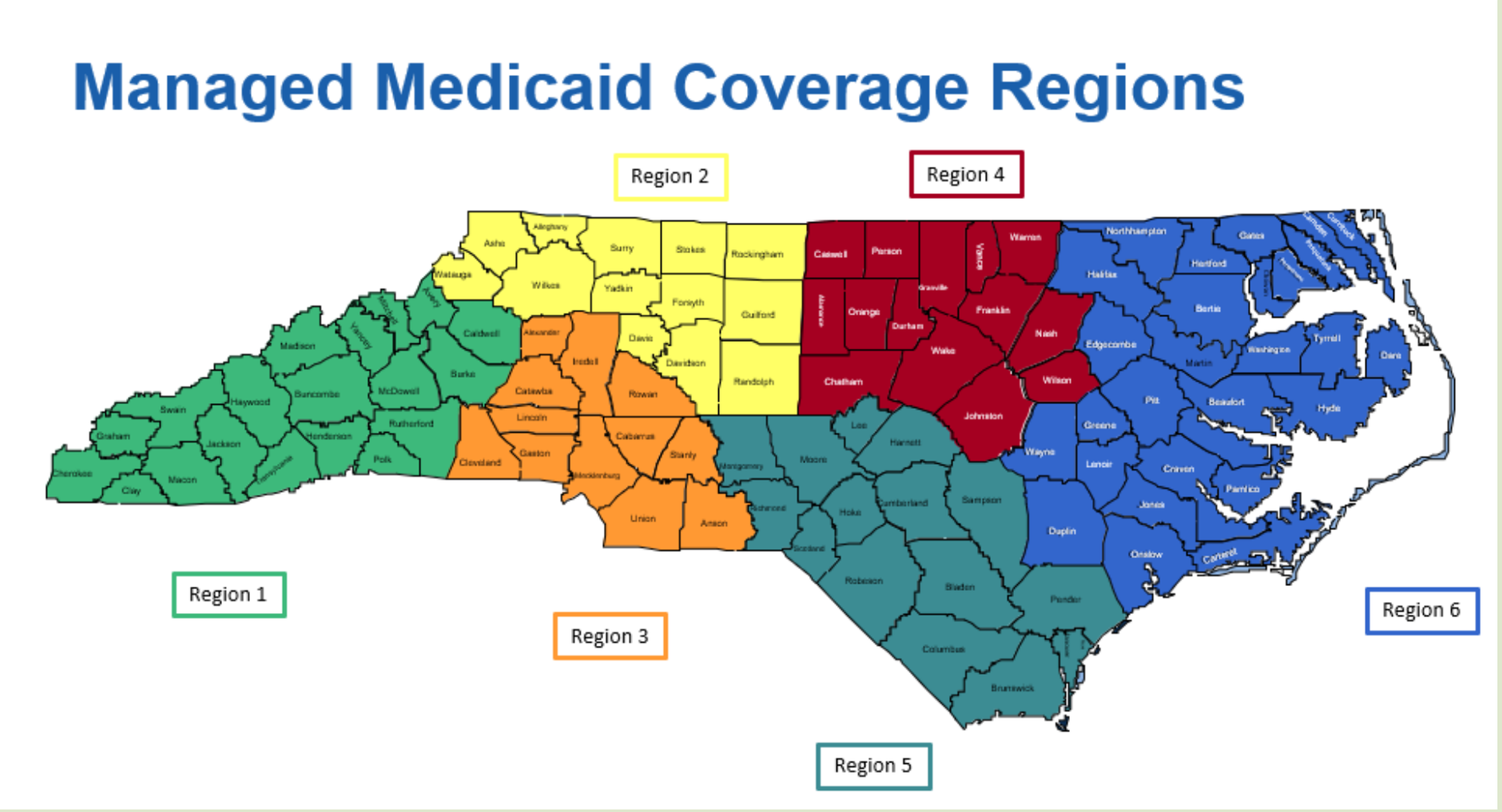
# Trillium Map per Region

| REGION | POPULATION | SQUARE MILES | # OF COUNTIES |
|---|---|---|---|
| Northern | 201,969 | 3,511 | 10 |
| Central | 494,441 | 4,717 | 9 |
| Southern | 772,691 | 4,176 | 7 |

# Medicaid Transformation- Standard Plans

- Standard Plan- 5 companies were awarded
  - Amerihealth Caritas NC Inc.
  - Blue Cross Blue Shield of NC
  - UnitedHealthcare of NC Inc.
  - WellCare of NC Inc.
  - Carolina Complete Health- covers regions 3, 4 and 5
    - These Plans will be managing the mild to moderate Medicaid behavioral health recipients

# Map of Standard Plan Regions



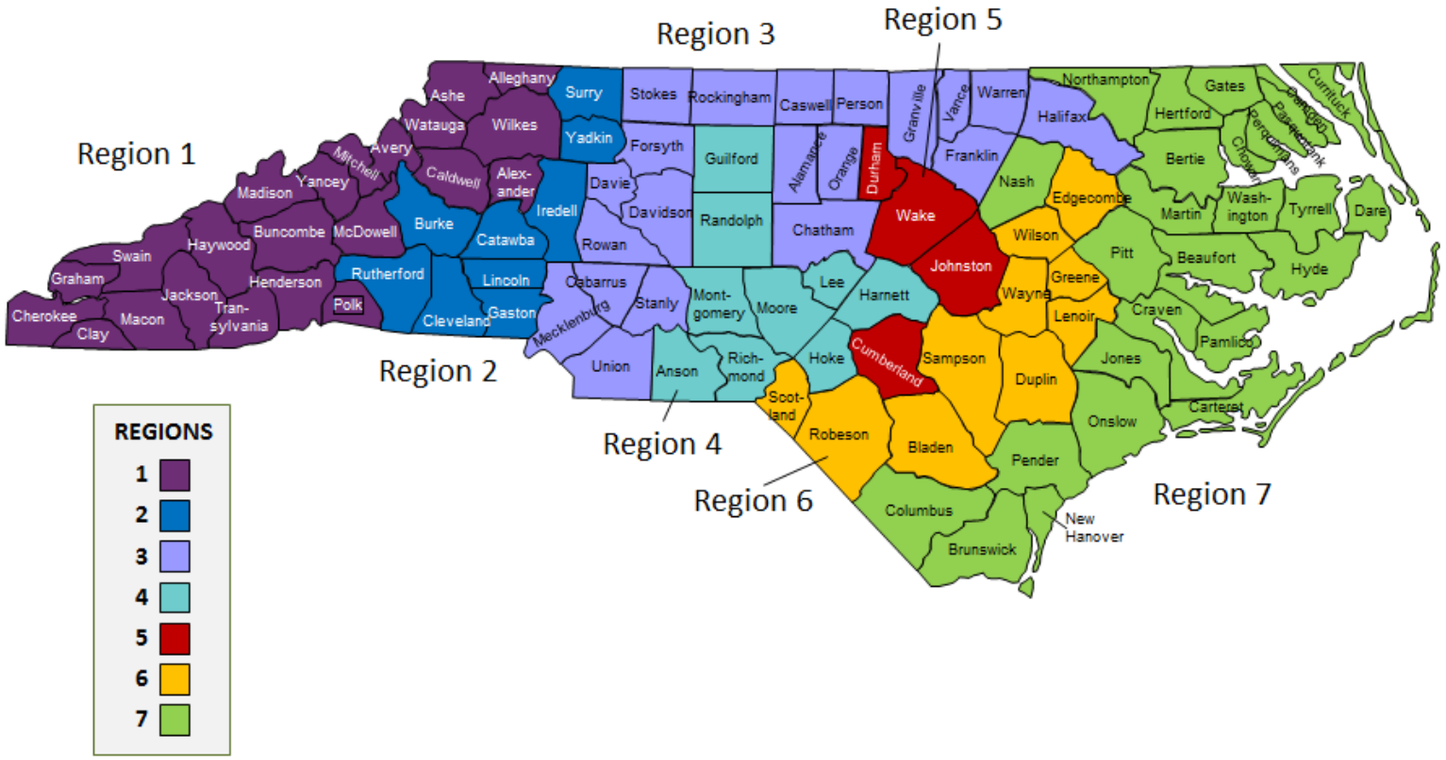
# Medicaid Transformation Standard Plans continued:

- Standard Plan Insurance Companies Timeline:
- March 15th through May 14th – Open Enrollment
- May 15th- Auto enrollment
- July 1st 2021- Standard Plans begin to serve Medicaid individuals with Low to Moderate needs

# Medicaid Transformation Tailored Plan:

- 5-7 Managed Care Organizations- NCACC recommended the current LME/MCO map
- Managing the high risk/high cost individuals with mental health, developmental disabilities and substance use
- DHHS released the RFA on November 13th 2020
- Managing the whole person- both physical health and behavioral health

# Behavioral Health I/DD Tailored Plan Regions



# Medicaid Transformation Tailored Plan Continued

- Applications were due back to the state on Feb 2nd 2021 and we submitted ours on time
- DHHS will award the contracts on June 11th, 2021 to 5-7 MCO's
- We will have a readiness review late fall
- July 1st 2022- Begin the Tailored Plan the more Severe behavioral Health, Substance use and IDD population like we do today

# What will it Look like

- Manage the whole person both Behavioral and Physical health
- Focus on the Social Determinants of Health-

1. 1. Transportation
2. 2. Housing
3. 3. Food Insecurities
4. 4. Employment
5. 5. Personal Safety

- Contract with every pharmacy in our 26 counties
- Contract with all primary care physicians that provide services to Medicaid consumers
- Provide Tailored Care Management

# Organizational changes

## Call Centers

- Pharmacy
- Provider
- Nurse
- Current Call Center

## Contracts

- Pharmacy
- Primary Care Offices

## Care Management

- Whole Person Care

# Impact today

- Consumers will remain with the same services with their MCO
- We will still move forward with developing the infrastructure to serve the whole person
- Work towards contracting with pharmacies and primary care services

# COVID - 19 IMPACT

- Some rate increases extended ranging from 5% - 30% to Network Providers
- Respite for Children with IDD increased to 30 hours
- Telehealth continues to be provided when needed
- Trillium continues remote status with office usage limited to 15% of allowed capacity
- Access to Care continues to be in operation 24 hours per day.

# Project Updates

- DSS Respite Homes
- 1200 Naloxone kits
- COVID Kits for Providers and Consumers
- Increased Rates for providers Direct Care Staff
- Hand Sanitizer stations at Playgrounds
- Racial Equity Projects- internal and external
- Safe Schools/Healthy Kids- online training on a variety of topics

# Consumers served in Brunswick County

Total Consumers served – 4,559

- Mental Health – 3,568
- Substance Use – 418
- I/DD – 1,067

Total is unduplicated, since a single individual may receive services in more than one category

# QUESTIONS?

Transforming Lives

Trillium HEALTH RESOURCES

# Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
## May 3, 2021

**Action Item # VI. - 2.**

**From:** Presentation - Health and Human Services - Wilmington Area Rebuilding Ministry Inc. (JC Lyle, Executive Director)
David Stanley, Deputy County Manager for Health and Human Services

**Issue/Action Requested:**
Request that the Board of Commissioners receive an update on the progress of Wilmington Area Rebuilding Ministry Inc. (WARM), in Brunswick County.

**Background/Purpose of Request:**
Ms. JC Lyle, WARM Executive Director, has requested that Brunswick County receive a presentation to update the Commissioners on the Urgent Repair Program and progress of WARM in Brunswick County.

Over the last several years, as a grantee of Brunswick County, WARM has committed to providing urgent repairs and accessibility upgrades for low income homeowners in Brunswick County.

Staff recommends approval of the request to receive a presentation from WARM.

**Fiscal Impact:**
Reviewed By Director of Fiscal Operations

**Approved By County Attorney:**
Yes

**County Manager's Recommendation:**
Recommend the Board of Commissioners receive an update on the progress of Wilmington Area Rebuilding Ministry Inc. (WARM), in Brunswick County.

**ATTACHMENTS:**

Description

- WARM Request - Update FY-21

# WILMINGTON AREA REBUILDING MINISTRY

5058 WRIGHTSVILLE AVENUE - WILMINGTON, NC - 28403
910.399.7563 - WWW.WARMNC.ORG - INFO@WARMNC.ORG
GENERAL CONTRACTING LICENSE #78118


April 12, 2021

Brunswick County Clerk's Office
PO Box 249
Bolivia, NC 28422

JC Lyle, Executive Director for WARM, Inc., would like to speak before the Brunswick County Commissioners at their May 3, 2021 meeting.

WARM, Inc. is the recipient of funding from Brunswick County used as matching funds for a grant we receive from the North Carolina Housing Finance Agency.

Ms. Lyle would like to update the Commissioners on our progress in assisting low-income families with free home repair in Brunswick County.

Please feel free to contact me if you have questions.

Melanie James
Melanie James
Program Manager

## Brunswick County Board of Commissioners
# ACTION AGENDA ITEM
### May 3, 2021

**Action Item # VIII. - 1.**
Closed Session - Approve Closed Session Minutes and Consult with Attorney

**From:**
Andrea White

**Issue/Action Requested:**
Request that the Board of Commissioners enter into Closed Session pursuant to N.C.G.S. 143-318.11(a)(1) to approve closed session minutes and 143-318.11(a)(3) to consult with its attorney.

**Background/Purpose of Request:**

**Fiscal Impact:**

**Approved By County Attorney:**

**County Manager's Recommendation:**
Recommend that the Board of Commissioners enter into Closed Session pursuant to N.C.G.S. 143-318.11(a)(1) to approve closed session minutes and 143-318.11(a)(3) to consult with its attorney.