

**BRUNSWICK COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING AGENDA**

**April 5, 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 Lincoln Roof Replacement
Request that the Board of Commissioners approve and authorize the Chairman to sign the Highland Roofing Company contract for roof replacement at Lincoln Elementary School in the amount of \$709,365.
2. Board Appointment - Fire Fee Committee - Southport Fire District
Request that the Board of Commissioners appoint Ms. Mary McCarthy as the community member to represent the Southport Fire District on the Fire Fee Committee and review the committee member list for any additional changes.
3. Board Appointment - Juvenile Crime Prevention Council (JCPC) - Chief District Court Judge Designee
Request that the Board of Commissioner approve the selection of Judge Pauline Hankins as the Chief District Judge Designee on the Juvenile Crime Prevention Council (JCPC).
4. Clerk to the Board - Meeting Minutes
Request that the Board of Commissioners approve the draft minutes from the March 15, 2021 Regular Meeting.
5. 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.

-NC Concealed Weapons Fees Budget Amendment
Appropriate \$70,000 of concealed weapons permits revenue estimated through June 30,2021 for payment of the NC Bureau of Investigation Concealed Handgun Permit Fees.

-Sheriff's Sales and Services Budget Amendment
Appropriate \$73,165 of sales and services revenue to reimburse overtime and temporary part time line items for hours worked at Brunswick Community College and various community events. This funding is not associated with COVID-19 related events.
6. Operation Services - Lease Agreement for Southport Probation & Parole Office
Request that the Board of Commissioners approve a lease for the probation and parole office in Southport.
7. Sheriff's Office - 911 Center Phone System Contract Extension
Request that the Board of Commissioners approve an extension of the existing 911 Center Phone System agreement with ePlus Group, Inc. for six months, maintaining the current monthly rate in the state 911 budget 224376.

8. Tax Administration - ESRI Small Government Agreement (SGEA)
Request that the Board of Commissioners approve the licensing agreement for GIS mapping services with ESRI.
9. Utilities - 211 WTP Change Order # 1
Request that the Board of Commissioners approve Change Order #1 in the amount of \$31,750 and 90 additional days for the 211 WTP Lab Building contract with Coastal Carolina Builders, Inc.
10. Utilities - Comprehensive Wastewater Master Plan 2021
Request that the Board of Commissioners approve associated budget amendment and authorize the Chairman and Clerk to the Board to approve the Professional Services Agreement for Architectural, Engineering and/or Surveying Services with McKim and Creed, PA, in the amount of \$120,000 for engineering services associated with the 2021 Comprehensive Wastewater Master Plan.
11. Utilities - McKim & Creed Soil Testing Budget Amendment
Request that the Board of Commissioners approve the Professional Services Agreement for Architectural, Engineering, and/or Surveying Services with McKim & Creed, P.A., in the amount of \$55,400. This will be for engineering services associated with the addition to the Northeast Brunswick Regional Force Main Off-Site Transmission Improvements Project and to continue the previous contract to provide an on-site testing protocol plan and daily on-site environmental monitoring during construction.

VI. Presentation

1. Presentation - Brunswick BID Marketing/Campaign Information (Bill Early, Executive Director and Kevin Lackey, Business Development Manager)
Request that the Board of Commissioners receive a presentation from Brunswick BID to include their marketing efforts and campaign moving forward.
2. Presentation - Final Mission, Vision, and Values Statements (Meagan Kascsak, Communications Director)
Request the Board of Commissioners receive a presentation on the final mission, vision, and value statements for Brunswick County and to consider their adoption.
3. Presentation - Health and Human Services - COVID-19 Update (David Stanley, Deputy County Manager for HHS)
Request that the Board of Commissioners receive an update on the Coronavirus (COVID-19) and vaccine availability.

VII. Administrative Report

1. County Attorney - Resolution of Support for Bald Head Island Transportation Authority (Bob Shaver, County Attorney)
Request that the Board of Commissioners consider approval of a Resolution of Support for the Acquisition of the Bald Head Island Ferry Transportation System by the Bald Head Island Transportation Authority.
2. Operation Services - Integrated Supply Amendment (Stephanie Lewis, Director of Operation Services)
Request that the Board of Commissioners approve an amendment to the Integrated Supply Agreement with Atlantic Auto & Marine Inc. (d/b/a NAPA Auto Parts).

VIII. Other Business/Informal Discussion

IX. Adjournment



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

From:
Julie A. Miller

Action Item # V. - 1.

Administration - Brunswick County Schools Lincoln Roof Replacement

Issue/Action Requested:

Request that the Board of Commissioners approve and authorize the Chairman to sign the Highland Roofing Company contract for roof replacement at Lincoln Elementary School in the amount of \$709,365.

Background/Purpose of Request:

Brunswick County Board of Education approved this contract on 3/23/2021 and staff recommends the contract with Highland Roofing Company in the amount of \$709,365 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
Funds available in the project

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners approve and authorize the Chairman to sign the Highland Roofing Company contract for roof replacement at Lincoln Elementary School in the amount of \$709,365.

ATTACHMENTS:

Description

- ▣ 20210405 Attach Highland Roofing Lincoln Roof Contract



BRUNSWICK COUNTY SCHOOLS

35 Referendum Drive • Bolivia, North Carolina 28422 • Phone: 910-253-2900 • Fax: 866-291-7891

☐ Board Presentation	☐ Approved
☐ Report to the Board	☐ Denied
☒ Consent Agenda	☐ Deferred
☐ Action Agenda	
☐ Discussion Agenda	Attest: Clerk to the Board
☐ Confidential Agenda	
☐ Information Item	
☐ Announcement	Date <u>3/23/21</u>

To: Operations Committee

From: Susan Rutledge

Date: March 5, 2021

Re: Lincoln Elementary roof replacement – Highland Roofing Company

Background Information

The 2016 Bond included funds for roof replacement at Lincoln Elementary. In addition to the base bid, two additional roof sections were included as alternates. The Bids for this project were received on March 2, 2021.

Current Status

Eight bids were received. All bids were evaluated by REI Engineers. REI Engineers recommended to accept the lowest bid in the amount of \$709,365 from Highland Roofing Company, which also included the two alternates.

Recommendation

Staff recommends the Board approve the contract to Highland Roofing Company to be forwarded to the County for approval. This will allow the roofing project to start by June 1.



OWNER-CONTRACTOR AGREEMENT

PROJECT: RE-ROOFING PROJECT

SCHOOL NAME: **Lincoln Elementary**

THIS AGREEMENT, in three (3) copies, made this 3rd 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 Highland Roofing Company. (herein referred to as the "Contractor"), whose mailing address is 4310 Deer Creek Ln, Wilmington, NC 28405. 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 Lincoln 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 January 29, 2021 for Brunswick County Board of Education, including the following addenda:

Addendum 1 dated 2/25/21

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:

Alternate 1- remove and replace roof Area A3 \$88,308

Alternate 2 - remove and replace roof Area D \$ 7,037

- 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 - \$15,000

- 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, Suite 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 seven hundred and nine thousand, three hundred sixty-five dollars (\$709,365) 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.

5.3 Unit Prices are established as follows for the Project:

Unit Price No. 1	Repair corroded steel deck with coating	\$1.10
Unit Price No. 2	Repair steel deck with steel plates	\$4.75
Unit Price No. 3	Overlay deteriorated steel deck with new steel deck	\$7.50
Unit Price No. 4	Replace wet or deteriorated existing gypsum substrate	\$1.38
Unit Price No. 5	Replace deteriorated wood blocking	\$2.80
Unit Price No. 6	Replace deteriorated plywood	\$2.20
Unit Price No. 7	Provide additional manufacturer's walk pad material	\$7.50

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 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.

COUNTY OF BRUNSWICK, NORTH CAROLINA

Frank Williams, Chairman
Board of Commissioners

ATTEST:

Clerk to the Board of Commissioners

This contract was approved by the Board on the ____ day of April, 2021

HIGHLAND ROOFING

By: 
 President or Vice-President
(Print Name)

ATTEST:


Corporate Secretary

4. 9003.696.529.320.838

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, Finance Officer Brunswick County Schools	Julie A. Miller, Director Of Fiscal Operations, County of Brunswick, North Carolina

APPROVED AS TO FORM

Brunswick County Attorney/Asst Attorney

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)

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.

- 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

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

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).

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.

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.

- 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.

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

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 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 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 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.

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 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.

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.

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:

- .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

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

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

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 entities 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 of 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.

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,

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

- .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);

- (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;

- .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.

- 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

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

OWNER: _____
CONTRACTOR: _____
ADDRESS: _____

PROJECT: _____
FOR PERIOD FROM: _____
TO: _____

VENDOR TAX WAS PAID TO	MATERIAL PURCHASED	ADDRESS	INVOICE NUMBER	DATE	INVOICE AMOUNT	TAXABLE AMOUNT	N.C. TAX	COUNT Y TAX	NAME OF COUNTY
				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____

Notary Public

Seal

My Commission Expires: _____

Signed: _____

Print Name: _____

Title: _____

CHANGE PROPOSAL FORM
Time and Material / Unit Price Estimate

Project: _____
 Contract: _____
 Contractor: _____

Proposal #: _____
 Project #: _____
 Contractor #: _____

Description of change: _____

Materials & Labor

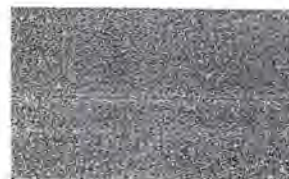
Estimated cost of labor & materials including shipping, overtime, payroll taxes and insurance, and overhead and profit.
 Maintain accurate records for billing purposes.

SUBTOTALS



Unit Price Work

Estimated quantity of units required less allowance units not used, times the established unit cost.
 Maintain accurate records for billing purposes. Third party records may be required.



Equipment Rental

Estimated cost of equipment rental including shipping, taxes and overhead and profit.
 Maintain accurate records for billing purposes.



Subcontractors

Estimated cost of subcontracts including all subcontractor expenses.
 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: _____

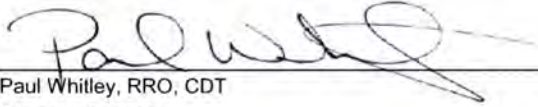
Date: _____

BID TABULATION

Owner Name: Brunswick County Schools
Project Name: Lincoln Elementary School Roof Replacement
Bid Due Date: March 2, 2021
Bid Due Time: 2:00 PM

Bidders	Base Bid	Alternate 01 ADD	Alternate 02 ADD	UP-1	UP-2	UP-3	UP-4	UP-5	UP-6	UP-7	RMA	Addendum No. 1	Bid Bond	MWBE A or B
AAR of North Carolina, Inc.	\$664,950.00	\$138,540.00	\$6,700.00	\$ 3.00	\$ 6.00	\$ 7.00	\$ 1.75	\$ 4.00	\$ 4.00	\$ 12.00	Soprema	Yes	Yes	A
Coastal Commercial Roofing Co.	\$672,218.00	\$142,350.00	\$7,100.00	\$ 2.20	\$ 3.25	\$ 7.00	\$ 1.75	\$ 5.00	\$ 2.35	\$ 7.50	Soprema	Yes	Yes	B
Curtis Construction Company	\$806,600.00	\$101,600.00	\$14,600.00	\$ 4.50	\$ 25.00	\$ 15.00	\$ 3.50	\$ 4.00	\$ 5.00	\$ 20.00	Soprema	Yes	Yes	B
Highland Roofing Company	\$614,020.00	\$88,308.00	\$7,037.00	\$ 1.10	\$ 4.75	\$ 7.50	\$ 1.38	\$ 2.80	\$ 2.20	\$ 7.50	Soprema	Yes	Yes	A
Industrial Contract Service Corp.	\$642,780.00	\$124,460.00	\$9,340.00	\$ 4.20	\$ 8.60	\$ 13.30	\$ 2.80	\$ 6.90	\$ 3.60	\$ 28.70	Siplast	Yes	Yes	A & B
Tecta America Carolinas, LLC	\$767,581.00	\$133,124.00	\$18,400.00	\$ 3.00	\$ 5.00	\$ 10.00	\$ 2.00	\$ 5.00	\$ 6.00	\$ 18.00	Soprema	Yes	Yes	B
Triangle Roofing Services, Inc.	\$627,500.00	\$115,400.00	\$8,200.00	\$ 3.00	\$ 3.00	\$ 10.00	\$ 1.20	\$ 3.00	\$ 4.00	\$ 10.00	Soprema	Yes	Yes	B
Weathergard, Inc.	\$982,452.00	\$159,518.00	\$7,719.00	\$ 3.00	\$ 3.50	\$ 6.50	\$ 2.00	\$ 3.50	\$ 6.00	\$ 6.00	Siplast	Yes	Yes	B

I hereby certify that this is a true tabulation of bids received.


 Paul Whitley, RRO, CDT
 Project Manager

3/3/2021
 Date

SECTION 00 41 13

BID FORM

To: Brunswick County Schools
199 Sessions Drive
Bolivia, North Carolina 28422

Project: Lincoln Elementary School Roof Replacement
REI Project No. 020CLT-200

Date: March 2, 2021

Contractor: Highland Roofing Company

Address: 4310 Deer Creek Ln, Wilmington, NC 28405

Phone: 910-798-0155

Email: MMcGraw@HighlandRoofingCompany.com

North Carolina License No.: 67180 Classification : S

Limitation: Unlimited

PART 1 - GENERAL

1.1 SUMMARY

- A. The undersigned, as bidder, 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 the contract to be entered into; 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 he has examined the site of the work and the contract documents relative thereto dated January 29, 2021 as prepared by REI Engineers, Inc., and has read all special provisions furnished prior to the opening of bids; that he has satisfied himself relative to the work to be performed. The Bidder proposes and agrees if this proposal is accepted to contract with the Owner in the form of contract specified, to furnish all necessary materials, equipment, machinery, tools apparatus, means of transportation and labor necessary to complete the construction of the project 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, for the sum of:

1.2 BASE BID:

Six Hundred Fourteen Thousand & Twenty
(Words)

\$ 614,020.00
(Figures)

1.3 ALTERNATES

A. The undersigned agrees to perform alternative work as described in Section 01 23 00 "Alternates" for the sums stated below resulting in additions to or deductions from the base bid stated above. Additions and deductions shall include any modifications of the Work or additional work that may be reasonably included as part of the alternative work. All alternative work is to be completed within the same timeframe as the base bid work. All alternates must be filled out. A zero or no entry after any alternate indicates no cost change to include that Alternate. The Owner may accept Alternates at any time during the bid holding period. The undersigned acknowledges that failure to complete all information requested in this section may result in the rejection of this bid.

1. Alternate No. 1: Provide roof replacement as specified on Roof Area A3.
 - a. Words: Eighty Eight Thousand Three Hundred & Eight
 - b. Figures: \$ 88,308 .00
 - c. Select One: X Add or Deduct
2. Alternate No. 2: Provide roof replacement as specified on Roof Area D.
 - a. Words: Seven Thousand & Thirty Seven
 - b. Figures: \$ 7,037 .00
 - c. Select One: X Add or Deduct

1.4 ALLOWANCES:

- A. Include in the Base Bid the \$15,000.00 Contingency Allowance specified in Section 01 21 00 "Allowances" of the Project Manual.
- B. Include in the Base Bid the Quantity Allowances specified in Section 01 21 00 "Allowances" of the Project Manual.
 1. Repair 5,000 SF of Corroded Steel Deck with Coating. Refer to Section 05 01 30 "Steel Roof Deck Repair and Securement"
 2. Repair 500 SF of Steel Deck with Steel Plates. Refer to Section 05 01 30 "Steel Roof Deck Repair and Securement".
 3. Overlay 200 SF of Deteriorated Steel Deck with New Steel Deck. Refer to Section 05 01 30 "Steel Roof Deck Repair and Securement"
 4. Replace 7,500 SF of Wet or Deteriorated Existing Gypsum Substrate. Refer to Section 07 22 16 "Roof Insulation"
 5. Replace 600 BF of Deteriorated Wood Blocking. Refer to Section 06 10 00 "Rough Carpentry"
 6. Replace 160 SF of Deteriorated Plywood. Refer to Section 06 10 00 "Rough Carpentry"
 7. Provide 60 SF of Additional Manufacturer's Walk Pad Material. Refer to Section 07 52 16 "Modified Bitumen Roofing".

1.5 UNIT PRICES:

- A. 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. Refer to Section 01 22 00 "Unit Prices".
1. Repair Corroded Steel Deck with Coating. Refer to Section 05 01 30 "Steel Roof Deck Repair and Securement".
 - a. Cost: \$ 1.10 per SF
 2. Repair Steel Deck with Steel Plates. Refer to Section 05 01 30 "Steel Roof Deck Repair and Securement".
 - a. Cost: \$ 4.75 per SF
 3. Overlay Deteriorated Steel Deck with New Steel Deck. Refer to Section 05 01 30 "Steel Roof Deck Repair and Securement".
 - a. Cost: \$ 7.50 per SF
 4. Replace Wet or Deteriorated Existing Gypsum Substrate. Refer to Section 07 22 16 "Roof Insulation".
 - a. Cost: \$ 1.38 per SF
 5. Replace Deteriorated Wood Blocking. Refer to Section 06 10 00 "Rough Carpentry".
 - a. Cost: \$ 2.80 per BF
 6. Replace Deteriorated Plywood. Refer to Section 06 10 00 "Rough Carpentry".
 - a. Cost: \$ 2.20 per SF
 7. Provide Additional Manufacturer's Walk Pad Material. Refer to Section 07 52 16 "Modified Bitumen Roofing".
 - a. Cost: \$ 7.50 per LF

1.6 MANUFACTURERS:

- A. Base bid shall utilize roofing materials manufactured by Soprema. Only one manufacturer shall be listed. Provide Section 00 62 33 "Roof Manufacturer's Acknowledgment" signed by manufacturer listed above and enclose with bid.

1.7 BID HOLDING TIME AND ACCEPTANCE:

- A. The undersigned hereby agrees that this bid may not be revoked or withdrawn after the time set for the opening of bids but shall remain open during the bid holding period as specified in Section 00 21 13 "Instructions to Bidders".

1.8 SCHEDULE OF COMPLETION:

- A. The undersigned understands that time is of the essence and agrees to the Contract Time and liquidated damages as indicated in AIA Document A201, General Conditions of the Contract for Construction and Supplementary Conditions apply to this Work. The undersigned hereby agrees to commence work on this project within thirty (30) days following receipt of an Executed Agreement between Owner and Contractor. Date of commencement will be established in a Notice to Proceed issued to Contractor. All work to be accomplished under the Base Bid and all alternates accepted shall be within Ninety (90) calendar days from the date of commencement.
- B. Applicable liquidated damages shall be stated in the Section 00 73 00 "Supplementary Conditions".

1.9 ADDENDUM:

- A. Addendum received and used in computing bid:

1. Addendum No. 1: 2/25/2021
2. Addendum No. 2: _____
3. Addendum No. 3: _____
4. Addendum No. 4: _____

1.10 SUBCONTRACTORS:

- A. If subcontractors are to be utilized, the General Contractor shall fill out all blanks on the list below. All subcontractors shall be listed. The general contractor shall identify work by the general, subcontractor or not applicable for each trade; utilize parenthesis () to list trades not provided. Do not list suppliers. All blanks must be filled in. Failure to do so may result in bid being declared non-responsive. If there is more than one subcontractor per trade identified below, list all. If no subcontractors are to be utilized, indicate by signing at the appropriate place at the bottom of the table.

Trade	Company	License #
General (Roofing)		
General (Sheet Metal)		
General ()		
Mechanical		
Electrical		
Plumbing		
Masonry		
Concrete		
Waste Disposal		
Other ()		
Other ()		
Other ()		
We do not plan to use subcontract forces		

Respectfully submitted this 2nd day of March, 2021.

Company: Highland Roofing Company

Printed Name: Mac McGraw

Signature: *Mac McGraw*

Title: Lead Estimator

North Carolina (State)

County of New Hanover

I, Heather L Horak, a Notary Public for New Hanover County, North Carolina (State), do hereby certify that Mac McGraw personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this 2nd day of March, 2021.

Heather L Horak
Notary Public

(OFFICIAL SEAL)

My commission expires 12/1, 2024.

Heather L. Horak
NOTARY PUBLIC
New Hanover County
North Carolina
My Commission Expires December 1, 2024

END OF SECTION 00 41 13

SECTION 00 62 33

ROOF MANUFACTURER'S ACKNOWLEDGMENT

Owner: Brunswick County Schools
 Project Name: Lincoln Elementary School Roof Replacement
 Project Address: 1664 Lincoln Rd NE, Leland, North Carolina 28451
 Roofing Contractor: Highland Roofing Company
 Address: 4310 Deer Creek Ln, Wilmington, NC 28405
 Telephone: 910-619-2647

This is to advise the Owner that having thoroughly reviewed the Specifications and Drawings contained within the Project Manual dated January 29, 2021, the above-titled project, we acknowledge that the roof system(s) and flashing system(s) specified are suitable for the issuance of the specified Manufacturer's warranty on this project and have been tested and approved for the wind uplift pressures outlined in the project specifications. Having reviewed the project requirements in detail, the Manufacturer will provide a written response of exceptions to the Engineer through the contractor before five (5) days of the bid due date or as otherwise outlined in the Instructions to Bidders, if conflicts exist between the Manufacturer's warranty requirements and the above listed documents. Exceptions not submitted accordingly are subject to rejection. The manufacturer also certifies that the installer is approved, authorized, or licensed by the manufacturer to install the specified roof system and is eligible to provide the specified manufacturer's warranty. The manufacturer will comply with the specified requirements for on-site technical support.

Dallas Marshburn
 Print or type name of manufacturer's designated Liaison on this project
919-345-5464 dmarshburn@soprema.us
 Telephone and Email
SOPREMA, INC
 Roof Manufacturer's Company Name
Jason Dickens 2-24-21
 Roof Manufacturer Representative's Signature Date
Jason Dickens District Sales manager
 Roof Manufacturer Representative's Name Title
310 Quadral Drive Wadsworth, OH
 Roof Manufacturer's Address

END OF SECTION 00 62 33

Identification of Minority Business Participation

(Name of Bidder)

*Minority

[illegible]

The total value of minority business contracting will be (\$) 0.

Attach AFFIDAVIT A or AFFIDAVIT B to the Bid
State of North Carolina AFFIDAVIT A - Listing of the Good Faith Effort

County of New Hanover

Affidavit of Highland Roofing Company

(Name of Bidder)

I have made a good faith effort to comply under the following areas checked:

(A minimum of 50 points must be checked in order to have achieved a "good faith effort")

- ☐ 1 - 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 10 days before the bid date and notified them of the nature and scope of the work to be performed. Value = 10 points.
- ☒ 2 - Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due. Value = 10 points.
- ☒ 3 - Broken down or combined elements of work into economically feasible units to facilitate minority participation. Value = 15 points.
- ☐ 4 - Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. Value = 10 points.
- ☒ 5 - Attended prebid meetings scheduled by the public owner. Value = 10 points.
- ☐ 6 - Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors. Value = 20 points.
- ☒ 7 - 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. Value = 15 points.
- ☐ 8 - 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. Value = 25 points.
- ☐ 9 - 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. Value = 20 points.
- ☐ 10 - Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. Value = 20 points.

In accordance with GS143-128.2(d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract.

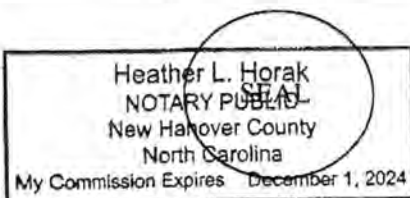
The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: March 2, 2021

Name of Authorized Officer: Mac McGraw

Signature: [Signature]

Title: Lead Estimator



State of North Carolina, County of New Hanover

Subscribed and sworn to before me this 2 day of March 2021

Notary Public [Signature]

My commission expires 12/1/24

FORM OF BID BOND

KNOW ALL MEN BY THESE PRESENTS THAT _____
Highland Roofing Company _____ as
principal, and The Cincinnati Insurance Company _____, as surety, who is
duly licensed to act as surety in North Carolina, are held and firmly bound unto
Brunswick County Schools _____ as obligee,
in the penal sum of Five Percent of Amount Bid _____ 5% _____ DOLLARS, lawful money of
the United States of America, for the payment of which, well and truly to be made, we bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and
severally, firmly by these presents.

Signed, sealed and dated this _____ 2nd _____ day of _____ March _____, 2021 _____

WHEREAS, the said principal is herewith submitting proposal for

Lincoln Elementary School Roof Replacement

and the principal desires to file this bid bond in lieu of making the cash deposit as required
by G.S. 143-129.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that
if the principal 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 days after
the award of same to the principal, then this obligation shall be null and void; but if the
principal fails to so execute such contract and give performance bond as required by G.S.
143-129, the surety shall, upon demand, forthwith pay to the obligee the amount set forth in
the first paragraph hereof. Provided further, that the bid may be withdrawn as provided by
G.S. 143-129.1

Highland Roofing Company _____ (SEAL)

By: [Signature] _____ (SEAL)

_____ (SEAL)

The Cincinnati Insurance Company _____ (SEAL)

By: [Signature] _____ (SEAL)
Heather Segrist, Attorney-in-Fact



THE CINCINNATI INSURANCE COMPANY
THE CINCINNATI CASUALTY COMPANY

Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY and THE CINCINNATI CASUALTY COMPANY, corporations organized under the laws of the State of Ohio, and having their principal offices in the City of Fairfield, Ohio (herein collectively called the "Companies"), do hereby constitute and appoint Heather Segrist its true and legal Attorney-in-Fact to sign, execute, seal and deliver on behalf of the Companies as Surety, at any place within the United States, the following surety bond:

Surety Bond Number: Bid Bond

Principal: Highland Roofing Company

Obligee: Brunswick County Schools

This appointment is made under and by authority of the following resolutions adopted by the Boards of Directors of The Cincinnati Insurance Company and The Cincinnati Casualty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the President or any Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company.

RESOLVED, that the signature of the President or a Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary and the Seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS WHEREOF, the Companies have caused these presents to be sealed with their corporate seals, duly attested by their President or a Vice President this 19th day of December, 2018.



STATE OF OHIO)
COUNTY OF BUTLER) SS:

THE CINCINNATI INSURANCE COMPANY
THE CINCINNATI CASUALTY COMPANY

Stephen A. Ventre

Vice President

On this 19th day of December, 2018 before me came the above-named President or Vice President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, to me personally known to be the officer described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of said Companies and the corporate seals and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporations.



Keith Collett

Keith Collett, Attorney at Law
Notary Public - State of Ohio
My commission has no expiration date.
Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Secretary of The Cincinnati Insurance Company and The Cincinnati Casualty Company, hereby certify that the above is the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Power of Attorney is still in full force and effect.

Given under my hand and seal of said Companies at Fairfield, Ohio, this 2nd day of March, 2021.



Sten D. Dan

Secretary

Project	Lincoln Roof Replacement
Project Start Date	
Contract Amt	
Bid Opening	3/2/2021

MEETING	DATE OF MEETING
Directors Meeting	3/10/2021
Cabinet Meeting	3/15/2021
Ops/Com Meeting	3/23/2021
Board Meeting	4/13/2021
County Commissioners Meeting	4/19/2021

SECTION 00 41 13

BID FORM

To: Brunswick County Schools
199 Sessions Drive
Bolivia, North Carolina 28422

Project: Lincoln Elementary School Roof Replacement
REI Project No. 020CLT-200

Date: March 2, 2021

Contractor: Highland Roofing Company

Address: 4310 Deer Creek Ln, Wilmington, NC 28405

Phone: 910-798-0155

Email: MMcGraw@HighlandRoofingCompany.com

North Carolina License No.: 67180 Classification : S

Limitation: Unlimited

PART 1 - GENERAL

1.1 SUMMARY

- A. The undersigned, as bidder, 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 the contract to be entered into; 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 he has examined the site of the work and the contract documents relative thereto dated January 29, 2021 as prepared by REI Engineers, Inc., and has read all special provisions furnished prior to the opening of bids; that he has satisfied himself relative to the work to be performed. The Bidder proposes and agrees if this proposal is accepted to contract with the Owner in the form of contract specified, to furnish all necessary materials, equipment, machinery, tools apparatus, means of transportation and labor necessary to complete the construction of the project 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, for the sum of:

1.2 BASE BID:

Six Hundred Fourteen Thousand & Twenty
(Words)

\$ 614,020.00
(Figures)

1.3 ALTERNATES

- A. The undersigned agrees to perform alternative work as described in Section 01 23 00 "Alternates" for the sums stated below resulting in additions to or deductions from the base bid stated above. Additions and deductions shall include any modifications of the Work or additional work that may be reasonably included as part of the alternative work. All alternative work is to be completed within the same timeframe as the base bid work. All alternates must be filled out. A zero or no entry after any alternate indicates no cost change to include that Alternate. The Owner may accept Alternates at any time during the bid holding period. The undersigned acknowledges that failure to complete all information requested in this section may result in the rejection of this bid.

1. Alternate No. 1: Provide roof replacement as specified on Roof Area A3.
 - a. Words: Eighty Eight Thousand Three Hundred & Eight
 - b. Figures: \$ 88,308 .00
 - c. Select One: X Add or Deduct
2. Alternate No. 2: Provide roof replacement as specified on Roof Area D.
 - a. Words: Seven Thousand & Thirty Seven
 - b. Figures: \$ 7,037 .00
 - c. Select One: X Add or Deduct

1.4 ALLOWANCES:

- A. Include in the Base Bid the \$15,000.00 Contingency Allowance specified in Section 01 21 00 "Allowances" of the Project Manual.
- B. Include in the Base Bid the Quantity Allowances specified in Section 01 21 00 "Allowances" of the Project Manual.
1. Repair 5,000 SF of Corroded Steel Deck with Coating. Refer to Section 05 01 30 "Steel Roof Deck Repair and Securement"
 2. Repair 500 SF of Steel Deck with Steel Plates. Refer to Section 05 01 30 "Steel Roof Deck Repair and Securement".
 3. Overlay 200 SF of Deteriorated Steel Deck with New Steel Deck. Refer to Section 05 01 30 "Steel Roof Deck Repair and Securement"
 4. Replace 7,500 SF of Wet or Deteriorated Existing Gypsum Substrate. Refer to Section 07 22 16 "Roof Insulation"
 5. Replace 600 BF of Deteriorated Wood Blocking. Refer to Section 06 10 00 "Rough Carpentry"
 6. Replace 160 SF of Deteriorated Plywood. Refer to Section 06 10 00 "Rough Carpentry"
 7. Provide 60 SF of Additional Manufacturer's Walk Pad Material. Refer to Section 07 52 16 "Modified Bitumen Roofing".

1.5 UNIT PRICES:

- A. 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. Refer to Section 01 22 00 "Unit Prices".
1. Repair Corroded Steel Deck with Coating. Refer to Section 05 01 30 "Steel Roof Deck Repair and Securement".
 - a. Cost: \$ 1.10 per SF
 2. Repair Steel Deck with Steel Plates. Refer to Section 05 01 30 "Steel Roof Deck Repair and Securement".
 - a. Cost: \$ 4.75 per SF
 3. Overlay Deteriorated Steel Deck with New Steel Deck. Refer to Section 05 01 30 "Steel Roof Deck Repair and Securement".
 - a. Cost: \$ 7.50 per SF
 4. Replace Wet or Deteriorated Existing Gypsum Substrate. Refer to Section 07 22 16 "Roof Insulation".
 - a. Cost: \$ 1.38 per SF
 5. Replace Deteriorated Wood Blocking. Refer to Section 06 10 00 "Rough Carpentry".
 - a. Cost: \$ 2.80 per BF
 6. Replace Deteriorated Plywood. Refer to Section 06 10 00 "Rough Carpentry".
 - a. Cost: \$ 2.20 per SF
 7. Provide Additional Manufacturer's Walk Pad Material. Refer to Section 07 52 16 "Modified Bitumen Roofing".
 - a. Cost: \$ 7.50 per LF

1.6 MANUFACTURERS:

- A. Base bid shall utilize roofing materials manufactured by Soprema. Only one manufacturer shall be listed. Provide Section 00 62 33 "Roof Manufacturer's Acknowledgment" signed by manufacturer listed above and enclose with bid.

1.7 BID HOLDING TIME AND ACCEPTANCE:

- A. The undersigned hereby agrees that this bid may not be revoked or withdrawn after the time set for the opening of bids but shall remain open during the bid holding period as specified in Section 00 21 13 "Instructions to Bidders".

1.8 SCHEDULE OF COMPLETION:

- A. The undersigned understands that time is of the essence and agrees to the Contract Time and liquidated damages as indicated in AIA Document A201, General Conditions of the Contract for Construction and Supplementary Conditions apply to this Work. The undersigned hereby agrees to commence work on this project within thirty (30) days following receipt of an Executed Agreement between Owner and Contractor. Date of commencement will be established in a Notice to Proceed issued to Contractor. All work to be accomplished under the Base Bid and all alternates accepted shall be within Ninety (90) calendar days from the date of commencement.
- B. Applicable liquidated damages shall be stated in the Section 00 73 00 "Supplementary Conditions".

1.9 ADDENDUM:

- A. Addendum received and used in computing bid:
1. Addendum No. 1: 2/25/2021
 2. Addendum No. 2: _____
 3. Addendum No. 3: _____
 4. Addendum No. 4: _____

1.10 SUBCONTRACTORS:

- A. If subcontractors are to be utilized, the General Contractor shall fill out all blanks on the list below. All subcontractors shall be listed. The general contractor shall identify work by the general, subcontractor or not applicable for each trade; utilize parenthesis () to list trades not provided. Do not list suppliers. All blanks must be filled in. Failure to do so may result in bid being declared non-responsive. If there is more than one subcontractor per trade identified below, list all. If no subcontractors are to be utilized, indicate by signing at the appropriate place at the bottom of the table.

Trade	Company	License #
General (Roofing)		
General (Sheet Metal)		
General ()		
Mechanical		
Electrical		
Plumbing		
Masonry		
Concrete		
Waste Disposal		
Other ()		
Other ()		
Other ()		
We do not plan to use subcontract forces	✓	

Respectfully submitted this 2nd day of March, 2021.

Company: Highland Roofing Company

Printed Name: Mac McGraw

Signature: *Mac McGraw*

Title: Lead Estimator

North Carolina (State)

County of New Hanover

I, Heather L Horak, a Notary Public for New Hanover County, North Carolina (State), do hereby certify that Mac McGraw personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this 2nd day of March, 2021.

Heather L Horak
Notary Public

(OFFICIAL SEAL)

My commission expires 12/1, 2021.

Heather L. Horak
NOTARY PUBLIC
New Hanover County
North Carolina
My Commission Expires December 1, 2024

END OF SECTION 00 41 13

SECTION 00 62 33

ROOF MANUFACTURER'S ACKNOWLEDGMENT

Owner: Brunswick County Schools
 Project Name: Lincoln Elementary School Roof Replacement
 Project Address: 1664 Lincoln Rd NE, Leland, North Carolina 28451
 Roofing Contractor: Highland Roofing Company
 Address: 4310 Deer Creek Ln, Wilmington, NC 28405
 Telephone: 910-619-2647

This is to advise the Owner that having thoroughly reviewed the Specifications and Drawings contained within the Project Manual dated January 29, 2021, the above-titled project, we acknowledge that the roof system(s) and flashing system(s) specified are suitable for the issuance of the specified Manufacturer's warranty on this project and have been tested and approved for the wind uplift pressures outlined in the project specifications. Having reviewed the project requirements in detail, the Manufacturer will provide a written response of exceptions to the Engineer through the contractor before five (5) days of the bid due date or as otherwise outlined in the Instructions to Bidders, if conflicts exist between the Manufacturer's warranty requirements and the above listed documents. Exceptions not submitted accordingly are subject to rejection. The manufacturer also certifies that the installer is approved, authorized, or licensed by the manufacturer to install the specified roof system and is eligible to provide the specified manufacturer's warranty. The manufacturer will comply with the specified requirements for on-site technical support.

Dallas Marshburn

Print or type name of manufacturer's designated Liaison on this project

919-345-5464

dmarshburn@soprema.us

Telephone and Email

SOPREMA, INC

Roof Manufacturer's Company Name

Jason Dickens

Date

2-24-21

Roof Manufacturer Representative's Signature

Jason Dickens

Title

District Sales manager

Roof Manufacturer Representative's Name

310 Quadral Drive

Wadsworth, OH

Roof Manufacturer's Address

END OF SECTION 00 62 33

Identification of Minority Business Participation

(Name of Bidder)

[illegible]

*Minority

[illegible]

Female (F) Socially and Economically Disadvantaged (D)

Lincoln Elementary School Roof Replacement

Minority Business Participation

Attach AFFIDAVIT A or AFFIDAVIT B to the Bid
State of North Carolina AFFIDAVIT A - Listing of the Good Faith Effort

County of New Hanover

Affidavit of Highland Roofing Company

(Name of Bidder)

I have made a good faith effort to comply under the following areas checked:

(A minimum of 50 points must be checked in order to have achieved a "good faith effort")

- ☐ 1 - 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 10 days before the bid date and notified them of the nature and scope of the work to be performed. Value = 10 points.
- ☒ 2 - Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due. Value = 10 points.
- ☒ 3 - Broken down or combined elements of work into economically feasible units to facilitate minority participation. Value = 15 points.
- ☐ 4 - Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. Value = 10 points.
- ☒ 5 - Attended prebid meetings scheduled by the public owner. Value = 10 points.
- ☐ 6 - Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors. Value = 20 points.
- ☒ 7 - 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. Value = 15 points.
- ☐ 8 - 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. Value = 25 points.
- ☐ 9 - 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. Value = 20 points.
- ☐ 10 - Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. Value = 20 points.

In accordance with GSI43-128.2(d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract.

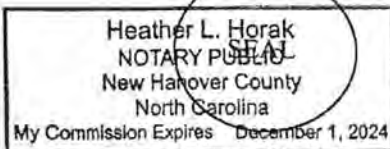
The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: March 2, 2021

Name of Authorized Officer: Mac McGraw

Signature: [Signature]

Title: Lead Estimator



State of North Carolina, County of New Hanover

Subscribed and sworn to before me this 2 day of March 2021

Notary Public [Signature]

My commission expires

12/1/24

Lincoln Elementary School Roof
Replacement

00 43 39-9

Minority Business Participation

FORM OF BID BOND

KNOW ALL MEN BY THESE PRESENTS THAT _____
Highland Roofing Company _____ as
principal, and The Cincinnati Insurance Company _____, as surety, who is
duly licensed to act as surety in North Carolina, are held and firmly bound unto
Brunswick County Schools _____ as obligee,
in the penal sum of Five Percent of Amount Bid _____ 5% _____ DOLLARS, lawful money of
the United States of America, for the payment of which, well and truly to be made, we bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and
severally, firmly by these presents.

Signed, sealed and dated this 2nd day of March, 2021

WHEREAS, the said principal is herewith submitting proposal for
Lincoln Elementary School Roof Replacement
and the principal desires to file this bid bond in lieu of making the cash deposit as required
by G.S. 143-129.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that
if the principal 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 days after
the award of same to the principal, then this obligation shall be null and void; but if the
principal fails to so execute such contract and give performance bond as required by G.S.
143-129, the surety shall, upon demand, forthwith pay to the obligee the amount set forth in
the first paragraph hereof. Provided further, that the bid may be withdrawn as provided by
G.S. 143-129.1

Highland Roofing Company _____ (SEAL)

By: [Signature] _____ (SEAL)

_____ (SEAL)

The Cincinnati Insurance Company _____ (SEAL)

By: [Signature] _____ (SEAL)
Heather Segrist, Attorney-in-Fact



THE CINCINNATI INSURANCE COMPANY
THE CINCINNATI CASUALTY COMPANY

Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY and THE CINCINNATI CASUALTY COMPANY, corporations organized under the laws of the State of Ohio, and having their principal offices in the City of Fairfield, Ohio (herein collectively called the "Companies"), do hereby constitute and appoint Heather Segrist its true and legal Attorney-in-Fact to sign, execute, seal and deliver on behalf of the Companies as Surety, at any place within the United States, the following surety bond:

Surety Bond Number: Bid Bond

Principal: Highland Roofing Company

Obligee: Brunswick County Schools

This appointment is made under and by authority of the following resolutions adopted by the Boards of Directors of The Cincinnati Insurance Company and The Cincinnati Casualty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the President or any Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company.

RESOLVED, that the signature of the President or a Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary and the Seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS WHEREOF, the Companies have caused these presents to be sealed with their corporate seals, duly attested by their President or a Vice President this 19th day of December, 2018.



STATE OF OHIO)SS:
COUNTY OF BUTLER)

THE CINCINNATI INSURANCE COMPANY
THE CINCINNATI CASUALTY COMPANY

Stephen A. Ventre

Vice President

On this 19th day of December, 2018 before me came the above-named President or Vice President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, to me personally known to be the officer described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of said Companies and the corporate seals and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporations.



Keith Collett

Keith Collett, Attorney at Law
Notary Public - State of Ohio
My commission has no expiration date.
Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Secretary of The Cincinnati Insurance Company and The Cincinnati Casualty Company, hereby certify that the above is the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Power of Attorney is still in full force and effect.

Given under my hand and seal of said Companies at Fairfield, Ohio, this 2nd day of March, 2021.



Sten D. Dan

Secretary

ACORD™

Client#: 1714809

20HIGHLROO

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/05/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER McGriff Insurance Services Post Office Box 13941 Durham, NC 27709 919 281-4500		CONTACT NAME: Bobbi Pendleton PHONE (A/C, No, Ext): 919 281-4500 E-MAIL ADDRESS: nccertificateteam@mcgriff.com FAX (A/C, No): 8887468761															
INSURED Highland Roofing Company 4310 Deer Creek Lane Wilmington, NC 28405		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : State Auto P & C Ins Co</td> <td>25127</td> </tr> <tr> <td>INSURER B : American Interstate Insurance Company</td> <td>31895</td> </tr> <tr> <td>INSURER C : Berkley National Insurance Company</td> <td>38911</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : State Auto P & C Ins Co	25127	INSURER B : American Interstate Insurance Company	31895	INSURER C : Berkley National Insurance Company	38911	INSURER D :		INSURER E :		INSURER F :	
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INSURER D :																	
INSURER E :																	
INSURER F :																	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ PD Ded:5,000 GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC OTHER:	X	PBP2908980	11/07/2020	11/07/2021	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$750,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMPI/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☒ Drive Oth Car ☐ SCHEDULED AUTOS NON-OWNED AUTOS ONLY	X	BAP2483222	11/07/2020	11/07/2021	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$0	X	PBP2908980	11/07/2020	11/07/2021	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	AVWCNC2939802020	11/07/2020	11/07/2021	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Contractors Equip Leased/Rented	X	1036912	11/07/2020	11/07/2021	\$250,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: Lincoln Elementary School Reroof

Brunswick County Board of Education is an Additional Insured regarding the General Liability if required by written/executed contract before a loss.

** Named Insureds **

(See Attached Descriptions)

CERTIFICATE HOLDER

CANCELLATION

County of Brunswick, North Carolina
 Brunswick County
 30 Government Center Dr. NE
 Bolivia, NC 28422

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Bobbi J. Pendleton

DESCRIPTIONS (Continued from Page 1)

Highland Roofing Company
Coastal Fabrication, Inc.
Saluzo, LLC



March 3, 2021

Brunswick County Schools
Government Complex
199 Sessions Drive,
Bolivia, NC 28422

Attention: David Barbour
Project Manager

Reference: Contract Award Recommendation
Lincoln Elementary School
Roof Replacement
REI Project No. 020CLT-200

Dear Mr. Barbour:

Bids were opened at 2:00 PM on Tuesday, March 2, 2021 for the above referenced project. Highland Roofing Company submitted the lowest total base bid in the amount of \$709,365.00. REI Engineers recommends the Owner accept Alternate No. 1 for roof replacement of Area A3 and Alternate No. 2 for roof replacement of area D.

REI Engineer's estimated construction cost for the project was \$867,600.00; therefore, REI recommends this project be awarded to Highland Roofing Company in the amount of \$709,365.00.

Please contact our office if you have any questions regarding the bidding and awarding of this project.

Sincerely,

REI Engineers

A handwritten signature in black ink, appearing to read "Paul Whitley", is written over a horizontal line.

Paul Whitley, RRO, CDT
Project Manager

Enc: Certified Bid Tabulation
Copy of Highland Roofing Company Bid Form



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

From:
Andrea White

Action Item # V. - 2.

Board Appointment - Fire Fee Committee - Southport Fire District

Issue/Action Requested:

Request that the Board of Commissioners appoint Ms. Mary McCarthy as the community member to represent the Southport Fire District on the Fire Fee Committee and review the committee member list for any additional changes.

Background/Purpose of Request:

The Board of Commissioners will set the fire fee rate based on recommendations from the Fire Fee District Committee. Each Fire Fee District Committee consists of the following members:

- Fire Chief
- Commissioner from that district
- Community member chosen by the Fire Department Board
- Community member chosen by the Board of commissioners
- Fire Marshal or County Manager Designee

Community members appointed by the Board of Commissioners serve at the pleasure of the board, without term. It is recommended that Ms. Mary McCarthy serve as the community member representing the Southport Fire District, replacing Ms. Colleen Combs. All other members will remain the same unless directed otherwise by the Board of Commissioners.

Fire Fee Committee meetings will be held in April per the legislative requirements, with scheduling to begin in March.

Fiscal Impact:

Not Applicable

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners appoint Ms. Mary McCarthy as the community member to represent the Southport Fire District on the Fire Fee Committee and review the committee member list for any additional changes.

ATTACHMENTS:

Description

- ▣ 2021 Fire Fee Committee

BRUNSWICK COUNTY BOARD OF COMMISSIONERS
BOARD APPOINTMENTS

2021 FIRE FEE COMMITTEE

<u>Fire Department</u>	<u>Member</u>	<u>District</u>	<u>Phone</u>	<u>Email</u>
Sunset Beach	Bob Stinson	1	910 209 3499	bob@plangoals.com
Shallotte Point	Jerry Thrift	1	910-617-2869	jerrythrift2@gmail.com
Calabash	Ronnie Mitchell	1	336-902-8816	no email address
Grissettown/Longwood	Carol Dunham	1	910-5756812	carol_eric537@yahoo.com
Ocean Isle	Wayne Rowell	1	910-575-6717	oibwayne@gmail.com
Tri-Beach	Rickie Robinson	2	910-470-2676	rr5074@yahoo.com
Civietown	Napoleon "Poli" Barefoot	2	910-754-8111	nbbarefoot@wwpemlaw.com
Supply	Warren Kroe	2	910-465-3535	liper@mail.com
Bolivia	Jerry Shane Guyton	2	910-262-6612	shaneshtgandac@gmail.com
Sunset Harbor/Zion Hill	Michelle Ingram	3	910-616-2731	annamichelleingram@gmail.com
Oak Island	Ted Bodenschatz	3	336-575-4479	theob726@gmail.com
St. James	Bill Bittenbender	3	910-253-9846	billbitt42@atmc.net
			910-279-0511 (c)	
Southport	Mary McCarthy	3	910-540-3190	mam@maryannmccarthy.com
Winnabow	Chris Bordeaux	4	910-269-1267	cbo@atmc.net
Boiling Springs Lakes	Sean Fenick	4	910-620-1847	seanfenick@yahoo.com
Waccamaw	Jeremy King	4	910-231-9438	5kingsofnc@gmail.com
Shallotte	Kenneth Williams	4	910-754-3828	kbwilliams1017@gmail.com
			910-620-7018 (c)	
Northwest	Darren Grice	5	910-619-3137	gricetrucksales@gmail.com
Leland	Bill Wilson	5	910-620-0432	wilsonb6076@gmail.com
Navassa	Valorie Hatten	5	910-265-1297	v.hatten@yahoo.com

Sunset Beach**Mr. Bob Stinson**

602 Planters Ridge Drive
Sunset Beach, NC 28468
910 209 3499
bob@plangoals.com

Shallotte Point**Mr. Jerry Thrift**

1624 lakeview Court SW
Ocean Isle Beach, NC 28469
910-617-2869
jerrythrift2@gmail.com

Calabash**Mr. Ronnie Mitchell**

8933 Landing Drive SW
Sunset Beach, NC 28468
336-902-8816

Grissettown/Longwood**Ms. Carol Dunham**

537 Gladstone Circle
Ocean Isle Beach, NC 28469
910-5756812
carol_eric537@yahoo.com

Ocean Isle**Mr. Wayne Rowell**

10 Asheville Street
Ocean Isle Beach, NC 28469
910-575-6717

Tri-Beach**Mr. Rickie Robinson**

1815 Robinsonville Rd SW
Supply, NC 28462
910-470-2676
rr5074@yahoo.com

Civietown**Mr. Napoleon Barefoot**

PO Box 543
Supply, NC 28462
nbbarefoot@wwpemailaw.com

Supply**Mr. Warren Kroe**

1172 Palatka Place SE
Bolivia, NC 28422
910-754-6427
liper@mail.com

Bolivia**Mr. Jerry Shane Guyton**

3615 Lewis Loop Road SE
Bolivia, NC 28422
910-262-6612
shaneshtgandac@gmail.com

Sunset Harbor/Zion Hill**Michelle Ingram**

3093 Valderama Way SE
Bolivia, NC 28422
910-616-2731
annamichelleingram@gmail.com

Oak Island**Mr. Ted Bodenschatz**

201 Ocean Dr.
Oak Island, NC 28465
336-575-4479
theob726@gmail.com

St. James**Mr. Bill Bittenbender**

3482 Beaver Creek Dr.
St. James, NC 28461
910-253-9846 / 910-279-0511 (c)
billbitt42@atmc.net

Southport**Ms. Mary McCarthy**

5241 Shipmast Way
Southport, NC 28461
mam@maryannmccarthy.com

Winnabow**Mr. Chris Bordeaux**

5432 Maultsby Road
Leland, NC 28451
910-269-1267
cbo@atmc.net

Boiling Springs Lakes**Sean Fenick**

510 Woodhaven Rd.
Southport, NC 28461
seanfenick@yahoo.com

Waccamaw**Mr. Jeremy King**

6000 Old King Road
Ash, NC 28420
910-231-9438
5kingsofnc@gmail.com

Shallotte**Mr. Kenneth Williams**

451 McMilly Rd
Shallotte, NC 28470
910-754-3828 -/ 910-620-7018
Kbwilliams1017@gmail.com

Northwest**Mr. Darren Grice**

5400 Northwest Road
Riegelwood, NC 28456
910-619-3137
gricetrucksales@gmail.com

Leland**Bill Wilson**

8775 Northridge Drive, NE
Leland, NC 28451
(Temp. Address: is 121 Baldwin
Drive, Apt #108, Leland, NC
28451)
910-620-0432
wilsonb6076@gmail.com

Navassa**Valorie Hatten**

122 North Navassa Rd
Leland, NC 28451
910-265-1297
v.hatten@yahoo.com

**Community members appointed
by the Board of Commissioners
serve at the pleasure of the
board, without term.*



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

Action Item # V. - 3.

From:

Andrea White

Board Appointment - Juvenile Crime Prevention Council (JCPC)
- Chief District Court Judge Designee

Issue/Action Requested:

Request that the Board of Commissioner approve the selection of Judge Pauline Hankins as the Chief District Judge Designee on the Juvenile Crime Prevention Council (JCPC).

Background/Purpose of Request:

JCPC Coordinator Donna Cuneo advised that Chief District Judge Scott Ussery has requested a change in his designee from Lisa Sellers to Judge Pauline Hankins.

Fiscal Impact:

Not Applicable

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioner approve the selection of Judge Pauline Hankins as the Chief District Judge Designee on the Juvenile Crime Prevention Council (JCPC).

ATTACHMENTS:

Description

- ☐ Chief District Judge Designee Request
- ☐ JCPC Membership Roster

From: [Donna Cuneo](#)
To: [Andrea White](#)
Cc: [Christina Kennedy](#); [Melinda Johnson](#); [Meredith Lloyd](#)
Subject: Membership
Date: Friday, March 12, 2021 11:57:00 AM
Attachments: [JCPC Members.docx](#)

CAUTION: This email originated from outside of Brunswick County Government. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Chief District Judge Scott Ussery has requested to change his designee from Lisa Sellers to Judge Pauline Hankins. I have attached an updated membership list. Please have this presented to the County Commissioners for approval. Let me know if you have any questions.

thanks,

Donna Cuneo

BRUNSWICK COUNTY JCPC MEMBERS
Effective March 12, 2021

Member	Position
Forte, Mike	County Commissioner
Lytch, Catherine	Director DSS or designee
Hamilton, Dena	AMH/DD/SA designee
	Juvenile Defense Attorney
Nowell, T K	Brunswick County Sherriff
Rogge, Marsha	Chief Court Counselor or designee
Sellers, Lisa P	Chief District Judge/ designee
Campbell, Allison	Local Health Director/designee
Keener, Debbie	Member of Business Community
	Member of Faith Community
Davis, Sam	DA Officer or designee
Willis, Resea	Representative Non-Profit
Johnson, Melinda	Representative/Parks & Rec
Lloyd, Meredith	School designee
Wood, Raymond	Substance Abuse Professional
	Chief of Police
Ohmer, Rich	County Manager designee
Rutkowski, E 6/21	County Commissioner Appointee
Jordan, Bonnie 6/22	County Commissioner Appointee
Flucker, Sharon 6/21	County Commissioner Appointee
Smithers, N 6/21	County Commissioner Appointee
Elliott, Maxine 6/21	County Commissioner Appointee
Manning, John 6/21	County Commissioner Appointee
Marlowe, Lavar 6/22	County Commissioner Appointee
	Youth Member
	Youth Member
Program Providers	Program
Mortley, Warren	Providence Home
Davis, Sam	Teen Court
Jackson/Lois Breen/Bob	Restitution
Ditta, Erin/ Hale-Holland Deeanna	Strengthening Families
Clemmons, Kristina/Seamon, Jeremy	Coastal ART
Britt, Lance	DPS Area JCPC Consultant



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

Action Item # V. - 4.

Clerk to the Board - Meeting Minutes

From:

Andrea White

Issue/Action Requested:

Request that the Board of Commissioners approve the draft minutes from the March 15, 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 March 15, 2021 Regular Meeting.

ATTACHMENTS:

Description

- Draft Minutes - 2021-03-15 Regular Meeting

**BRUNSWICK COUNTY BOARD OF COMMISSIONERS
OFFICIAL MINUTES
REGULAR MEETING
MARCH 15, 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 Randy Thompson, Chairman
Commissioner Mike Forte, Vice-Chairman
Commissioner J. Martin Cooke
Commissioner Pat Sykes
Commissioner Frank Williams
- STAFF:

Randell Woodruff, County Manager
Bob Shaver, County Attorney
Steve Stone, Deputy County Manager
David Stanley, Deputy County Manager
Julie Miller, Finance Director
Andrea White, Clerk to the Board
Jared Galloway, Deputy Clerk to the Board
Neal Galloway, MIS
Meagan Kascsak, Communications Director
Sgt. Tate Bond, Sheriff’s Office

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

I. CALL TO ORDER

Chairman Thompson called the meeting to order at 6:00 p.m.

II. INVOCATION/PLEDGE OF ALLEGIANCE

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

III. ADJUSTMENTS/APPROVAL OF AGENDA

Chairman Thompson asked for adjustments to the agenda.

Chairman Thompson requested to add Board Appointments following the Administrative Report for consideration of an appointment to the Brunswick County Airport Commission.

Commissioner Williams moved to approve the agenda as amended. The motion was seconded by Commissioner Forte and passed unanimously (5 to 0).

IV. PUBLIC COMMENTS

Chairman Thompson announced that no one signed up to speak.

V. APPROVAL OF CONSENT AGENDA

Commissioner Cooke moved to approve the Consent Agenda as presented. The motion was seconded by Commissioner Sykes and passed unanimously (5 to 0). The following items were approved:

1.

Administration - Proclamation Designating April 2021 as “North Carolina 811 Safe Digging Month”

Approved a Proclamation designating the month of April 2021 as “North Carolina 811 Safe Digging Month”.

**PROCLAMATION
DESIGNATING APRIL 2021 AS
“NORTH CAROLINA 811 SAFE DIGGING MONTH”**

WHEREAS, as utility owners, excavators, designers, and homeowners work to keep pace with North Carolina’s economic development, it is important to minimize damages to underground utility lines, danger to workers and the general public, environmental impact, and loss of utility services to the citizens of North Carolina; and

WHEREAS, North Carolina 811, a utility service notification center and leader in education celebrates its 43rd year of continuous service to the State, is key to preventing injuries and damages when excavating; and

WHEREAS, this unique service provides easy, one-call notification about construction and excavation projects that may endanger workers and jeopardize utility lines while promoting workplace and public safety, reducing underground utility damage, minimizing utility service interruptions and protecting the environment; and

WHEREAS, this vital service, which began in 1978 serves the citizens of North Carolina from the mountains to the coast, educates stakeholders about the need for excavation safety whether the project is as small as planting a tree to designing and beginning construction on a new interstate; and

WHEREAS, in 2020, the North Carolina one call system received 2.1 million notification requests and transmitted over 12.2 million requests, providing protection to utility companies infrastructure, their employees, excavators, and customers.

NOW, THEREFORE, BE IT RESOLVED, that Brunswick County has designated the month of April 2021 as “North Carolina 811 Safe Digging Month” to encourage all excavators and homeowners of Brunswick County to contact 8-1-1 either by dialing 8-1-1 or contacting NC811 via the webpage of NC811.org at least three working days prior to digging in order to “Know What’s Below,” avoid injury, protect the environment, prevent millions of dollars in damages and to remind excavators that three working days’ notice is the law, for safe digging is no accident, and that more information may be obtained by visiting www.nc811.org.

Adopted this the 15th day of March, 2021.

Randy Thompson, Chair
Brunswick County Commissioners

Attest:
Andrea White, NCCCC
Clerk to the Board

2. **Administration - Surplus Property Offers for Upset Bid Process**
Accepted, subject to the upset bid process, the following offers submitted for surplus parcels that met the value parameters previously established by the Board:
- | Parcel | Location | Size | Tax Value | Acquired | Cost | Bid |
|----------|----------------------|----------|-------------|------------|--------|------------|
| 241NA047 | Jericho Rd, Calabash | .10 acre | \$13,000.00 | 11-26-2008 | \$0.00 | \$3,250.00 |
3. **Clerk to the Board - Meeting Minutes**
Approved the draft minutes from the Special Called Meeting and Regular Meeting held on March 1, 2021.
4. **County Attorney - Cameron Woods, Phase 6A-2, Lots 98-118 DOD**
Accepted the Deed of Dedication for water and sewer infrastructure in Cameron Woods, Phase 6A-2, Lots 98-118.
5. **County Attorney - Special Assessment Release for Parcel 1410000213**
Approved an agreement for the release and refund of special sewer assessment #12 (Boiling Spring Lakes) for Parcel # 1410000213.
6. **Finance - Fiscal Items**
Approved Budget Amendments, Capital Project Ordinances, and Fiscal Items of a routine nature on the consent agenda.
- **HAVA Subgrant Amendment**
Approved the HAVA Subgrant Agreement as amended by the NC State Board of Elections. Awards were calculated based upon economic tiers defined by the North Carolina Department of Commerce and the number of registered voters; similar to the criteria used by the General Assembly to award CARES Act funds. Initial award was approved at the 8/3/20 board meeting with an appropriation of the minimum amount of \$10,000. Appropriation of an additional \$135,025 is needed based on percentage of voter registration for a grand total of \$145,025. Grant funds support eligible costs to improve

the administration of the federal elections as authorized under HAVA Title I, Section 101. Budget period is 7/1/20-6/30/21.

- **LIEAP Additional Funding Budget Amendment**
Approved the appropriation of \$35,000 of additional Federal (LIEAP) Low Income Energy Assistance Program funding and \$232,438 of Federal Pandemic LIEAP funding as allocated by the Department of Health and Human Services to Brunswick County for use in the LIEAP Program.
 - **Airport Grant 36237.45.18.1 Budget Amendment and CPO**
Approved the closeout of airport grant 36237.45.18.1 and reduced federal revenues \$13,109 and returned local matching funds of \$1,458 to the county capital reserve undesignated.
 - **Financial Statements for February 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>.
7. **Health and Human Services - BSRI - Council of Governments Grant Agreement for Evidence Based Health Promotion FY2020 - 2021**
Approved the Grant Agreement for the Provision of Title III-D Health Promotion/Disease Prevention Evidence Based Health Promotion FY 2020-2021 ending June 30, 2021.
 8. **Health and Human Services - Health Services - AA-716 Revision 1 - COVID-19 Vaccination Program**
Approved the agreement addendum revision and authorized the Health Director's executing signature on the form.
 9. **Health and Human Services - Health Services - FY 21-22 State Consolidated Agreement Approval**
Approved the consolidated agreement for FY 21-22 between the State of North Carolina and Brunswick County Health Services.
 10. **Health and Human Services - Health Services - Interim Healthcare of the Eastern Carolinas, Inc. - Staffing Agreement**
Approved the staffing agreement between the Brunswick County Health Department and Interim Healthcare of the Eastern Carolinas, Inc.
 11. **Health and Human Services - The Toner Exchange Lease Agreement FY 22-24**
Approved the lease agreement with The Toner Exchange for FY 22-24.
 12. **Human Resources - Delta Dental Renewal**
Approved for the County to renew with Delta Dental to provide dental insurance for fiscal year 2021-22 and authorized the County Manager to execute any renewal documents subject to the County Attorney's review.
 13. **Human Resources - Long Term Disability and Life Insurance Carrier Change**
Approved moving the County provided Long Term Disability (LTD) and Life Insurance to VOYA and authorized the County Manager to execute required documentation, subject to the County Attorney's review.
 14. **IT - Courthouse Change Order for Courtroom Audio/Visual**
Ratified the approval of an amendment to the Goods and Services Agreement with NC Sound in the amount of \$6,218.60, and approved an additional amendment in the amount of \$9,341.33 to complete the requested audio/visual work created by Change Order RFP 21 and Jury Assembly Room Electrical Data Rework (Construction Change Order forthcoming) as a component of the Brunswick County Courthouse Addition and Renovations project.
 15. **Tax Administration - March 2021 Releases**
Approved the March 2021 releases.
 16. **Utilities - Randall Site Services**
Approved the proposal and associated services agreement with Randall Site Services to camera and inspect 10% of the County's gravity sewer lines per NCDEQ requirements in FY21 and authorized the Chairman and Clerk to the Board to approve the services agreement which expires June 30, 2021.

VI. PRESENTATION

1. **Planning - Brunswick County Comprehensive Transportation Plan (Helen Bunch, Zoning Administrator/Transportation Planner)**

Receive Information on the Brunswick County Comprehensive Transportation Plan.

Ms. Bunch explained that the Brunswick County Comprehensive Transportation Plan is a long-range multimodal plan that will assess future needs for roadways, public transportation, aviation, ferries, rail, bike and pedestrian facilities in the county. Brunswick County's growth rate of 2.93%, as provided by the Office of State Budget and Management, was used as the model for growth for the plan. The State of North Carolina as a whole is growing at 0.9% annually in comparison. A survey was developed by the North Carolina Department of Transportation (NCDOT), with the County's input, and will be accessible in both English and Spanish March 11 – June 9, 2021 on the NCDOT and County websites with paper copies available in the Planning Department. Ms. Bunch encouraged everyone to complete the survey as community engagement is vital to this plan.

The Board thanked Ms. Bunch for the presentation. No action was taken.

2. **Presentation - Health and Human Services - COVID-19 Update (David Stanley, Deputy County Manager for HHS)**

Request that the Board of Commissioners receive an update on the Coronavirus (COVID-19).

Mr. Stanley provided an update on the COVID-19 virus and vaccine efforts noting the following statistics: From day 1 until now (operational day 369), North Carolina's case count is 886,218 with 11,709 COVID-related deaths and Brunswick County's case count is 8,341 with 139 COVID-related deaths. Brunswick County is experiencing lower case counts and is currently the lowest in the region for infectious cases per 10,000. The percent positivity rate is currently 6.4% which is encouraging. Mr. Stanley also recognized the efforts of everyone involved with the vaccination efforts.

A brief discussion was held regarding the current State of Emergency. With the cases trending down, the percent positivity trending down, and vaccination efforts trending up, at this time the protective measures in the Executive Order from the Governor are sufficient. Variants of the COVID-19 virus vaccine, hesitancy, and complacency are concerns moving forward.

Mr. Ed Conrow, Emergency Services Director, noted that there were 96 counties under a State of Emergency as of today. The County is in recovery mode and rescinding the State of Emergency will not reduce the chances of obtaining resources.

Following discussion, Vice-Chairman Forte moved to lift the State of Emergency effective Monday, March 22, 2021 at 9:00 a.m.

Commissioner Williams raised a point of order stating that the State of Emergency falls under the jurisdiction of the Chairman and submitted that the motion was out of order. The point was well taken. Chairman Thompson stated that he would consider lifting the state of Emergency on Monday, March 22, 2021 at 9:00 a.m. to allow the Communications Director and the Health Director to prepare information for dissemination as it relates to recovery activities and precautionary measures that need to continue, and directed the Emergency Services Director to update WebEOC. No action was taken.

VII. PUBLIC HEARING

1. **Planning - Southeastern North Carolina Regional Hazard Mitigation Plan (Kirstie Dixon, Planning Director)**

Request that, after the Public Hearing, the Commissioners consider adopting the Southeastern North Carolina Regional Hazard Mitigation Plan.

Ms. Dixon explained that the Southeastern North Carolina Regional Hazard Mitigation Plan is required by the State of North Carolina through the North Carolina Emergency Management Act and is required to be updated every five years. The current plan expires in April. The State paid for the plan and hired ESP Associates to draft and coordinate the plan. The Planning Board reviewed and endorsed the plan on February 8, 2021. A public hearing is required, and a mandated resolution was provided for the Board's consideration. Ms. Dixon introduced Mr. Nathan Slaughter, ESP Associates, to present the plan.

Mr. Slaughter presented an overview of the plan, noting that the plan must be in place and updated in order to retain federal grant funding eligibility in the Hazard Mitigation Grant Program (HMGP), the Building Resilient Infrastructure and Community Program (BRIC) and the Flood Mitigation Assistance program (FMA). Following the presentation, Mr. Slaughter asked that the Board review and approve the resolution to adopt the plan.

Chairman Thompson opened the Public Hearing at 7:06 p.m. and asked those wishing to comment on the Regional Hazard Mitigation Plan to come forward.

There were no comments.

Chairman Thompson closed the Public Hearing at 7:06 p.m.

Commissioner Williams moved to adopt the plan as a whole to include the required resolution. The motion was seconded by Commissioner Sykes and passed unanimously (5 to 0).

RESOLUTION OF INTENT BY THE BRUNSWICK COUNTY BOARD OF COMMISSIONERS TO ADOPT THE SOUTHEASTERN NC REGIONAL HAZARD MITIGATION PLAN

WHEREAS, the citizens and property within Brunswick County are subject to the effects of natural hazards and man-made hazard events that pose threats to lives and cause damage to property, and with the knowledge and experience that certain areas of the county are particularly vulnerable to flooding, high winds, droughts/heat waves, and severe winter weather; and

WHEREAS, the County and participating municipal jurisdictions desire to seek ways to mitigate the impact of identified hazard risks; and

WHEREAS, the Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Chapter 160D; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Legislature of the State of North Carolina has in Part 6 of Article 1A of Chapter 166A of the North Carolina General Statutes, stated in item 19.41(b)(2): “For a state of emergency declared pursuant to G.S. 166A-19.20(a) after the deadline established by the Federal Emergency Management Agency pursuant to the Disaster Mitigation Act of 2002, P.L. 106-390, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act;” and

WHEREAS, Section 322 of the Federal Disaster Mitigation Act of 2000 states that local governments must develop an All-Hazards Mitigation Plan in order to be eligible to receive future Hazard Mitigation Grant Program Funds and other disaster-related assistance funding and that said Plan must be updated and adopted within a five year cycle; and

WHEREAS, the County and its participating municipal jurisdictions have performed a comprehensive review and evaluation of each section of the previously approved Hazard Mitigation Plan and have updated the said plan as required under regulations at 44 CFR Part 201 and according to guidance issued by the Federal Emergency Management Agency and the North Carolina Division of Emergency Management; and

WHEREAS, it is the intent of the County Commissioners to fulfill this obligation in order that the County will be eligible for federal and state assistance in the event that a state of disaster is declared for a hazard event affecting the County; and

WHEREAS, Brunswick County actively participated in the planning process of the Southeastern NC Regional Hazard Mitigation Plan and has fulfilled all their part of the multi-jurisdictional planning elements required by FEMA.

NOW, THEREFORE BE IT RESOLVED, by the County Commissioners of Brunswick County, North Carolina:

1. That the current version of the Southeastern North Carolina Hazard Mitigation Plan is hereby adopted.
2. That this Plan is adopted in the interest of public health, safety and general welfare of the inhabitants of Brunswick County, North Carolina, and shall be in full force and effect on March 15, 2021.
3. That sections of the plan that are specific to Brunswick County are adopted.
4. That the County Commissioners are vested with the responsibility, authority, and the means to:

- (a) Inform all concerned parties of this action.
 - (b) Cooperate with Federal, State and local agencies and private firms which undertake to study, survey, map, and identify floodplain or flood-related erosion areas, and cooperate with neighboring communities with respect to management of adjoining floodplain and/or flood-related erosion areas in order to prevent aggravation of existing hazards.
5. That the County Commissioners assure that the Hazard Mitigation Plan is reviewed annually, and every five years as specified in the Plan to assure that the Plan is in compliance with all State and Federal regulations and that any needed revisions or amendments to the Plan are developed and presented to the Brunswick County Commissioners for consideration.
6. That the County Commissioners agree to take such other official action as may be reasonably necessary to carry out the objectives of the 2021 Southeastern NC Regional Hazard Mitigation Plan.

Adopted this the 15th day of March, 2021.

Randy Thompson, Chair
Brunswick County Board of Commissioners

ATTEST:
Andrea White, NCCCC
Clerk to the Board

VIII. ADMINISTRATIVE REPORT

1. **Sheriff’s Office - Request for Positions**
Request the Board of Commissioners approve a request of six positions in the Sheriff’s Office. The positions include three civilian and three sworn positions and are the result of a request brought to the attention of the Liaison Committee on February 11, 2021. Revenues from the Sheriff’s Office Juvenile Detention Program will cover initial salary, vehicle, and equipment costs associated with the request.

Chairman Thompson commended the Sheriff’s Office on behalf of the residents in District 1 for the response during the tornado event.

Chairman Thompson stated that the Liaison Committee recently met with the Sheriff’s Office and Administration to discuss the Sheriff’s request in order to narrow down the focus to critical needs.

Sheriff Ingram explained, as a result of the meeting, the requested six positions would consist of one detective and two civilian personnel positions to allow the creation of an Intelligence Unit, an Evidence Technician, General Investigator and a Narcotics Investigator. The positions would be funded by the Juvenile Detention Program revenues for the remainder of this fiscal year and would assist the Sheriff’s Office in keeping pace with the growth of the county.

Commissioner Cooke moved to approve the request of six positions in the Sheriff’s Office as requested. The motion was seconded by Vice-Chairman Forte.

Following discussion on the motion, Commissioner Sykes expressed concerns with the request and indicated a preference to defer the request for consideration during the budget process.

Chairman Thompson called for a vote on the motion to approve the positions. The vote passed 4 to 1 (Ayes: Thompson, Cooke, Williams, Forte. Nays: Sykes).

2. **Board Appointment – Brunswick County Airport Commission** *(added during Adjustments/Approval of the Agenda).*

Chairman Thompson requested that the Board consider appointing Mr. Jimmy Powell to the Brunswick County Airport Commission.

Commissioner Cooke moved to approve the appointment of Mr. Jimmy Powell as requested. The motion was seconded by Commissioner Williams and unanimously approved (5 to 0).

IX. OTHER BUSINESS/INFORMAL DISCUSSION

No items were brought forth.

- X. ADJOURNMENT
Commissioner Williams moved to adjourn the meeting at 7:32 p.m. The motion was seconded by Vice-Chairman Forte and passed unanimously (5 to 0).

Randy Thompson, Chairman
Brunswick County Board of Commissioners

Attest:

Andrea White, NCCCC
Clerk to the Board



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

Action Item # V. - 5.

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.

-NC Concealed Weapons Fees Budget Amendment

Appropriate \$70,000 of concealed weapons permits revenue estimated through June 30, 2021 for payment of the NC Bureau of Investigation Concealed Handgun Permit Fees.

-Sheriff's Sales and Services Budget Amendment

Appropriate \$73,165 of sales and services revenue to reimburse overtime and temporary part time line items for hours worked at Brunswick Community College and various community events. This funding is not associated with COVID-19 related events.

Background/Purpose of Request:

Fiscal Impact:

Budget Amendment 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.



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

From:

Stephanie Lewis, Director of Operation Services

Action Item # V. - 6.

Operation Services - Lease Agreement for Southport Probation & Parole Office

Issue/Action Requested:

Request that the Board of Commissioners approve a lease for the probation and parole office in Southport.

Background/Purpose of Request:

The county is required to lease space for the NC Department of Probation and Parole. The lease for the Southport Probation and Parole office located at 800 N. Howe Street, Southport, NC is for approximately 750 square feet. The current lease expires on June 30, 2021. The monthly rent increased from \$1,000.00 to \$1,200.00 due to an increase in the insurance on the Leased Premises, per the Landlord. The monthly cost is now \$1,200.00.

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 a lease for the probation and parole office in Southport.

ATTACHMENTS:

Description

▣ Lease Agreement

NORTH CAROLINA

LEASE AGREEMENT

BRUNSWICK COUNTY

THIS LEASE AGREEMENT (hereinafter referred to as the “Lease”) is made and entered into by and between Mr. Marvin Fullwood, (hereinafter referred to as “Landlord”) and Brunswick County, a body politic and corporate of the State of North Carolina (hereinafter referred to as “County”).

WITNESSETH:

1. LEASED PREMISES. On the terms and conditions hereinafter set forth, and in consideration of the mutual covenants and undertakings herein contained, the Landlord does hereby agree to lease to County and County does hereby agree to lease from Landlord the property and premises set forth on Exhibit “A” attached hereto (hereinafter referred to as the “Leased Premises”).

Any exhibits or attachments referenced herein are hereby incorporated by reference and made a part of this Lease. Any conflict between the language in an exhibit or attachment and the main body of this Lease shall be resolved in favor of the main body of this Lease.

2. TERM OF LEASE. The initial term of this Lease begins on July 1, 2021 (the “Effective Date”) and continues in effect until June 30, 2023, unless earlier terminated pursuant to any of the terms and conditions contained herein. The parties will negotiate in good faith to renew this Lease every two (2) years unless either party gives notice to the other party at lease sixty (60) days before the end of the then current fiscal year of its intention not to renew the Lease by delivering or mailing such notice to the other party at the address(es) below.

3. TERMINATION.

- a. **Without Cause.** County may terminate this Lease at any time without cause by giving sixty (60) calendar days written notice to Landlord.
- b. **For Cause.** County may terminate this Lease for cause by giving written notice of a breach to Landlord. Landlord 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 Lease. County may terminate this Lease immediately and without notice if Landlord 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 Landlord, or has a receiver or trustee appointed for substantially all of its property, or if Landlord allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

- c. **Fire or Casualty.** Notwithstanding the foregoing, if the Leased Premises is destroyed by fire or other casualty and rendered unfit for occupancy for ninety-six (96) consecutive hours, County may terminate this Lease immediately and without further obligation to Landlord.

4. **RENT.** County agrees to pay Landlord the sum of One Thousand Two Hundred and No/100 (\$1,200.00) monthly during the term of this Lease. Payment shall be made to Landlord on or before the first day of each calendar month at the address set forth below or at such other address as Landlord may designate in writing. No security deposit shall be required.

5. **NONAPPROPRIATION.** If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Lease 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 Landlord of the non-appropriation and this Lease 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 Lease.

6. **USE OF PREMISES.** County shall not use the Leased Premises for any unlawful purpose. County shall not permit any noxious or offensive sights, odors or activities on or about the Leased Premises and shall not conduct or permit any nuisance thereon. County shall not permit the Leased Premises or any part thereof to be used in any manner, or anything to be done therein, or permit anything to be brought into or kept in the Leased Premises which in any way (i) causes structural injury to the building or any part thereof; (ii) interferes with the normal operations, heating, air conditioning, ventilation, plumbing or other mechanical or electrical systems of the building; (iii) constitutes a public or private nuisance; or (iv) alters the appearance of the exterior or interior of the building or any portion thereof other than as permitted herein.

7. **REPRESENTATIONS AND WARRANTIES.** Each party to this Lease represents and warrants that:

- a. It 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. It has all requisite corporate power and authority to execute, deliver and perform its obligations under this Lease;
- c. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Lease;
- d. It shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses, if any; and
- e. It shall not violate any agreement with any third party by entering into or performing the obligations under this Lease.

8. LANDLORD'S COVENANTS. Landlord covenants that it has fee simple title to the Leased Premises and that the Leased Premises is free of encumbrances and restrictions that would prohibit its use for the purposes hereunder.

9. INSURANCE.

- a. County shall procure and maintain in full force and effect at all times and at its sole cost and expense Workers' Compensation, Commercial General Liability, Commercial Automobile Liability and Professional Liability insurance and any additional insurance as may be required by Landlord with limits acceptable to Landlord. All insurance policies (with the exception of Worker's Compensation and Professional Liability) shall be endorsed, specifically or generally, to include Landlord as an additional insured and as a certificate holder. County 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 Landlord. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. County shall have no right of recovery or subrogation against Landlord (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.
- b. County shall insure, at its own expense, the assets, possessions and furnishings contained within the Leased Premises and make available to Landlord copies of said insurance on an annual basis.
- c. Landlord shall maintain fire and casualty insurance on the Leased Premises including extended coverage, vandalism and malicious mischief and make available to County copies of said insurance on an annual basis.

10. INDEMNIFICATION. To the extent allowed by law, County does hereby covenant and agree to indemnify and hold harmless Landlord from and against any and all claims for injury or damage to persons or property or for the loss of life or of property occurring upon, in or about the Leased Premises, the public portion of the building and the public portions of the parking lot.

11. REPAIRS AND MAINTENANCE.

- a. County shall maintain and deliver at the end of the Lease term the Leased Premises, including the building and furnishings, in such good repair and condition (except for ordinary wear and tear or damage caused by casualty) as the Leased Premises was in at the beginning of the County's occupancy of the Leased Premises. All damage or injury to the Leased Premises and its fixtures, glass appurtenances, and equipment caused by County moving property in or out of the building or by installation or explosion, short circuits, flow or leakage

of water, steam, sewer or by frost or by bursting by leaking of pipes or plumbing, or from another cause of any other kind or nature whatsoever, due to carelessness, omission, neglect, improper conduct, or other cause of County, its servants, employees, agents, visitors, or licensees, shall be repaired, restored, or replaced promptly by County to the reasonable satisfaction of Landlord at County's sole cost and expense except to the extent that such cost and expense is covered by insurance proceeds recovered by Landlord. All of said repairs and any restorations or replacements required in connection therewith shall be of quality and class at least equal to the original work or installations and shall be done in a good and workmanlike manner.

- b. Landlord shall be responsible for routine maintenance of laws and paved areas, including cutting of grass, trimming of trees, and snow or ice removal.
- c. Landlord shall be responsible for all structural maintenance and repairs, including: the exterior roof and walls of the Leased Premises; HVAC maintenance and repair; and electrical and plumbing maintenance on the current structure. Maintenance shall include, but is not limited to, furnishing and replacing electrical light fixture ballasts, air conditioning and ventilation equipment filters, if applicable, and broken glass. In the event Landlord fails, refuses or neglects to correct any condition following written notice by County, or in the event of an emergency constituting a hazard to the health or safety of any individual or property, County shall have the right, but not the obligation, in addition to any other remedy County may have, to make such repair at its own cost and expense and deduct the amount thereof from any rent due or to become due.

12. COUNTY'S RIGHT TO ALTER AND IMPROVE; SIGNAGE.

- a. County shall make no structural or interior alterations to the Leased Premises or upon the grounds of the Leased Premises or place any signage or advertisements upon the Leased Premises or grounds without the prior written consent of Landlord.
- b. County shall give advance written notice to Landlord of the proposed alterations or signage and describe the same or submit drawings or sketches of the proposed work in sufficient detail that such drawings or sketches can be easily understood by Landlord.
- c. Landlord shall have sixty (60) days within which to object to the alterations and attempt to reach a mutual agreement with County concerning the extent and type of alterations proposed. If Landlord does not object to such alterations within the sixty (60) day period, County may proceed with the alterations upon issuance of the appropriate building and zoning permits. If Landlord objects to such alterations or improvements, its decision is binding.

- d. Any alteration, addition or improvement made by County after consent has been given and any fixtures permanently installed as a part thereof in such manner that removal would damage the Leased Premises shall, at Landlord's option, become the property of Landlord upon expiration or sooner termination of this Lease. County shall have no duty to remove any improvement or fixture placed by it on the Leased Premises or to restore any portion of the Leased Premises altered by it. In the event County elects to remove any improvements or fixtures and such removal causes damage or injury to the Leased Premises, County will repair that portion of the Leased Premises at its sole cost and expense.

13. UTILITIES AND SERVICES. Landlord agrees to provide the following at its sole cost and expense:

- a. Heating facilities, air conditioning facilities, electrical facilities, adequate lighting fixtures and sockets, hot and cold-water facilities and adequate toilet facilities.
- b. Janitorial services (limited to the toilet, floor of the restroom and sink outside the restroom).
- c. Trash dumpster.
- d. All utilities except telephone.
- e. Parking.
- f. Handicapped accessibility.

14. LANDLORD'S RIGHT OF ACCESS. Landlord and its representatives may enter the Leased Premises at any reasonable time to inspect the Leased Premises to ensure it is being maintained in good working order, that County is in compliance with the provisions of this Lease and for performing any work required by the terms of this Lease.

15. QUIET ENJOYMENT. Except for Landlord's right of access as set forth herein, so long as County pays all rental amounts when due and has not breached any of its obligations hereunder, County shall peacefully hold and quietly enjoy the Leased Premises without interruption by Landlord or any other person, firm or entity.

16. ACCEPTANCE OF PREMISES BY COUNTY. Landlord has made no representations with respect to the building, the land upon which it is erected or the Leased Premises except as expressly set forth in the provisions of this Lease. County acknowledges that it has examined the Leased Premises and accepts it in its present condition.

17. ASSIGNMENT AND SUBLETTING. County shall not assign, mortgage, pledge or otherwise encumber its interests in this Lease or the Leased Premises, nor sublet, nor permit the property or any part thereof to be used or occupied by others, except as provided herein or as

specifically approved by Landlord. Notwithstanding the foregoing, Landlord acknowledges that County will sublet the Leased Premises to the State of North Carolina, Department of Public Safety for the operation of parole/probation offices and related purposes, and Landlord expressly approves such subletting and use. Such sublease shall not relieve County of any of its obligations under this Lease.

18. SUBORDINATION OF LEASEHOLD INTEREST. This Lease shall be subject at all times to all existing mortgages or deeds of trust encumbering the Leased Premises and to all modifications, extensions or consolidations thereof.

19. TAXES. Landlord shall be responsible for all *ad valorem* property taxes on the land and Leased Premises, if any, and County shall be responsible for all *ad valorem* taxes on any personal property, equipment, furnishings and contents located on the Leased Premises.

20. DEFAULT. If County shall fail to pay any rental amount within fifteen (15) days after the same is due, or if Tenant shall fail to pay any other sums or perform any other obligations, duties or responsibilities for which it is liable hereunder after being given fifteen (15) days written notice of such failure, or if the Leased Premises is deserted or vacated by County, then in any of said events Landlord may (a) terminate this Lease and/or (b) take any other legal action or pursue any other remedy against County or against any guarantors of this Lease. In the event of such default, the Landlord may, at its option, relet the Leased Premises, or any part thereof, and County shall pay Landlord the difference between the rent hereby reserved and agreed to be paid by County for the portion of the term remaining at the time of reentry or repossession and the amount, if any, received or to be received under such reletting for such portion of the term.

21. SURRENDER OF POSSESSION. Upon expiration or termination of this Lease or any extension thereof, County shall surrender the Leased Premises to Landlord in as good a condition as the same was at the beginning of the Lease term, reasonable wear and tear excepted. Any holdover by County shall be construed to be a tenancy from month to month and shall otherwise be on the terms and conditions herein specified. Landlord may elect to remove County at the end of any month upon seven (7) days written notice, provided no new lease agreement has been entered into in writing by the parties.

22. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL. Landlord 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.

23. DEBARMENT. Landlord hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Lease by any governmental department or agency. Landlord must notify County within thirty (30) days if debarred by any governmental entity during this Lease.

24. NOTICES.

- a. **Delivery of Notices.** Any notice required or permitted to be given in connection with this Lease 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 Lease shall be sent to:

TO COUNTY: Brunswick County Manager
P.O. Box 249
Bolivia, NC 28422
Fax: 910-253-2022

TO LANDLORD: Mr. Marvin Fullwood
711 Dale Avenue
Southport, NC 28461

25. GOVERNING LAW AND VENUE. This Lease shall be governed 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 Lease 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.

26. DISPUTE RESOLUTION. Should a dispute arise as to the terms of this Lease, 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.

27. GOVERNMENTAL IMMUNITY. County, to the extent applicable, does not waive its governmental immunity by entering into this Lease and fully retains all immunities and defenses provided by law with regard to any action based on this Lease.

28. NON-WAIVER. Failure by either party at any time to require the strict performance of any of the provisions of this Lease shall in no way affect said party's right hereunder to enforce the same, nor shall any waiver by a party of any breach be held to be a waiver of any succeeding breach or a waiver.

29. ENTIRE AGREEMENT. This Lease 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 Lease supersedes all prior agreements, negotiations, representations and proposals, written or oral.

30. HEADINGS. The headings in this Lease are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

31. SEVERABILITY. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Lease shall not affect the validity of the remaining portion of the Lease so long as the material purposes of this Lease can be determined and effectuated. If a provision of this Lease 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 Lease shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

32. SIGNATURES. This Lease, 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 Lease. This Lease 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 Lease 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]

LANDLORD

By: _____

Printed Name: Marvin Fullwood

Date: _____

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

Julie A. Miller, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney

EXHIBIT "A"
DESCRIPTION OF LEASED PREMISES/FLOOR PLAN

CORRECTED EXHIBIT A OF
800 N. HOWE ST. SOUTHPORT, N.C.
DATE 6-25-2019



- #1: CORRECT FOOT PRINT OF REST ROOM AREA * NO NON-DCC SPACE
- #2: BLUE DOTS AND ARROWS INDICATE 864 SQ. FT. (27' X 32') DOES NOT INCLUDE PPC
- BRUNSWICK COUNTY 65541 AND REST ROOM
- R.V.



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

Action Item # V. - 7.

Sheriff's Office - 911 Center Phone System Contract Extension

From:

Elizabeth Bynum

Issue/Action Requested:

Request that the Board of Commissioners approve an extension of the existing 911 Center Phone System agreement with ePlus Group, Inc. for six months, maintaining the current monthly rate in the state 911 budget 224376.

Background/Purpose of Request:

Request that the Board of Commissioners approve an extension of the existing 911 Center Phone System agreement with ePlus Group, Inc. for six months, maintaining the current monthly rate in the state 911 budget 224376 of \$8,934.09. The extension is to help prepare for an entire hardware refresh that's needed and requested in the FY22 budget request.

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 an extension of the existing 911 Center Phone System agreement with ePlus Group, Inc. for six months, maintaining the current monthly rate in the state 911 budget 224376.

ATTACHMENTS:

Description

- ☐ Extension Agreement

EXTENSION AGREEMENT
TO SCHEDULE NO. 1 TO
MASTER LEASE AGREEMENT NCM140
DATED AS OF July 30, 2015
BETWEEN EPLUS GROUP, INC. AS LESSOR
AND COUNTY OF BRUNSWICK
AS LESSEE

Effective May 9, 2021 the parties hereto agree to extend Schedule No. 1 (hereinafter referred to as the "Schedule") to the above-referenced Master Lease as follows:

1. The term of the Schedule has been extended for an additional six (6) months from the present maturity date of May 9, 2021 to a new maturity date of November 9, 2021 (hereinafter referred to as the "Extension Period").
2. The first payment during the Extension Period shall be due on May 9, 2021 and subsequent payments shall be due on the same day of each month thereafter with the last payment being due October 9, 2021.
3. The Monthly Rent during the Extension Period shall be \$8,934.09.

All other terms and conditions of the Schedule to the Master Lease Agreement, shall remain in full force and effect as if set forth fully herein. This extension agreement must be executed by an authorized individual, and returned to Lessor by April 15, 2021. If this extension agreement is not returned by that date, new agreement dates may need to be drafted at the discretion of Lessor.

IN WITNESS WHEREOF, the parties hereto have caused this Extension Agreement to be executed as of this 5th day of April, 2021.

ePlus Group, Inc.
Lessor

BY: Jason Marsh

NAME: Jason Marsh

TITLE: VP Operations

County of Brunswick
Lessee

BY: _____

NAME: Randy Thompson

TITLE: Chairman, Board of Commissioners

ATTEST:

Clerk to the Board

[SEAL]

"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, NC

APPROVED AS TO FORM

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



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

From:
Jeffery P Niebauer

Action Item # V. - 8.

Tax Administration - ESRI Small Government Agreement (SGEA)

Issue/Action Requested:

Request that the Board of Commissioners approve the licensing agreement for GIS mapping services with ESRI.

Background/Purpose of Request:

Brunswick County has an established relationship with ESRI for providing the mapping software for our GIS department. These tools and services provided by ESRI are very beneficial to the continued growth of our GIS/mapping products within Brunswick County and to our citizens. The attached three (3) year license agreement is a continuation of prior agreements. The yearly fees are determined by population. For the new agreement period our population increase has moved us into a higher user fee. For the past three (3) years we have been charged \$75,250 per year. The new agreement will be a charge of \$90,000 the first year, \$110,000 the second year and \$130,000 the third year. Funds to cover this license agreement have been included within the budget request.

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 licensing agreement for GIS mapping services with ESRI.

ATTACHMENTS:

Description

▣ ESRI Agreement



January 22, 2021

Mr. Anthony Thomas
County of Brunswick
30 Government Center DR, NE
Bolivia, NC 28422-7987

Dear Anthony,

The Esri Small Municipal and County Government Enterprise Agreement (SGEA) is a three-year agreement that will grant your organization access to Esri term license software. The EA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply Geographic Information System (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an Enterprise Agreement (EA).

An EA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the EA.
- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the EA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the EA who may directly contact Esri for Tier 2 technical support.
- The organization will provide an annual report of installed Esri software to Esri.
- Esri software and updates that the organization is licensed to use will be automatically available for downloading.
- The fee and benefits offered in this EA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government EA terms and conditions.

- Licenses are valid for the term of the EA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

To expedite your acceptance of this EA offer:

1. Sign and return the EA contract with a Purchase Order or issue a Purchase Order that references this EA Quotation and includes the following statement on the face of the Purchase Order:

"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY GOVERNMENT EA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."

Have it signed by an authorized representative of the organization.

2. On the first page of the EA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.
3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.
4. Send the purchase order and agreement to the address, email or fax noted below:

Esri
Attn: Customer Service SG-EA
380 New York Street
Redlands, CA 92373-8100

e-mail: service@esri.com
fax documents to: 909-307-3083

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Blake Pierson



Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853 Fax: (909) 307-3049
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 11/16/2020 To: 2/14/2021

Quotation # Q-429174

Date: January 22, 2021

Customer # 19345 Contract # ENTERPRISE AGREEMENT

County of Brunswick
GIS Dept
30 Government Center DR, NE
Bolivia, NC 28422-7987

ATTENTION: Anthony Thomas
PHONE: (910) 253-2393
EMAIL: anthony.thomas@brunswickcountync.gov

Material	Qty	Term	Unit Price	Total
168181	1	Year 1	\$90,000.00	\$90,000.00
Populations of 125,001-150,000 Small Government Term Enterprise License Agreement				
168181	1	Year 2	\$100,000.00	\$100,000.00
Populations of 125,001-150,000 Small Government Term Enterprise License Agreement				
168181	1	Year 3	\$110,000.00	\$110,000.00
Populations of 125,001-150,000 Small Government Term Enterprise License Agreement				
Subtotal:				\$300,000.00
Sales Tax:				\$20,250.00
Estimated Shipping and Handling (2 Day Delivery):				\$0.00
Contract Price Adjust:				\$0.00
Total:				\$320,250.00

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact:

Blake Pierson

Email:

bpierson@esri.com

Phone:

(909) 793-2853 x8628

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://go.esri.com/MAPS> apply to your purchase of that item. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin.

PIERSONB

This offer is limited to the terms and conditions incorporated and attached herein.

Esri Use Only:

Cust. Name _____
 Cust. # _____
 PO # _____
 Esri Agreement # _____



SMALL ENTERPRISE AGREEMENT COUNTY AND MUNICIPALITY GOVERNMENT (E214-5)

This Agreement is by and between the organization identified in the Quotation ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**.

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

Table A
List of Products

Uncapped Quantities**Desktop Software and Extensions (Single Use)**

ArcGIS Desktop Advanced
 ArcGIS Desktop Standard
 ArcGIS Desktop Basic
 ArcGIS Desktop Extensions: ArcGIS 3D Analyst,
 ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst,
 ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS
 Schematics, ArcGIS Workflow Manager, ArcGIS Data
 Reviewer

Enterprise Software and Extensions

ArcGIS Enterprise and Workgroup
 (Advanced and Standard)
 ArcGIS Monitor
 ArcGIS Enterprise Extensions: ArcGIS 3D Analyst,
 ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst,
 ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS
 Workflow Manager

Enterprise Additional Capability Servers

ArcGIS Image Server

Developer Tools

ArcGIS Engine
 ArcGIS Engine Extensions: ArcGIS 3D Analyst, ArcGIS
 Spatial Analyst, ArcGIS Engine Geodatabase Update,
 ArcGIS Network Analyst, ArcGIS Schematics
 ArcGIS Runtime (Standard)
 ArcGIS Runtime Analysis Extension

Limited Quantities

One (1) Professional subscription to ArcGIS Developer
 Two (2) ArcGIS CityEngine Single Use Licenses
 1,000 ArcGIS Online Viewers
 1,000 ArcGIS Online Creators
 110,000 ArcGIS Online Service Credits
 1,000 ArcGIS Enterprise Creators
 10 ArcGIS Insights in ArcGIS Enterprise
 10 ArcGIS Insights in ArcGIS Online
 100 ArcGIS Tracker for ArcGIS Enterprise
 100 ArcGIS Tracker for ArcGIS Online
 6 ArcGIS Parcel Fabric User Type Extensions (Enterprise)
 6 ArcGIS Utility Network User Type Extensions (Enterprise)

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	4
Number of Tier 1 Help Desk individuals authorized to call Esri	4
Maximum number of sets of backup media, if requested*	2
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement	

*Additional sets of backup media may be purchased for a fee

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("**Ordering Document**"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("**Effective Date**").

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

(Customer)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

CUSTOMER CONTACT INFORMATION

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, Postal Code: _____

E-mail: _____

Country: _____

Quotation Number (if applicable): _____

1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

"Case" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"Deploy", "Deployed" and "Deployment" mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

"Fee" means the fee set forth in the Quotation.

"Maintenance" means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

"Master Agreement" means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at <https://www.esri.com/en-us/legal/terms/full-master-agreement> and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

"Product(s)" means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

"Quotation" means the offer letter and quotation provided separately to Customer.

"Technical Support" means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"Tier 1 Help Desk" means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

"Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk.

"Tier 2 Support" means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

2.0—ADDITIONAL GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

2.2 Consultant Access. Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

3.0—TERM, TERMINATION, AND EXPIRATION

3.1 Term. This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

3.2 No Use upon Agreement Expiration or Termination. All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

3.3 Termination for a Material Breach. Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

3.4 Termination for Lack of Funds. For an Agreement with government or government-

owned entities, either party may terminate this Agreement before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.

3.5 Follow-on Term. If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

4.0—PRODUCT UPDATES

4.1 Future Updates. Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

4.2 Product Life Cycle. During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <https://support.esri.com/en/other-resources/product-life-cycle>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other

than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to

supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.
5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

6.0—ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

7.0—ADMINISTRATIVE REQUIREMENTS

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download,

operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee up to thirty (30) calendar days before the annual anniversary date for each year.

- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of Products if Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the past-due balance.

- c. Esri's federal ID number is 95-2775-732.

- d. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

8.2 Order Requirements. Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

- a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.
- b. The following information will be included in each Ordering Document:
 - (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
 - (2) Order number
 - (3) Applicable annual payment due

9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be no decrease in Fee as a result of any Ownership Change.

- 9.1 If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.
- 9.2 If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer the Products to Customer or uninstall, remove, and destroy all copies of the Products.
- 9.3 This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

Action Item # V. - 9.

From:
John Nichols, P.E.

Utilities - 211 WTP Change Order # 1

Issue/Action Requested:

Request that the Board of Commissioners approve Change Order #1 in the amount of \$31,750 and 90 additional days for the 211 WTP Lab Building contract with Coastal Carolina Builders, Inc.

Background/Purpose of Request:

On June 15, 2020, the County entered into a Construction or Repair Agreement [Design Build] with Coastal Carolina Builders, Inc., in the amount of \$275,000 for the construction of a new lab building at the 211 Water Treatment Plant (WTP). A Notice to Proceed was then issued on July 6, 2020. This building replaced an existing metal building approaching 40 years old which was in poor condition. The new building will be rated for high winds to house staff during storms to allow for proper WTP operation during adverse weather. Due to additional requirements set forth by Brunswick County Planning and Permitting which were unforeseen during the early design build process, additional site work, parking accommodations, and building modifications were needed. This also resulted in additional Engineering costs and time for plan resubmittal, review, and approval. A drop ceiling and additional SCADA equipment and connections are also to be added. The COVID-19 pandemic has delayed the delivery of the building and various materials as well. The additional funds requested are available in the 211 WTP operating budget under the items of road maintenance, buildings, and professional services.

Staff recommends that the Board approve a budget amendment and Change Order #1 in the amount of \$31,750 to include an additional 90 days to the 211 WTP Lab Building Contract with Coastal Carolina Builders, Inc. The new contract total value will be increased from \$275,000 to \$306,750 with a revised completion date of October 3, 2021.

Fiscal Impact:

Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations
Funds available in the current budget

Approved By County Attorney:

Yes

Advisory Board Recommendation:

Not Applicable

County Manager's Recommendation:

Recommend the Board of Commissioners approve Change Order #1 in the amount of \$31,750 and 90 additional days for the 211 WTP Lab Building contract with Coastal Carolina Builders, Inc.

ATTACHMENTS:

Description

- ☐ Utilities - 211 WTP Lab Building Contract - Attach 1

▣ Utilities - 211 WTP Lab Building Change Order # 1 - Attach 2

NORTH CAROLINA**CONSTRUCTION OR REPAIR AGREEMENT****[Design-Build]****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 Coastal Carolina Builders, Inc., (hereinafter referred to as “Contractor”), party of the second part.

WITNESSETH:**1. PROJECT; FEES**

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 Request for Qualifications; Qualifications Statement; Scope of Work; Schedule of Values; General Conditions; Supplementary General Conditions; Specifications; Addenda; Accepted 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: 211 WTP Lab Building

Consisting of the following sheets **Electrical plans, floor plan**

dated **various**

The Bid Documents 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

The term of this Agreement begins upon issuance of the Notice to Proceed by Brunswick County (the “Effective Date”) and continues in effect for **Three Hundred Sixty-Five (365)** consecutive calendar days, unless extended or sooner terminated as provided for in the Brunswick County General Conditions of the Contract.

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 the total amount of **Two Hundred Seventy-Five Thousand and no/100 Dollars (\$275,000.00)** for the Project. 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.

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. PERMITS AND APPROVALS

Contractor 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. Contractor 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. County shall be financially responsible for all necessary permits, licenses, approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

8. 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);
- (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.

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. DEBARMENT

Contractor 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. Contractor must notify County within thirty (30) days if debarred by any governmental entity during this Agreement.

13. MINORITY BUSINESS ENTERPRISES

Contractor will make a good faith effort to utilize Minority Business Enterprises (MBEs) per N.C. Gen. Stat. 143-128 as subcontractors in the performance of this Agreement.

14. 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.

15. 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.

16. 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.

17. 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 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. AMENDMENTS

Amendments or changes to this Agreement shall not be valid unless in writing and signed by authorized agents of both Contractor and County.

27. 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: Paul Biagiotti
Construction Manager
P.O. Box 249
Bolivia, NC 28422

- 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: Paul Biagiotti
Construction Manager
P.O. Box 249
Bolivia, NC 28422

- c. All communications to Contractor shall be sent to:

For the Contractor: Coastal Carolina Builders Inc.
7237 Ridgewood Trail NW
Ocean Isle Beach, NC 28469

[SIGNATURES APPEAR ON FOLLOWING PAGE]

28. 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.

BRUNSWICK COUNTY

DocuSigned by:
By: Randell K. Woodruff
D90ACF07AE2946C...

Printed Name: Randell K. Woodruff

Title: County Manager

Date: 6/15/2020

COASTAL CAROLINA BUILDERS, INC.

DocuSigned by:
By: Matthew Reaves
2D8727BC1345457...

Printed Name: Matthew Reaves

Title: President

Date: 6/15/2020

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

DocuSigned by:
Julie A. Miller
02299718CD1D4B2
Julie A. Miller, Finance Director
Brunswick County, North Carolina

APPROVED AS TO FORM

DocuSigned by:
Robert V. Shaver, Jr.
13876418C174044A8
Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney

BRUNSWICK COUNTY
CHANGE ORDER NO. 1

PROJECT:
211 WTP LAB BUILDING
ORIG. TIME OF COMP.
365 DAYS
ORIG. DATE OF COMP.
JULY 5, 2021

CAUSE CODE:

FOR BC USE ONLY

- ☐ OR Owner Request
☐ CR Contractor Request
☐ DR Designer Request
☐ CC Concealed Condition
☐ DE Design Error
☐ DO Design Omission
☐ SC Schedule Change
☐ OT Other

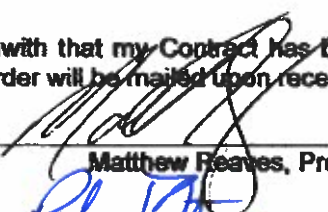
Under the terms of the Contract and without invalidating the original provisions thereof, the following change(s) in work is(are) authorized for the change in Contract amount herein set forth: (Description of change order with detailed breakdown attached)

The Time of Completion including previous orders is 365 calendar days and shall be increased by 90 calendar days by this change order for a revised Contract date of completion of October 3, 2021. (Detailed analysis supporting the requirements for a change in duration is attached)

CONTRACT COST SUMMARY

					TOTALS
1. Original Contract Amount	\$275,000				\$275,000
2. Amount of Previous Orders	ADD	\$0	Deduct	\$0	
3. Amount of This Order:	ADD	\$31,750	Deduct	\$0	\$31,750
4. Total additions lines 2 & 3			Minus Total Deducts:	\$0	\$0
(Line 4 shall show the net amount to be added or [deducted] from the original Contract amount.)					
5. Revised Contract Total Amount					\$306,750

I certify that my Bonding Company will be notified forthwith that my Contract has been changed by the amount of this change order, and that a copy of the approved change order will be mailed upon receipt by me to my surety.

COASTAL CAROLINA BUILDERS, INC. (Contractor/ Design Builder)	By:	 Matthew Reeves, President	3/23/21 (Date)
BRUNSWICK COUNTY (Owner)	By:	 Paul Biagiotti, Construction Manager	3/23/21 (Date)
BRUNSWICK COUNTY (Owner)	By:	 John Nichols P.E., Public Utilities Director	3/24/21 (Date)
BRUNSWICK COUNTY (County Commissioners)	By:	Chairman	(Date)

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Approved as to Form

Brunswick County Finance Officer

Brunswick County Attorney

DISTRIBUTION: 1 original to Owner 1 original to Contractor

DESIGNER'S REQUEST FOR AUTHORIZATION TO CHANGE

DATE:

REQUEST NO.: 1

PROJECT NAME:
211 WTP LAB BUILDING

OWNER:
BRUNSWICK COUNTY

CONTRACTOR:
COASTAL CAROLINA BUILDERS, INC.

DESIGNER:

CONTRACT FOR:
CONSTRUCTION

N/A DESIGN BUILD CONTRACT

REASON FOR CHANGE:

DUE TO ADDITIONAL REQUIREMENTS SET FORTH BY BC PLANNING AND PERMITTING, UNEXPECTED SITE WORK AND BUILDING MODIFICATIONS WERE NECESSARY WHICH ALSO WARRANTED ADDITIONAL ENGINEERING. A DROP CEILING AND ADDITIONAL SCADA EQUIPMENT AND CONNECTIONS ARE ALSO INCLUDED. UNANTICIPATED TIME FOR DESIGN AND RESUBMITTALS FOR BC PLANNING AND PERMITTING AS WELL AS DELAYS RELATED TO THE PANDEMIC FOR MATERIAL DELIVERIES WERE ENCOUNTERED. SEE ATTACHED DOCUMENTATION.

SUMMARY REVIEW OF CONTRACTOR'S ESTIMATE FOR TIME AND COST: (Attach Contractor's detailed cost breakdown of labor and materials)
SEE ATTACHED.

DESIGNER (OWNER) SUMMARY:

1. Schedule items affected by this change:

ADDITIONAL SITE WORK, PARKING AND BUILDING MODIFICATIONS AFFECTED PROJECT SCHEDULE'S OVERALL CRITICAL PATH.

2. Can Contractor mitigate the change without requiring a Contract time extension? NO

3. Will the change require a Contract time extension for other Contractors? NO Which? N/A.

4. Are additional costs indicated by reason of the time extension If so they must be included in 5 & 6 Below. NO

	CONTRACTOR'S ESTIMATE	DESIGNER'S ESTIMATE
5. Estimated cost of change:	0	0
6. Estimated time extension field cost (if any):	0	0

OWNER RECOMMENDATION AND CERTIFICATION:

I certify that I have reviewed all aspects of this change order and have determined that it is in the best interest of the Owner to have the work accomplished. I have also determined that the cost and time allotment are fair and equitable, and I recommend acceptance by the Owner.

Approved by: Paul V. [Signature] Date: 3/23/21

Title: CONSTRUCTION MANAGER

COASTAL CAROLINA BUILDERS INC

7237 RIDGEWOOD TRAIL NW, OCEAN ISLE BEACH, NC 28469

coastalcarolinabuilders@gmail.com

1-910-443-1181

211 WTP
4305 Southport-Supply Rd SE
Southport, NC 28461
P71477

3/23/21

Paul,

The attached change of work order is to reflect additional engineering requirements per the request of Brunswick County Planning and Permitting Department. These additional requirements have translated to re-engineering and additional fees incurred.

These additional requirements have impacted the job in a manner that has required engineering changes encompassing the site plan, mechanical, electrical, plumbing, floor plan and life safety plan. These changes have also delayed the permitting and approval process, ultimately delaying an on time start date.

Further, we are attaching three other change of work orders that reflect:

- 1) Suspended ceiling installation
- 2) ADA parking and sidewalks
- 3) IT/Telecom requirements

Additionally, we are currently battling the COVID pandemic and its impact on the construction process. This issue is having the greatest impact on the above project as related to delays and unavailable materials to the site daily.

To date we have been or will be delayed by the following items as related to the COVID pandemic on the manufacturing side of the project.

- 1) Unavailable production of plant steel for the metal building to be installed
- 2) Insulation systems manufacturing plant shut down due to COVID outbreak
- 3) Windows and doors unavailable, delayed and backordered
- 4) Plumbing items unavailable and backordered



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With respect to the above listed delay issues related to the COVID pandemic and additional requirements per Brunswick County Planning and Permitting, we would like to formally request a time extension for the CO and final approval of this project by 90 days from the original completion day as scheduled. I am including some vendor supporting literature to accompany this request for your review. Other delays were phone related conversations between our office and the suppliers and have no written dialogue but remain impactful to the schedule.

Thank you for your consideration to this ongoing issue.

Respectfully,

Matthew Reaves
Owner/CEO

ATTENTION:

Paul Biagiotti
Utilities Operations Center
250 Grey Water Road NE
Supply, NC 28462



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P71477

Scope:

- 1) Re-engineer and design site plan, mechanical plan, electrical plan, plumbing plan, life safety plan and floor plan to accommodate Brunswick County Planning and Review.

Total..... \$4,600.00

ATTENTION:

Paul Biagiotti
Utilities Operations Center
250 Grey Water Road NE
Supply, NC 28462



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Scope:

- 1) Install 2x2 suspended ceiling system in complete building.
- 2) Install lay in lighting to accommodate new 2x2 suspended ceiling
- 3) Install HVAC 2x2 lay grills to accommodate new 2x2 suspended ceiling
- 4) Amend prints as needed for final CO with engineering

Total..... \$14,750.00

ATTENTION:

Paul Biagiotti
Utilities Operations Center
250 Grey Water Road NE
Supply, NC 28462



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Scope:

- 1) Rough grade proposed parking site for site prep
- 2) Back fill and grade proposed parking area with gravel to accommodate
- 3) Install (1) one general gravel parking area per engineering rework to include parking barrier
- 4) Install concrete ADA parking area to include striping, ADA symbol painting, parking barrier and ADA post mounted signage, concrete in place
- 5) Form and install new sloped/tapered ADA access ramp from main entry to new proposed parking area

Note:

- 1) Removal of existing trailer and associated systems by others and outside this proposed work scope.

Total.....\$9,800.00

ATTENTION:

Paul Biagiotti
Utilities Operations Center
250 Grey Water Road NE
Supply, NC 28462



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211 WTP
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P71477

Scope:

- 1) Install cabling for telecommunication jacks per existing drawing locations
- 2) Cables to be Cat6
- 3) 2 cables per location to be installed
- 4) Furnish and terminate RJ45 wall jacks
- 5) BCs IT department to loop test and verify cabling for certification

Note: A) Telecom board to remain in the original location.

B) Water heater to remain in original location at closet as reservoir type noted

Total..... \$2,600.00

ATTENTION:

Paul Biagiotti
Utilities Operations Center
250 Grey Water Road NE
Supply, NC 28462



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211 WASTE TREATMENT PLANT SHOWER STALL1 message

Tim McLamb <timm@ses.us.com>

Tue, Mar 23, 2021 at 9:04 AM

To: coastalcarolinabuilders@gmail.com

Good Morning Matt

I am emailing you to update you on the ADA Shower stall the vendor has moved ship date out to March 26th.....

They are saying it will take about 7-10 days after that to get to us....

I am sorry for all hold ups and changes to the delivery date. The vendor has said the reason is due to Covid and short hand work staff and also issues with shipping.

If you have any questions please let me know ...

PS : I will keep you up dated

Thank you,

Tim McLamb
Shallotte Electric Stores
910-754-6000



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

Action Item # V. - 10.

From: Utilities - Comprehensive Wastewater Master Plan 2021
John Nichols, P.E.

Issue/Action Requested:

Request that the Board of Commissioners approve associated budget amendment and authorize the Chairman and Clerk to the Board to approve the Professional Services Agreement for Architectural, Engineering and/or Surveying Services with McKim and Creed, PA, in the amount of \$120,000 for engineering services associated with the 2021 Comprehensive Wastewater Master Plan.

Background/Purpose of Request:

In an effort to better serve the community's wastewater needs and allow staff to more efficiently manage resources, Brunswick County Public Utilities solicited engineering firms to produce a county-wide wastewater 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: McKim & Creed, PA and CDM Smith, Inc., The selection committee selected McKim & Creed, PA 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 McKim & Creed, PA, in the amount of \$120,000.

Fiscal Impact:

Budget Amendment Required, Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations
Budget amendment appropriates \$120,000 of wastewater retail sales for the contract award.

Approved By County Attorney:

Yes

Advisory Board Recommendation:

Not Applicable

County Manager's Recommendation:

Recommend the Board of Commissioners approve associated budget amendment and authorize the Chairman and Clerk to the Board to approve the Professional Services Agreement for Architectural, Engineering and/or Surveying Services with McKim and Creed, PA, in the amount of \$120,000 for engineering services associated with the 2021 Comprehensive Wastewater Master Plan.

ATTACHMENTS:

Description

❑ 20210405 Budget Amendment Wastewater Master Plan.pdf

▣ Professional Services Agreement

Request Info		
Type	Budget Amendment	
Description	Wastewater Master Plan	
Justification	Board Meeting 04/05/2021-Appropriate \$120,000 of wastewater sales retail revenue for professional services associated with wastewater master plan study contract award.	
Originator	TIFFANY ROGERS	

Items						
Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
627210	371405	Wastewater - Administration	Wastewater Sales-Retail	120000	Increase	Credit
627210	419900	Wastewater - Administration	Prof Ser-Other	120000	Increase	Debit

Total	
Grand Total:	240000

**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 McKim & Creed, P.A., (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 Wastewater Master Plan,” as published by Brunswick County on January 13, 2021, and an addenda thereto, and on Exhibit “A” and Exhibit “B” attached hereto, all of which are hereby incorporated by reference.

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 one (1) business day after approval by the Brunswick County Board of Commissioners or execution of the Agreement by County, whichever is later (the “Effective Date”). Engineer shall complete the Services in accordance with the schedule set forth on Exhibit “B,” unless this Agreement is sooner terminated or amended as provided herein. 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 Engineer to allow Engineer 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 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.

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 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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 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.

11. 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 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

1. 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.

12. 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.

13. 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.

14. NON-EXCLUSIVITY

Provider acknowledges that County is not obligated to contract solely with Provider for the Services covered under this Agreement.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.
- 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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 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.

33. 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.

34. 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.

35. 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.

36. 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. For the County: Brunswick County Manager
P.O. Box 249
Bolivia, NC 28422
Fax: 910-253-2022

ii. For the Provider: McKim & Creed, P.A.
243 N. Front Street
Wilmington, NC 28401

37. 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]

MCKIM & CREED, P.A.

By: Anthony Boahn

Printed Name: Anthony Boahn

Title: Vice President

Date: 3/19/2021

“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

This is **EXHIBIT A**, consisting of 9 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** to which 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

A1.01 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services which are not part of Engineer's Basic Services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment, if included or required.
4. Identify and evaluate feasible alternate solutions as identified in Paragraph A1.01 A.6 of this document available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.
6. Perform or provide the following additional Study and Report Phase tasks or deliverables:

TASK 1 – PROJECT INITIATION MEETING & COORDINATION

McKim & Creed will schedule and conduct an initial workshop meeting with County staff to identify stakeholders, develop overall project goals, establish schedules, and lines of communication. The primary topics for the kick-off meeting will address:

- A. Goals & Objectives – as part of the scoping meeting and project initiation, an initial workshop meeting will be conducted to define goals and objectives. A clear understanding of goals and expectations, schedules, deliverables, and communication will be crucial to project success.

- B. Stakeholder Identification – as part of the initial workshop meeting, we would work with the County to identify potential stakeholders that may be involved in the master plan process. We anticipate stakeholders to include County utility, engineering, and planning representatives. This Scope of Work assumes that Brunswick County staff will coordinate and communicate with all other stakeholders to include wholesale customers and environmental groups.
- C. Deliverables & Workshop Schedule – we will conduct a series of workshops with the County based on the project schedule. We will coordinate critical milestones and workshops to engage all parties for a final plan that meets the County’s objectives.
- D. Obtain/Identify Required Information & Documentation – we will review all relevant data provided by the County to include reports, plans, etc. that can be used as base information to develop the proposed master plan. As a minimum, we anticipate the County will provide the following information:
- Record Drawings
 - 2006 Wastewater Master Plan
 - 2006 Water Master Plan dated
 - Biosolids/Residuals Management Plan
 - Current and proposed County Land Use Plans
 - Existing wastewater historical flow data as available (SCADA)
 - Treatment facilities permits, plans, and flow data.
 - Effluent disposal site plans permits and data.
 - Existing system GIS data
 - Existing wastewater model (SewerGEMS or SewerCAD format)
 - Status of County’s current and planned CIP Projects
 - Status of development project currently in process.
 - Known or planned future developments.

TASK 2 – UPDATE & CALIBRATE EXISTING SEWERCAD HYDRAULIC MODEL

We will update and calibrate the County’s existing SewerCAD hydraulic model as follows:

- A. SewerCAD Model Base Calibration – The County shall provide the existing SewerGEMS hydraulic model that will be utilized to evaluate the existing system and future improvements identified in the master plan. The model will be updated based on current GIS information and input from County staff on infrastructure that is not currently included in the document. The Scope of Work includes updating the model for primary pump station and force main conveyance and does not include incidental collection systems to include gravity sewers, low-pressure systems, or vacuum systems. Sources for updating the model will include the following:
- SCADA data
 - Historical records of pump stations, force mains, and record drawing
 - Existing Flow, Obligated Not Tributary, Permitted Flow information
 - Known/Planned Pump Stations & Force Mains

This Scope of Work does include field testing, drawdowns, or other physical investigations of the system.

- B. Inflow & Infiltration (I&I) – We will compile County-provided meter data and develop comparative analysis of rainfall records available from NOAA for an approximate evaluation of rainfall dependent impacts in the existing system. A limited review of dry weather and wet weather conditions will be evaluated to determine the approximate percentage or factors associated with I&I in the system. This Scope of Work does not include a Sanitary Sewer Evaluation Study, flow monitoring, or field testing to complete a detailed evaluation of system I&I.
- C. Existing Model Calibration Workshop - Our team will present the updated hydraulic model to the County staff in a workshop format. We will demonstrate the model operation, identifying challenges or deficiencies noted as a result of the model calibration. Input from County staff and operations will be valuable to ensure that the model is accurately representing real world conditions and follows the operational protocols that are currently in use.

TASK 3 – IDENTIFY EXISTING SYSTEM DEFICIENCIES

In conjunction with Task 2, we will evaluate the existing hydraulic model to determine deficiencies that exist in the existing wastewater system.

- A. Identification of Deficiencies - We will consult with the County on the results of the initial hydraulic model calibration and conduct a workshop discussion of deficiencies noted. Deficiencies are defined as lack of capacity, high pressures, or excessive velocities in the system.
- B. Mitigation Recommendations - Based on deficiencies identified, we will develop mitigation plans for correction or improvement. To include a cost opinion and exhibit that depicts the recommended improvements. We anticipate potential improvements may include:
- Upgrades to pump stations for capacity
 - Upgrades or new pipelines to increase force main capacity.
- C. Existing Deficiency Identification Workshop - Our team will present the recommended deficiencies in workshop format for discussion with County staff. Comments received will be incorporated as part of the final recommendations for mitigation of existing deficiencies in the system.

TASK 4 – GROWTH PROJECTIONS & WASTEWATER LOADING

In conjunction with County staff and planning department recommendations, we will develop growth projections and resultant wastewater loadings for a 20-year planning period as follows:

GROWTH PROJECTIONS

- A. County Planning Department Master Plan Documents – We will utilize current and in-process planning documents that have been developed by the County Planning Department for acceptable growth rates across the County and areas to be served. If the growth rates vary

across the service area, these will be factored as part of the overall projections. A population growth rate can be applied based on current data and projected growth rates.

- B. Land Use & Zoning - Utilize the County's land use plan(s), GIS, and available databases, to identify the types of land use in the respective service areas to include industrial, commercial, residential, etc. Flow factors will be applied to specific land uses for projection of future wastewater loading.
- C. Final Growth Projections – Based on growth projections and land use evaluations, we will develop a final recommended growth projection for the identified service areas for a 20-year planning period. The growth projections will be stratified in 5-year increments over the 20-year planning period.

WASTEWATER LOADING

- A. Wastewater Loading- Based projections of growth developed for the service areas, will develop wastewater flow projections/loadings and peak demands. Primary elements of the wastewater loading will include the following:
 - Per Capita Growth Rate Flows
 - Growth Rate Adjusted Baseline Wastewater Flows
 - Land Use/Zoning Flow Factors
 - Known Developments
 - Undeveloped Properties (to be identified in consultation with County staff)
 - I&I Factor
- B. Final Wastewater Loading Projections – A final wastewater loading projection will be developed for the service area in 5-year increments for the 20-year planning period. The wastewater loadings will be stratified by average daily base flow, I&I factors, and peaking factors.
- C. Growth Projection & Wastewater Loading Workshop – we will present projected growth and wastewater loadings to County staff for review and input. Comments received will be incorporated and the final projections will be updated prior to completing Task 5 below. we will develop mitigation plans for correction or improvement. To include a cost opinion and exhibit that depicts the recommended improvements. We anticipate potential improvements may include:

TASK 5 – EVALUATION OF FUTURE INFRASTRUCTURE NEEDS

Once flow projections are established, McKim & Creed will utilize the calibrated SewerCAD wastewater model to evaluate the existing wastewater system to develop recommendations for future infrastructure needs based on the projected growth and wastewater loadings. Our scope of services includes the following primary tasks:

PRIMARY PUMP STATIONS & TRANSMISSION FORCE MAINS

- A. Develop Model Scenarios for 5, 10, 15, 20 Year Wastewater Flows – We will apply the projections for each time period to the wastewater model and evaluate necessary infrastructure improvements to meet the projected wastewater demand loadings for each time period.
- B. Existing Primary Pump Stations & Force Mains– the modeling scenarios will be utilized to identify improvements to the existing infrastructure necessary to accommodate the wastewater loadings. Improvements would be prioritized based on timing, criticality, and capacity impacts. Improvements recommendations would generally include:
- Upgrades to existing pump stations or replacement of existing pump stations.
 - New pump stations (existing service areas)
 - New or parallel force mains

This Scope of Work does not include evaluations, modeling, or recommendations for low pressure systems, vacuum systems, or gravity sewer systems.

- C. Known Developments & Infrastructure Needs – For developments that have been permitted, or may be planned, we will identify and incorporate anticipated infrastructure in the proposed master planning recommendations.
- D. Primary Infrastructure for Undeveloped Areas – For undeveloped and unsewered areas, we will provide strategic locations for primary pump stations and transmission. A conceptual plan will be developed for “back-bone” infrastructure necessary to serve the undeveloped areas based on the 20-year planning period, segmented in the 5-year planning increments. This Scope of Work does not include evaluations, modeling, or recommendations for low pressure systems, vacuum systems, or gravity sewer systems. This Scope of Work assumes that Brunswick County will provide direction and assistance on the location of undeveloped areas to include in the master planning effort.

WASTEWATER TREATMENT PLANT CAPACITY NEEDS

The various sub-basins and regions will be evaluated to determine the required treatment capacity at the County’s 6 wastewater treatment plants (WWTP), which have a combined total of 13 MGD of treatment and disposal. For the purposes of this Scope of Work, the evaluation of WWTP’s will be limited to determining capacity needs for the 20-year planning period and does not include a detailed evaluation of process, bio-solids, or plant configurations. Tasks associated with WWTP evaluations are as follows:

- A. Expansion of existing facilities - we will evaluate the capacity needs as well as the land available to expand existing facilities to meet projected wastewater loadings of the system.
- B. Construction of New Facilities – as the growth continues to expand in undeveloped areas, it may not be practical or cost effective to direct flow to existing WWTPs. Our team will evaluate the growth patterns and development potential for the County and provide recommendations for new WWTPs if the projections warrant. The recommendations for a new facility will be based on capacity needs only and do not include analysis of sites or feasibility for construction of the required infrastructure for the plant.

- C. Consolidation of Existing Facilities – per discussions with County staff, there may be a potential to consolidate the Sea Trail WWTP as part of the Ocean Isle Beach WWTP when the OIB facility is expanded. We will review this option as part of the planning process, to include a reuse force main from the OIB WWTP to continue to utilize the Sea Trails disposal systems.

EFFLUENT DISPOSAL NEEDS

- A. Effluent Disposal Alternatives - the County currently employs a combination of spray irrigation, high rate infiltration, drip irrigation, and NPDES discharge for effluent disposal. In conjunction with evaluation of the WWTP capacity needs, we will identify basic effluent disposal capacity needs. This may include the following:

- Expansion of existing land application systems currently permitted.
- New land application systems
- Identify current NPDES permits and what capacity may be required at each NPDES permit discharge location based on projections.

This Scope of Work is based on a cursory, desktop evaluation of potential disposal options and does not include detailed analysis of (or location of) sites, soils, permitting challenges, or regulatory negotiations.

TASK 6 – FUTURE RECOMMENDATIONS PLAN

Upon completion of Tasks 1-5 of this Scope of Work, we will provide the County with a final comprehensive plan or recommendations to meet future demands of the wastewater system. The major elements of the final plan include the following:

- A. Review and Incorporation of the County's Current CIP – We will review and compare the County's current CIP to the proposed recommendations of the master plan and note where the current CIP does not match the recommendations of the plan. Applicable triggers will be identified for each project.
- B. Opinions of Probable Project Cost - For all recommended improvements we will develop and provide an opinion o probable project costs for review and comment by the County utilizing current market conditions and historical construction data. This will include construction, contingency, technical fees, administrative fees, land acquisition, and other identified miscellaneous costs necessary for a total budgetary cost.
- C. Graphical Mapping Exhibits –We will develop exhibits that graphically depict the existing system and proposed improvements required at each 5-year increment. Each exhibit will build upon the previous incremental exhibit such that the County can easily determine the proposed improvements required based on projected growth and wastewater demand.
- D. Future Improvements Timeline – As part of the Future Project Recommendations, each project will be noted in a timeline format to include engineering and construction costs over the project cycle such that the project would be completed when (or prior to) it is needed.
- E. Funding Alternatives – The final plan will include a matrix of potential funding vehicles or agencies that may be feasible for implementation of the proposed improvements.

TASK 7 – FINAL COMPREHENSIVE WASTEWATER MASTER PLAN

A draft Comprehensive Master Plan will be prepared that summarizes the findings of the work completed and presented at workshop setting via PowerPoint, MS Teams, or other means as appropriate. Review comments received will be incorporated where appropriate. Major components of the draft document will include:

- Executive Summary
- Introduction and Purpose
- Background and Project Scope
- Hydraulic Modeling Calibration & Update
- Existing System Configuration & Noted Deficiencies
 - ✓ Proposed Improvements for the Existing System
 - ✓ Cost Opinions
- Growth Projections & Wastewater Loading Scenarios
 - ✓ Proposed growth alternatives
 - ✓ Recommended Growth Projections
 - ✓ Projected Wastewater Loadings (5-year increments)
- Pump Station & Transmission System
 - ✓ Alternatives Evaluated
 - ✓ Recommended 5-Year Incremental Improvements
 - ✓ Pump Station & Force Main Improvements
 - ✓ Opinions of Probable Cost
 - ✓ Graphics & Exhibits
- Wastewater Treatment & Disposal
 - ✓ Alternatives Evaluated
 - ✓ Recommended 5-year Incremental Improvements.
 - ✓ Expansion of Existing WWTPs
 - ✓ New WWTPs
 - ✓ Consolidation of WWTP's
 - ✓ Effluent Disposal Options
 - ✓ Opinions of Probable Cost
 - ✓ Graphics & Exhibits
- Funding Alternatives
 - ✓ Grant Opportunities
 - ✓ Loan Opportunities
- Final Future Project Recommendations
 - ✓ Prioritized Recommendation by Year & Impact
 - ✓ Planning Level Cost Opinions
 - ✓ Project Identification Maps
- Appendices – Supporting Documentation

Comments received during the submittal of the draft plan will be evaluated and incorporated as part of the final plan. The final plan will be provided to the County as appropriate in both hard copy and electronic format, including the SewerGEMS model and all necessary components for integration into the GIS system.

TASK 8 – PRESENTATION TO COUNTY COMMISSIONERS

Upon direction of County staff, McKim & Creed will prepare a PowerPoint presentation for the County Commissioners summarizing the results of the completed Comprehensive Wastewater Master Plan Report.

7. Furnish two hard review copies of the Preliminary Report and any other deliverables to Owner and review it with Owner. Within fourteen calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.
 8. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish up to seven copies of the revised Report and any other deliverables to the Owner in accordance with the schedule outlined in Exhibit B.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.

1. Sub-surface underground utility engineering or locate services.
2. Detailed analysis of the conditions of wastewater treatment plants, pump stations, force mains, or other infrastructure.
3. Field testing, drawdowns, or other testing activities.
4. Environmental Assessments or Impact Statements or Biological surveys
5. As-Built surveys of gravity mains, force mains, pump stations, or infrastructure
6. Flow monitoring or smoke testing of gravity mains and/or pump stations
7. Detailed investigations or reports by a soil scientist.
8. Hydrogeological Investigations
9. Wetlands delineation or mapping
10. Geotechnical Investigations
11. Design or Permitting
12. Consultations with NCDENR regarding NPDES permit negotiations.
13. Bidding & Award
14. Construction Phase Services
15. Easement Surveying and Mapping, to include deed and property research.
16. Legal advertisements for construction contracts
17. Application fees for plan approval or construction permits.
18. Court appearances for litigation, or preparation for the same
19. Evaluation of funding sources or opportunities

This is **EXHIBIT B**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** to which 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:

	<u>Amount</u>	<u>Duration</u>
a. Study and Report Phase	\$ <u>120,000</u>	<u>214</u> days
Basic Services Total	\$ <u>120,000</u>	<u>214</u> days

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, also known as the "Time for Completion" to the Effective Date of the agreement.
6. 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.
7. 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.
8. 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.
9. The date for project completion shall be determined by adding the above noted Total Duration, also known as the "Time for Completion" to the Effective Date of the Agreement.



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

Action Item # V. - 11.

From:

John Nichols, P.E.

Utilities - McKim & Creed Soil Testing Budget Amendment

Issue/Action Requested:

Request that the Board of Commissioners approve the Professional Services Agreement for Architectural, Engineering, and/or Surveying Services with McKim & Creed, P.A., in the amount of \$55,400. This will be for engineering services associated with the addition to the Northeast Brunswick Regional Force Main Off-Site Transmission Improvements Project and to continue the previous contract to provide an on-site testing protocol plan and daily on-site environmental monitoring during construction.

Background/Purpose of Request:

In 2020 the Board of Commissioners approved an agreement with McKim & Creed, P.A., for the development of soil testing protocols and daily on-site environmental monitoring during construction of the force main within the Kerr McGee superfund site associated with the Northeast Brunswick Regional Force Main Off-Site Transmission Improvements Project. The owner of the Kerr McGee superfund site (Greenfield Trust) required daily on-site environmental monitoring during construction as a condition of easement agreement. Due to construction delays, the original contract for the daily monitoring has expired. The unused fee remaining on the expired contract was in the amount of \$47,401.32. In addition to the original unused fee, the delays resulted in additional service fees in the amount of approximately \$8,000 and additional changes to the Soil plan, bringing the total of the contract to \$55,400.

Staff recommends approval of the proposed contract with McKim & Creed, P.A., in the amount of \$55,400.

Fiscal Impact:

Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations
Funds available in the current project

Approved By County Attorney:

Yes

Advisory Board Recommendation:

Not Applicable

County Manager's Recommendation:

Recommend the Board of Commissioners approve the Professional Services Agreement for Architectural, Engineering, and/or Surveying Services with McKim & Creed, P.A., in the amount of \$55,400. This will be for engineering services associated with the addition to the Northeast Brunswick Regional Force Main Off-Site Transmission Improvements Project and to continue the previous contract to provide an on-site testing protocol plan and daily on-site environmental monitoring during construction.

ATTACHMENTS:

Description

- ❑ Utilities - Soil Testing Professional Services Agreement McKim & Creed - Attach 1

**NORTH CAROLINA
BRUNSWICK COUNTY**

**PROFESSIONAL SERVICES AGREEMENT
FOR ARCHITECTURAL, ENGINEERING
AND/OR SURVEYING 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 McKim & Creed, P.A., (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 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 AND TERMINATION

The term of this Agreement begins one (1) business day after approval by the Brunswick County Board of Commissioners or execution of the Agreement by County, whichever is later (the “Effective Date”). Engineer shall complete the Services in accordance with the schedule set forth on Exhibit “B”, unless this Agreement is sooner terminated or amended as provided herein. 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 Engineer to allow Engineer 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 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.

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 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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. County shall be financially responsible for all necessary permits, licenses, approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

10. 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 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.

11. 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.

12. 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.

13. NON-EXCLUSIVITY

Provider acknowledges that County is not obligated to contract solely with Provider for the Services covered under this Agreement.

14. 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.

15. 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.

16. 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.

17. 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.

Further, 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 all of those certain insurance requirements called for in the Utility Easement recorded in Book 4310, Page 720 in the Brunswick County Register of Deeds. Said requirements specifically include providing Greenfield Environmental Multistate Trust, LLC a certificate of insurance satisfactory in both form and substance.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.
- 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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 initial bid packet submitted by Contractor, if applicable, including, but not necessarily limited to: the Invitation to Bid; Notice to Bidders; Instructions to Bidders; General Conditions; Supplementary General Conditions; 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.

32. 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.

33. 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.

34. 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.

35. 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:

For the County: Brunswick County Manager
P.O. Box 249
Bolivia, NC 28422
Fax: 910-253-2022

For the Provider: McKim & Creed, P.A.
243 N. Front Street
Wilmington, NC 28401

36. 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

 By:

 Frank Williams
 Chairman

[SEAL]

MCKIM & CREED, P.A.By: Anthony Boahn

Printed Name: Anthony W. Boahn, PE

Title: Vice President

Date: 3/19/2021

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

Julie A. Miller
 Julie A. Miller, Finance Director
 Brunswick County, North Carolina

APPROVED AS TO FORM

Bryan W. Batton
 Robert V. Shaver, Jr., County Attorney /
 Bryan W. Batton, Assistant County Attorney

This is **EXHIBIT A**, consisting of 2 pages, referred to in and part of the Professional Services Agreement between County and Engineer.

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

1. Task 1 – Soil Management Plan Revisions

This task includes a total of five (5) revisions to the existing Soil Management Plan (dated October 9, 2019). Four (4) revisions to the plan have been completed based upon multiple requested changes from Greenfield Multi-State Trust (Environmental Consultant for the Kerr McGee Superfund site). This task includes coordination with Greenfield Multi-State Trust and one final revision to the Soil Management Plan.

2. Task 2 – Environmental Observation and Documentation

The Engineer will provide environmental observation and documentation during the installation of the Brunswick County Force Sewer Main. A staff professional will be on-site throughout the duration of the invasive activities. Owner/Contractor shall provide 48 hours-notice prior to beginning of field activities. This scope of work provides for 35 days of oversight (10-hour workdays). Field staff to be assigned to this project have received Hazardous Waste Operations and Emergency Response (HAZWOPER) 40-Hour Training per 29 CFR 1910.120.

The Engineer will conduct observation and documentation activities during the excavation of potentially impacted soil, the installation of the new sewer lines and the backfill of existing soil (if clean) or clean backfill from an off-site location. A field representative will look for visual or olfactory indications of creosote contamination. The representative will be onsite to assist the Contractor's site workers and associated subcontractors in the compliance with the approved Soil Management Plan for the Kerr McGee Superfund site.

Per the approved Soil Management Plan, the Engineer will also provide a total of two (2) contaminant monitoring devices including a Personnel Monitor and a Handheld Dust Monitor throughout the duration of the invasive activities.

Items included in this scope of work are as follows:

- Hold daily health and safety meetings, with contractor and other site leadership personnel, to discuss the proposed excavations for the day.
- Observe daily operations for compliance with the approved Soil Management Plan.
- Screen the work zones and suspect material for the presence of creosote related VOCs using field instruments.
- Observe daily operations for compliance with the approved Health and Safety Plan (Task 2).

- Assist in screening stockpiled soil and determination of disposal/backfill requirements.
- If contaminated soil or groundwater is observed, the field representative will notify the Contractor. The soil management plan will be followed at that point for the handling and sampling requirements set forth in that approved document.
- Notes and photographs will be taken daily during the drilling/excavation observations. The project manager will provide a daily update of site activities and the observations made during our site visits.

The following items are not included with this task:

- Reporting. If a formal report is required to document the oversight activities, it will be covered as a change order to this scope of services.
- Environmental Soil Disposal Sampling. The approved soil management plan provides guidelines for the testing of potentially impacted soil for disposal purposes.
- Environmental Consulting.

PART 2 – ADDITIONAL SERVICES

The following services are excluded from this scope of work. The Engineer can provide these services; however, a separate proposal would be required.

- Sampling and disposal coordination of potentially impacted material during the excavation of the new force sewer main.
- Borrow source sampling. It is assumed that an environmental professional will be required to collect representative soil samples from the proposed soil to be imported to the site for laboratory analysis.
- Soil disposal sampling. Disposal facilities may require additional analytical testing of the soil to be disposed of.
- Soil disposal coordination.
- Attendance of project meetings.
- Environmental consulting.

This is **EXHIBIT B**, consisting of 1 pages, referred to in and part of the Professional Services Agreement between County and Engineer.

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

B. Owner shall pay Engineer for Basic Services as follows:

1. A Lump Sum amount based on the following estimated distribution of compensation:

Task	Amount	Anticipated Duration
Task 1 – Amendments to the Soil Management Plan	\$2,750	25 Days
Task 2 – On-Site Environmental*	\$52,650*	35 Days
Basic Services Total Fee	\$55,400	60 Days

* The parties had previously contracted for Task 2 with said agreement having expired. This task and amount includes funding previously allocated from Task 4 in the previous agreement. Only the tasks yet to be completed and paid shall be covered by this Agreement.

1. 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.
2. 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.
3. 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.
4. The date for project completion shall be determined by adding the above noted Total Duration, also known as the "Time for Completion" to the Effective Date of the agreement.



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

From:

Randall Woodruff, County Manager

Action Item # VI. - 1.

Presentation - Brunswick BID Marketing/Campaign Information
(Bill Early, Executive Director and Kevin Lackey, Business
Development Manager)

Issue/Action Requested:

Request that the Board of Commissioners receive a presentation from Brunswick BID to include their marketing efforts and campaign moving forward.

Background/Purpose of Request:

Brunswick BID has requested to provide the Board of Commissioners with an update on their marketing efforts and their campaign moving forward.

Fiscal Impact:

Not Applicable

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners receive a presentation from Brunswick BID to include their marketing efforts and campaign moving forward.

ATTACHMENTS:

Description

- ☐ Marketing Presentation

BRAND GUIDE

BRAND FRAMEWORK

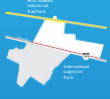
What do we stand for?	POSITIONING	Powering North Carolina's bottom line			
What do customers feel from our brand?	EMOTIONAL BENEFIT	A sense of competency and determination.			
What do customers gain from what we do?	FUNCTIONAL BENEFIT	A more efficient business and a healthier bottom line.			
Why can they believe it?	PROOF	Unique infrastructure	Specialized workforce	Unmatched partnership	Balanced lifestyle
Who are we talking to?	AUDIENCE	Consultants and c-suite execs. Seeking an ideal environment for their business AND people. Practical, yet visionary. Look for the building blocks and foundation – not the name or fame. Companies that are often behind the scenes or up and coming, but serving an integral role or function.			
What role do we play in culture?	BRAND ROLE	The hero brand.			
What are the core values that guide us?	BRAND PILLARS	Ignite potential	Foster collaboration	Advocate relentlessly	Charge forward
How do we act and sound?	TONE	industrious	resilient & persevering	candid	encouraging & approachable pragmatic

BUSINESS NC PRINT AD

Mega Sites. Mega Opportunities. POWERFUL POSSIBILITIES.

Expand or relocate to coastal Brunswick County, where you'll find the building blocks your business needs to prosper: superior infrastructure, a skilled workforce and specialized training opportunities.

Named the fastest growing county in North Carolina in 2018, Brunswick County boasts low corporate income and property taxes. If you're interested in moving to the region, we can help you hit the ground running with our business-friendly, customer-focused approach and unique understanding of the needs of businesses experiencing rapid growth.



Take Advantage of Two Unique Land Parcels Available for Turnkey Development:

- 13 miles to the nearest international airport
- 18 miles from the Port of Wilmington
- Electricity, gas, water and sewer are all available on-site
- Proximity to I-95 and I-85
- Proximity to the Atlantic Ocean
- Proximity to the Mid-Atlantic Industrial Rail Park

Mid-Atlantic Industrial Rail Park (1,500 acres)

Let us help you find the offering and develop your business.

International Logistics Park (1,500 acres)

Powered for growth at brunswickbid.com

Tel: (910) 408-1603

Brunswick BID BUSINESS & INDUSTRY DEVELOPMENT

SPONSOR COMMENTS

Brunswick BID BUSINESS & INDUSTRY DEVELOPMENT

Welcome to Southeastern North Carolina, your connection to the global economy. You will see that we truly are the land of plenty for businesses and families alike.

Why? Our unique infrastructure serves as a powerhouse to businesses, featuring port facilities, international and regional airports, cross-country highways and rail, with proximity to the raw materials and natural resources found here in Southeastern North Carolina.

From 2010 onward, Brunswick County continues to be the fastest growing county in North Carolina - with no signs of slowing down. Whether entrepreneurialism or enterprise, we're creating new opportunities for people and businesses. Strong skilled labor force with access to talent and specialized training at nearby universities and community colleges enables continuous improvement and forward thinking ideas.

Brunswick County boasts two Mega Sites - impressive land parcels available for turnkey development for companies looking to expand or relocate here. Both have been North Carolina certified with site assessments completed. Not only does the county have the land to support advanced manufacturing, alternative energy, logistics, agribusiness, and cold storage facilities, it also offers the required infrastructure to underpin critical commerce and foreign trade. Both sites are primed with ample access to electricity, gas, water and waste-water for ease of development - and the Mid-Atlantic Industrial Rail Park is one of 23 CSX Select sites.

Equally important, coastal North Carolina offers countless recreational activities and a mild climate to be enjoyed year-round by residents. Our taxes are lower than the national average. This quality of life coupled with affordability makes our part of the state the perfect place to meet new people, raise a family, as well as run a business.

Assuredly, Brunswick County will continue to power North Carolina's bottom line with vitality and vigor leaving burgeoning businesses and thriving communities in its wake.

If you would like to learn more, please reach out to me for more information. I encourage you to take a closer look at all that Brunswick County has to offer.

Sincerest regards,

William S. Bid Early
William S. Bid Early
Executive Director
Brunswick Business & Industry Development
bill.early@brunswickbid.com
(910) 408-1603

Powered for growth at brunswickbid.com



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International Logistics Park (1,500 acres)

Powered for growth at brunswickbid.com

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THE CAMPAIGN

This section sets up the concept for this campaign and includes some examples of how it comes to life through print, digital, and collateral executions. These examples should serve as a guide when creating new deliverables within the campaign.

The *Bid on Brunswick* campaign was created as a way for Brunswick BID to connect with consumers—to communicate what truly makes Brunswick great—and show them why it's where they should establish their new base of operations for whatever business they are looking to grow.

The driving force behind the *Bid on Brunswick* campaign is the notion that Brunswick has so much to offer, both on a personal and operational level. Thus our unofficial tagline: *The resources you need. The lifestyle you want.*



18 MILES TO THE PORT OF WILMINGTON
12 MILES TO THE NEAREST INTERNATIONAL AIRPORT
AND OPEN ROADS THAT WON'T SLOW YOU DOWN

In Brunswick County, you'll find the transportation access you need and the lifestyle you want. Just south of Wilmington, Brunswick has been named the fastest growing county in North Carolina for 10 years and counting. Here, our infrastructure moves at the speed of business and our geography allows for easy development. With two 1,000+ acre, turnkey megasites waiting for your expansion or relocation, you can hit the ground running. If you're ready to bid on Brunswick, our business and industry development team can help you achieve your next phase of growth.

BID ON BRUNSWICK
SOUTHEAST NC
BRUNSWICK BUSINESS & INDUSTRY DEVELOPMENT

LEARN MORE & EXPLORE OUR MEGASITES AT BRUNSWICKBID.COM

Lore
sit a
adip
bibe
impe
ultri
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augu
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NEED + WANT

Home to talent, transportation, and resources plus miles and miles of Atlantic shoreline, Brunswick County can power your growth and help you kick back. Find the resources you need and the lifestyle you want in one incredible location. Brunswick County has the land, lifestyle, people and partners necessary for you to embrace opportunity and find success. So, are you ready to place your bid?

BANDED LOGO

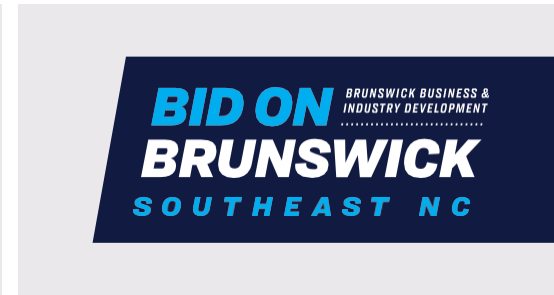
Banded logo

The banded version of the logo is used in certain situations where the logo is used to wrap at the edge of a creative execution, such as a business card. The primary and secondary logos are always preferred, but the banded logo can be used in specific situations.

Follow the same priority in usage as the Primary and Secondary logos on the previous page.



Primary Banded Logo



Secondary Banded Logo



PRINT

200,000 SKILLED WORKERS
15,000 STUDENTS IN TECHNICAL PROGRAMS
AND A COMMUNITY WITH OPEN ARMS



In Brunswick County, you'll find the talent you need and the coastal lifestyle you crave. Whether working remotely or in the office, this is the place to establish your business. Just south of Wilmington, Brunswick has been named the fastest growing county in North Carolina for 10 years running. Here, you'll find a diverse talent pool, customizable training programs and a pipeline of graduates looking for their next opportunity. If you're ready to bid on Brunswick, our business and industry development team can help you plan for future success.

**BID ON
BRUNSWICK
SOUTHEAST NC**

LEARN MORE & EXPLORE OUR MEGASITES AT BRUNSWICKBID.COM

18 MILES TO THE PORT OF WILMINGTON
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**BID ON
BRUNSWICK
SOUTHEAST NC**

LEARN MORE & EXPLORE OUR MEGASITES AT BRUNSWICKBID.COM

SPONSOR COMMENTS

**BID ON
BRUNSWICK
SOUTHEAST NC**

Over the last few months, we've all had the opportunity to reflect upon our business goals and recalibrate our priorities. In Brunswick County, we've used this time to plan for our next phase of growth...and we invite you to do the same.

Along with a low cost of living, our pristine beaches, proximity to Wilmington and ample career opportunities continue to attract talent to our area. In fact, Brunswick has been named the fastest growing county in North Carolina for the tenth year in a row, and we show no signs of slowing down. And yet, there's still plenty of room to expand.

Not only is Brunswick home to plenty of space ripe for development, but the county boasts two 1,000+ acre megasites that are turnkey opportunities waiting for your expansion or relocation. Both parcels have been North Carolina Certified, which reduces the risks associated with development through a rigorous pre-qualification process. Both sites adjoin a major highway with direct connections to I-40 and I-95—two interstates that stretch across the eastern seaboard and beyond. A CSX main rail line is located adjacent to the Mid-Atlantic Industrial Rail Park with direct access to the Port of Wilmington.

From advanced manufacturing to alternative energy, refrigerated transport to warehousing and logistics, there's a place for you here. Our impressive infrastructure connects you to sea, sky, road and rail. Brunswick is minutes from port facilities, international and regional airports, cross-country highways that put you within in a day's drive of some of the United States' largest cities, and a robust rail system. Plus, you'll enjoy access to the raw materials, climate and natural resources that are unique to the Southeastern coast.

If you're looking to lower your business taxes and costs of operation, decrease the congestion you encounter during your daily commute and improve your quality of life, consider a move to Brunswick County. Our area is ideally positioned to help you connect to the global economy with the lifestyle you want and the resources you need to jumpstart your next phase of growth.

If you'd like to learn more about possibilities to relocate or expand, please don't hesitate to reach out for more information. We're here to help power your bottom line and open doors to new business potential.

Sincerest regards,

William S. (Bill) Early
William S. (Bill) Early
Executive Director
Brunswick Business & Industry Development
bill_early@brunswickbid.com
(910) 408-1603

Powered for growth at brunswickbid.com



BILLBOARD



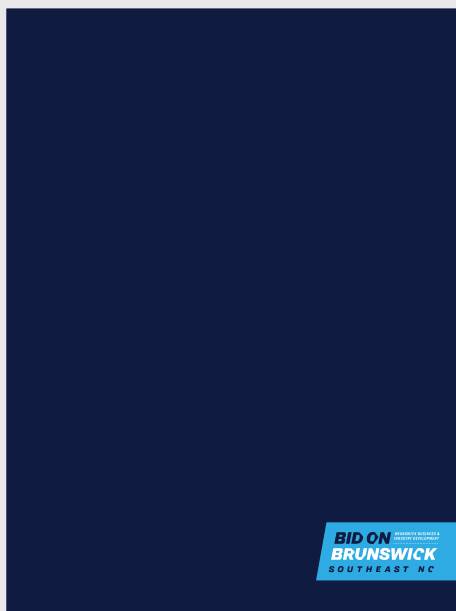
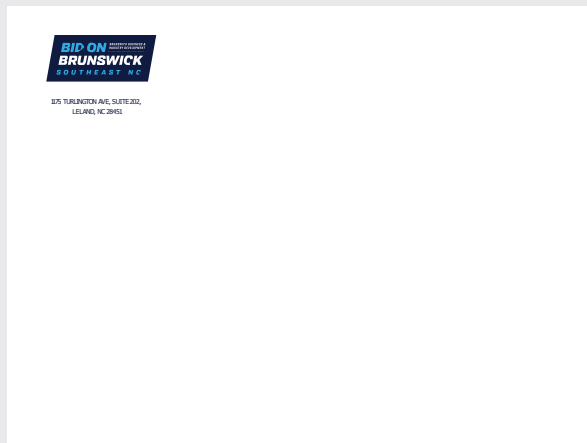
BILLBOARD



DIORAMA



STATIONERY SUITE



SWAG



BANNER ADS

[General](#)

[Workforce](#)

[Infrastructure](#)

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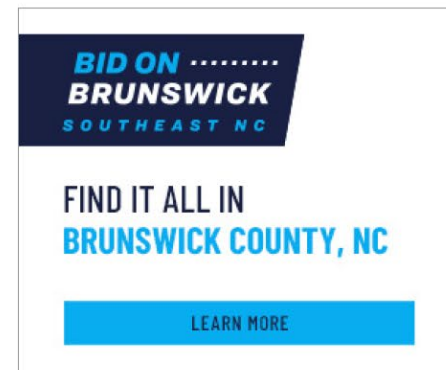
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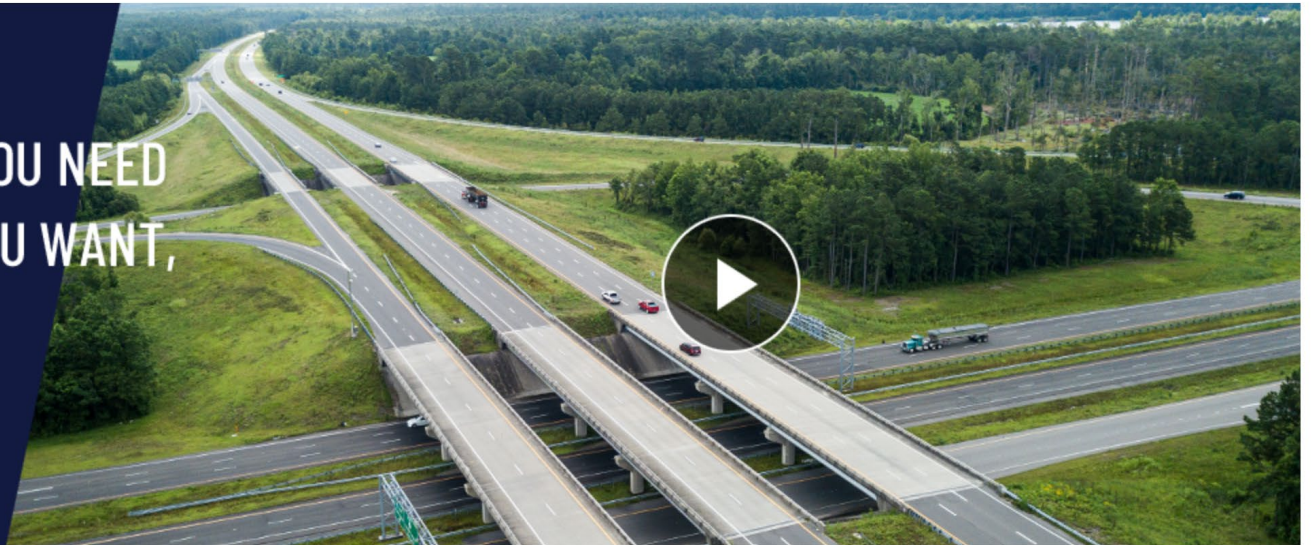
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7



GET THE RESOURCES YOU NEED
AND THE LIFESTYLE YOU WANT,
ALL IN ONE PLACE:
BRUNSWICK COUNTY.



START, EXPAND OR RELOCATE A BUSINESS —
NOW'S THE TIME TO BID ON BRUNSWICK



Lowest corporate state tax in the United States at 2.5%



Ranked #1 for Best State for Business by *Forbes* and designated #1 Top Competitive State by *Site Selection* in 2018



Brunswick is the fastest growing county in NC for 10 years running and the 4th fastest in the U.S.

Brunswick
BID | BUSINESS &
INDUSTRY
DEVELOPMENT



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

Action Item # VI. - 2.

From:
Meagan Kasczak

Presentation - Final Mission, Vision, and Values Statements
(Meagan Kasczak, Communications Director)

Issue/Action Requested:

Request the Board of Commissioners receive a presentation on the final mission, vision, and value statements for Brunswick County and to consider their adoption.

Background/Purpose of Request:

The Board of Commissioners requested staff review and revise the County's mission, values, and vision statement based on input provided during the Dec. 17, 2020 regular meeting and the Feb. 1, 2021 workshop.

Fiscal Impact:

Reviewed By Director of Fiscal Operations

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners receive a presentation on the final mission, vision, and value statements for Brunswick County and consider their adoption.

ATTACHMENTS:

Description

- ▣ FY22 Mission, Vision, Goals, and Values Statements Presentation

FY 2021 – 2022

Mission, Vision, and Values Statements

Meagan Kascsak, Communications Director

Our Mission

We provide the highest level of service to support an active, dynamic, and thriving community. In cooperation with our local and regional partners, we collaborate to provide responsive and efficient services that support and advance the development of our community's educational, recreational, and economic prosperity.

Our Vision

Brunswick County is a prosperous, vibrant, and forward-thinking community that offers opportunities to enhance and sustain the highest quality of life for residents.

Our Values

Respect

We treat our residents and one another with the highest regard for dignity and courtesy. We exemplify the dedication, efficiency, and effectiveness recognized as exceptional customer service qualities.

Integrity

We strive to be honest and transparent in all that we do. We provide accurate information and guidance to strengthen positive relationships between residents and their county government.

Collaboration

We are open-minded and welcoming to new ideas and diverse perspectives. We engage and foster strong, long-lasting partnerships to expand our opportunities for feedback and representation in our decisions and actions.

Our Values

Accountability

We honor the authority entrusted to us to serve and protect our residents and preserve our natural and fiscal resources through ethical and responsible stewardship.

Innovative

We are a goal-oriented and future-driven community that seeks out thoughtful and industrious means to improve service quality and delivery both effectively and affordably.



Economic Development

Purpose: To grow and strengthen economic prosperity through exceptional service and collaborative efforts to recruit and retain quality employers that advance our commercial, industrial, agricultural, tourism, and hospitality sectors.

Objective No. 1: Foster partnerships to collectively develop strategies and inspire a positive business environment.

Objective No. 2: Support policies and developments that strengthen and diversify the county tax base and create jobs that pay a living wage.

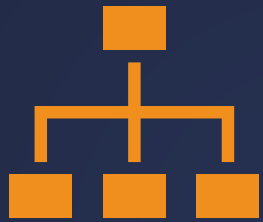


Education

Purpose: To build an educated and highly skilled workforce by supporting the development of future-driven and accessible education and training opportunities for students of all ages and backgrounds.

Objective No. 1: Continue to collaborate with county educational partners to support their efforts to teach and retain students, faculty, and staff.

Objective No. 2: Identify pathways to future success and skill development for students after high school and beyond.



Excellent Government

Purpose: To demonstrate forward-thinking and high-performing standards within the county government through exceptional leadership, planning, and customer service.

Objective No. 1: Maintain the county government's positive financial position, low tax rate, and credit strength.

Objective No. 2: Attract and retain an experienced, skilled, and diverse county government workforce.

Objective No. 3: Create an environment where residents feel respected and engaged in county government decisions.



Growth & Sustainability

Purpose: To encourage the development of innovative strategies and policies for infrastructure, transportation, and the environment that support residential, commercial, and industrial growth.

Objective No. 1: Continue efforts to offer utility customers with robust, reliable, and high-quality water and wastewater services.

Objective No. 2: Form and sustain partnerships to provide a strong regional utility system for the benefit of all customers countywide.

Objective No. 3: Encourage forward-thinking development and construction practices that balance respect for natural resources and private property.

Objective No. 4: Support accessible and multimodal transportation options that connect residents to services and employment opportunities.



Healthy & Safe Community

Purpose: To support the advancement of health and safety efforts in our county that incorporate current best practices and anticipate the county's future growth and development.

Objective No. 1: Continue to respond timely and effectively to emergency situations when they arise.

Objective No. 2: Support policies and initiatives that deter criminal activity and reduce risks for residents and visitors while incorporating mitigation strategies learned from previous reviews and experiences.

Objective No. 3: Develop proactive and responsible programs focused on reducing negative outcomes related to preventable health issues, diseases, mental health challenges, and substance abuse.



Next Steps

Questions and Comments



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

Action Item # VI. - 3.

From: Presentation - Health and Human Services - COVID-19 Update
David Stanley, Deputy County Manager for (David Stanley, Deputy County Manager for HHS)
Health and Human Services

Issue/Action Requested:

Request that the Board of Commissioners receive an update on the Coronavirus (COVID-19) and vaccine availability.

Background/Purpose of Request:

Brunswick County continues to work with both private and public officials to navigate the pandemic and provide relevant information to our citizens.

As of March 29, 2021, there have been 8,607 confirmed cases of COVID-19 in Brunswick County. Staff plans to present an update which will include the latest status and planning concerning the COVID-19 virus and vaccine efforts.

Vaccine supplies and vaccine providers have been increasing in Brunswick County. Individuals are encouraged to schedule first dose vaccine appointments at county clinics (as available) the following ways:

Schedule online [here](#) (Community members will then need to answer questions and select the Brunswick location to schedule.)

Call the Public Health Call Line at 910.253.2339 (Open Monday through Friday from 9 a.m. to 5 p.m.) Email: coronavirus@brunswickcountync.gov

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 Coronavirus (COVID-19) and vaccine availability.



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

Action Item # VII. - 1.

From:

Bob Shaver, County Attorney

County Attorney - Resolution of Support for Bald Head Island
Transportation Authority (Bob Shaver, County Attorney)

Issue/Action Requested:

Request that the Board of Commissioners consider approval of a Resolution of Support for the Acquisition of the Bald Head Island Ferry Transportation System by the Bald Head Island Transportation Authority.

Background/Purpose of Request:

The Bald Head Island Transportation Authority seeks support from the Board of Commissioners for its purchase of the ferry transportation system from its private owners as contemplated by the legislature when it enacted the Ferry Transportation Authority Act in 2017.

Fiscal Impact:

Not Applicable

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners consider approval of a Resolution of Support for the Acquisition of the Bald Head Island Ferry Transportation System by the Bald Head Island Transportation Authority.

ATTACHMENTS:

Description

- ▣ 2021-04-05 Resolution Supporting BHITA

County of Brunswick
Office of the County Commissioners



**RESOLUTION OF SUPPORT FOR THE ACQUISITION OF THE
BALD HEAD ISLAND FERRY TRANSPORTATION SYSTEM BY THE
BALD HEAD ISLAND TRANSPORTATION AUTHORITY**

WHEREAS, on July 18, 2017, the North Carolina General Assembly enacted S.L. 2017-120, known as the Ferry Transportation Authority Act (now Article 29 of Chapter 160A); and

WHEREAS, on August 23, 2017, the Bald Head Island Transportation Authority (the "Authority") filed its Articles of Incorporation with the Office of the Secretary of State, and is governed by an 11-member Board of Trustees consisting of 1 Governor's appointee, 2 General Assembly appointees, 3 NCDOT appointees, 3 Village of Bald Head Island appointees, 1 City of Southport appointee, and 1 Brunswick County appointee; and

WHEREAS, over the last four years the Authority has engaged in extensive meetings with interested governmental stakeholders, private businesses, property owners, and BHI residents regarding a process for the Authority to acquire the Bald Head Island Transportation System (consisting of ferry, barge, tram, terminals, parking facilities and related assets -- the "System") from its current owners, Bald Head Island Limited, LLC and Bald Head Transportation, Inc. (collectively "Limited"); and

WHEREAS, the Authority has engaged in extensive due diligence and feasibility studies with appraisers, bond counsel, financial advisers, and port and terminal consultants to develop an acquisition strategy that would acquire the System at or slightly below its appraised value; and

WHEREAS, on December 8, 2020, the Authority adopted a resolution approving an Asset Purchase Agreement and adopted a Findings Resolution required as a prerequisite to pursuit of Local Government Commission (the "LGC") approval for a bond sale; and

WHEREAS, on March 22, 2021, the Village of Bald Head Island (the "Village") expressed to the LGC its interest in acquiring the System instead of the Authority; and

WHEREAS, Limited, the owners of the System, have notified the LGC by letter dated March 26, 2021 that the Village has never made a formal offer to purchase the System and that Limited "does not intend to engage in negotiations with the Village."; and

WHEREAS, in contrast to the diverse constituency represented by the Authority, the permanent residents of the Village represent less than 10% of annual ferry ridership; and

WHEREAS, Limited has unequivocally stated that it “stands ready, willing, and able to close the transaction with the Authority, and only with the Authority, upon the terms and conditions set forth in the Asset Purchase Agreement finalized and approved by the Authority at its December 8, 2020 meeting.”

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF BRUNSWICK, NORTH CAROLINA:

1. Brunswick County expresses its support and confidence in the work of the Bald Head Island Transportation Authority.
2. Brunswick County supports the sale of the System by Limited to the Authority.
3. Brunswick County believes the purpose and function of the legislature’s passage of the Ferry Transportation Authority Act was to provide accountable representation of all constituent interests in the ownership and operation of a ferry transportation system, and that the Authority is the appropriate entity by statute to acquire ownership of the Bald Head Island Transportation System.
4. Brunswick County encourages the Local Government Commission to promptly consider and schedule the Authority’s request for approval to proceed with acquisition and bond issuance.
5. This Resolution shall take effect immediately on its adoption.

Adopted this, the 5th day of April 2021.

Randell Thompson, Chairman
Brunswick County Board of Commissioners

ATTEST:

Andrea White, NCCCC
Clerk to the Board



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
April 5, 2021

Action Item # VII. - 2.

From: Stephanie Lewis, Director of Operation Services
Operation Services - Integrated Supply Amendment (Stephanie Lewis, Director of Operation Services)

Issue/Action Requested:

Request that the Board of Commissioners approve an amendment to the Integrated Supply Agreement with Atlantic Auto & Marine Inc. (d/b/a NAPA Auto Parts).

Background/Purpose of Request:

The Integrated Supply Agreement previously approved on July 16, 2018 allowed Atlantic Auto & Marine, Inc. to continue to provide an on-site NAPA store at the location of the Brunswick County Service Center. This agreement allows Brunswick County to reduce inventory investment, provides lower transaction costs and increases shop productivity. With this contract Brunswick County purchases parts and supplies at cost plus 10% gross profit and pays a management fee of approximately \$66,000 per year. The amendment references the new Sourcewell contract number and the term auto renews through the term of the Sourcewell contract.

Funds are budgeted in 104250-425200, 104250-426002, 104250-435200 and 104250-435300. The management fee is budgeted in 104250-439900.

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 an amendment to the Integrated Supply Agreement with Atlantic Auto & Marine Inc. (d/b/a NAPA Auto Parts).

ATTACHMENTS:

Description

- Atlantic Auto & Marine, Inc. Amendment

**AMENDMENT TO INTEGRATED SUPPLY AGREEMENT
BY AND BETWEEN
ATLANTIC AUTO & MARINE, INC.
AND
COUNTY OF BRUNSWICK, NC**

THIS AMENDMENT TO INTEGRATED SUPPLY AGREEMENT (this “Amendment”) is made by and between **ATLANTIC AUTO & MARINE, INC.**, a North Carolina corporation (d/b/a NAPA Auto Parts) (“NAPA”) and **COUNTY OF BRUNSWICK, NC** (“CUSTOMER”), to be effective as of the 5th day of April, 2021.

WHEREAS, pursuant to a competitive bidding and selection process by Sourcewell (f/k/a National Joint Powers Alliance) (hereinafter, “Sourcewell”), a Minnesota-based Service Cooperative created by Minnesota Legislative Statute 123A.21, Sourcewell and Genuine Parts Company, a Georgia corporation (“GPC”), executed contract #061015 on July 21, 2015, amended by that certain Amendment to Contract #061015-GPC dated November 20, 2019 (hereinafter, the “Original Sourcewell Contract”), to establish a source of supply for certain auto, truck and bus parts as well as to provide Integrated Business Solutions services; and

WHEREAS, by becoming a participating member of Sourcewell, Members and User Agencies were authorized to utilize the pricing and incentives available to Sourcewell Members set forth in the Original Sourcewell Contract; and

WHEREAS, CUSTOMER, as a User Agency under the Original Sourcewell Contract, previously executed that certain Integrated Supply Agreement effective as of September 1, 2015 by and between CUSTOMER and NAPA (the “Agreement”), pursuant to which NAPA has provided integrated business solutions services to CUSTOMER; and

WHEREAS, on December 23, 2020, pursuant to a competitive bidding and selection process by Sourcewell, Sourcewell and GPC executed contract #110520-GPC, pursuant to which NAPA may continue to provide a source of supply for certain auto, truck and bus parts as well as to provide Integrated Business Solutions to User Agencies (the “New Sourcewell Contract”); and

WHEREAS, CUSTOMER remains a User Agency under the New Sourcewell Contract, and the parties agree that the New Sourcewell Contract is a vehicle by which CUSTOMER and NAPA may extend the term of the Agreement, and following NAPA and Sourcewell’s execution of the New Sourcewell Contract, the parties hereto desire to so extend the term of the Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. Defined Terms. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement or the New Sourcewell Contract.

2. **Term.** The parties hereby agree to extend the term of the Agreement until the first to occur of such date as the New Sourcewell Contract terminates or expires, or the earlier termination of the Agreement in accordance with the applicable terms and conditions of the Agreement. As the New Sourcewell Contract is renewed or extended, or upon the award of a successive contract from Sourcewell to NAPA for substantially the same products and services, the Agreement may be again renewed or extended for a period of time equal to or shorter than the period of time the New Sourcewell Contract is renewed or extended, or upon the award of a successive contract from Sourcewell to NAPA for substantially the same products and services, upon the mutual written agreement of the parties hereto. The Agreement shall terminate automatically upon the termination, for any reason, of the New Sourcewell Contract; provided that in the event Sourcewell awards to NAPA a successive contract for substantially the same products and services, this Agreement may be extended for the term of such successive Sourcewell contract. Notwithstanding the foregoing, either party may terminate the Agreement at any time for its convenience by giving the other party sixty (60) days prior written notice of such termination.

3. **Choice of Law.** Section 25 of the Agreement is deleted in its entirety and replaced with the following:

25. **CHOICE OF LAW.** This Agreement, as amended, 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, as amended, 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.

4. **Additional Provisions.** The following additional provisions shall be added to the Agreement, as numbered below:

31. **NON-APPROPRIATION.** If the Board of County Commissioners of CUSTOMER does not appropriate the funding needed by CUSTOMER to make payments under the Agreement, as amended, for a given fiscal year, CUSTOMER will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, CUSTOMER will promptly notify NAPA of the non-appropriation, and the Agreement, as amended, will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by CUSTOMER which is attributable to non-appropriation of funds shall constitute a breach of or default under the Agreement, as amended.

32. **DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL.** NAPA 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.

33. **DEBARMENT.** NAPA 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, as amended, by any governmental department or agency. NAPA must notify Customer within thirty (30) days if debarred by any governmental entity.

34. NON-DISCRIMINATION IN EMPLOYMENT. NAPA 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. NAPA shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event NAPA 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, the Agreement, as amended, may be cancelled, terminated or suspended in whole or in part by CUSTOMER, and NAPA may be declared ineligible for further agreements with CUSTOMER.

35. COMPLIANCE WITH E-VERIFY PROGRAM. Pursuant to N.C.G.S. § 143-133.3, NAPA understands that it is a requirement of the Agreement, as amended, that NAPA and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, NAPA 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 NAPA shall require its subcontractors to do the same. Upon request, NAPA agrees to provide Customer with an affidavit of compliance or exemption.

36. DISPUTE REOLUTION. Should a dispute arise as to the terms of this Agreement, as amended, 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.

37. GOVERNMENTAL IMMUNITY. CUSTOMER, to the extent applicable, does not waive its governmental immunity by entering into the Agreement, as amended, and fully retains all immunities and defenses provided by law with regard to any action based on the Agreement, as amended.

5. Conflict. Except as hereby amended, the Agreement shall remain unchanged in full force and effect, and the Agreement remains enforceable against each of the parties and is hereby ratified and acknowledged by each of the parties. If there is any conflict between the terms and provisions of the Agreement and the terms and provisions of this Amendment, this Amendment shall control.

6. Counterparts. This Amendment may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument. This Amendment 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

Amendment by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

IN WITNESS WHEREOF, the parties hereto cause their hands and seals to be affixed by their duly-authorized representatives effective as of the date and year first above written.

NAPA:

ATLANTIC AUTO & MARINE, INC.

By: 
Name: Andrew Dickson
Title: President

CUSTOMER:

COUNTY OF BRUNSWICK, NC

By: _____
Name: Randell Thompson
Title: Chairman, Board of Commissioners

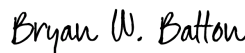
ATTEST:

_____ [SEAL]
Clerk to the Board

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”


Julie A. Miller, Director of Fiscal Operations
Brunswick County, NC

APPROVED AS TO FORM


Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Asst. County Attorney
Brunswick County, NC