BRUNSWICK COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING AGENDA
September 6, 2022
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 Contracts with Becker Morgan Group, Inc. and Barnhill Contracting Company for design and construction of North Brunswick High School Addition

   Request that the Board of Commissioners approve and authorize the Chairman to sign the Becker Morgan Group, Inc. design contract in the amount of $1,057,000 and the Construction Manager at Risk Barnhill Contracting Company construction contract in the amount of $22,274,068 for the North Brunswick High School Addition.

2. Clerk to the Board - Meeting Minutes

   Request the Board of Commissioners approve the meeting minutes for July 18 2022, August 1, 2022 and August 15, 2022

3. Emergency Services - Board Appointment - Waccamaw Fire District Fireman's Relief Fund Board

   Request the Board to appoint Ellen Milligan to the Waccamaw Fireman's Relief Fund Board. Ms. Milligan will replace Mr. Doug Brown who has passed away.

4. Emergency Services - Homeland Security Disaster Preparedness Grant

   Request the Board of Commissioners approve Notification and Grant Application Evaluation Form for the (FY) 2022 Homeland Security Grant Program (HSGP).

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.

   -DSS Links Additional Revenue Budget Amendment
   -Appropriate $17,500 of additional Links Transitional Revenue for use in the Links Transitional Expense program line.

   -WIC Client Services Additional Revenue Budget Amendment
   Appropriate $25,697 of additional WIC Client Services Revenue based on the increased client load.

   -Airport Grant 36244.58.10.1 Closeout Budget Amendment and CPO
   Closeout airport grant 36244.58.10.1 and return unexpended local match of $5,623 to undesignated funds in the County Capital Reserve.

   -Code Administration Insurance Proceeds Budget Amendment
   Appropriate insurance proceeds of $1,500 for the replacement of damaged drone in Code Administration.

-NC911 Board Ineligible Expenditures Budget Amendment
To move ineligible expenditures associated with the ESInet connection currently budgeted in the emergency telephone system fund. The County will invoice the state for these costs and be reimbursed in the General Fund moving forward.

-Lightning Strike Insurance Proceeds Budget Amendment
Appropriate $11,780 of insurance proceeds to repair and maintenance equipment for emergency repair of tower after lightning strike.

6. Finance - NC Forest Service Agreement

   Request that the Board of Commissioners approve and authorize the County Manager to sign an agreement with the North Carolina Department of Agriculture and Consumers Services for the protection, development, and improvement of forest land in Brunswick County.

7. Health and Human Services - BSRI - FY 2023 HCCBG County Agreement, Funding Plan, and Lead Agency Designation

   Request that the Board of Commissioners approve the 2022-2023 Home and Community Care Block Grant for Older Adults (HCCBG) package including the funding plan, grant agreement, Attachment B Federal Certifications, form CD-511, disclosure of lobbying activities, and the county designation of Brunswick Senior Resources Inc. (BSRI) as lead agency for aging services.

8. Health and Human Services - Health Services – Annual Board of Health Policies

   Request that the Board of Commissioners review and approve annual Board of Health policies.

9. Health and Human Services - Health Services – Contract for School Nursing FY 22-23

   Request that the Board of Commissioners approve the FY 22-23 contract agreement with Brunswick County Schools for funding school nurses utilizing state-restricted funds.

10. Health and Human Services - Health Services – Tobacco-Free Policy

    Request that the Board of Commissioners review and approve the Tobacco-Free Policy for Local Health Department Buildings and Grounds.

11. Health and Human Services - Sheltering Agreement with Brunswick County Schools FY 22-23

    Request that the Board of Commissioners approve the sheltering agreement between Brunswick County and Brunswick County Schools (BCS).

12. Health and Human Services - Social Services - DSS and Trillium MOA

    Request that the Board of Commissioners approve the FY 22-23 Memorandum of Agreement with Trillium Health Resources for Work First and Child Protective Services Substance Use Initiative.

13. Health and Human Services: Social Services - Wortman Law Firm Contract FY 22-23

    Request that the Board of Commissioners approve the FY 22-23 contract for Wortman Law Firm, PLLC.

14. IT - Contract Amendment to Agreement with CivicPlus (CivicClerk) and addition of Statements of Work for CivicEngage (website) and CivicGov (Planning, Code Enforcement and Zoning)

    Request Brunswick County Board of Commissioners approve the (attached) Amendment to the Agreement adopted on 06/29/22 with CivicPlus allowing for multiple modules of the CivicPlus platform to be covered under the same

Agreement. Also requesting approval of the (attached) Statements of Work for CivicEngage (Outsourcing of County Website) and CivicGov (for use by Planning Department for planning, zoning and code enforcement).

15. Library - Nonrecurring State Aid to Libraries

    Request the Board of Commissioners approve the acceptance of Nonrecurring State Aid to Libraries for Brunswick County Library.

16. Library - Schedule of Fees

    Request the Board of Commissioners approve the attached updated Schedule of Fees, specifically the change in the fees associated with color and black and white printing/copies.

17. Soil and Water - Conservation Easement Grant Award Acceptance

    Request for the Board of Commissioners approve and accept a grant from the North Carolina Department of Agriculture and Consumer Services Division of Farmland Preservation to place a conservation easement on agricultural property located at 1330 Hickman Rd NW Calabash, NC with the Brunswick Soil and Water Conservation District as the easement holder. The grant amount consists of $379,331.80 in State Funds. Required match to be covered by landowner donated easement value.

18. Utilities - CFPUA Interlocal Agreement Goods Received (John Nichols, PE - Director of Public Utilities)

    Request that the Board of Commissioners approve the attached Interlocal Agreement for the receipt of goods for used SCADA radios from CFPUA (Cape Fear Public Utility Authority).

19. Utilities - Raw Water Agreement Compass Pointe (John Nichols, PE - Director of Public Utilities)

    Request that the Board of Commissioners approve the attached Raw Water Supply Agreement for Irrigation with Irrigation, LLC and authorize the Chairman and Clerk to the Board to execute the associated agreement.

VI. Presentation

1. Clerk to the Board - Emergency Preparedness Month

   Request the Board of Commissioners approve and adopt the Emergency Preparedness Month Resolution.

VII. Administrative Report

1. Administration - American Flood Coalition

   Request that the Board consider membership in the American Flood Coalition (AFC).

2. Administration - City of Boiling Spring Lakes Dam Projects Funding

   Request that the Board consider approving the Interlocal Agreement with the City of Boiling Spring Lakes for the County to provide $3,000,000 to support the City's dam restoration projects.

3. Administration - NCACC FY 23 Legislative Goals

   Request that the Board consider the draft goals below for potential inclusion on the NCACC Legislative Goal Agenda.

VIII. Other Business/Informal Discussion

IX. Closed Session

1. Closed Session

   Request the Board to enter into closed session pursuant to G.S. § 143-318.11(a)(1) and (3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege and to approve Closed Session Minutes from June 20, 2022 and August 15, 2022.

X. Adjournment

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

From:
Aaron Smith

Action Item # V. - 1.
Administration - Brunswick County Schools Contracts with Becker Morgan Group, Inc. and Barnhill Contracting Company for design and construction of North Brunswick High School Addition

Issue/Action Requested:
Request that the Board of Commissioners approve and authorize the Chairman to sign the Becker Morgan Group, Inc. design contract in the amount of $1,057,000 and the Construction Manager at Risk Barnhill Contracting Company construction contract in the amount of $22,274,068 for the North Brunswick High School Addition.

Background/Purpose of Request:
Brunswick County Schools Operations Committee approved the contracts on August 23, 2022 and staff recommends the contracts with Becker Morgan design contract in the amount of $1,057,000 and the Construction Manager at Risk Barnhill Contracting Company construction contract in the amount of $22,274,068 for the North Brunswick High School Addition be executed by the Board of Commissioners. Similar to past CMAR contracts, only the portion of the contract for Pre-Construction services in the amount of $147,459 will be initially authorized. Any additional work will be authorized in writing with a contract change order. The contracts are fully funded by bond proceeds.

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

Approved By County Attorney:
Yes

County Manager's Recommendation:
Recommend that the Board of Commissioners approve and authorize the Chairman to sign the Becker Morgan design contract in the amount of $1,057,000 and the Construction Manager at Risk Barnhill Contracting Company construction contract in the amount of $22,274,068 for the North Brunswick High School Addition.

ATTACHMENTS:

Description

- 20220906 Attach Brunswick County Schools Project Approval Memos.pdf
- Becker Morgan Group, Inc. - Design Consultant - NBHS
- Barnhill Contracting Company - Construction-Manager At Risk - NBHS

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
_X_ Action Agenda	
___ Discussion Agenda	Attest: Clerk to the Board
___ Confidential Agenda	VBB
___ Information Item	
___ Announcement	Date 8/23/22

To: **Operations Committee**

From: **Craig Eckert**

Date: **August 23, 2022**

Re: **Design Contract for NBHS Addition**

Background Information

In response to growth in the area, an addition at North Brunswick High School is funded in Phase III of the Bond. Statements of Qualification were received on June 21st for architectural services.

Current Status

A contract scope and fee were negotiated between staff and Becker Morgan. The contract, in the amount of $1,057,000 is attached. Construction documents are scheduled for completion by March 2023.

Recommendation

Staff requests that the Board forward the contract to Brunswick County Commissioners for execution. Forwarding of the contract at this time will allow for the scheduled completion of the addition by opening of school in 2024.

A Community of Learners

Board Members: Steven P Barger -, Chairman • Robin A Moffitt, Vice- Chairman • Harry E. Lemon, Jr. • David M. Robinson • Gerald Benton

Dr. Jerry L. Oates, Superintendent

BRUNSWICK COUNTY SCHOOLS

35 Referendum Drive • Bolivia, North Carolina 28422 • Phone: 910-406-5100 • Fax: 866-291-7891

___ Board Presentation	✓ Approved
___ Report to the Board	__ Denied
___ Consent Agenda	__ Deferred
_X_ Action Agenda	
___ Discussion Agenda	Attest: Clerk to the Board
___ Confidential Agenda	VNB
___ Information Item	
___ Announcement	Date 8/23/22

To: **Operations Committee**

From: **Craig Eckert**

Date: **August 23, 2022**

Re: **Construction Manager at Risk (CMAR) Contract for NBHS Addition**

Background Information

In response to growth in the area, an addition at North Brunswick High School is funded in Phase III of the Bond. Statements of Qualification were received on June 21st for CMAR services.

Current Status

A contract scope and fee were negotiated between staff and the selected Construction Manager at Risk (CMAR) Barnhill Contracting Company. The contract, in the amount of $22,274,068 is attached. Similar to our past CMAR contracts, only the portion of the contract for Pre-Construction services in the amount of $147,459 will be initially authorized. Any additional work will be authorized in writing with a contract Change Order. Construction is scheduled to start June 1, 2023.

Recommendation

Staff requests that the Board forward the contract to Brunswick County Commissioners for execution. Forwarding of the contract will allow for the scheduled completion of the addition by opening of school in 2024.

A Community of Learners

Board Members Steven P. Barger -, Chairman • Robin A Moffitt, Vice- Chairman • Harry E Lemon, Jr. • David M. Robinson • Gerald Benton

Dr. Jerry L. Oates, Superintendent

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AGREEMENT FOR

DESIGN CONSULTANT SERVICES

BETWEEN

BRUNSWICK COUNTY BY AND THROUGH ITS AUTHORIZED AGENT, BRUNSWICK COUNTY BOARD OF EDUCATION

hereinafter referred to as the Owner

AND

BECKER MORGAN GROUP, INC.

hereinafter referred to as the Design Consultant

PROJECT: North Brunswick High School Addition and Site Improvements

DATE: September 7, 2022

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AGREEMENT FOR DESIGN CONSULTANT SERVICES

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AGREEMENT FOR

DESIGN CONSULTANT SERVICES

This Agreement is made this 7th day of September**,** 2022 between the Owner Brunswick County by and through its authorized agent, Brunswick County Board of Education, and the Design Consultant, Becker Morgan Group, Inc. for Professional Services in connection with the Project known as:

North Brunswick High School Addition and Site Improvements

The Owner and the Design Consultant agree as set forth below:

ARTICLE 1

DEFINITIONS

The following words and phrases where appearing in initial capitalization, shall for the purposes of this Agreement have the following meanings:

1.1 Project. The project will consist of a 2-story 12-classroom addition, a bid alternate band room, and provisions for a future 4-classroom expansion. The site layout will generally conform with but not be limited by the District's Master Plan for the site, which locates the new addition, relocates the fire apparatus access road, relocates the existing tennis courts (adding lighting, a restroom/package concession building) relocates the softball field, dugouts, press box, and lighting, and constructs 3 new irrigated practice fields of various sizes. Demolition of the certain existing athletic amenities and sections of the existing fire apparatus access road will be required. Offsite local road improvement and new staff parking for the addition if required are also included. Other miscellaneous items necessary to complete items above may be required

1.1.1 The new North Brunswick School addition square footage is to be approximately 24,000 square feet.

1.1.2 Project Parameters

1.1.2.1 The physical parameters are: the new North Brunswick High School addition and site improvements will be constructed on the site owned by Brunswick County located at 114 Scorpion Dr., Leland, NC 28451.

1.1.2.2 Overview of Design Consultant's Scope: The Design Consultant's fee includes the complete design of a new facility including all architectural, sitework, extensions of utilities, civil, structural, mechanical, plumbing, electrical, landscape, fire suppression, food service, technology infrastructure (including all required cabling, but excluding servers, smartboards, laptops, phones, cameras, flat panel TVs, and other such devices), and any other work required for a complete set of design documents. The Design Consultant's fee shall also include structured cabling and raceways for phone system, paging system, data systems, intrusion detection system, video surveillance system, audio systems and video distribution system.

1.2 Design Consultant. Design Consultant as used herein shall mean the architect or engineer identified above.

1.3 Sub-Consultant. Sub-Consultant as used herein shall mean any consultant or sub-consultant retained by or on the behalf of the Design Consultant for the performance of any Services pursuant to this Agreement. The Design Consultant's use of a Sub-Consultant shall not relieve the Design Consultant of any responsibility for providing the Services outlined in this Agreement.

1.4 Services. The Services to be performed by the Design Consultant under this Agreement shall consist of the Basic Services described in Article 3, any Additional Services under Article 7, and any other obligations of the Design Consultant included in this Agreement.

1.5 Construction Contract. The Construction Contract shall consist of the plans and specifications prepared by the Design Consultant, and any addenda and change orders thereto, and the Owner and Construction Manager at Risk Agreement, and all General Conditions, Amended Conditions, and Supplemental Conditions

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thereto, all of which shall be compatible and consistent with this Agreement. In the event of any conflict between the terms of this Agreement and the Owner-Construction Manager Agreement, the terms of this Agreement shall control.

1.6 Construction Contract Award Price. The amount established in the Design, Construction and Equipment Budget, attached as Exhibit A, for the total cost of the work to be performed by the Construction Manager pursuant to the Construction Contract shall be referred to as the Construction Contract Award Price or CCAP. The CCAP shall include the cost of the work, CM fee, CM contingency, CM's general conditions, and bonds/insurance. The cost of the work shall be defined as the construction bids received by the CM for all portions of the work.

1.7 Construction Manager. The Owner intends to hire a Construction Manager at Risk ("CM") for the Project pursuant to N.C. Gen. Stat. Sec. 143-128.1. The term "Construction Manager" or "CM" means the Construction Manager or its authorized representative. The Construction Manager's services shall be as stated in this Agreement and generally in the form Owner-Construction Manager Agreement attached to this Agreement as Exhibit G and incorporated by reference. If and when the Owner selects a Construction Manager, the Design Consultant shall have the opportunity to consult with the Owner on the final Agreement prior to execution.

1.8 Program of Requirements. The Program of Requirements or "Program" is the detailed written summary of the requirements of the facility which sets forth the Owner's design objectives, constraints and criteria, including space requirements and relationships, quality levels, flexibility and expandability, special equipment and systems and site requirements, as described in Exhibit B.

1.9 Management Plan. The Management Plan is the description and definition of the phasing, sequencing and timing of the major project activities for design, construction procurement, construction and occupancy as described in Exhibit C. The Management Plan shall be incorporated into the CM's schedule for the Project.

1.10 Design Phase Change Order. A Design Phase Change Order is the form of documentation from the Owner approving and authorizing a modification to Exhibits A, B and/or C attached hereto, or previously approved Design Phase documents.

ARTICLE 2

RELATIONSHIP OF THE PARTIES

2.1 Design Consultant Services. The Design Consultant shall provide professional architectural/engineering services for the Project in accordance with the terms and conditions of this Agreement. The Design Consultant's performance of the Services shall be as professional consultant to the Owner and as a cooperating partner with the Construction Manager to carry out the activities of Project design and construction administration and to provide the technical documents and supervision to achieve the Owner's Project objectives. The Design Consultant may employ Sub-Consultants to provide discreet portions of the Services pursuant to this Agreement. The Design Consultant shall ensure that all services provided by a Sub-Consultant are provided in accordance with the terms and conditions of this Agreement. The Design Consultant shall coordinate the services of any Owner provided professional consultants and any vendors for furniture and equipment to design spaces.

2.1.1 The consultants retained at the Design Consultant's expense include the following:

Structural:	Woods Engineering
Plumbing:	CBHF Engineers, PLLC
Mechanical:	CBHF Engineers, PLLC
Electrical:	CBHF Engineers, PLLC
Civil/Landscape:	Paramounte Engineering

2.1.2 The Design Consultant shall require each of its consultants to execute an agreement similar to the agreement attached as Exhibit D certifying that the consultant has read and is thoroughly familiar with the terms of this

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Agreement and that the pertinent provisions of this Agreement shall govern the work performed by the consultant.

2.2 Owner Representation. The Owner shall employ and assign a Project Manager from the Brunswick County Board of Education to serve as the Owner's Representative on the Project ("Owner's Representative"). The Owner's Representative has no design responsibilities of any nature. None of the activities of the Owner's Representative supplant or conflict with the design, budget or any other services and responsibilities customarily furnished by the Design Consultant or Sub-Consultant in accordance with generally accepted architectural/engineering practices except as otherwise modified by this Agreement. Instructions by the Owner to the Design Consultant relating to the Services will be issued or made by or through and in accordance with procedural, organizational, and documentation standards established by the Owner's Representative. Communications and submittals of the Design Consultant to the Owner and Construction Manager shall be in writing and issued or made in accord with similar procedural and documentation standards established by the Owner's Representative. The Owner's Representative shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Design Consultant and Construction Manager and to call periodic conferences to be attended by the Design Consultant, its Sub-Consultants, the CM and the CM's contractors, throughout the term of this Agreement.

2.3 Other Consultants. The Owner may provide drawings, consultation, recommendations, suggestions, data and/or other information relating to the Project from other consultants under separate contract with the Owner, including but not limited to: Land Surveying Consultant, Geotechnical Consultant, and/or Materials Testing Consultant.

2.4 Design Consultant Representation.

2.4.1 The Design Consultant shall provide a list to the Owner and the Construction Manager of all Sub-Consultants which the Design Consultant intends to utilize relating to the Project prior to commencing work on the Project. The list shall include such information on the qualifications of the Sub-Consultants as may be requested by the Owner or Construction Manager. The Owner will review the Sub-Consultants proposed. The Design Consultant shall not retain a Sub-Consultant to which the Owner has a reasonable objection. The Design Consultant shall be and use only individuals or firms that are properly licensed in North Carolina and regularly engaged in the fields of expertise required for this Project. In addition, the Design Consultant shall use an individual or firm with specific expertise in roofing certified by licensure as a Registered Roofing Consultant for the design of roofing system.

2.4.2 The Design Consultant shall provide to the Owner and the Construction Manager a list of the proposed key project personnel of the Design Consultant by position, including Sub-Consultants, to be assigned to the Project. This list shall include such information on the professional background of each of the assigned personnel as may be requested by the Owner or Construction Manager, through the Owner's Representative. Such key personnel and consultants shall be satisfactory to the Owner and shall not be changed except with the consent of the Owner unless said personnel cease to be employed.

2.4.3 The Design Consultant shall include normal structural, plumbing, mechanical, electrical and other engineering services necessary to produce a reasonably complete and accurate set of Construction Documents. All consultants who will perform services required by this Agreement shall execute an agreement with the Design Consultant with terms not inconsistent with this Agreement.

2.4.4 The Design Consultant shall require each of its consultants to execute an agreement similar to the agreement attached as Exhibit D certifying that the consultant has read and is thoroughly familiar with the terms of this Agreement and that the pertinent provisions of this Agreement shall govern the work performed by the consultant.

2.4.5 The Design Consultant represents and warrants that at the time of execution of this Agreement he has and will retain all licenses and certifications required of him to perform the services and other work identified in this Agreement and associated contract documents. The Design Consultant further represents and warrants that it is lawfully licensed to practice architecture in the jurisdiction where the project is located. The Design

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Consultant shall keep this licensure in good standing without lapse throughout the term of this Agreement. The Design Consultant shall provide proof of this licensure to the Owner and/or Contractor upon request.

2.5 Division of Responsibilities/Services. The Design Consultant understands and agrees that should the Owner's Representative, Construction Manager, or consultant retained by the Owner provide the Design Consultant with any estimating assistance, cost or time control recommendations or other consultation, recommendations or suggestions, any or all such activities on the part of the Owner or any other representative of the Owner shall in no way relieve the Design Consultant of the responsibility of fulfilling its obligations and responsibilities under this Agreement.

2.6 Design Consultant's Relationship with the Construction Manager. The Design Consultant acknowledges that the Owner shall employ a Construction Manager for the Project. The Construction Manager shall perform all the Construction Manager's Services outlined in the agreement between the Construction Manager and the Owner attached as Exhibit G (Owner-Construction Manager Agreement). The Construction Manager's Basic Services shall include the pre-design phase, design phase, procurement phase, construction phase and post-construction phase services. During the performance of the Services the Design Consultant shall cooperate and work in good faith with the Construction Manager as a cooperating partner with the Construction Manager (so long as such cooperation serves the Owner's best interests and the Owner's Project objectives) on all relevant issues including those associated with constructability, construction cost, sequence of construction, construction duration, time for construction, separation of the Project contracts for various categories of work and any other services reasonably necessary to assist the Construction Manager with the pre-construction services of the Project within the CCAP. If and when the Owner executes a CM-at-Risk Agreement, the tenets of cooperation as outlined in this paragraph shall carry forward.

ARTICLE 3

BASIC SERVICES

3.1 Scope of Services. The Basic Services, as defined in this Article, to be provided by the Design Consultant shall be performed in the phases described hereinafter and shall include architectural, landscape architectural, civil engineering, structural engineering, mechanical engineering, electrical engineering, roofing engineering, and all other services customarily furnished by an architect/engineer on similar projects in accordance with generally accepted architectural and engineering practices consistent with the terms of this Agreement. The Design Consultant shall utilize an individual or firm with specific expertise in acoustics for any middle or high school auditorium or music room. The Basic Services to be performed by the Design Consultant consist of professional tasks which have as their objective design, production of technical documents and construction administration to provide the Owner with a complete and properly functioning facility. The Basic Services shall be performed in accordance with the standard of care set forth in this Agreement. The facility shall be suitable for the Owner's purposes, be structurally sound, satisfy the Owner's requirements, comply with all applicable codes and laws, and be completed on a timely basis and within the approved CCAP. To provide the optimal constructed value, the Design Consultant shall analyze alternative materials and building systems at the appropriate phases throughout the Basic Services phases.

3.1.1 This Agreement describes the Design Consultant's Basic Services in seven (7) phases. Each of these phases (Design Narrative, Schematic Design, Design Development, Construction Contract, Permitting and Bid/ Negotiation, Construction, and Post Construction) may be divided to facilitate bidding of separate trade contracts or phased construction activities. The Owner and/or the Construction Manager shall have the right to determine early, late and other separate contract awards and may modify the Management Plan to change the number and times of issue of various contract document packages at no additional compensation to the Design Consultant so long as there are no more than two (2) bid packages for the various portions of the Project (which packages do not include individual material purchase orders, bid package alternates and rework by the Design Consultant of documents already completed, which shall be provided at no additional cost).

3.1.1.1 The Services described below are under the Project phases in which they customarily occur. This order is for convenience only and does not necessarily reflect the sequence in which a service will actually be performed, or necessarily limit the Project, or a designated portion of the Project, to one of each phase. The

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Owner, through its Representative and/or the Construction Manager, reserves the right to designate the phasing of segregated portions of the Services and to modify the Management Plan, within the terms and conditions of this Agreement.

3.1.2 Design Narrative Phase.

3.1.2.1 The Design Consultant shall examine and analyze available information provided by the Owner and Construction Manager and shall advise and recommend as to additional information necessary to begin specific design work on the Project.

3.1.2.2 Upon analysis of all available information and prior to initiating any design tasks, the Design Consultant shall participate in a pre-design Project analysis on the dates specified in the Management Plan contained in Exhibit C or as may subsequently be approved. The Design Consultant shall have in attendance the individuals who will represent the primary architectural and engineering disciplines on the Project and others as may be requested by the Owner's Representative or Construction Manager. The Design Consultant shall take and transcribe minutes of the sessions.

3.1.2.3 Upon conclusion of the pre-design Project analysis and in accordance with the Management Plan, the Design Consultant shall prepare a report to the Owner and Construction Manager (hereinafter referred to as the Design Narrative) which is the Design Consultant's interpretation of the Project requirements, design parameters and objectives, and results of the pre-design Project analysis. To the maximum extent possible, the Design Narrative will contain diagrammatic studies and pertinent text relative to: design concept; Program of Requirements; analysis of alternatives; internal functions; human, vehicle and material flow patterns; general space allocations; detailed review of operating functions; studies of adjacency, vertical and horizontal affinities; and outline descriptions of major building components and systems.

3.1.2.4 Upon written authorization from the Owner to proceed, and based on the approved Design Narrative, the CCAP, Program of Requirements, and the Management Plan (Exhibit C), the Design Consultant shall prepare Schematic Design studies consisting of drawings and other documents illustrating the design concept, scale and relationship of the Project components for approval by the Owner.

3.1.2.5 The Owner and the Design Consultant recognize the volatility of the current construction marketplace and agree that in the event that during the Design Narrative phase, the statement of probable construction cost predicts a CCAP beyond the target budget, that the parties will work together in good faith to address the scope and budget of the Project. Any proposed resolution shall be subject to the approval of the governing boards of Brunswick County and the Board of Education.

3.1.3 Schematic Design Phase.

3.1.3.1 The Design Consultant shall periodically provide the Owner's Representative and the Construction Manager with copies of Schematic Design studies for their review during the Schematic Design Phase. The Design Consultant shall review any recommendations from the Construction Manager, including any recommendations regarding the constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project contracts for various categories of construction, to confirm that they are architecturally sound and do not adversely impact the scope, functionality or requirements of the Project. The Design Consultant’s review of these recommendations shall not relieve or in any way diminish the Construction Manager’s responsibilities pursuant to the Owner-Construction Manager Agreement. At the end of the Schematic Design Phase, the Design Consultant shall provide the Owner's Representative with up to two (2) full size complete sets of the drawings and other documents for approval by the Owner. The Design Consultant also shall provide the Construction Manager with two (2) full size complete sets of the drawings and other documents identical to those provided to the Owner.

3.1.3.2 The Design Consultant, and the relevant Sub-Consultants, shall participate as requested in meetings with Owner's staff and/or the Construction Manager to review the project, receive the Owner's and the Construction Manager’s input and provide responses to input.

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3.1.3.3 The Design Consultant shall prepare the necessary documents and make presentations as scheduled to the Board of Education and/or its committees as determined by the Facility Planning & Construction Department. Documents required for presentation shall include mounted and colored site plans, floor plans and elevations.

3.1.3.4 Documents prepared by the Design Consultant for final Schematic Design Phase submittal shall include drawings and a written report. The drawings shall include, but not be limited to, a proposed site utilization study of the property of the Project, schematic plans of all floor plan conditions, and simplified elevations indicating the fundamentals of the architectural concept. The report shall include the status of the work in accordance with Exhibit C – Management Plan, a summary of programmed versus actual square footage by room or area and net to gross comparisons in a format defined by the Owner; such discussion of design factors, if any, as are pertinent in the opinion of the Design Consultant; and descriptions of proposed engineered systems, proposed construction methods, proposed materials and proposed work to be included in the construction contracts. Further, the report should include any minutes from meetings or telephone conferences with, or letters from review agencies with responses, and responses to all review comments from the Owner and the Construction Manager from previous reviews. The Design Consultant shall submit its estimate and breakdown of the anticipated construction cost no later than two (2) business days in advance of the scheduled Schematic Design review meeting. The Design Consultant shall prepare such estimates to assure that the Project cost is within the CCAP or include specific alternates to the design that do not impact the scope of the Project to bring the Project estimate into alignment with the CCAP.

3.1.3.5 A statement from the Design Consultant with the final Schematic Design Phase submittal shall be included that acknowledges that Design Consultant has reviewed all of the applicable Design Guidelines and Educational Specifications and confirms that they have been incorporated in the documents unless specifically noted in writing.

3.1.3.6 The Design Consultant shall submit a written statement indicating that local governing authorities are aware of the Project, and the necessary requirements of such agency will be met.

3.1.3.7 To be considered acceptable for final Schematic Design Phase submittal, the documents shall contain all of the following unless otherwise agreed in writing:

3.1.3.7.1 <u>Architectural</u>

(i) Plans (at 1/8" scale) showing complete building layout, and identifying areas, room by room, showing square footage with comparisons to program standards, and core areas and their relationships.

(ii) Preliminary building section and elevations indicating location and size of fenestration.

(iii) Preliminary furniture layouts of critical spaces (i.e. dining area, media center).

(iv) Site plan(s) with building located and an overall grading plan with a minimum of 1’-0” contour lines. All major site development such as orientation, access road paving, walls, and outside support buildings, structured parking facilities, programmed play areas, and paved parking lots, along with preliminary stormwater management and erosion control features should be shown.

(v) Gross and net area calculations separated to show conformance with the Program of Requirements.

(vi) Preliminary Building Code Summary.

3.1.3.7.2 <u>Structural</u>

(i) Narrative of structural system (precast, structural steel with composite deck, structural steel with bar joists, etc.).

(ii) Identification of foundation requirements (fill requirements, piles, caissons, spread, footings, etc.).

3.1.3.7.3 Mechanical

(i) Block heating, ventilating and cooling loads calculations including skin versus internal loading.

(ii) Single-line drawings of all mechanical equipment spaces, duct chases and pipe chases.

(iii) Location of all major equipment in allocated spaces.

(iv) Location of all service entrances.

3.1.3.7.4 Electrical

(i) Lighting fixtures outlined in the plan and roughly scheduled showing types of fixtures to be used.

(ii) Major electrical equipment roughly scheduled indicating size and capacity.

(iii) Complete preliminary one-line electrical distribution diagrams with indications of final location of service entry, transformers and emergency generator, if required.

(iv) Description of specialized electrical systems (fire alarm, intercom, voice/data, MATV).

(v) Legend showing all symbols used on drawings.

(vi) Projected energy use.

3.1.3.8 Documents not complying with Subparagraph 3.1.3.7 shall be returned to the Design Consultant for correction at no additional charge to the Owner and with no change to the overall Project design schedule.

3.1.3.9 Upon Owner acceptance and approval of the Schematic Design, the structural bay sizes, floor elevations and exterior wall locations (building “footprint”) may not be changed except by a design phase change order. Interior wall locations shall not be changed unless approved in writing by the Owner.

3.1.4 Design Development Phase.

3.1.4.1 The Design Consultant shall prepare from the approved Schematic Design Studies, for further approval by the Owner, the Design Development documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to structural, mechanical and electrical systems, materials and such other essentials as may be appropriate.

3.1.4.2 Design Development documents prepared by the Design Consultant shall include drawings and a written report in more detail than the Schematic Design documents and shall take into account the Owner's and the Construction Manager’s comments on the previous submittal. The report shall include the status of the Services in accordance with the Management Plan, a summary of programmed versus actual square footage by room or area in a format defined by the Owner, such discussion of design factors, if any, as are pertinent in the opinion of the Design Consultant; and outline descriptions of proposed engineered systems, proposed construction methods, proposed materials and proposed work to be included in the construction contracts. Drawings shall include dimensioned site development plan, floor plans, elevations, and typical sections indicating proposed construction. Drawings shall also include information on major finishes as well as diagrammatic drawings illustrating fundamentals of major engineered systems, i.e., structural, mechanical and electrical. The Design Consultant, in conjunction with the Construction Manager, shall submit its estimate and breakdown of the anticipated construction cost no later than two (2) business days in advance of the scheduled Design Development review meeting.The Design Consultant, in conjunction with the Construction Manager, shall prepare such estimates in the form prescribed by the Owner to assure itself that the project cost is within the CCAP.

3.1.4.3 A statement from the Design Consultant with the final Design Development Phase submittal shall be included that acknowledges that Design Consultant has reviewed all of the applicable Design Guidelines and Educational Specifications and confirms that they have been incorporated in the documents unless specifically noted in writing. The Design Consultant shall not incorporate asbestos-containing materials in the Project.

3.1.4.4 The Design Consultant shall submit the final Design Development package, meeting minutes, etc. to show how review comments made in Schematic Design have been addressed. It should be clear from the notes where the specific item was incorporated into the Design Development submittal or an explanation if it was not incorporated.

3.1.4.5 The Design Consultant shall provide the Owner's Representative and the Construction Manager periodically with copies of in-progress Design Development documents during the Design Development Phase. The Design Consultant shall review any recommendations from the Construction Manager, including any recommendations regarding the constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project contracts for various categories of construction, to confirm that they are architecturally sound and do not adversely impact the scope, functionality or requirements of the Project. The Design Consultant's review of these recommendations shall not relieve or in any way diminish the Construction Manager's responsibilities pursuant to the Owner-Construction Manager Agreement. At the end of the Design Development Phase the Design Consultant shall provide the Owner's Representative with up to two (2) full size complete sets of the drawings and design phase report for approval by the Owner at no charge to Owner. The report shall incorporate the status of the work in accordance with Exhibit C–Management Plan and a summary of programmed versus actual square footage in a format defined by the Owner by room or area. The Design Consultant also shall provide the Construction Manager with two (2) full size complete sets of the drawings and other documents identical to those provided to the Owner. The Design Consultant shall work cooperatively with the Construction Manager at Risk on the preparation of their respective Project estimates at the conclusion of the design development phase. The documents for this final Design Development Phase submittal shall contain all of the following unless otherwise agreed in writing:

3.1.4.5.1 <u>Architectural</u>

(i) Project phasing plan.

(ii) Building Code Summary Sheet.

(iii) Life safety plans showing all fire walls and egress calculations.

(iv) Site plan(s) with building located and an overall grading plan with a minimum of 1'-0" contour lines. All major site development such as orientation, access road paving, walls and outside support buildings, structured parking facilities, programmed play areas, and paved parking lots, along with preliminary stormwater management and erosion control features should be shown.

(v) Floor plans (at 1/8" scale) with final room locations including all openings.

(vi) Roof plan (at 1/8" scale) indicating structural slope, drainage areas and drain locations.

(vii) Wall sections showing final dimensional relationships, materials and component relationships.

(viii) Identification of all fixed and loose equipment, furniture, and furnishings.

(ix) Room inventory data sheets showing locations of furniture and equipment for each room. Owner will provide lists of furniture and equipment and format to Design Consultant. Hard copies and digital formats (if desired) will be provided to the Design Consultant.

(x) Finish schedule identifying all finishes.

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(xi) Preliminary door and window and hardware schedule showing final quantity plus type and quality levels.

(xii) Virtually complete site plan including grading and drainage.

(xiii) Preliminary development of details, including millwork details and large scale blow-ups.

(xiv) Legend showing all symbols used on drawings.

(xv) Outline specifications of materials to be specified in the Construction Contract Phase.

(xvi) Reflective ceiling development including ceiling grid and all devices that penetrate the ceiling (i.e., light fixtures, sprinkler heads, ceiling register or diffusers, etc.).

3.1.4.5.2 Structural

(i) Plan drawings with all structural members located and sized.

(ii) Final building elevations.

(iii) Outline of materials to be specified in the CD phase.

(iv) Foundation drawings.

3.1.4.5.3 Plumbing

(i) Piping, fixtures and equipment substantially located and sized.

(ii) Outline specifications of materials to be specified in the Construction Contract Phase.

3.1.4.5.4 Mechanical

(i) Heating and cooling load calculations for each space and major duct or pipe runs sized to interface structural.

(ii) Major mechanical equipment scheduled indicating size and capacity.

(iii) Ductwork and piping substantially located and sized.

(iv) Above ceiling and/or mechanical room layouts to verify all, structural, mechanical, plumbing, electrical and fire protection systems fit in available spaces.

(v) Location of devices in ceiling.

(vi) Legend showing all symbols used on drawings.

(vii) Outline specifications of materials to be specified in the Construction Contract Phase.

(viii) Completed life cycle cost analysis in a format acceptable to the Owner and Design Consultant.

3.1.4.5.5 Electrical

(i) All power consuming equipment and load characteristics.

(ii) Total electric load.

(iii) Major electrical equipment (switchgear, distribution panels, emergency generator, transfer switches, UPS system, etc.) dimensioned and drawn to scale into the space allocated.

(iv) Preliminary site lighting design coordinated with the power company.

(v) Outline specifications of materials to be specified in the Construction Contract Phase.

(vi) Lighting, power, telecommunications and office automation devices and receptacles shown in plan.

(vii) Preliminary light fixture schedule.

(viii) One line diagram of specialized electrical systems (fire alarm, intercom, voice/data, MATV) showing location of control equipment/panels and devices.

(ix) Interior electrical loads estimate for systems furniture, receptacles, lighting, food service equipment, and any other special use areas, etc.

3.1.4.5.6 Fire Protection

(i) Provide flow test information.

(ii) Provide narrative of proposed fire protection system.

3.1.4.6 Upon Owner acceptance and approval of the Design Development Phase, the structural bay sizes, floor elevations and exterior wall locations (building "footprint") may not be changed except by a Design Phase Change Order. Interior wall locations shall not be changed unless approved in writing by the Owner.

3.1.4.7 Documents not complying with Subparagraph 3.1.4.5 shall be returned to the Design Consultant for correction at no additional charge to the Owner and with no change to the overall Project design schedule.

3.1.5 Construction Contract Phase.

3.1.5.1 Upon written authorization from the Owner to proceed, the Design Consultant shall prepare from the approved Design Development documents, working drawings and specifications setting forth in detail the requirements for the construction of the entire Project. In bidding the Project, the Construction Manager will be responsible for providing the bidders the conditions of the contract, advertisement for bids, instructions to bidders, time control specification provisions, bid proposal forms, and a form agreement between the Construction Manager and the contractors to the bidders.

3.1.5.2 Construction Contract documents shall be completed within the time prescribed in Exhibit C – Management Plan.

3.1.5.3 Detailed drawings shall cover all work included in the Project or designated portion thereof. It is the responsibility of the Design Consultant to assure that the Construction Contract requires that no asbestos-containing materials are to be incorporated in the Project.

3.1.5.4 Detailed drawings suitable for use by the Construction Manager for the contractors shall be prepared by the Design Consultant.

3.1.5.5 Specifications shall be prepared using the Construction Specifications Institute 33 division format. Specifications for products, materials and equipment shall be written in full compliance with N. C. Gen. Stat. § 133-3 and all other relevant laws and building codes. Brand names may be used to specify a particular product to be bid as an alternate only in accordance with North Carolina law.

3.1.5.6 The Design Consultant shall work with the Owner to show preliminary furniture and equipment layouts as needed and requested by the Owner for each room to coordinate with electrical and technology service layouts. Furniture design and procurement is not within the Basic Services of the Design Consultant. When preliminary layouts are completed, final hard copies and digital information will be provided by the Design Consultant to the Owner and Construction Manager.

3.1.5.7 The Design Consultant shall provide to the Owner and the Construction Manager a preliminary color board with exterior and interior color selection for review, approval and use by the Owner. The approved color board shall be submitted for use by the Owner with, or before, the 80% Construction Contract documents submittal.

3.1.5.8 The Design Consultant shall provide the Owner's Representative and the Construction Manager periodically with copies of in-progress Construction Contract documents during this phase. The Design Consultant shall review any recommendations from the Construction Manager, including any recommendations regarding the constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project contracts for various categories of Services, to confirm that they are architecturally sound and do not adversely impact the scope, functionality or requirements of the Project. The Design Consultant's review of these recommendations shall not relieve or in any way diminish the Construction Manager's responsibilities pursuant to the Owner-Construction Manager Agreement. Additionally, and in accordance with the Management Plan, the Design Consultant shall submit to the Owner up to four (4) full complete sets, and to the Construction Manager two (2) full size complete sets, of the drawings of preliminary Construction Contract documents at the stage of 60% completeness along with the design phase report for approval by the Owner. The report shall incorporate the status of the Services in accordance with Exhibit C – Management Plan and a summary of programmed versus actual square footage in a format defined by the Owner by room or area. The Design Consultant shall submit its estimate and breakdown of the anticipated construction cost no later than two (2) business days in advance of the scheduled 60% Construction Contract documents review meeting. The Design Consultant shall prepare such estimates to assure that the Project cost is within the CCAP or include specific alternates to the design that do not impact the scope of the Project to bring the Project estimate into alignment with the CCAP. The documents for this 60% Construction Contract submittal shall, at a minimum, satisfy all of the requirements of the Design Development Phase, plus all of the following unless otherwise agreed in writing:

3.1.5.8.1 <u>General</u>

(i) Complete index of drawings.

(ii) Vicinity plan.

(iii) Building Code Summary.

(iv) Life safety plans.

(v) Energy data.

(vi) Accessibility summary.

(vii) U.L. details.

(viii) Outline specifications of materials to be specified in Construction Contract Phase.

3.1.5.8.2 <u>Civil / Landscaping</u>

(i) Copy of the Site Survey.

(ii) Site plan satisfactory for site plan approval.

(iii) Site demolition plan.

(iv) Staking plan.

(v) Erosion control plan.

(vi) Grading plan.

(vii) Site utility plan.

(viii) Storm drainage plan, details and schedule.

(ix) Paving plans and details.

(x) Landscaping plans and details, plant schedule.

(xi) Outline specifications of materials to be specified in the Construction Contract Phase.

3.1.5.8.3 Architectural

(i) Demolition plans.

(ii) Key plans with final room numbers as approved by Owner.

(iii) Critical sections and details identified and drawn.

(iv) Roof plan with all penetrations.

(v) Kitchen layout and equipment schedule.

(vi) Exterior elevations with control joints located.

(vii) Enlarged toilet room layout with all fixtures and dimensions.

(viii) Toilet room elevations.

(ix) Reflected ceiling plan with all fixtures located and ceiling height identified.

(x) Bulkhead and lintel details.

(xi) Finish plan and schedule.

(xii) Door and hardware schedule, elevations, and head and jamb details.

(xiii) Masonry details.

(xiv) Roof details.

(xv) Stair details.

(xvi) Elevator sections and details if applicable.

(xvii) Furniture layout.

(xviii) Casework elevations.

(xix) Air Barrier System details for all penetrations and terminations.

(xx) Outline specifications of materials to be specified in the Construction Contract Phase.

3.1.5.8.4 Structural

(i) Demolition plans.

(ii) Footing plans and details.

(iii) Reinforcing steel plans.

(iv) Structural steel plans.

(v) Outline specifications of materials to be specified in the Construction Contract Phase.

3.1.5.8.5 Plumbing

(i) Demolition plan.

(ii) Fixture schedule.

(iii) Plumbing plans.

(iv) Enlarged toilet room plans.

(v) Riser diagrams for waste and vent, water, storm drainage, and gas.

(vi) Plumbing site plan.

(vii) Plumbing details.

(viii) Outline specifications of materials to be specified in the Construction Contract Phase.

3.1.5.8.6 Mechanical

(i) Demolition plan.

(ii) Ductwork and piping completely located and sized.

(iii) Complete equipment schedules.

(iv) Mechanical room enlarged plans and sections.

(v) Schematic control diagrams.

(vi) Mechanical details.

(vii) Outline specifications of materials to be specified in the Construction Contract Phase

3.1.5.8.7 Electrical

(i) Demolition plan.

(ii) Fixture schedule.

(iii) Electrical site plan.

(iv) Power plan with panels located and identified.

(v) Lighting plan.

(vi) Complete plans for auxiliary systems including but not limited to, fire alarm, voice/data, intercom, MATV, and security.

(vii) Riser diagrams for all systems.

(viii) Panel schedule.

(ix) Outline specifications of materials to be specified in the Construction Contract Phase.

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3.1.5.8.8 Fire Protection

(i) Demolition plan.

(ii) Fire protection plan with location of all hose and valve cabinets identified.

(iii) Preliminary fire protection design calculations.

(iv) Outline specifications of materials to be specified in the Construction Contract Phase.

3.1.5.9 Documents not complying with Subparagraph 3.1.5.8 shall be returned to the Design Consultant for correction at no additional charge to the Owner and with no change to the overall Project design schedule.

3.1.5.10 After review and approval of the 60% Construction Contract documents by the Owner, the Design Consultant shall continue with preparation of final Construction Contract and bid documents, including final specifications for all authorized work on the Project and shall incorporate in those final documents the comments and any modifications and changes desired by the Owner and any modifications required for compliance with all applicable codes, regulations, standards, the approved program, and prior written approvals and instructions of the Owner. The resulting final Construction Contract submittal is to be a complete, fully coordinated, integrated package, suitable for bidding distribution, without any significant addenda or further significant clarification required. If the Project is a prototype that has been previously constructed, the Design Consultant shall verify that all applicable change orders from previous projects have been incorporated into the bidding documents.

3.1.5.11 The Design Consultant, and any relevant Sub-Consultants, shall participate in such reviews and meetings as are necessary to ensure that the Project design conforms to all applicable codes and all requirements of responsible agencies and will make any changes to the Construction Contract which are required for issuance of all permits and legal authorizations needed to construct the Project.

3.1.5.12 The Design Consultant shall submit all relevant applications for all required building permits within a reasonable time to receive final comments in time to issue any required addenda to the bidding documents.

3.1.5.13 At the completion of the Construction Contract Phase, the Design Consultant shall submit to the Owner up to four (4) full size complete sets of the drawings and design phase report at 100% completeness prepared by the Design Consultant for final Construction Contract Phase submittal which shall include the final working drawings and specifications. At this same time, the Design Consultant also shall submit to the Construction Manager two (2) full size sets of 100% complete documents identical to those provided to the Owner.

3.1.5.14 A statement from the Design Consultant with the final Construction Contract Phase submittal shall be included that acknowledges that Design Consultant has reviewed all of the applicable Design Guidelines and Educational Specifications and represents that they have been incorporated in the documents, and that the actual versus programmed square footage has not changed from the approved Schematic Design and 60% Construction Contract submittals unless specifically noted in writing.

3.1.5.15 The Design Consultant shall submit with the final Construction Contract package, meeting minutes, etc. to show how review comments made in Design Development have been addressed. It should be clear from the notes if the specific item was incorporated into the Construction Contract submittal or not (with an explanation).

3.1.6 Permitting and Bidding/Negotiation Phase.

3.1.6.1 There may be more than one Permitting and Bidding/Negotiation Phase at no additional compensation to the Design Consultant so long as there are no more than two (2) bid packages for the various portions of the Project (which packages do not include individual material purchase orders, bid package alternates and rework by the Design Consultant of documents already completed, which shall be provided at no additional cost).

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3.1.6.2 The Design Consultant shall facilitate the filing of applications, endeavor to expedite and coordinate obtaining all necessary permits, licenses and approvals, required for the construction, use or occupancy of permanent structures. The Owner will pay all fees. Copies of all correspondence and applications shall be provided to the Owner. The Owner shall reimburse the Design Consultant for the actual cost of any fees or assessments paid by the Design Consultant pursuant to this subparagraph if needed to expedite approvals.

3.1.6.3 After receiving written authorization from the Owner, the Construction Manager will proceed with bidding and negotiation of the construction contracts for the Project. The Construction Manager shall coordinate and document the reproduction, distribution and retrieval of the bidding documents. Further, the Construction Manager will coordinate and document the collection and return of deposits or payments. The Design Consultant shall be responsible for submitting the relevant Construction Contract documents to all required code authorities and others, as the Owner designates.

3.1.6.4 The Design Consultant shall prepare such clarifications and addenda to the bidding documents as may be required. The Design Consultant will provide these to the Owner and the Construction Manager for review prior to issuance to all holders of bid documents. The Design Consultant shall review any recommendations from the Construction Manager, including any recommendations regarding the constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project contracts for various categories of Services, to ensure that they are architecturally sound and do not adversely impact the scope, functionality or requirements of the Project. The Design Consultant will incorporate into the addenda comments of the Owner and Construction Manager as appropriate and provide the Owner and the Construction Manager with final addenda for the Construction Manager's distribution to all holders of bid documents.

3.1.6.5 The Construction Manager will schedule and conduct Pre-Bid Conferences with bidders to review the Project requirements. The Design Consultant shall provide knowledgeable representatives, including Sub-Consultants, to participate in these conferences as requested by the Construction Manager to explain and clarify the bidding documents. Within two (2) days after the Pre-Bid Conference the Design Consultant shall deliver to the Owner and Construction Manager, if needed, an addendum, incorporating any changes required from the Pre-Bid Conference. The Design Consultant shall issue any required final addendum at least three (3) days prior to the bid date.

3.1.6.6 The Design Consultant shall assist the Owner and Construction Manager in obtaining bids.

3.1.6.7 Should first bidding or negotiation produce prices in excess of the approved CCAP, the Design Consultant shall participate with the Owner and Construction Manager in such re-bidding, re-negotiation, and re-design, at no additional expense to the Owner, as may be necessary to obtain price(s) within the approved CCAP or price(s) acceptable to the Owner. The Owner and Construction Manager will assist in re-design decisions. All re-design must be approved by the Owner.

3.1.6.8 Should the Design Consultant re-design under its responsibilities set out in the preceding paragraph, its Construction Phase and Post Construction Services shall be extended to take re-design/re-bid delays into account at no additional expense to the Owner.

3.1.6.9 At the conclusion of bidding, the Design Consultant shall provide a copy of the conformed bid drawings and specifications (not 100% review set or bid set), in a source file format, with file names consistent with the Owner's requirements, for the Owner's use in updating its property accounting drawings for the Project.

3.1.7 Construction Phase.

3.1.7.1 The Construction Phase for each portion of the Project will commence with the establishment of the Guaranteed Maximum Price, as defined in the Owner-Construction Manager Agreement, and will terminate when the Construction Manager achieves final completion of the Project.

3.1.7.2 The Design Consultant and Owner shall consult with the Construction Manager and participate in all decisions as to the acceptability of contractors and other persons and organizations proposed by the Construction Manager for various portions of the construction.

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3.1.7.3 The Design Consultant shall review and approve shop drawings, samples, and other submissions of the Construction Manager and its contractors for conformance with the design concept of the Project and for compliance with the Construction Contract. The Design Consultant shall prepare one final color board for the use by the Owner and one to be kept on the jobsite containing the Owner-approved submittal samples. The review and return of submittals shall be accomplished by the Design Consultant within fourteen (14) calendar days from date of receipt except when otherwise authorized by the Owner's Representative.

3.1.7.4 The Design Consultant shall provide necessary Project drawings, in electronic format, to the Construction Manager for use on the Project.

3.1.7.5 The Design Consultant shall adhere to the procedures established by the Owner's Representative and/or the Construction Manager for review and processing of all shop drawings, catalog submissions, project reports, test reports, maintenance manuals, and other necessary documentation, as well as requests for changes and applications for extensions of time.

3.1.7.6 The Design Consultant shall, when requested by the Owner's Representative, prepare documentation related to change orders between the Owner and Construction Manager.

3.1.7.7 The Design Consultant shall render to the Owner's Representative, within two (2) working days unless otherwise authorized by the Owner's Representative, interpretations of requirements of the Construction Contract. The Design Consultant shall make all interpretations consistent with the intent of and reasonably inferable from the Construction Contract. The Design Consultant's decision in matters relating to artistic effect shall be final if consistent with the intent of the Construction Contract.

3.1.7.8 Should errors, omissions or conflicts in the drawings, specifications or other Construction Contract documents by the Design Consultant be discovered, the Design Consultant will prepare and submit to the Owner's Representative and the Construction Manager, within two (2) working days unless otherwise authorized by the Owner's Representative, such amendments or supplementary documents and provide consultation as may be required, for which the Design Consultant shall make no additional charges to the Owner.

3.1.7.9 The Owner's Representative shall be the point of contact for the Owner, except when the Owner shall direct otherwise by Board policy or in writing. All instructions to the Construction Manager shall be issued by the Design Consultant except when directed otherwise by the Owner's Representative.

3.1.7.10 The Design Consultant, including Sub-Consultants, will have access to the Project site at all times. All site visits, observations and other activities by the Design Consultant shall be coordinated with the Construction Manager and a written report of such visits shall be made promptly to the Construction Manager and Owner's Representative.

3.1.7.11 The Design Consultant, including Sub-Consultants, shall make such periodic visits to the Project site as may be necessary to familiarize themselves generally with the progress and quality of the construction and to determine in general if the construction is proceeding in accordance with the Construction Contract. On the basis of such on-site observations, the Design Consultant, including Sub-Consultants, shall take reasonable steps to guard the Owner against defects and deficiencies in the construction of the Construction Manager or its contractor(s). If the Design Consultant or a Sub-Consultant observes any construction that does not conform to the Construction Contract, the Design Consultant shall immediately make an oral and written report of all such observations to the Construction Manager and Owner's Representative. The Design Consultant and its Sub-Consultants shall not be required to make exhaustive or full-time on-site observations to check the quality or quantity of the Construction Manager's work but shall make as many observations as may be reasonably required to fulfil their obligations to the Owner. The Design Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the construction.

3.1.7.12 Periodic visits by the Design Consultant shall be not less than once weekly. Each Sub-Consultant shall make periodic visits not less than once every two weeks, during the course of the Project applicable to its discipline. During critical construction phases, each Sub-Consultant may be required to make periodic visits weekly.

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The Sub-Consultants shall prepare and submit a report on each visit, submitted via the Design Consultant to the Owner's Representative and the Construction Manager within three (3) working days of the visit.

3.1.7.13 The Design Consultant shall render written field reports relating to the periodic visits and observations of the Project required by Subparagraph 3.1.7.11 within three (3) working days to the Owner's Representative and the Construction Manager in the form required by the Owner's Representative.

3.1.7.14 The Design Consultant and the relevant Sub-Consultants shall attend weekly construction progress meetings scheduled by the Construction Manager.

3.1.7.15 The Design Consultant shall review payment applications made by the Construction Manager to determine whether the construction reflected in the payment application has been satisfactorily completed as represented on the payment application. The Design Consultant's signing of a certificate of payment shall constitute a representation by the Design Consultant to the Owner, based upon the Design Consultant's observations at the Project site and the data comprising the application for payment, that the construction has progressed to the point indicated, that to the best of the Design Consultant's knowledge, information and belief, the quality of the construction appears to be in accordance with the Construction Contract (subject to: an evaluation of the Project for conformance with the Construction Contract upon substantial completion, as defined in the Owner-Construction Manager Agreement; the results of any subsequent tests required by the Construction Contract; minor deviations from the Construction Contract correctable prior to completion; and to any specific qualifications stated in the certificate for payment), and that the Construction Manager is entitled to payment in the amount certified. By signing a certificate for payment to the Owner, the Design Consultant shall not be deemed to represent that it has made any examination to ascertain how and for what purpose the Construction Manager has used the monies paid since the previous pay application, except the Design Consultant shall inquire into and notify the Owner of the status of any payment issues of which it is aware.

3.1.7.16 The Design Consultant and the Owner shall have authority to reject the Construction Manager’s work when in the Owner's or the Design Consultant's opinion the work does not conform to the Construction Contract. Whenever in the Owner's or the Design Consultant's reasonable opinion it is considered necessary or advisable to enforce the proper implementation of the intent of the Construction Contract, the Owner shall have the authority to require special inspection or testing of the Construction Manager’s work in accordance with the provisions of the Construction Contract whether or not such work is fabricated, installed or completed.

3.1.7.17 When the Construction Manager notifies the Design Consultant that it considers the construction or a designated portion of the construction substantially complete, the Design Consultant and its Sub-Consultants, after notice to the Owner, shall review and evaluate the construction and prepare and submit to the Owner and the Construction Manager punch lists of the construction which is not in conformance with the Construction Contract. When the Design Consultant and the Construction Manager on the basis of an inspection determine that the construction or designated portion thereof is substantially complete, the Design Consultant will then prepare a certificate of substantial completion which shall state the responsibilities of the Owner and the Construction Manager for security, maintenance, heat, utilities, damage to the construction and insurance. Should the Design Consultant determine that the construction or a designated portion thereof is not substantially complete after the Construction Manager notifies the Design Consultant that it considers such construction to be substantially complete, the Design Consultant shall provide the Construction Manager with written notice stating why the construction or designated portion is not substantially complete. The Owner may request that the Design Consultant review and evaluate the construction and prepare a punch list on any portion of the Project.

3.1.7.18 The Design Consultant shall obtain governing agency occupancy approval if any exceptions arise related to the design or specified materials.

3.1.7.19 The Design Consultant shall review requests by the Owner or the Construction Manager for changes in the Project including adjustments to the Construction Contract sum or time and shall promptly make a recommendation to the Owner who may authorize such changes in writing.

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3.1.7.20 The Design Consultant shall render initial decisions on claims, disputes or other matters in question between the Owner and the Construction Manager as provided in this Agreement and the Construction Contract.

3.1.7.21 The Design Consultant shall be a point of contact with the Construction Manager, except when the Owner shall direct the Design Consultant otherwise. All instructions to the Construction Manager shall be issued by the Design Consultant, except when directed otherwise by the Owner.

3.1.7.22 The Design Consultant and the relevant Sub-Consultant shall review test data to determine that equipment is performing in accordance with the requirements of the design. In addition, the Design Consultant and the relevant Sub-Consultant will witness the Construction Manager's demonstration to the Owner of all such systems.

3.1.7.23 The Design Consultant and the relevant Sub-Consultant shall provide assistance in the original operation of any equipment or system such as initial start-up, testing, adjusting and balancing.

3.1.7.24 The Design Consultant and the relevant Sub-Consultant shall observe, review test data, and certify the original operation of any equipment or system such as initial start-up testing, adjusting and balancing to make sure that all equipment and systems are properly installed and functioning in accordance with the design and specifications.

3.1.7.25 The Design Consultant and its Sub-Consultants shall conduct up to two (2) comprehensive substantial completion inspections and two (2) final completion inspections pursuant to the Construction Contract. If more than two (2) substantial completion or two (2) final completion inspections are required, through no fault of the Design Consultant, the additional inspections shall be paid as Additional Services and reimbursed by the Construction Manager.

3.1.7.26 The Design Consultant shall make a recommendation in writing to the Owner regarding liquidated damages as may be applicable. If requested by the Owner or the CM, the Design Consultant shall certify in writing the date that the building is enclosed as defined in the Contract Documents.

3.1.7.27 Upon correction of the deficiency reports (punch lists), and acceptance of all other close-out submittals and certificates from the Construction Manager, the Design Consultant shall review and approve the application for final payment prepared by the Construction Manager and forward it to the Owner for execution. Simultaneously, the Design Consultant shall confirm in writing that the Project conforms to the Construction Contract.

3.1.7.28 The Design Consultant shall obtain from the Construction Manager drawings, prints, and other data necessary for the accurate preparation of the record drawings.

3.1.8 Post Construction Project Phase.

3.1.8.1 The Design Consultant and the relevant Sub-Consultant shall review and confirm the adequacy of the maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection as required by the Construction Contract and forward within two weeks of receipt of approved materials, all approved copies to the Owner's Representative for use by the Owner. In addition, the Design Consultant and the relevant Sub-Consultant shall conduct such observations as necessary to confirm all material and equipment warranties are in compliance with applicable specifications.

3.1.8.2 Educational Commissioning

3.1.8.2.1 The Design Consultant shall produce two or more presentation boards (approximately 24" x 36", full-color, with hanging apparatus) for each project for use by the Owner. Boards will include photos, floor plans, elevations, and written documentation related to sustainable design features, community use, site development, flexibility of educational spaces, etc. These boards will be left at the school to be shared with students, parents, faculty/staff, school visitors, etc., for the first year of operation, at a minimum.

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3.1.8.2.2 The Design Consultant shall provide input/review for development of PowerPoint presentation. The PowerPoint presentation will be used to educate faculty & staff about the special features available in their new school facility, specifically including the items in section 3.1.8.5. Both the original PowerPoint presentation (Source File) and a pdf version will be delivered electronically and on flash drive. The flash drive will be left with the school principal for future use with PTA, new faculty/staff, etc.

3.1.8.2.3 The Design Consultant shall provide input on signage to be posted in and around the school facility to point out various design features that support sustainability, facility efficiency, energy conservation, learning and teaching as requested by the Owner.

3.1.8.3 The Design Consultant shall prepare and deliver three (3) printed sets, one (1) pdf set, and one (1) AutoCAD or REVIT set of record drawings and all related files, including the design specifications (project manual) and all addenda. The electronic files shall be delivered in PDF, AutoCAD.DWG, and Source File formats via electronic file delivery and CD. These files will reflect and certify significant changes in the Project made during the construction process, based on marked-up contract drawings, prints, and other data furnished by the Construction Manager and the applicable addenda, clarifications, and change orders which occurred during the Project for delivery to the Owner within thirty (30) days after final completion of the Project. All electronic file names shall be consistent with the name of the sheet(s) they represent in accordance with the Owner's criteria.

3.1.8.4 The Construction Manager shall be responsible for creating the master project data file downloaded from the construction management application used for the Project in accordance with the Construction Manager's contract requirements. This master project file will contain all relevant date developed during the progress of the construction phase. The Design Consultant will review the data as necessary and/or requested by the Construction Manager or the Owner to review the completeness of the information.

3.1.8.5 The Design Consultant will report the use of Sub-Consultants, their function, contract amount and MBE classification to the Owner at the conclusion of the Project.

3.2 Design Consultant's Professional Responsibility and Standard of Care.

3.2.1 The Design Consultant shall perform its services, including but not limited to the Basic Services and any Additional Services authorized in writing by the Owner, consistent with the professional skill and care ordinarily provided by design consultants practicing in or around the Research Triangle Park, North Carolina area under the same or similar circumstances. The Design Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

3.2.1.1 By execution of this Agreement, the Design Consultant agrees, warrants, and confirms that (a) it is an experienced and duly licensed firm or individual having the ability and skill necessary to perform all the Services required of it under this Agreement in connection with the design and construction of a project having the scope and complexity of the Project contemplated herein; (b) it has the capabilities and resources necessary to perform its obligations hereunder; and (c) it is familiar with all current laws, rules and regulations which are applicable to the design and construction of the Project (such laws, rules and regulations including, but not limited to, all local ordinances, requirements of building codes of city, county, state and federal authorities which are applicable to the Project, local sanitary laws and rules and regulations, and all orders and interpretations by governing public authorities of such ordinances, requirements, codes, laws, rules and regulations in effect at the time of commencement of Services on the Project), and that all drawings, specifications and other documents prepared by the Design Consultant shall be prepared in accordance with and shall accurately meet, reflect and incorporate all such applicable laws, rules and regulations.

3.2.1.2 The Design Consultant shall ensure that any Sub-Consultants: (a) are an experienced and duly licensed firm or individual having the ability and skill necessary to perform the requested services; (b) have the capabilities and resources necessary to perform its obligations; and (c) are familiar with all current laws, rules and regulations which are applicable to the work of the Sub-Consultant (such laws, rules and regulations including, but not limited to, all local ordinances, requirements of building codes of city, county, state and federal authorities which are applicable to the Sub-Consultant's work, local sanitary laws and

rules and regulations, and all orders and interpretations by governing public authorities of such ordinances, requirements, codes, laws, rules, and regulation in effect at the time of commencement of services on the Project and relevant to the Sub-Consultant's work), and that all drawings, specifications and other documents prepared for the Project shall be prepared in accordance with and shall accurately meet, reflect and incorporate all such applicable laws, rules and regulations.

3.2.2 The Design Consultant hereby represents and agrees that the drawings, specifications and other documents prepared pursuant to this Agreement shall be complete and functional, except as to any deficiencies which are due to causes beyond the control of the Design Consultant and its Sub-Consultants, and that the Project, if constructed in accordance with the drawings, specifications and other documents, shall be structurally sound and a complete and properly functioning facility in accordance with the terms of this Agreement. Any suggestions, recommendations or review comments by the Owner or the Construction Manager shall not reduce or diminish the Design Consultant's responsibilities pursuant to this Agreement.

3.2.3 The Design Consultant shall be responsible for damages to the Owner that are a result of errors, inconsistencies, and/or omissions in the drawings, specifications, other documents or other Basic Services. In addition, the Design Consultant will correct at no additional cost to the Owner any and all errors and omissions in the drawings, specifications and other documents prepared by the Design Consultant and its Sub-Consultants, and the Design Consultant further agrees to render assistance, at no additional cost to the Owner, in resolving problems relating to the design or specified materials.

3.2.4 It is the responsibility of the Design Consultant to make certain that, at the time the Project is bid, all drawings, specifications and other documents are in accordance with applicable laws, statutes, building codes and regulations and that appropriate reviews and approvals are requested and obtained from federal, state and local governments.

3.2.5 It shall be the responsibility of the Design Consultant and its Sub-Consultants throughout the period of performance under this Agreement to exercise the abilities, skills and care customarily used by Design Consultants and Sub-Consultants of the training and background needed to perform the Services who practice in Brunswick County or similar communities.

3.3 Project Requirements.

3.3.1 A component of Exhibit A – Design, Construction and Equipment Budget is the CCAP. The CCAP for this Project is: twenty-one million, five hundred sixty-eight thousand, three hundred nine dollars ($21,568,309). The CCAP for this Project, or designated portion thereof, may be modified in writing only in the form of a Design Phase Change Order, executed by the Owner and Design Consultant. The Design Consultant shall prepare drawings, specifications and other documents necessary so that the construction bids received by the Construction Manager from responsive, responsible bidding contractors, plus the CM's general conditions, contingency, fee and bonds/insurance, will be within the CCAP.

3.3.1.1

During all phases of the Project the Design Consultant shall prepare such estimates as it deems necessary, at no additional cost to the Owner, to assure itself that the estimated Project cost is within the CCAP and shall supply such data, information or estimates as the Owner may require to substantiate the Design Consultant's contention that the Project cost is within the CCAP.

3.3.1.2

With each Design Phase submittal and each interim, revisionary or subsequent design submittal of the Design Consultant to the Owner and/or Construction Manager, the Design Consultant shall make the following statement in writing:

"The drawings, specifications, and other documents submitted herewith, in my/our professional opinion, fulfill the Program of Requirements and the Project indicated by them may be purchased by the Owner in a construction contract or contracts, the total price of which will not exceed the CCAP, (based on bid date of no later than July 24, 2023, unless the delay in bidding is attributable to the Design Consultant). Further ,in my/our professional opinion, the above-mentioned documents submitted herewith have been prepared in accordance with the Agreement for Design Consultant Services."

With each Design Phase submittal and each interim, revisionary or subsequent design submittal of the Design Consultant to the Owner and/or Construction Manager and with his approval of the final payment to the Construction Manager and certificate of final completion to the Owner, the Design Consultant shall make the following statement in writing:

"No asbestos-containing building materials have been specified and to the best of my/our knowledge and belief none have been incorporated into this Project."

3.3.2 Incorporated herein and made a part of this Agreement as Exhibit B is the Program of Requirements which defines the physical and environmental parameters for the Project and establishes the design objectives and criteria. No deviations from the Program of Requirements shall be allowed without written approval for change, in the form of a Design Phase Change Order executed by the Owner and Design Consultant.

3.3.3 Incorporated herein and made a part of this Agreement as Exhibit C is the Management Plan for the Project which defines the sequence and timing of the design and construction activities. The Management Plan is the schedule to be adhered to by the Design Consultant. No deviation from the Management Plan shall be allowed without written approval for a change in the Management Plan, in the form of a Design Phase Change Order executed by the Owner and Design Consultant. Should the Owner or the Construction Manager determine that the Design Consultant is behind schedule due to the fault of the Design Consultant; the Design Consultant shall expedite and accelerate its efforts, including additional manpower and/or overtime, to maintain the approved design schedule at no additional cost to the Owner.

3.4 Project Meetings.

3.4.1 Throughout all phases of the Project, the Design Consultant and its Sub-Consultants shall meet periodically with the Owner and/or the Construction Manager when reasonably requested. Participants shall be as determined by the Owner and/or the Construction Manager. As a minimum, regularly scheduled meetings which the Design Consultant will attend include:

3.4.1.1 Design Consultant orientation.

3.4.1.2 Predesign conferences on a biweekly basis.

3.4.1.3 Predesign project analysis sessions.

3.4.1.4 Design conferences on a monthly basis.

3.4.1.5 Prebid conferences conducted by the Construction Manager.

3.4.1.6 Preconstruction conferences conducted by the Construction Manager.

3.4.1.7 Construction progress meetings on a bi-weekly basis.

3.4.1.8 Substantial completion, final completion and completion of warranty period inspections for the Construction Contract.

3.4.2 The Design Consultant shall be responsible for scheduling and attending any meetings necessary to properly coordinate the design effort including, without limitation, meetings with governing agencies, code officials and applicable utilities.

3.4.3 The Design Consultant shall be responsible for preparing accurate and complete minutes of all Project conferences that are not the responsibility of the Construction Manager and distributing same to all participants.

3.5 Serving As Witness.

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3.5.1 The Design Consultant, and any required Sub-Consultant, shall prepare for and provide testimony or otherwise participate in public hearings, and legal proceedings, including as necessary to secure governmental approval of zoning or land use clearances, for the Project as part of Basic Services, unless said testimony or participation is requested by the Owner and consists of expert testimony not related to this Project or the Construction Manager's work.

3.6 Construction Warranty.

3.6.1 The Design Consultant and its Sub-Consultants shall assist the Owner in resolution of warranty issues as may be required to determine responsibility for deficiencies.

3.6.2 The Design Consultant and its Sub-Consultants shall conduct an inspection of the project one (1) month prior to warranty expiration and provide to the Owner a written report specifying any warranty deficiencies which may exist.

ARTICLE 4

COMPENSATION

4.1 Basic Services Compensation.

The Owner shall compensate the Design Consultant in accordance with the terms and conditions of this Agreement, including the following:

4.1.1 For the Basic Services of the Design Consultant, compensation shall be a lump sum fee amount of $1,057,000 (one million, fifty-seven thousand Dollars), plus approved reimbursable expenses ("Basic Services Compensation").

4.1.1.1 For the purposes of Subparagraph 4.1.1, no amount is to be included within the scope of the CCAP for the cost of land, rights-of-way or other non-construction costs which are the responsibility of the Owner.

4.1.1.2 For the purposes of Subparagraph 4.1.1, no labor and materials furnished by the Owner for the Project shall be included with the scope of the CCAP.

4.1.1.3 For the purposes of Subparagraph 4.1.1, should the Owner request additions to the Project which would cause a change or changes in the scope of the Program of Requirements or previously approved designs or design criteria, the CCAP shall be increased by the estimated aggregate amount of such change(s) and the revised and adjusted CCAP shall be the figure used in determining the Design Consultant's fee. The additional fee paid to the Design Consultant shall be negotiated in good faith by the Owner and the Design Consultant based upon the actual additional work to be performed by the Design Consultant.

4.1.1.4 In the event the Owner requests changes to the Project or elects not to complete the Project or any portion thereof, which would decrease the most recently approved CCAP, basic compensation due the Design Consultant, as to such deletion or decrease, shall be adjusted downwards for remaining Services to be performed but not for Services already performed to the date of receipt by the Design Consultant of the written requested change or notice of the intent not to complete part or all of the Project, in accordance with the basic payment schedule set forth in Paragraph 4.2 hereof. Unless otherwise agreed in writing by the parties, the reduction in the Design Consultant's fee shall be calculated by multiplying the dollar amount of the reduction in the CCAP by the fee percentage noted in 4.1.1 above and then multiplying that dollar amount by the percentage of design work not completed.

4.1.2 The Basic Services Compensation stated in Paragraph 4.1.1 includes all compensation and other payments due the Design Consultant (manpower, overhead, profit, direct costs, travel, copies, postage, telephone and facsimile service, etc.) in the performance of the Basic Services.

4.2 Payments to the Design Consultant.

Payments on account of the Design Consultant shall be made as follows:

4.2.1 Payments for Basic Services, including any design phase change orders, shall be made monthly in proportion to services performed so that the compensation at the completion of each Phase shall equal the following percentages of the Basic Services Compensation. Payment shall be made monthly upon presentation of the Design Consultant's statement of services, fully supported by invoices, time cards, and certifications that all Sub-Consultants have been paid, and other documentation as requested by the Owner.

Design Narrative Phase	5%
Schematic Design Phase	15%
Design Development Phase	35%
Construction Contract Phase	60%
Permitting and Bidding/Negotiation Phase	65%
Construction Phase	95%
Post Construction Services Phase	100%

4.2.2 No deductions shall be made from the Basic Services Compensation on account of penalty, liquidated damages, retainage or other sums withheld from payments to the Construction Manager.

4.2.3 Reasonable deductions may be made from the Basic Services Compensation on account of errors and omissions in the drawings, specifications and other documents prepared by the Design Consultant or in the Design Consultant's performance of its obligations under this Agreement following written notice to the Design Consultant regarding the reason for the deductions.

4.2.4 Payments due the Design Consultant under the Agreement shall bear interest at the legal rate commencing forty-five (45) days after the date the billing is received by the Owner, unless the Owner has a good faith basis to withhold payment.

4.2.5 Reimbursable expenses shall include such reasonable, actual expenditures made by the Design Consultant, its employees, or Sub-Consultants, in the interest of the Project, limited to the following: the reasonable expense of transportation and living when traveling from the Design Consultant's or Sub-Consultant's office to a location outside of Brunswick County, North Carolina in connection with the Project; and expense of reproductions, postage and handling of Drawings and Specifications, beyond those for the Design Consultant's and Sub-Consultants' use and those required as the phase submittals ("Reimbursable Expenses"). Before incurring any Reimbursable Expenses, the Design Consultant must request and receive written authorization from the Owner. Reimbursable Expenses incurred while performing Basic or Additional Services shall be computed at a multiple of 1.10 times actual cost.

4.2.6 Notwithstanding Section 7.1, the Parties agree that the Design Consultant is authorized to proceed with the printing and delivery of the following documents, but that said reimbursable cost shall not exceed an aggregate of $2,500 without the express written permission of the Owner:

(a) Agency Submittals;
(b) Bid Documents, including plan rooms; and
(c) Various design phase submissions to the Owner and Construction Manager.

4.2.7 If the Project is suspended for more than six months or abandoned in whole or in part by the Owner, the Design Consultant shall be paid compensation for services performed prior to receipt of written notice from the Owner of such suspension or abandonment. If the Project is resumed after being suspended for more than twelve months, the Design Consultant's Basic Services Compensation shall be equitably adjusted.

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4.3 Additional Services Compensation.

4.3.1 With respect to any Additional Services, as described in Article 7 herein, performed by the Design Consultant hereunder, the Design Consultant and Owner shall negotiate an equitable adjustment to the Basic Services Compensation ("Additional Services Compensation"). However, if negotiations are not successful prior to the time the Additional Services are needed, the Owner may direct the Design Consultant to proceed with the Additional Services on a time spent basis with compensation to be computed as follows:

4.3.1.1 Design Consultant time shall be at the fixed hourly rate included in the fee schedule attached hereto as Exhibit E and made part of this Agreement.

4.3.1.2 Sub-Consultant time shall be at an hourly fixed rate agreed to between the Design Consultant and the Owner prior to the Sub-Consultant performing any Additional Services.

4.3.1.3 Reinspection and resubmittal review time that is billable to the Construction Manager shall be reimbursed to the Design Consultant as noted in 4.3.1.1 and 4.3.1.2 except the total compensation shall not exceed the amount attributable to the Construction Manager.

4.3.2 Payments for Additional Services of the Design Consultant shall be made monthly upon presentation of the Design Consultant's statement of services, fully supported by invoices, time cards, and other documentation as requested by the Owner.

4.4 Accounting Records.

4.4.1 Records of the Design Consultant with respect to Additional Services and payroll, and Sub-Consultant and other expenses (including Reimbursable Expenses) pertaining to the Project, shall be kept according to generally accepted accounting principles and shall be available to the Owner or its authorized representative for inspection and copying at mutually convenient times.

4.4.2 At the request of the Owner or its authorized representative, the Design Consultant will supply in a timely manner and certify as accurate, unaltered copies of all time sheets, invoices, and other documents to substantiate and document any and all Additional Services and Reimbursable Expenses.

4.5 Non-Appropriation. If the Board of County Commissioners does not appropriate the funding needed by the Owner to make payments under this Agreement for a given fiscal year, the Owner 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 Owner will promptly notify the Design Consultant 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 Owner which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

ARTICLE 5

PERIOD OF SERVICE

5.1 Specific dates relating to the period of services are set forth in Exhibit C – Management Plan.

5.2 Unless earlier terminated as provided in Article 10 hereof, this Agreement shall remain in force for a period which may reasonably be required for the Basic Services and Additional Services hereunder. However, the provisions of the Agreement relating to Professional Responsibility (Paragraph 3.2); Professional Liability coverage (Article 9); and Ownership of Documents/Confidential Information (Article 12) shall remain in effect after termination of the other provisions of the Agreement.

5.3 If the Project is delayed through no fault of the Design Consultant, all specific dates noted in the Management Plan that are affected by the delay will be adjusted by the number of calendar days of the delay.

5.4 If the Owner materially revises the Project, a reasonable time extension or reduction shall be negotiated between the Design Consultant and the Owner.

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5.5 Time is of the essence in this Agreement,

ARTICLE 6

OWNER'S RESPONSIBILITIES

6.1 The Owner shall provide full information regarding the requirements for the Project.

6.2 The Owner shall examine documents submitted by the Design Consultant and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Design Consultant's Services.

6.3 If required for this Project, the Owner shall furnish a certified land survey of the site, giving as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines, both public and private, above and below grade, including inverts and depths.

6.4 The Owner shall pay for the services of a soils engineer or other consultant, when such services are deemed necessary by the Design Consultant or Owner's Representative, to provide reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations for determining subsoil, air and water conditions, with appropriate professional interpretations thereof.

6.5 The Owner shall pay for environmental, hazardous material, chemical and other laboratory tests, inspections and reports as required by law that are not otherwise called for in this Agreement.

6.6 The Owner shall furnish such legal, accounting, and insurance counseling services as the Owner may deem necessary for the Project and such auditing services as it may require to ascertain how, or for what purposes, the Construction Manager has used the moneys paid to it under the Construction Contract.

6.7 All services, information, surveys and reports required of the Owner shall be furnished at the Owner's expense and the Design Consultant shall be entitled to rely upon their accuracy and completeness.

6.8 The Owner shall furnish information and approvals required of it expeditiously, for orderly progress of the construction.

6.9 The Owner shall reimburse the Design Consultant for any fees or assessments paid by the Design Consultant pursuant to Article 3.1.6.3.

6.10 The Design Consultant shall coordinate the services of the Owner’s consultants listed below in the section with those services provided by the Design Consultant. Upon the Design Consultant’s request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner’s consultants. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided. If in the opinion of the Architect a particular consultant or engineering service is needed to produce a reasonably complete and accurate set of Construction Documents or to satisfy the Owner’s Program requirements based upon the information available to the Design Consultant as of the date of this Agreement and said consultant or engineering service is not listed as being provided by the Owner below, it is the responsibility of the Architect to provide that service at no additional cost to the Owner.

The Owner shall furnish or provide the following services only if specifically designated:

1. Topographic and Boundary Survey including off-site requirements (as stated in 5.4)
2. Geotechnical Engineering Services including off-site requirements (as stated in 5.5)
   a. Seismic Site Classification (shock-wave testing or equivalent determination)
   b. Soils analysis and consultation

c. Seasonal High Water Table evaluation and Infiltration Testing
d. Wetlands and Stream delineation and remediation/modification consulting (including USACE jurisdictional determinations)
e. Underground stream mitigation analysis and design
f. Riparian Buffer Analysis
g. Tier 1 Vapor Encroachment Screening
h. Testing commissioning of HVAC, and Solar P.V. System

3. All Environmental Assessments that may be required including but not limited to Phase I and Phase II Environmental Assessments
4. Off-site sewer and water systems design
5. Geothermal Conductivity Tests
6. Historical or Anthropological identification, testing, and reporting
7. Hazardous Materials identification, testing and removal design
8. Underground storage tank identification, testing and removal design
9. Traffic Information Analysis or other information as may be required by NCDOT/MSTA
10. Roadway improvements design as required including off-site requirements
11. Testing Services and Special Inspections
12. Arborist consultation and services

ARTICLE 7

ADDITIONAL SERVICES

7.1 If any of the following Additional Services, as defined in this Article, are authorized in advance by the Owner in writing, the Design Consultant shall furnish or obtain from others the authorized services. If authorized in advance, in writing, by the Owner, the Design Consultant shall be paid for these Additional Services by the Owner pursuant to Article 4.3 to the extent they exceed the obligations of the Design Consultant under this Agreement. If the Design Consultant informs the Owner in writing that additional services are required then the Owner shall agree or not agree that the services are required and if the Owner agrees the services are required, additional services shall be paid to the Design Consultant. The Owner shall respond to the Design Consultant within 7 days of receipt of such notice or quicker if necessary to not delay the Project.

7.1.1 Providing fully detailed presentation models, presentation renderings, or video presentations, not included in Basic Services.

7.1.2 Providing financial feasibility or other special studies, not included in Basic Services.

7.1.3 Providing planning surveys or alternative site evaluations.

7.1.4 Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project other than general and master planning for future work as indicated by the Program of Requirements.

7.1.5 Providing acoustical services by an individual or firm with specific expertise in acoustics for a school project.

7.1.6 Making major revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given by the Owner.

7.1.7 Preparing supporting data and other services in connection with an Owner-initiated change order if the Basic Compensation is not commensurate with the services required of the Design Consultant.

7.1.8 Providing operating and maintenance manuals, training personnel for operation and maintenance, and consultation during operations other than initial start-up, and coordinating with the Construction Manager to provide in electronic format, as designated by the Owner's Representative, detailed product and warranty information for input to the Owner's facility management computer system.

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7.1.9 Providing soils sampling, classification and analysis; however, analysis of existing soils information and soils analysis during the Design Phase and recommendations needed during the Construction Phase of the Project are not considered Additional Services.

7.1.10 Providing services of interior furnishings not included in the Basic Services or otherwise included in this Agreement.

7.1.11 Providing professional services made necessary by the default of the Construction Manager or any of its contractors.

7.1.12 Providing services made necessary by major defects in the Construction Manager's work which were not preventable by the Design Consultant or a Sub-Consultant in the performance of its Services pursuant to this Agreement.

7.1.13 Providing surveying services such as platting; mapping; subdivision agreements or recording subdivision plats.

7.1.14 Providing Services prior to actual substantial completion of the Project made necessary by delays or defects in the Construction Manager's work by more than sixty (60) days from the date agreed to for substantial completion in the Owner-Construction Manager Agreement, which delay the Design Consultant could not reasonably have prevented through the performance of its services pursuant to this Agreement.

7.1.15 Providing Services made necessary by delays or defects in the Construction Manager's work for more than thirty (30) additional days than are provided in the Owner-Construction Manager Agreement for the time period between the scheduled substantial completion and final completion dates, which delay the Design Consultant could not reasonably have prevented through the performance of its Services pursuant to this Agreement.

7.1.16 Providing extensive assistance in the initial start-up and test operations of equipment or systems which is beyond the scope of that normally required to insure proper operation in accordance with the design and specifications.

7.1.17 Providing services necessitated by out-of-town travel required by the Design Consultant and approved by the Owner other than visits to the Project and other than for travel required to accomplish the Basic Services.

7.1.18 Providing consultation concerning replacement of any of the Construction Manager's work on the Project damaged by fire or other cause during construction and furnishing professional services of the type set forth in Basic Services as may be required in connection with the replacement of such work.

7.1.19 Providing services after the Owner makes final payment to the Design Consultant other than services required by this Agreement.

7.1.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural and engineering practices consistent with the terms of this Agreement.

7.1.21 Providing high performance features such as a Geothermal HVAC system and solar P.V. system.

7.1.22 Providing consulting services regarding the procurement of tax credits.

7.1.23 Providing furniture design and consultation with the Owner's furniture vendor(s).

7.1.24 Preparation for, and attendance at a mediation of a dispute regarding the Project between the Owner and Construction Manager, except where the Architect is party thereto.

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ARTICLE 8

NOTICES

8.1 Any notice required by this Agreement or other communications to either party by the other shall be in writing and deemed given when delivered personally or when deposited in the United States Post Office, first class, postage prepaid, addressed as follows, or to such other address as shall be duly given by notice meeting the requirement of this Article.

To Owner:

Brunswick County Manager
30 Government Dr NE (if via courier or overnight delivery)
P. O. Box 249 (if via mail)
Bolivia, NC 28422

With a Copy to:
Executive Director of Operations
Brunswick County Schools
35 Referendum Dr.
Bolivia, NC 28422

Dr. Jerry Oates
Superintendent
Brunswick County Schools
35 Referendum Dr
Bolivia, NC 28422

To Design Consultant:

Ernest Olds
Vice President
Becker Morgan Group
3333 Jaeckle Dr., Suite 120
Wilmington, NC 28403

ARTICLE 9

INSURANCE

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

a. Workers' Compensation:

Statutory

b. Employer’s Liability

$1,000,000.00 Each Accident
$1,000,000.00 Policy Limit
$1,000,000.00 Each Employee

c. Commercial General Liability

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(Standard ISO Occurrence Form)

Combined Single Limit for Bodily Injury, Property Damage or Personal General

Aggregate Injury of:

$2,000,000.00 (Except Products Completed Operations Limit)
$2,000,000.00 Products Completed Operations Aggregate Limit
$1,000,000.00 Personal & Advertising Injury Limit
$1,000,000.00 Each Occurrence Limit

d. Commercial Automobile Insurance including coverage for owned, non-owned and hired vehicles:

$1,000,000.00 Combined Single Limit for Bodily Injury and Personal Damage

e. Professional Liability:

$2,000,000 Each Claim
$2,000,000 Policy Aggregate

f. Umbrella Liability Insurance to “pay on Behalf of the Insured”:

$1,000,000.00 Limit

9.2 Evidence of such insurance shall be furnished to the Owner and Owners Agent, and they shall receive thirty (30) days prior written notice of any cancellation, non-renewal or reduction of coverage of any of the policies. Upon notice of such cancellation, non-renewal or reduction, the Design Consultant shall procure substitute insurance so as to assure the Owner that the minimum limits of coverage are maintained continuously throughout the period of this Agreement. 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 similar rating company of at least an “A”.

9.2.1 The Design Consultant shall deliver to the Owner a certificate of insurance for its professional liability coverage annually, so long as it is required to maintain such coverage under paragraph 9.4.

9.3 The Owner and Owners Agent shall be added as an additional named insureds on all policies, except the professional liability, commercial, automobile and worker’s compensation policies. All insurance policies, except the professional liability policy, shall contain a waiver of subrogation against the Owner.

9.4 The Design Consultant shall maintain in force during the performance of this Agreement and for six (6) years after final completion of the Project, the professional liability insurance coverage referenced above.

9.5 The Design Consultant shall require its Sub-consultants to maintain all types of insurance as mentioned in this Article 9 and shall provide to the Owner certificates of insurance as described in Article 9.2 for all Sub-Consultants.

9.6 The Owner shall be under no obligation to review any certificates of insurance provided by the Design Consultant or to check or verify the Design Consultant's compliance with any or all requirements regarding insurance imposed by this Agreement. The Design Consultant is fully liable for the amounts and types of insurance required herein and is not excused should any policy or certificate of insurance provided by the Design Consultant not comply with any or all requirements regarding insurance imposed by this Agreement.

9.7 Should the Design Consultant or a Sub-Consultant fail to provide and maintain in force any insurance or insurance coverage required by this Agreement or by law, or should a dispute arise between Owner and any insurance company of the Design Consultant or Sub-Consultant over policy coverage or Limits of Liability as required herein, the Owner shall be entitled to recover from the Design Consultant all amounts payable, as a

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matter of law, to Owner or any of its agents, had the required insurance or insurance coverage been in force. Said recovery shall include, but is not limited to interest for the loss of use of such amounts of money, plus all attorney's fees, costs and expenses incurred in securing such determination and any other consequential damages arising out of the failure of the Design Consultant or Sub-Consultant or insurance company to comply with the provisions of this Agreement or any policy required hereby, or any other requirements regarding insurance imposed by law. Nothing herein shall limit any damages for which Design Consultant is responsible as matter of law.

ARTICLE 10

TERMINATION OF AGREEMENT

10.1 If: (a) the Owner abandons the Project or the Project is stopped for more than six (6) months due to actions taken by the Owner, or 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 Design Consultant or its agents or employees, or (b) the Owner has failed to substantially perform in accordance with the provisions of this Agreement due to no fault of the Design Consultant and such non-performance continues without cure for a period of thirty (30) days after the Owner receives from the Design Consultant a written notice of such non-performance (including a detailed explanation of the actions of the Owner required for cure), the Design Consultant may, upon fifteen (15) days additional written notice to the Owner, terminate this Agreement, without prejudice to any right or remedy otherwise available to the Owner, and recover from the Owner payment for all Services performed to the date of the notice terminating this Agreement. The recovery of this payment shall be the sole and exclusive remedy of the Design Consultant as a result of termination under this paragraph. The Owner shall not be liable to the Design Consultant for any special or consequential damages as a result of the termination of this Agreement.

10.2 Upon the appointment of a receiver for the Design Consultant, or if the Design Consultant makes a general assignment for the benefit of creditors, the Owner may terminate this Agreement, without prejudice to any right or remedy otherwise available to the Owner, upon giving three (3) days written notice to the Design Consultant. If an order for relief is entered under the bankruptcy code with respect to the Design Consultant, the Owner may terminate this Agreement by giving three (3) days written notice to the Design Consultant unless the Design Consultant or the trustee: (a) promptly cures all breaches; (b) provides adequate assurances of future performance; (c) compensates the Owner for actual pecuniary loss resulting from such breaches; and (d) assumes the obligations of the Design Consultant within the statutory time limits.

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

10.4 Upon termination of this Agreement by the Owner under Article 10.2 or 10.3 the Owner shall be entitled to furnish or have furnished the Services to be performed hereunder by the Design Consultant by whatever method the Owner may deem expedient. Also, in such cases, the Design Consultant shall not be entitled to receive any further payment until completion of the Project; and the total compensation to the Design Consultant under this Agreement shall be the amount which is equitable under the circumstances. If the Owner and the Design Consultant are unable to agree on the amount to be paid under the foregoing sentence, the Owner shall fix an amount, if any, which it deems appropriate in consideration of all of the circumstances surrounding such termination, and shall make payment accordingly.

10.5 The Owner may, upon thirty (30) days written notice to the Design Consultant, terminate this Agreement, in whole or in part, at any time for the convenience of the Owner, without prejudice to any right or remedy otherwise available to the Owner. Upon receipt of such notice, the Design Consultant shall immediately discontinue all Services affected unless such notice directs otherwise. In the event of a termination for convenience of the Owner, the Design Consultant's sole and exclusive right and remedy is to be paid for all work performed and to receive equitable adjustment for all work performed through the date of termination.

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The Design Consultant shall not be entitled to be paid any amount as profit for unperformed Services or consideration for the termination of convenience by the Owner.

10.6 Should the Owner terminate this agreement as provided for under this Article, the Owner will acquire such drawings, including the ownership and use of all drawings, specifications, documents and materials relating to the Project prepared by or in the possession of the Design Consultant. The Design Consultant will turn over to the Owner in a timely manner and in good unaltered condition all original drawings, specifications, documents, materials, and computer files.

10.7 The payment of any sums by the Owner under this Article 10 shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Design Consultant.

ARTICLE 11

SUCCESSORS/ASSIGNMENT

11.1 This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns, trustees and personal representatives of the Owner, as well as the permitted assigns and trustees of the Design Consultant.

11.2 The Design Consultant shall not assign, sublet or transfer its interest in this Agreement without the written consent of the Owner, except that the Design Consultant may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval of the Owner.

11.3 If the Owner requests the Design Consultant to execute consents reasonably required to facilitate assignment to Brunswick County or Brunswick County's lender, the Design Consultant shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Design Consultant for review at least 7 days prior to execution. The Design Consultant shall not be required to execute consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

ARTICLE 12

OWNERSHIP OF DOCUMENTS/CONFIDENTIAL INFORMATION

12.1 The Project drawings and specifications are instruments of service that shall remain the joint property of the Design Consultant and the Owner whether the Project for which they are made is built or not. The Owner shall retain reproducible copies of the Project drawings and specifications for information and reference and use in connection with the Owner's use and occupancy of the Project and for the Owner's future requirements of the Project facilities including without limitation any alteration or expansion in any manner the Owner deems appropriate without additional compensation to the Design Consultant. The Owner shall indemnify and hold harmless the Design Consultant in connection with the Owner's use of the Project drawings and specifications on a new project without the Design Consultant's consent.

12.2 In order for the Design Consultant to fulfill this Agreement effectively, it may be necessary or desirable for the Owner to disclose to the Design Consultant confidential and proprietary information and trade secrets pertaining to the Owner's past, present and future activities. The Design Consultant hereby agrees to treat any and all information gained by it as a result of the Services performed hereunder as strictly confidential. The Design Consultant further agrees that it will not disclose during the period of this Agreement or thereafter to anyone outside of the authorized Project team (1) Owner's trade secrets or (2) Owner's confidential and proprietary information.

ARTICLE 13
ADDITIONAL PROVISIONS

13.1 The Design Consultant acknowledges receipt of all Board of Education and Owner's policies from Owner or through the Board's website (http://www.bcswan.net) and agrees to comply with their provisions.

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The Design Consultant and its Sub-Consultants shall also comply with the Owner's site and school building access procedures when working on the Owner's property.

13.2 Applicable Laws.

13.2.1 This Agreement and the relationship of the parties 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 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.

13.2.2 Design Consultant and its Sub-Consultants shall comply with all applicable laws and regulations in providing the Services. Design Consultant shall not employ any individuals to provide services to the Owner who are not authorized by federal law to work in the United States. The Design Consultant 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 for employers that employ twenty-five (25) or more employees. The Design Consultant specifically represents and warrants that it is and will remain in compliance with these laws at all times while providing the Services. Design Consultant shall also ensure that its Sub-Consultants will remain in compliance with these laws at all times while providing subcontracted services in connection with the Agreement. Design Consultant 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.

13.2.3 Lunsford Act/Criminal Background Checks. The Design Consultant 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 Design Consultant shall conduct or arrange to have conducted at its own expense sexual offender registry checks on each of its employees, agents, ownership personnel, or Sub-Consultants("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 office is not located at a school; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites where no minors are present. 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 Design Consultant'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 Design Consultant shall provide certification on the Owner's Sexual Offender Registry Check Certification Form (attached as Exhibit F) 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 Design Consultant shall conduct a current initial check of the registries (a check done more than thirty (30) days prior to the date of this Agreement shall not satisfy this contractual obligation). In addition, the Design Consultant 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 Design Consultant further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. The Design Consultant 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 Design Consultant 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 Design Consultant 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 Design Consultant 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

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may deliver goods or perform services under this Agreement. The Design Consultant 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 Design Consultant 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.

13.2.4 Design Consultant represents that as of the date of this Agreement, neither Design Consultant nor its principals are included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Design Consultant also represents that as of the date of this Agreement, neither Design Consultant nor its principals are 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. The Design Consultant further represents that as of the date of this Agreement, neither the Design Consultant 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. The Design Consultant must notify Owner within thirty (30) days if debarred by any governmental entity during this Agreement.

13.2.5 Anti-Nepotism. Design Consultant 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 Owner's Board of Education or of any principal or central office staff administrator employed by the Owner. 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 Design Consultant 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, Design Consultant shall immediately disclose the family relationship in writing to the Superintendent. Unless formally waived by the Owner, the existence of a family relationship covered by this Agreement is grounds for immediate termination by Owner without further financial liability to Design Consultant.

13.3 Non-Discrimination. Design Consultant 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. Design Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Design Consultant 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 Owner, and Design Consultant may be declared ineligible for further agreements with Owner.

13.4 Governmental Immunity. Owner, 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.

13.5 The Design Consultant and its Sub-Consultants shall comply with these and all applicable laws and regulations in providing the Services.

13.6 The Owner and Design Consultant agree to endeavor to provide written notification and to negotiate in good faith prior to litigation concerning claims, disputes, and other matters in question arising out of or relating to this Agreement or the breach thereof. The Owner and Design Consultant also agree that the Owner's Policy 9120, adopted in compliance with G.S. 143-128(f1), shall apply to disputes arising between the parties on the Project.

13.7 Nothing herein contained shall be construed to require the parties to provide written notifications or engage in negotiations prior to the institution of litigation nor to submit for alternative dispute resolution by a third party or parties any such claim, dispute, or other matter in question between the parties. Notwithstanding the foregoing, the parties expressly 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.

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13.8 Whenever renderings, photographs of renderings, photographs of models, photographs, drawings, announcements, or other illustration or information of the Project are released for public information, advertisement or publicity, appropriate and proper credit for architectural and other services shall be given to the Design Consultant and Owner respectively.

13.9 The payment of any sums by the Owner shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Design Consultant.

13.10 This Agreement and its Exhibits and Attachments represent the entire and integrated agreement between the Owner and the Design Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Design Consultant.

13.11 If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13.12 Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.

13.13 The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.

13.14 For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.

13.15 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, which shall be sufficient evidence by any one thereof. 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 § 66-58.1 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.

13.16 The language used in this Agreement will be deemed to be the language chosen by each of the parties to express their mutual intent. In the event of an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

13.17 The Design Consultant may apply for and obtain a 179d Tax Deduction for the design of the Project. The Design Consultant shall only apply for the tax deduction if the Design Consultant provides the Owner with a separate written list of all building systems, equipment, and design features included in the Project that support the application for the tax deduction. An updated list will be provided to the Owner with each design phase submission. Each list submitted shall include all building systems, equipment, and design features, including a then current estimate of the additional cost each item is anticipated to add to the cost of the Project at the time the Project is bid when compared to items traditionally used on K-12 public school projects in North Carolina. The Design Consultant shall provide the Owner with any anticipated cost savings over the lift of the Project for any item supporting the 179d Tax Deduction. The Owner's consent to the Design Consultant's efforts to apply for and obtain a 179d Tax Deduction is conditioned upon the Design Consultant's strict compliance with this section.

ARTICLE 14

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EXHIBITS

14.1 The following exhibits are incorporated into this Agreement:

14.1.1 Exhibit A: Construction Contract Award Price

14.1.2 Exhibit B: Program of Requirements

14.1.3 Exhibit C: Management Plan

14.1.4 Exhibit D: Consultant Agreement

14.1.5 Exhibit E: Design Consultant's Fee Schedule

14.1.6 Exhibit F: Owner's Sexual Offender Registry Check Certification Form

14.1.7 Exhibit G: Owner and Construction Manager at Risk Agreement

In witness whereof, each individual executing this agreement acknowledges that he/she/it is authorized to execute this agreement and further acknowledges the execution of this agreement the day and year first written above.

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IN WITNESS WHEREOF the Owner and the Design Consultant have executed this contract, the day and year first above written.

BECKER MORGAN GROUP, INC.

Ernest Olds
_____
Ernest Olds/Vice President

Attest:

Brad A. Hastings
_____
Corporate Secretary

[Corporate Seal]

COUNTY OF BRUNSWICK

_____
Chairman, Board of Commissioners

Attest:

_____
Clerk to the Board

[SEAL]

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

Freyja Cahill
_____
Freyja Cahill, Finance Officer
Brunswick County Board of Education
4.9020.697.526.326.875.00

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

_____
Aaron C. Smith, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

_____
Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney
Brunswick County, North Carolina

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EXHIBIT A

CONSTRUCTION CONTRACT AWARD PRICE

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Design, Construction And Equipment Budget- Nbhs Addition And Improvements

DESIGN FEE	$1,057,000
PRECONSTRUCTION (CM)	$147,459
CONSTRUCTION CONTRACT AWARD PRICE-INCLUDES COST OF WORK, GENERAL CONDITIONS, CM FEE, CM CONTINGENCY, BONDS/INS.	$21,568,309
OWNER CONTINGENCY	$558,300
FURNITURE, EQUIPMENT, FEES, TESTING	$649,070
TOTAL	$23,980,138

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EXHIBIT B

PROGRAM OF REQUIREMENTS

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PROGRAM OF REQUIREMENTS

The program consists of the design and construction of new classrooms and athletic field/playing areas. The project will generally follow the master plan included in this section, described and/or modified herein. Specifically, the project program includes

- A 12-classroom addition. The building design will include a new band room and ancillary spaces as a bid alternate, and the provisions for a 4-classroom future addition. Provisions shall include adequate number of plumbing fixtures for build-out, electrical circuits sized for future build-out, and all other interfacing utility infrastructure wireways routed from the natural point of origination to the to the common expansion wall.
- Relocation of underground utilities from under building (and future classroom) footprints and paved athletic surfaces.
- The relocation and on-site set-up of 2 doublewide modular units
- Construction of a fire road to replace demolished sections of the existing fire road
- Construction of a new softball field, press box, dugouts, and scoreboard. Field shall be fenced and irrigated. Scope work shall include the relocation of LED field lights and poles.
- Construction of a 6-tennis court playing area adjacent to Old Fayetteville Road. The area will include male and female restrooms, a small concession (package goods) disbursement area, and a small storage area.
- Construction of 3 practice fields adjacent to the 12-classroom addition. The fields will be irrigated
- Modification of the front stormwater pond, completion of a new pond in the rear, and installation of required piping and appurtenances per the approved stormwater plan. Installation of erosion control measures. The civil engineer is to submit the stormwater and erosion control plan applications to the authority having jurisdiction.
- One additional parking lot for parking of the staff in the new addition and local road improvements if necessary.
- All demolition required to perform the scope of services. Items to include but are not limited to paving, masonry structures, electrical services, plumbing services, and fencing.
- And other non-specified items required for a complete design.

The design is by architect/engineer unless identified as a delegated design. Demolition and construction is through the CM unless indicated otherwise in the contract documents.

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EXHIBIT C

MANAGEMENT PLAN

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MILESTONES TO SUPPORT AUGUST 1, 2024 SUBSTANTIAL COMPLETION

Construction Manager at Risk Notice to Proceed..... September 8, 2022

Architect/Engineer Notice to Proceed..... September 8, 2022

Design/Permitting/Construction Drawings.....March 31, 2023

GMP Acceptance/Construction Notice to Proceed .....June 1, 2023

Construction Substantial Completion.....August 1, 2024

Project Completion ..... September 1, 2024

Construction Manager to Generate Detailed Comprehensive Management/Construction Schedules with Interim Dates for use During Design and Construction

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EXHIBIT D

AGREEMENT FOR CONSULTANTS SERVICES

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EXHIBIT D

AGREEMENT FOR CONSULTANT'S SERVICES

The undersigned Consultant and Architect agree as follows on the furnishing of services by the consultant for: (structural) (mechanical) (electrical) work for this Project to be executed under Agreement for Design Consultant Services with the Owner, dated _____ for the following Project:

Pertinent provisions of this Agreement for Design Consultant Services shall govern work to be performed by the Consultant and the Architect. By signing this document, the Consultant verifies that he has read and is thoroughly familiar with this Agreement for Design Consultant Services, and that he has not otherwise relied on any representations or assurances by any person as to the terms of the said Agreement for Design Consultant Services.

Services rendered by the Consultant shall be complete, including drawings and specifications, visits to the site at intervals appropriate to the stage of construction, reports, shop drawing approval and final certificate of compliance.

The Architect will act as principal coordinator and prime designer.

CONSULTANT:	**ARCHITECT:**
BY:_____	BY:_____
President	President
ATTEST:	ATTEST:
_____	_____
Secretary	Secretary
DATE: _____	DATE: _____

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EXHIBIT E

DESIGN CONSULTANT FEES

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HOURLY RATE SCHEDULE

Principal	$225-275/hr
Senior Associate	$150-200/hr
Associate	$120-160/hr
Architect/Engineer/Interior Designer	$145-165/hr
Designer	$100-145/hr
Technician	$ 50-110/hr
Support	$ 50-150/hr
Expert Witness	1.5 x billing rate
3D Scanner	$200

**Rates subject to change each January*

Any consultants required and authorized by the Owner will be billed at cost plus (10) ten percent

Reproduction Expenses

Plots	Size	Regular	Color
	18x24	$ 5.00	$10.00
	24x36	$10.00	$15.00
	30x42	$15.00	$20.00
Photocopies	8 1⁄2 x 11	$ .15	$ .50
	8 1⁄2 x 14	$ .20	$ .75
	11x17	$ .25	$ 1.00
Prints	18x24	$ 2.00	
	24x36	$ 3.00	
	30x42	$ 4.00	

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EXHIBIT F

SEXUAL OFFENDER CERTIFICATION FORMS

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Sexual Offender Registry Check Certification Form

Check the appropriate box to indicate the type of check:

- [x] Initial
- [ ] Supplemental
- [ ] Annual

I, **Ernest W. Olds** (insert name), **Vice President** (insert title) of **Becker Morgan Group Inc** (insert company name) hereby certify that I have performed all of the required sexual offender registry checks required under this Agreement for all contractual personnel (employees, agents, ownership personnel, or contractors) who may be used to deliver goods or provide services under this Agreement, including the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry. I further certify that none of the individuals listed below appears on any of the above-named registries and that I will not assign any individual to deliver goods or perform services under this Agreement if said individual appears on any of the sex offender registries. I agree to maintain all records and documents associated with these registry checks, and that I will provide such records and documents to the school system upon request. I specifically acknowledge that the school system retains the right to audit these records to ensure compliance with this section at any time in the school system's sole discretion. I acknowledge that I am required to perform these checks and provide this certification form before any work is performed under the Agreement (initial check), any time additional contractual personnel may perform work under the Agreement (supplemental check), and at each anniversary date of the Agreement (annual check).

Contractual Personnel Names	Job Title
1. Rick M. Collins	Project Architect
2. Laura J. Rezek	Designer
3. Kimberly L. Wilson	Administrator
4. Emily E. Purdum	Architect
5. Molly M. Marino	Architect

(attach additional page(s) if needed)

I attest that the forgoing information is true and accurate to the best of my knowledge.

Ernest W. Olds (print name) Ernest Olds (signature)

Vice President (title) **8/23/2022** (date)

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EXHIBIT G

OWNER AND CONSTRUCTION MANAGER AT RISK AGREEMENT

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Agreement Between
Owner and Construction Manager at Risk

AGREEMENT

Made this 7th day of September in the year of Two Thousand and Twenty-Two.

BETWEEN: The Owner, Brunswick County by and through its authorized agent, Brunswick County Board of Education

And the Construction Manager (hereinafter referred to as the "CM"): Barnhill Contracting Company

For services in connection with the Project known as:

North Brunswick High School Addition and Improvement.

As further described in Article 2:

_____

Design Consultant:

Becker Morgan Group
3333 Jaeckle Dr. Ste 120
Wilmington, NC 28403

The Owner and CM, in consideration of their mutual covenants herein, agree as set forth below:

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2. Project Definition
3. Construction Manager's Basic Services
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5. Changes in the Construction Manager's Basic Services and Additional Compensation
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7. Compensation for CM Services and Payment
8. Insurance and Mutual Indemnity
9. Suspension
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11. Additional Provisions
12. Special Guaranteed Maximum Price Provisions

Appendix:

A. Design Consultant Agreement - CM at Risk Projects
B-1 Management Plan (preliminary)
B-2 Construction Schedules and Reports
C. Sales Tax Reporting Form
D-1. Lump Sum Change Proposal Form
D-2. Time and Material Change Proposal Form
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ARTICLE 1
RELATIONSHIP OF THE PARTIES

1.1 Owner and Construction Manager

The CM and the Owner shall perform as stated in this Agreement and each accepts the relationship between them that is established by this Agreement.

1.1.1 Standard of Care

The CM covenants with the Owner to furnish its skill and judgment with due care in accordance with applicable federal, state, and local laws and regulations that are in effect on the date of this Agreement first written above. The CM shall perform its services, including but not limited to the Basic Services and any Additional Services authorized in writing by the Owner, consistent with the professional skill and care ordinarily provided by CMs practicing in or around the state of North Carolina area under the same or similar circumstances. The CM shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

1.1.2 CM Representations

The CM represents and warrants that at the time of execution of this Agreement the CM has and will retain all licenses and certifications required of him to perform the work identified in this Agreement and associated contract documents. The CM shall keep this licensure in good standing without lapse throughout the term of this Agreement. The CM shall provide proof of this licensure to the Owner and/or Design Consultant upon request.

By execution of this Agreement, the CM warrants that (a) it is an experienced and duly licensed having the ability and skill necessary to perform all the work required of it under this Agreement in connection with the design and construction of a project having the scope and complexity of the Project contemplated herein; (b) it has the capabilities and resources necessary to perform its obligations hereunder; and (c) it is familiar with all current laws, rules and regulations which are applicable to the construction of the Project, and that the CM's work on the Project shall be performed in accordance with all such applicable laws, rules and regulations.

1.2 Owner and Design Consultant

The Owner shall contract separately with one or more Design Consultants to provide architectural and engineering design for the Project. The Project is defined in Article 2 of this Agreement. The Design Consultant's services shall be as stated in this Agreement and as defined in the form agreement between the Owner and Design Consultant attached as Appendix A.

1.3 Owner and Contractors

The Owner will require the CM to contract directly with such Contractors as may be necessary for construction or supply of the Project. All such contracts shall be issued consistent with the applicable provisions of this Agreement and N.C. Gen. Stat. § 143-128.1, 143-128.2 to -128.4, 143.129, 143-135.8, and are subject to review and final approval by Brunswick County.

1.4 Relationship of the CM to the Design Consultant and Other Project Participants

In providing construction management services described in this Agreement, the CM shall maintain a working relationship with the Design Consultant. The Design Consultant is solely responsible for the Project design and shall perform in accordance with the Design Consultant Agreement with the Owner and nothing in this Agreement shall be construed to mean that the CM is responsible for the design of the Project or that the

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CM assumes any of the contractual or customary duties of the Design Consultant or any other persons or parties not specified by this Agreement.

ARTICLE 2
PROJECT DEFINITION

The term "Project" when used in the Agreement shall mean the total construction of which the Work may be a whole or part of the Project. The term "Work" required for the "Project" used in this Agreement shall mean the various parts of total construction to be performed under this Agreement.

The Project name and locations are as follows:
North Brunswick High School Addition and Improvements
114 Scorpion Dr.
Leland, NC 28451

The Project is intended for use as:

The project will consist of a 2-story 12-classroom addition, a bid alternate band room, and provisions for a future 4-classroom expansion. The site layout will generally conform with but not be limited by the District's Master Plan for the site, which locates the new addition, relocates the fire apparatus access road, relocates the existing tennis courts (adding lighting, a restroom/concession building) relocates the softball field, dugouts, pressbox, and lighting, and constructs 3 new irrigated practice fields of various sizes. Demolition of the certain existing athletic amenities and sections of the existing fire apparatus access road will be required. Required Offsite Road Improvement ($250,000 plus fee allowance included). New staff parking for the addition will also be required. Other miscellaneous items necessary to complete items above may be required.

ARTICLE 3
CONSTRUCTION MANAGER'S BASIC SERVICES

3.1 CM Basic Services

The CM shall perform the Basic Services described herein. It is not required that the Basic Services be performed in the sequence in which they are described.

3.2 Design Phase – Project Management

3.2.1 Project Management

3.2.1.1 Construction Management Plan

The CM shall prepare a Construction Management Plan for the Project within the time mutually established by the Owner and CM and shall make recommendations for revisions to the plan throughout the duration of the Project, as may be appropriate. In preparing the Construction Management Plan, the CM shall consider the Owner's schedule, budget, and design requirements for the Project. The CM shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the Owner. The Construction Management Plan shall also include a description of the various bid packages recommended for the Project. The Construction Management Plan shall be presented to the Owner for acceptance. The CM shall develop a Master Schedule for the Project. The CM shall determine the appropriate bid packages based on the available resources. The CM shall familiarize itself with all available Project funding and work with the Owner and Design Consultant to maximize the scope and quality of the Project based upon the available funds. The CM shall make recommendations regarding communication among the parties in an effort to ensure the prompt and proper flow of Project information. The CM shall outline its plan for minority

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business enterprise participation goals required by state law and the Owner, including providing all information necessary for the Owner to make the required reports to the North Carolina Department of Administration, Office of Historically Underutilized Businesses. The CM shall include a Project safety plan covering all critical areas of the Project.

3.2.2 Time Management

3.2.2.1 Master Schedule

In accordance with the Construction Management Plan, the CM shall prepare a Master Schedule for the Project in accordance with the deadlines established by the Owner. The Master Schedule shall specify the proposed start and finish dates for each major Project activity. The CM shall submit the Master Schedule to the Owner for acceptance.

3.2.2.2 Design Phase Milestone Schedule

After the Owner accepts the Master Schedule the CM shall prepare a Milestone Schedule for the Design Phase. The Design Phase Milestone Schedule may be used in the request for proposals and contract for the Design Consultant and shall be a method for judging progress during the Design Phase. The CM shall track the Design Consultant's progress during the design phase and alert the Owner of any delays in the Design Consultant's timely completion of its services.

3.2.3 Cost Management

3.2.3.1 Construction Market Survey

The CM shall conduct a Construction Market Survey to provide current information regarding the general availability of local construction services, labor, materials and equipment cost and other economic factors related to the Project.

3.2.3.2 Project and Construction Budget

Based on the Construction Management Plan and the Construction Market Survey, the CM shall prepare a Project and Construction Budget based on separate divisions of the Work required for the Project and shall identify contingencies for design and construction. The CM shall submit the Project and Construction Budget to the Owner for acceptance. The CM shall make recommendations to the Owner and Design Consultant regarding whether the Owner should conduct any additional geotechnical, environmental or other inspections of the Project site reasonably necessary for the CM to estimate the cost of the work and minimize change orders due to unforeseen conditions. If the Project involves renovation work, the CM shall perform inspections of the existing building and Project conditions and perform any destructive testing reasonably necessary for the Design Consultant to prepare a complete and accurate set of construction documents and allowing the CM to estimate the cost of the work in order to minimize change orders due to unforeseen conditions. The cost of any destructive testing shall be billed as a reimbursable and shall not be included in the CM's fee for basic services. The Project and Construction Budget shall be revised as directed by the Owner.

3.2.3.3 Preliminary Estimate and Budget Analysis

The CM shall analyze and report to the Owner the cost of various design and construction alternatives, including CM's assumptions in preparing its analysis, a variance analysis between budget and preliminary estimate, and recommendations for any adjustments to the budget. As a part of the cost analysis, the CM shall consider costs relating to efficiency, usable life, maintenance, energy, and operation.

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3.3 Design Phase – Design Support

3.3.1 Project Management

3.3.1.1 Revisions to the Construction Management Plan

During the Design Phase, the CM shall make the recommendations to the Owner regarding revisions to the Construction Management Plan. Revisions approved by the Owner shall be incorporated into the Construction Management Plan.

3.3.1.2 Project Conference

At the start of the Design Phase, the CM shall conduct a Project conference attended by the Design Consultant, the Owner and others as necessary. During the Project Conference, the CM shall review the Construction Management Plan, the Master Schedule, the Design Phase Milestone Schedule, the Project and Construction Budget, and the Management Information Systems ("MIS"), as more fully set forth below. The CM shall be responsible for tracking the progress of the design in relation to the Design Phase Milestone Schedule and shall promptly notify Owner of any delay. The CM shall make recommendations to the Owner, with a copy to the Design Consultant, regarding strategies for overcoming any delay in the design of the Project.

3.3.1.3 Design Phase Information

The CM shall monitor the Design Consultant's compliance with the Construction Management Plan and the MIS and the CM shall coordinate and expedite the flow of information between the Owner, Design Consultant, and others as necessary.

3.3.1.4 Progress Meetings

The CM shall conduct periodic progress meetings attended by the Owner, Design Consultant and others as necessary. Such meetings shall serve as a forum for the exchange of information concerning the Project and the review of design progress. The CM shall prepare and distribute minutes of these meetings to the Owner, Design Consultant and others. During the periodic progress meetings the CM shall update the Owner and Design Consultant regarding the estimated cost of the design and make recommendations to the Owner and Design Consultant regarding constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction, and any other information reasonably necessary to assist the Design Consultant with cost, budget and schedule requirements.

3.3.1.5 Review of Design Documents

The CM shall review the design documents and any addenda or other information from the Design Consultant for clarity, consistency, constructability and coordination among the Contractors. If the Project is a prototype that has been previously constructed, the CM shall verify that all applicable change orders from previous Projects have been incorporated into the bidding documents. The results of the review shall be provided in writing as notations on the documents. The CM is not responsible for providing, nor does the CM control, the Project design and contents of the design documents. By performing the reviews described herein, the CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design and design documents. The CM's actions in reviewing the Project design and design documents and in making recommendations as provided herein are for the use of the Owner and Design Consultant.

3.3.1.6 Design Recommendations

The CM shall make recommendations to the Owner and Design Consultant with respect to constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction, and separation of the Project contracts for various categories

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of Work. In addition, the CM shall give to the Design Consultant all data of which it or the Owner is aware concerning patents or copyrights for inclusion in Contract Documents.

3.3.1.6.1 On renovation Projects, the CM shall:

.1 Conduct thorough evaluation of existing conditions of building(s), all building systems, site, and site infrastructure;

.2 Conduct destructive and non-destructive testing as necessary to thoroughly evaluate existing conditions of the building(s), building systems, site, and site infrastructure (all testing, whether destructive or non-destructive, is to be approved in advance by the Owner and shall be coordinated to occur at a time that will reasonably allow the information to be used by the Design Consultant in the in the preparation of the contract documents);

.3 Report to Owner and Design Consultant during design phase regarding findings of evaluation of existing building(s), building systems, site, and site infrastructure and make recommendations to the Owner and Design Consultant that will assist with establishing cost, budget, and schedule requirements;

.4 Work with Owner and Design Consultant during design phase to create phasing plans that allow the work to be conducted in the most expedient manner while taking into account both cost and time;

.5 Develop a plan to address the safety and security of all students, staff, visitors that will be on a site that is being used as a school during construction, including a plan that minimizes noise levels that would be disruptive to the educational environment without the prior approval of the Owner.

3.3.1.7 Owner Design Reviews

The CM shall coordinate the Owner's design reviews by compiling and conveying the Owner's comments to the Design Consultant.

3.3.1.8 Approvals by Regulatory Agencies

The CM shall monitor transmittal of documents to regulatory agencies for review and shall advise of potential problems in completing such reviews of which the CM is aware.

3.3.1.9 General Conditions

The General Conditions for use in the contracts between the CM and the Contractors for construction of the Project shall be developed by the CM. Separate General Conditions for materials and equipment procurement shall be prepared by the CM to meet the specific requirements of the Project and all of the requirements of this Agreement.

In interpreting the requirements of this Agreement, anything shown on the Design Consultant's drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings shall have the same effect as if shown or mentioned respectively in both. The Design Consultant's technical specifications take priority over general specifications and detail drawings take precedence over general drawings. Any work shown on one drawing shall be construed to be shown in all relevant drawings, and the CM will coordinate the work and the drawings. If any portion of the Design Consultant's plans and specifications shall be in conflict with any other portion, the various documents comprising the contract documents shall govern in the following order of precedence: this Agreement; any addendum issued by the Design Consultant; the specifications; the drawings; as between schedules and information given on drawings, the schedules shall govern; as between figures given on drawings and the scaled measurements, the figures shall govern; as between large-scale drawings and small scale drawings, the larger scale drawings shall govern. Any such conflict or inconsistency between or in the drawings shall be submitted to the Design Consultant whose decision thereon shall be final and conclusive.

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3.3.1.10 Public Relations

The CM shall assist the Owner in public relations activities and shall prepare information for and attend public meetings regarding the Project.

3.3.1.11 Project Funding

The CM shall assist the Owner in preparing documents concerning the Project and Construction Budget and for use in obtaining or reporting on Project funding. The documents shall be prepared in a form approved by the Owner.

3.3.2 Time Management

3.3.2.1 Revisions to Master Schedule

While performing the services provided in Paragraphs 3.3.1.1, 3.3.1.2 and as necessary throughout the Design Phase, the CM shall recommend revisions to the Master Schedule. The Owner shall issue change orders as needed to the appropriate parties to implement the Master Schedule revisions.

3.3.2.2 Monitoring the Design Phase Milestone Schedule

While performing the services provided in Paragraphs 3.3.1.3, and 3.3.1.4, the CM shall monitor compliance with the Design Phase Milestone Schedule.

3.3.2.3 Pre-Bid Construction Schedules

Prior to transmitting Contract Documents to bidders, the CM shall prepare a Pre-Bid Construction Schedule for each part of the Project and make the schedule available to the bidders during the Procurement Phase.

3.3.3 Cost Management

3.3.3.1 Cost Control

Following the completion of each design phase milestone, the CM shall prepare an estimate of the construction cost for the Design Drawings and Specifications furnished by the Design Consultant. Each estimate shall be accompanied by a report to the Owner and Design Consultant identifying variances from the Project and Construction Budget as well as CM's assumptions in preparing the estimate. The CM shall coordinate the activities of the Owner and Design Consultant when changes to the design are required to remain within the Project and Construction Budget.

3.3.3.2 Project and Construction Budget Revision

The CM shall make recommendations to the Owner concerning the design changes that may result in revisions to the Project and Construction Budget and divisions of the Work required for the Project.

3.3.3.3 Value Engineering Studies

The CM shall provide value engineering recommendations to the Owner and Design Consultant for major construction components, including cost evaluations of alternative materials and systems.

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3.3.4 Management Information System (MIS)

3.3.4.1 Schedule Reports

In conjunction with the services provided by Paragraph 3.3.2.1, the CM shall prepare and distribute schedule maintenance reports that shall contrast actual progress against scheduled progress for the Design Phase and the overall Project and shall make recommendations to the Owner for corrective action.

3.3.4.2 Project Cost Reports

The CM shall prepare and distribute Project cost reports that shall indicate estimated costs compared to the Project and Construction Budget and shall make recommendations to the Owner for corrective action.

3.3.4.3 Cash Flow Report

The CM shall upon request by owner prepare and distribute a cash flow report.

3.3.4.4 Design Phase Change Order Report

The CM shall prepare and distribute Design Phase change order reports that shall list all Owner-approved change orders as of the date of the report and shall state the effect of the change orders on the Project and Construction Budget and the Master Schedule.

3.4 Procurement Phase

3.4.1 Project Management

The CM shall procure bids in accordance with N.C. Gen. Stat. § 143-128.1, 143-128.2 to -128.4, 143-135.8. The CM shall prequalify all bidders in accordance with G.S. 143-135.8 and this Agreement. The CM shall ensure that all minority business participation goal requirements are followed in the solicitation and award of contracts. The CM shall report its efforts to solicit minority business participation to the Owner in writing. Unless approved otherwise by the Owner, a minimum of three bids following N.C. Gen Stat. § 143-132 shall be required for first-round opening if bids are received in advance of the guaranteed maximum price ("GMP") having been established.

3.4.1.1 Prequalifying Bidders

The CM shall develop lists of possible bidders and prequalify-bidders. This service shall be performed in accordance with G.S. 143-128.1, 143-128.2 to -128.4, 143-135.8, and the Owner's prequalification of bidders for construction projects policy. The CM shall also prepare and transmit to the Owner a list of prequalified and disqualified bidders for each bid package. The CM shall provide the Owner with the reasons that any prospective bidders have been disqualified. The Owner shall notify the CM promptly of any reasonable objections to a proposed bidder, and the CM shall remove that bidder from the bidders list.

The CM shall provide the Owner with a list of all businesses in which the CM's Owners have any ownership interest if the business is engaged in the construction industry, including demolition and the supply of materials for construction, and the CM intends to solicit bids for any work on the Project from the business. The CM shall provide said list to the Owner prior to prequalifying bidders for the work. The Owner shall determine whether any business listed may submit a bid or perform any work on the Project.

3.4.1.2 Bidder's Interest Campaign

The CM shall conduct a thorough campaign to create interest among qualified bidders. The CM shall provide written documents of these efforts to the Owner prior to bidding the work.

3.4.1.3 Notices and Advertisements

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The CM shall prepare and place notices and advertisements to solicit bids for the Project as prescribed by N.C. Gen. Stat. § 143-128.1, 143-128.2 to -128.4, and 143-135.8.

3.4.1.4 Delivery of Bid Documents

The CM shall expedite the delivery of bid documents to the bidders. The CM shall obtain documents from the Design Consultant and arrange for printing, binding, wrapping and delivery to the bidders. The CM shall maintain a record of bidders receiving documents. The CM shall notify the Owner in advance, in writing, of the anticipated number of bid documents to be produced. The Owner shall reimburse the CM for the actual cost of bid documents.

3.4.1.5 Pre-Bid Conference

In conjunction with the Design Consultant, the CM shall conduct a Pre-Bid Conference. These conferences shall be forums for the CM and Design Consultant to explain to the bidders the Project requirements, including information concerning schedule requirements, time and cost control requirements, access requirements, contractor interfaces, the Project administrative requirements and technical information.

3.4.1.6 Information to Bidders

The CM shall develop and coordinate procedures to provide answers to bidders' questions.

3.4.1.6.1 Site Access for Bidders

In the event bidders require access to the site in order to gain information necessary to prepare their bids, the CM shall be responsible for coordinating access with the Owner. Any access shall be during regular business hours or otherwise at a time that would not unreasonably disturb the adjacent property Owners or interfere with the school day. If the information sought by the bidders requires any alteration to the existing building or site or destructive testing, the CM shall notify the Owner in advance and coordinate said work so that it does not cause any disruption to the current use of the site or building. The CM shall ensure that any disturbed areas are repaired if the building is currently being used by the Owner. In all situations, the CM shall ensure that the site or building is left in a safe and secure condition and that the disturbed area is cleaned of any debris resulting from the access. In the event that the bidders' access disturbs any adjacent property, including depositing dirt, soil or debris on the roads adjacent to the site, the CM shall promptly clean any and all areas and be responsible for any claims, fines or penalties resulting from said access.

3.4.1.7 Addenda

The CM shall receive from the Design Consultant a copy of all addenda. The CM shall review addenda for clarity, consistency and coordination. By performing the reviews described herein, the CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design. The CM shall also distribute a copy of all addenda to each bidder receiving documents.

3.4.1.8 Bid Opening

The CM shall act as the fiduciary of the public entity in handling and opening bids. All bids shall be received and opened in a manner agreed upon by the Owner. The CM shall conduct bid openings and shall evaluate the bids to determine the lowest responsive and responsible bidder, taking into consideration quality, performance, and time specified to perform. The contracts shall be awarded in accordance with N.C. Gen. Stat. § 143-128.1.

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3.4.1.9 Construction Contracts

The CM shall prepare, execute, and deliver the contract documents between the CM and the Contractors. The contract documents shall consist of the plans and specifications, any addendum, the general conditions, the form of Agreement between the CM and the contractor, and any other documents incorporated by the CM. The CM shall also issue the notices to proceed. The CM shall not issue contract documents or notices to proceed with the work to the contractors until the Owner and CM have agreed upon the amount of the GMP and the Owner has notified the CM that it can proceed with the work.

3.4.1.10 Permits, Insurance and Labor Affidavits

The CM shall verify that the Contractors have secured the required building permits, bonds, insurance, labor affidavits, and waivers.

3.4.2 Time Management

3.4.2.1 Pre-Bid Construction Schedule

The CM shall inform the bidders of their responsibilities regarding the Pre-Bid Construction Schedule specified in the Instructions to Bidders or Contract Documents. The CM shall inform the bidders of the Owner's requirements for scheduling and communication between the parties.

3.4.2.2 Construction Schedule

The CM shall provide a copy of the Master Schedule to the bidders. The CM shall prepare a Construction Schedule and all updates in accordance with the Owner's scheduling requirements. The Owner shall provide the CM with its scheduling requirements prior to receipt of bids for the Project.

3.4.3 Cost Management

3.4.3.1 Estimates for Addenda

Unless the Owner has elected to establish the GMP after bids have been received, the CM shall prepare an estimate of costs for all addenda and shall submit the estimates to the Owner for approval. After approval by the Owner, the addenda shall be transmitted to bidders and the Guaranteed Maximum Price and the CM's compensation shall be adjusted as provided in this Agreement.

3.4.3.2 Analyzing Bids: Upon receipt of bids, the CM shall evaluate the bids, including alternate prices and unit prices.

3.4.4 Management Information System (MIS)

3.4.4.1 Schedule Maintenance Reports

The CM shall prepare and distribute schedule maintenance reports during the Procurement Phase. The reports shall compare the actual bid and award dates to scheduled bid and award dates and shall summarize the progress of the Project.

3.4.4.2 Project Cost Reports

The CM shall prepare and distribute the Project cost reports during the Procurement Phase. The reports shall specify the actual award prices and construction costs for the Project, compared to the Project and Construction Budget. The CM shall provide updated Project cost reports to the Owner, with a copy to the Design Consultant, on at least a monthly basis.

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3.4.4.3 Cash Flow Reports

The CM shall prepare and distribute cash flow reports during the Procurement Phase. The reports shall be based on actual award prices and construction costs for the Project and the reports shall specify the actual cash flow compared to the projected cash flow.

3.5 Construction Phase

3.5.1 Project Management

3.5.1.1 Pre-Construction Conference

In connection with the Design Consultant, the CM shall conduct a Pre-Construction Conference during which the CM shall review the reporting procedures, site operations and other contractual requirements.

3.5.1.2 Onsite Management and Construction Phase Communication Procedures

The CM shall provide and maintain a management team on the Project site to provide contract administration and the CM shall establish and implement coordination and communication procedures among the CM, Owner, Design Consultant, and Contractors. The CM's Project manager and superintendent shall be approved by the Owner. The Owner reserves the right to require the removal of a particular PM or superintendent at any time the Owner reasonably believes the PM or superintendent is adversely impacting the Project. A PM or superintendent approved by the Owner shall not be reassigned by the CM unless they cease to be on the CM's payroll or the Owner otherwise agrees the CM shall observe the work as required for general conformance with the contract documents. The CM shall be responsible for Project site safety and the means and methods for the construction of the Project.

3.5.1.3 Contract Administration Procedures

The CM shall establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, Contractor schedule adjustments, change orders, substitutes, payment requests and the maintenance of logs. The CM shall maintain daily job reports. The CM shall be the party to whom requests for information, submittals, Contractor schedule adjustments, substitutes, change order requests and payment requests shall be submitted. The CM shall provide periodic reports to the Owner, with a copy to the Design Consultant, updating the status of the Project. The reports shall be provided not less than bi-weekly. The Owner shall have no duty to respond to any information in the periodic reports, unless the CM specifically requests a response or action by the Owner in writing in a separate document.

3.5.1.4 Project Site Meetings

Periodically the CM shall conduct meetings at the Project site with each Contractor and the CM shall conduct coordination meetings with all Contractors, the Owner and Design Consultant. The CM shall conduct weekly progress meetings with the Owner and Design Consultant. The CM shall record, transcribe and distribute minutes to all attendees, the Owner and Design Consultant.

3.5.1.5 Coordination of Other Independent Consultants

Technical inspection and testing provided by the Design Consultant or others shall be coordinated by the CM. The CM shall be provided with a copy of all inspection and testing reports on the day of the inspection or test or when issued. The CM is not responsible for providing, nor does the CM control, the actual performance of technical inspection and testing. The CM is performing a coordination function and is not acting in a manner so as to assume responsibility, in part or in whole, for all or any part of such inspection and testing.

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3.5.1.6 Review of Requests for Changes to the Contract Time and Price

The CM shall review the contents of a request for changes to the construction contract time or price submitted by a Contractor, assemble information concerning the request and endeavor to determine the cause of the requests. In instances where the CM's analysis reveals that the request is valid, the CM shall prepare a detailed report to the Owner and Design Consultant for review. If the Owner approves the change, the Design Consultant shall prepare the necessary change order documents for signing by the CM and Owner. The CM shall prepare the necessary change order documents for execution by the CM and contractors.

3.5.1.7 Quality Review

The CM shall establish and implement a program to monitor the quality of construction. The CM shall observe the work as required for general conformance with the contract documents. The purpose of the program shall be to guard the Owner against defects and deficiency in the work of the Contractor. The CM shall transmit to the Contractor a notice of nonconforming work and may reject work when it is the opinion of the CM that the work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the CM is not authorized as part of this service to change, evoke, enlarge, relax, alter, or to release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents. The Design Consultant shall have the final authority to decide the acceptability of the work.

3.5.1.8 Operation and Maintenance Materials

The CM shall receive from the Contractors operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project, in accordance with the Contract Documents.

3.5.1.9 Substantial Completion

The date of substantial completion of the work or designated portion thereof is the date certified by the Design Consultant 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, including a preliminary test and balance report for the mechanical system. The CM acknowledges and agrees that the intercom, telephone, data, security, building automation system (including functional graphics at the site), MATV, and other educational operational systems are required for the Owner's use of the building for its intended purpose. The CM shall provide operation & maintenance manuals to the Owner as required by the contract documents prior to substantial completion and shall provide the required training on the operation of the equipment and systems within two weeks of substantial completion of the Project. The Owner's occupancy of incomplete work shall not alter the CM's responsibilities pursuant to this paragraph. 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.

When the CM considers that the work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined above, the CM shall prepare for and submit to the Design Consultant and Owner a list of all items which in the CM's opinion are to be completed or corrected and shall attach it to a request in writing that the Design Consultant perform a substantial completion inspection. The Owner's occupancy of incomplete work shall not alter the contractor's responsibilities. The Design Consultant shall review the CM's list and shall compile a punch list of items to be corrected and completed. The failure to include any items on such list does not alter the responsibility of the CM to complete all work in accordance with the contract documents. When the Design Consultant and CM on the basis of an inspection jointly determine that the work or designated portion thereof is substantially complete, the Design Consultant 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 CM for security, maintenance, heat, utilities, damage to the work, and insurance, and shall signify the beginning of the time within which the CM shall complete the items listed therein. Warranties required by the contract documents shall commence on the date of substantial

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completion of the work or designated portion thereof, unless otherwise provided in the certificate of substantial completion. The certificate of substantial completion shall be submitted to the Owner and the CM for their written acceptance of the responsibilities assigned to them in such certificate.

Upon substantial completion of the work or designated portion thereof and upon application by the CM and certification by the Design Consultant, the Owner shall make payment, except retainage held pursuant to the contract documents and state law, for such work or portion thereof as provided in the contract documents.

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

The Owner shall have the option to correct or complete any and all punch list items not completed by the CM to the satisfaction of the Design Consultant and the Owner within the time specified for final completion by utilizing its own forces or by hiring others. The cost of such correction of remaining punch list items by the Owner or others shall be deducted from the final payment to the CM. If CM does not complete certain punch list items within the required time period, all warranties and guarantees for such incomplete punch list items shall become effective upon issuance of final payment for the Project.

The issuance of the certificate of substantial completion does not indicate final acceptance of the Project by the Owner, and the CM is not relieved of any responsibility for the Project except as specifically stated in the certificate of substantial completion.

Should the Design Consultant and the Owner determine that the work or a designated portion thereof is not substantially complete, they shall provide the CM with written notice stating why the Project or designated portion is not substantially complete. The CM shall expeditiously complete the work and shall re-request in writing that the Design Consultant perform another substantial completion inspection. Costs, if any, associated with such reinspection shall be assessed to the CM at the rate specified in the Design Consultant's contract.

3.5.1.10 Final Completion

In consultation with the CM and Owner, the Design Consultant shall determine when the Project and the contractors' work is finally completed and, following completion of corrections, the Design Consultant shall issue a certificate of final completion to the Owner. 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 Project 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. If more than two (2) final completion inspections are required by the Design Consultant due to the CM's failure to complete the work, the additional inspections shall be charged to the CM at the rate specified in the Design Consultant's contract all punch list work shall be complete. If any change order is issued for work to be performed after the substantial completion certificate is issued, the completion date for that work shall be established separately and shall not prevent the Project from achieving final completion for purposes of Sections 7.6 and 7.7 of this Agreement. Following the receipt of payment from the Owner, the CM shall make all payments due to contractors within ten (10) days.

For multi-phased projects, final completion of each phase shall include the completion of all work for the phase with the exception of any system that is required to be integrated into a phase that has a later contract date for final completion. This exception might apply to the HVAC, data, intercom, or similar systems. Notwithstanding the above, complete and proper operation of all systems shall be required for the Project to achieve final completion.

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3.5.2 Schedule

3.5.2.1 Master Schedule

The CM shall adjust and update the Master Schedule and distribute copies to the Owner and Design Consultant. All adjustments to the Master Schedule shall be made for the benefit of the Project.

3.5.2.2 Construction Schedule

The CM shall adjust and update the Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Owner noted in Paragraph 3.4.2.2 and that it establishes completion dates that comply with the requirements of the Master Schedule. The CM agrees that the construction schedule is for the benefit of the entire Project team and by execution of this Agreement gives permission and direction to its scheduler to provide copies of the schedule in a format as required by the Owner.

3.5.2.3 Construction Schedule Report

The CM shall review the progress of construction of each Contractor on a monthly basis, shall evaluate the percentage complete of each construction activity as indicated in the Construction Schedule and shall review such percentages with the Contractor. This evaluation shall serve as data for input to the periodic Construction Schedule report that shall be prepared and distributed to the Contractor, the Owner and Design Consultant. The report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payment to the Contractor. The CM shall determine and implement alternative courses of action that may be necessary to achieve contract compliance by the Contractor.

3.5.2.4 CM Review of Time Extension Requests

The CM shall, prior to the issuance of a change order, determine the effect on the construction and Master Schedules of time extensions requested by the Contractor.

3.5.2.5 Recovery Schedules

The CM shall prepare and submit a recovery schedule in accordance with the Owner's scheduling requirements specified in Appendix B-2.

3.5.3 Cost Management

3.5.3.1 Schedule of Values (Each Contract)

The CM shall, in participation with the Contractors, determine a Schedule of Values for each of the construction contracts. The Schedule of Values shall be the basis for payment to the contractors.

3.5.3.2 Change Order Control

The CM shall establish and implement a change order control system that is approved by the Owner.

3.5.3.2.1 All proposed Owner-initiated change orders shall first be described in detail in writing. In response to the request for a proposal, the Contractor shall submit to the CM for evaluation detailed information concerning the costs and time adjustments, if any, necessary to perform the proposed change order work. The CM shall review the Contractor's proposal, shall discuss the proposed change order with the Contractor and endeavor to determine the Contractor's basis for the cost and time to perform the Work and, as applicable, the effect, if any, on the Guaranteed Maximum Price. The CM shall present its findings to the Owner and, following Owner acceptance, the Design Consultant shall prepare the change order documents for signature by the CM and Owner. Upon execution of the change order documents between the CM and Owner, the CM shall prepare change order documents for signature by the affected Contractor. The CM shall verify that the

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Work, and any adjustment of time required by approved change orders has been incorporated into the Contractor's Construction Schedule.

3.5.3.2.2 The CM shall review the contents of all Contractor-requested changes to the contract time or price, endeavor to determine the effect, if any, on the Guaranteed Maximum Price. The CM shall provide the Design Consultant a copy of each change request, and the CM shall, in its evaluations of the Contractor's request, consider the Design Consultant's comments regarding the proposed changes. The CM shall present its findings to the Owner regarding the proposed changes and at the Owner's direction, shall prepare the change order documents for signature by the CM and Owner. Upon execution of the change order documents between the CM and Owner, the CM shall prepare change order documents for signature by the affected contractor.

3.5.3.3 Cost Records

In instances where a lump sum or unit price is not determined prior to performing Work described in a request for proposal as provided in Paragraph 3.5.3.2, the CM shall request from the Contractor records of the cost of payroll, materials and equipment and the amount of payments to subcontractors incurred by the Contractor in performing the Work.

3.5.3.4 Trade-Off Studies

The CM shall provide trade-off studies for various minor construction components. The results of the trade-off studies shall be in report form and distributed to the Owner and Design Consultant.

3.5.3.5 Progress Payments

In consultation with the Design Consultant, the CM shall inspect the work in order to ensure compliance with the contract documents, review the payment applications submitted by each contractor and determine whether the amount requested reflects the progress of the Contractor's Work. The CM shall make appropriate adjustments to each payment application and shall prepare and forward to the Owner a progress payment report. The report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a certificate of payment that shall be signed by the CM and delivered to the Owner. The CM shall make payments that are due to all contractors, suppliers, and material men within ten (10) days following the receipt of payment for the work from the Owner. In addition, the CM shall keep the Project and the site on which Work is performed free and clear of all liens from Contractors, subcontractors, or suppliers. The CM shall provide sales tax information using the form attached as Appendix C with each payment application.

Payments may be made by the Owner, at its sole discretion, on account of materials or equipment not incorporated in the work but delivered and suitably stored at the site or in a bonded warehouse by the CM or contactor. Payments for materials or equipment stored shall only be considered upon submission by the CM of satisfactory evidence (for example, releases or paid invoices from the seller) that the CM or the contractor has acquired title to such material, that it will be utilized on the work under this Agreement and that it is satisfactorily stored, protected, and insured or that other procedures satisfactory to the Owner that will protect the Owner's interests have been taken. In the event the materials are stored in a bonded warehouse that is not located in the county of the Project, the CM shall reimburse the travel cost and hourly billing expenses incurred by the Design Consultant for travel to view and assess whether the materials meet the requirements of the contract documents. Materials once paid for by the Owner become the property of the Owner and may not be removed from the work site or bonded warehouse, other than to be delivered from the warehouse to the site, without the Owner's written permission. Responsibility for such stored materials and equipment shall remain with the CM and the contractor regardless of Ownership.

The Owner will retain five percent of the amount for each progress payment on the Project, excluding the amount billed for general conditions, for as long as is authorized by G.S. 143-134.1. At all times during the Project, the Owner shall retain the maximum funds allowed by G.S. 143-134.1. The Owner specifically reserves the right to withhold additional funds as authorized by this Agreement or G.S. 143-134.1.

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3.5.3.6 Decisions to Withhold Payment

The Design Consultant may withhold a certificate for payment in whole or in part, to the extent reasonably necessary to protect the Owner. If the Design Consultant is unable to certify payment in the amount of the application, the Design Consultant will notify the CM and the Owner in writing. If the CM and Design Consultant cannot agree on a revised amount, the Design Consultant will promptly issue a certificate for payment for the amount for which the Design Consultant is able to make such representations to the Owner. The Design Consultant may also withhold a certificate for payment, in whole or in part, to such extent as may be necessary in the Design Consultant's opinion to protect the Owner from loss for which the CM or the contractor(s) is responsible, including loss resulting from acts and omissions, because of:

.1 Defective work not remedied;

.2 Third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the CM;

.3 Failure of the CM or contractor(s) to make payments properly to sub-contractors or for labor, materials or equipment;

.4 Reasonable evidence that the work cannot be completed for the unpaid balance of the contract sum;

.5 Damage to the Owner or another contractor;

.6 Reasonable evidence that the work will not be completed within the contract time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

.7 Failure to carry out the work in accordance with the contract documents;

.8 Failure to provide sales tax documentation as required by the Owner;

.9 Failure or refusal of the contractor to submit the required information on minority business enterprises;

.10 Any other reason deemed necessary by the Design Consultant to protect the Owner; or

.11 Subsequently discovered evidence that work previously approved was not performed in accordance with the contract documents.

3.5.3.7 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

3.5.3.8 No interest shall be added to any amounts withheld pursuant to Paragraph 3.5.3.6.

3.5.4 Management Information System (MIS)

3.5.4.1 Schedule Maintenance Reports

The CM shall prepare and distribute monthly schedule maintenance reports during the Construction Phase. The reports shall compare the actual construction dates to scheduled construction dates of each separate construction contract and to the Master Schedule for the Project.

3.5.4.2 Project Cost Reports

The CM shall prepare and distribute monthly Project cost reports during the Construction Phase. The reports shall specify actual Project and construction costs compared to the Project and Construction Budget.

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3.5.4.3 Project and Construction Budget Revisions

The CM shall make recommendations to the Owner concerning construction changes that may result in revisions to the Project and Construction Budget or Guaranteed Maximum Price.

3.5.4.4 Cash Flow Reports

The CM shall prepare and distribute cash flow reports during the Construction Phase. The reports shall specify actual cash flow as compared to projected cash flow.

3.5.4.5 Progress Payment Reports (Each Contract)

The CM shall prepare and distribute the progress payment reports. The reports shall state the total construction contract price, payment to date, current payment requested, retainage, sales tax paid, and actual amounts owed this period. A portion of this report shall be a certificate of payment that shall be signed by the CM certifying that the work complies with the contract documents and delivered to the Owner for use by the Owner in making payments to the CM.

3.5.4.6 Change Order Reports

The CM shall periodically prepare and distribute change order reports during the Construction Phase. The report shall list all Owner-approved change orders by number, a brief description of the change order work, the cost established in the change order and percent of completion of the change order work. The report shall also include similar information for potential change orders of which the CM may be aware. The report shall also include a summary of the impact of the change orders on the Project schedule and completion dates.

3.5.4.7 Contractor's Safety Program

The CM shall review the safety programs of each Contractor and confirm that each Contractor has established safety programs as required by the Contract Documents.

3.6 Post Construction Phase

3.6.1 Project Management

3.6.1.1 Record Documents

The CM Project superintendent shall maintain a field set of drawings for the duration of the construction period. The CM Project manager shall review the superintendent's field set to confirm that all addenda and bulletin drawings have been accurately incorporated. During construction the field set shall be updated to include all RFI responses, approved change orders and any minor plan clarifications made by the Design Consultant during site visits. The CM shall provide evidence to the Design Consultant on a monthly basis that it is maintaining an accurate and complete copy of all changes in the work in a form that will facilitate the prompt and accurate creation of record drawings. Within 30 days of substantial completion, the field set (including general, plumbing, mechanical and electrical as-built drawings) shall be delivered to the architect for preparation of record drawings. Prior to delivery, the CM Project manager shall thoroughly review the as-built field set for completeness and transmit said drawings to the Design Consultant with a letter stating that the drawings are complete and accurately reflect the construction.

3.6.1.2 Organize and Index Operations and Maintenance Materials

Prior to substantial completion of the Project, the CM shall compile manufacturers' operations and maintenance manuals, warranties and guarantees and bind such documents in an organized manner. A minimum of three (3) copies of this information shall then be provided to the Owner.

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3.6.1.3 Occupancy Permit

The CM shall be responsible for obtaining the final occupancy permit by accompanying governmental officials during inspections of the Project, preparing and submitting documentation to governmental agencies and coordinating final testing and other activities.

3.6.1.4 Closeout Documents and Test Reports

The CM shall organize and provide the Owner all closeout documents and test reports that the contractors are required to provide for the Project.

3.6.1.5 Owner Training

The CM shall coordinate or provide all training of the Owner's personnel required by the contract documents.

3.6.2 Time Management

3.6.2.1 Occupancy Plan the CM shall prepare an Occupancy Plan for the Project. This plan shall be provided to the Owner. The plan shall include early access, training on the use of equipment and systems, delivery of furniture and any other activities requested by the Owner. The plan shall comply with all deadlines provided by the Owner.

3.6.3 Cost Management

3.6.3.1 Change Orders

The CM shall continue to provide services related to change orders as specified in Paragraph 3.5.3.3.

3.6.4 Management Information System (MIS)

3.6.4.1 Closeout Reports

At the conclusion of the Project, the CM shall prepare final Project accounting and closeout reports.

3.6.4.2 Reports for Move-in and Occupancy

The CM shall prepare and distribute reports associated with the Occupancy Plan.

3.7 Additional Services

3.7.1 At the request of the Owner, the CM shall perform the following Additional Services and shall be compensated for same as provided in Article 7 of this Agreement, unless the need for the service is due to the CM's actions or inactions on the Project, and regardless Paragraphs 3.7.1.2, 3.7.1.7, 3.7.1.8, 3.7.1.10, 3.7.1.12, 3.7.1.15, 3.7.1.16 and 3.7.1.17 shall be provided as part of the basic services. The CM shall perform Additional Services only after the Owner and CM have executed a written change order to this Agreement providing for such services. Additional Services may include:

3.7.1.1 Services related to investigation, appraisal, or evaluation of existing conditions, facilities, or equipment or determination of the accuracy of existing drawings or other information furnished by the Owner that are not required to be performed by the CM in the basic services;

3.7.1.2 Services related to procurement, storage, maintenance and installation of Owner-furnished equipment, materials, supplies and furnishings;

3.7.1.3 Services related to determination of space needs;

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3.7.1.4 Preparation of space programs;

3.7.1.5 Services related to building site investigations and analyses that are not required to be performed by the CM in the basic services;

3.7.1.6 Services for tenant or rental spaces;

3.7.1.7 Preparation of a Project financial feasibility study;

3.7.1.8 Preparation of financial, accounting or MIS reports not provided under Basic Services;

3.7.1.9 Performance of technical inspection or testing;

3.7.1.10 Preparation of an Operations and Maintenance Manual for all materials and equipment reasonably required for the Owner's use of the Project;

3.7.1.11 Services related to recruiting and training of maintenance personnel;

3.7.1.12 Performance of warranty inspections and correction of warranty items during the warranty period of the Project;

3.7.1.13 Services related to interfacing or working with the Design Consultant or other consultants that are beyond the scope of this Agreement;

3.7.1.14 Consultation regarding replacement of work damaged by fire or other cause during construction and furnishing services in connection with the replacement of such work;

3.7.1.15 Preparation for and serving as a witness regarding the CM's observations on the Project in connection with any public or private hearing or arbitration mediation or legal proceeding;

3.7.1.16 Assisting the Owner in public relations activities and preparing information for and attending public meetings; and

3.7.1.17 Services related to move-in, including preparing and soliciting responses to requests for proposals, preparing and coordinating the execution of contracts, conducting pre-moving conferences, administering the contract for moving activities in conjunction with the move-in for the Project and providing on-site personnel to oversee the relocation of furniture and equipment by the movers while actual move-in is in progress.

3.8 Warranty

3.8.1 The CM warrants to the Owner and the Design Consultant that all materials and equipment furnished under this Agreement will be new unless otherwise specified, and that all workmanship will be in accordance with generally accepted industry standards, 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 CM shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.8.2 The CM will be required to complete the work specified and to provide all items needed for construction of the Project, complete and in good order.

3.8.3 The warranties set forth in this section and elsewhere in the contract documents shall survive final completion of the work.

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3.8.4 The CM guarantees and warrants to the Owner all work as follows:

.1 that all materials and equipment furnished under this Agreement will be new and the best of its respective kind unless otherwise specified;

.2 that all work will be in accordance with generally accepted industry standards and free of omissions and faulty, poor quality, imperfect and defective material or workmanship;

.3 that the work shall be entirely watertight and leak proof in accordance with all applicable industry customs and practices, and shall be free of shrinkage and settlement;

.4 that the work, including but not limited to, mechanical and electrical machines, devices and equipment, shall be fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care;

.5 that consistent with requirements of the contract documents, the work shall be installed and oriented in such a manner as to facilitate unrestricted access for the operation and maintenance of fixed equipment;

.6 that the work will be free of abnormal or unusual deterioration which occurs because of poor quality materials, workmanship or unsuitable storage; and

.7 that the products or materials incorporated in the work will not contain asbestos.

3.8.5 All work not conforming to guarantees and warranties specified in the contract documents, including substitutions not properly approved and authorized, may be considered defective. If required by the Design Consultant or Owner, the CM shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.8.5.1 The CM will submit a written affidavit certifying that none of the materials incorporated in the Project contain asbestos.

3.8.6 If, within one (1) year after the date of substantial completion of the work or designated portion thereof 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 CM shall correct it within five (5) working days or such other period as mutually agreed, after receipt of notice from the Owner to do so. The Owner shall give such notice with reasonable promptness after discovery of the condition. For items that remain incomplete or uncorrected on the date of substantial completion, the one (1) year warranty shall begin on the date of final completion of the work or upon correction of the defective work.

3.8.7 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 CM, any contractor or supplier, the CM 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.

3.8.8 Any materials or other portions of the work, installed, furnished or stored on site which are not of the character or quality required by the specifications, or are otherwise not acceptable to the Design Consultant or the Owner, shall be immediately removed and replaced by the CM to the satisfaction of the Design Consultant and Owner, when notified to do so by the Design Consultant or Owner.

3.8.9 If the CM fails to correct defective or non-conforming work as required, or if the CM fails to remove defective or non-conforming work from the site, the Owner may elect to either correct such work or remove

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and store materials and equipment at the expense of the CM. If the CM does not pay the cost of such 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 CM, including compensation for the Design Consultant's additional services and Owner's reasonable attorney's fees made necessary thereby. If such proceeds of sale do not cover all costs, which the CM should have borne, the difference shall be charged to the CM and an appropriate change order shall be issued. If the payments then or thereafter due the CM are not sufficient to cover such amount, the CM shall pay the difference to the Owner.

3.8.10 The CM shall bear the cost of making good all of the work of the Owner, separate contractors or others, destroyed or damaged by such correction or removal required under this section or elsewhere in the contract documents.

ARTICLE 4
DURATION OF THE CONSTRUCTION MANAGER'S SERVICES

4.1 The duration of the CM's Basic services under this Agreement shall be from the date of this Agreement through the issuance of final payment. The CM shall provide any warranty phase services at no additional cost to the Owner.

4.1.1 The commencement date for the CM's Basic Services shall be the date of execution of this Agreement by the Owner as stated herein or the date on which the Owner issues to the CM a written instruction to proceed with Basic Services, whichever is earlier.

4.1.2 The CM's Basic Services shall be performed for the periods of time indicated in this Agreement. If portions of design and construction occur simultaneously, some of the phase durations may overlap.

4.1.2.1 The CM's Basic Services during the Pre-Design Phase shall be performed as required during the pre-design phase.

4.1.2.2 The CM's Basic Services during the Design Phase shall be performed as required during the design phase.

4.1.2.3 The CM's Basic Services during the Procurement Phase shall be performed as required during the procurement phase.

4.1.2.4 The CM's Basic Services during the Construction Phase shall be performed as required during the construction phase.

4.1.3 The CM's Basic Services during the Post-Construction Phase shall be performed as required during the post-construction phase

4.1.4. The CM shall achieve substantial completion of the Project on or before August 1, 2024, unless the Owner and CM agree to a different date in writing. The date for final completion shall be thirty (30) days after substantial completion.

4.2 Delays and Extensions of Time

4.2.1 The time during which the CM or any of the contractors is delayed in the performance of the work by the issuance of any required permits, acts of god, excessive inclement weather, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotions or freight embargoes, or other conditions beyond the

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CM's or the contractors' control and which the CM or the contractors could not reasonably have foreseen and provided against, except for delays caused solely by the Owner, Design Consultant or their consultants, shall be added to the time for completion of the work stated in the Agreement. Neither the Owner nor the Design Consultant shall be obligated or liable to the CM or the contractors for indirect or direct damages, costs or expenses of any nature which the CM, the contractors, or any other person may incur as a result of any of the delays, interferences, or changes in sequence in the work included in this section 4.2.1. The CM hereby expressly waives any claims against the Owner and the Design Consultant on account of any indirect or direct damages, lost profits, costs or expenses of any nature which the CM, the contractors or any other person may incur as a result of any delays, interferences, changes in sequence or the like, and it is understood and agreed that the CM's sole and exclusive remedy in any such events shall be an extension of the contract time in accordance with the contract documents.

4.2.1.1 Currently a known global pandemic has caused material shortages that are unprecedented. If critical path delays that are greater than 10 days are incurred in material deliveries solely due to new disruptions occurring after the issuance of a Change Order authorizing the material procurement he CM shall be entitled to a 50% reimbursement of additional general conditions for staffing, temporary facilities, and other costs associated with the delay. If the project is impacted because of these circumstances that are out of the control of the CM the owner shall grant the contractor an extension of time to the contract. Construction contingency funds may be utilized to assist the CM with reconciliation of the general conditions however if contingency funds are depleted the owner will work with the CM to cover these costs.

4.2.2 In the event Project delays arise from or out of any act or omission of the Owner, Design Consultant or their consultants, the time during which the Project is delayed shall be added to the Agreement and the CM may be reimbursed for its direct Project damages, excluding general overhead expenses and indirect costs, if the CM strictly complies with this Article 4.2. Notwithstanding the previous sentence, if the CM, a contractor and/or subcontractor in any way shares in responsibility for the delay, neither the Owner nor the Design Consultant shall be obligated or liable to the CM or the contractors for indirect or direct damages, costs or expenses of any nature which the CM, the contractors, or any other person may incur as a result of any of the delays, interferences, changes in sequence of the work, and the CM's sole remedy, if any, shall be an extension of the contract time.

4.2.3 In the event Project delays arise solely from or out of any act or omission of the CM, contractors, subcontractors or their agents, the CM shall not be entitled to extension of the contract time and shall be subject to the payment of liquidated damages as provided in this Agreement.

4.2.4 The contract time shall be adjusted only for changes authorized pursuant to this Agreement, suspension or the work by the Owner, and excusable delays pursuant to section 4.2.4.2. In the event the CM requests an extension of the contract time or files a claim related to any form of delay, it shall furnish such justification and supporting evidence as the Owner may deem necessary for a determination of whether or not the CM is entitled to an extension of time under the provisions of the contract, and shall further outline the alleged impact on the schedule's critical path. The burden of proof to substantiate a claim shall rest with the CM, including evidence that the cause was beyond its control. The Owner shall base its findings of fact and decision on such justification and supporting evidence, including a finding that the alleged delay impacted the Project's critical path, and shall advise the CM in writing thereof. If the Owner finds that the CM is entitled to any extension of the contract time, the Owner's determination of the total number of days extension shall be based upon the currently approved progress schedule and on all data relevant to the extension. Such data will be incorporated into the schedule in the form of a revision thereto, accomplished in a timely manner. The CM acknowledges and agrees that actual delays (due to said changes, suspension of work or excusable delays) in activities which, according to the schedule, do not affect the contract time, do not have any effect upon the contract time and therefore will not be the basis for a change therein. The CM acknowledges and agrees that time extensions will be granted only to the extent that excusable delays exceed the available float in the critical path activities in the currently approved schedule.

4.2.4.1 Extensions in the contract time by change orders are subject to extension-in-time audit by the Owner as follows:

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4.2.4.1.1 The CM agrees that, even though the Owner, CM and Design Consultant have previously signed a change order containing an extension-in-time resulting from a change in or addition to the work that said extension in the contract time may be adjusted by an audit after the fact by the Owner. If such an audit is to be made, the Owner must undertake the audit and make a ruling within 30 days after the completion of the work under the change order.

4.2.4.1.2 The CM agrees that any extension of the contract time to which it is entitled arising out of a change order undertaken on a force accounting (labor and materials) basis, shall be determined by an extension-in-time audit by the Owner after the work of the change order is completed. Such rulings shall be made by the Owner within 30 days after a request for same is made by the CM or Design Consultant, except said 30 days will not start until the work under the change order is completed.

4.2.4.1.3 Should a time extension be granted for substantial completion the date for final completion shall be appropriately adjusted unless specifically stated otherwise.

4.2.4.2 Subject to other provisions of the contract, the CM may be entitled to an extension of the contract time (but no increase in the GMP) for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the CM, the contractors or suppliers as follows:

4.2.4.2.1 Labor disputes and strikes (including strikes affecting transportation), that do, in fact, directly delay the progress of the work on the critical path; however, an extension of contract time on account of an individual labor strike shall not exceed the number of days of said strike;

4.2.4.2.2 Acts of God: tornado, fire, hurricane, blizzard, earthquake, or flood that damage completed work or stored materials and affecting the critical path;

4.2.4.2.3 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 Agreement, 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 Agreement, 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 total cumulative time from the notice-to-proceed with on-site activities until the date established for Substantial Completion using data from the National Oceanic and Atmospheric Administration (“NOAA”) weather service stations in the Brunswick County, NC area (Wilmington, NC and Myrtle Beach, SC) 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 F or less as recorded at the approved weather station. Rain days from hurricanes and tropical storms not causing damage in Brunswick County shall be deemed inclement weather days.

If the total accumulated number of calendar days lost to excessive inclement weather, from the notice-to-proceed with on-site activities until the date established for Substantial Completion, exceeds the total accumulated number to be reasonably anticipated for the same period based upon the five-year average, 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 or work out of doors that is not on the critical path. No change in Contract Sum will be authorized because of adjustment of Contract time due to excessive inclement weather.

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4.2.4.2.4 Delays in the issuance of a required permit, acts of the public enemy, acts of the state, federal or local government in its sovereign capacity, and acts of another contractor in the performance of a contract with the Owner relating to the Project.

4.2.5 If the CM shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the CM does hereby agree, as a part consideration for the awarding of this Agreement, to pay the Owner the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the CM shall be in default after the time stipulated in the contract for completing the work. The said amount is fixed and agreed upon by and between the CM and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates.

4.2.6 The CM and the contractors shall not be entitled to and hereby expressly waive 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 for all delays, except excessive inclement weather which shall be made in writing to the Owner within forty-five (45) days after the date the structure is enclosed. Circumstances and activities leading to such claim shall be indicated or referenced in a daily field inspection report for the day(s) affected. In every such written claim, the CM shall provide the following information:

4.2.6.1 Nature of the delay;

4.2.6.2 Date (or anticipated date) of commencement of delay;

4.2.6.3 Activities on the progress schedule affected by the delay, and/or new activities created by the delay and their relationship with existing activities;

4.2.6.4 Identification of person(s) or organization(s) or event(s) responsible for the delay;

4.2.6.5 Anticipated extent of the delay; and

4.2.6.6 Recommended action to avoid or minimize the delay.

4.2.7 If no schedule or agreement is made stating the dates upon which written interpretations shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until twenty (20) days after request is made for them, and not then unless such claim is reasonable.

4.2.8 No claim by the CM for an extension of time for delays will be considered unless made in strict compliance with the requirements of this Article. All claims not filed in accordance with this Paragraph shall be waived by the CM.

ARTICLE 5
CHANGES IN THE CONSTRUCTION MANAGER'S BASIC SERVICES AND ADDITIONAL COMPENSATION

5.1 Changes - Preconstruction Basic Services

5.1.1 The Owner, without invalidating this Agreement, may make changes in the CM's Basic Services specified in Paragraphs 3.2, 3.3 and 3.4 of this Agreement. The CM shall promptly notify the Owner of changes which increase or decrease the CM's compensation, the duration of the CM's Basic Services, or both.

5.1.2 Additional Compensation and Extended Duration

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The CM shall be entitled to receive additional compensation and additional time when the scope of Paragraphs 3.2, 3.3 and 3.4 is increased or extended through no fault of the CM. If the scope of these Basic Services is increased or the duration of these Basic Services is extended or the duration of the Basic Services to be performed within a phase duration specified in Article 4 is extended, the CM shall be entitled to receive additional compensation, and the duration of the Agreement shall be extended. A written request for additional compensation shall be given by the CM to the Owner within ten (10) days of the occurrence of the event giving rise to such request. The amount of additional compensation to be paid and the amount of extension of the duration of this Agreement shall be determined on the basis of the CM's cost, a customary and reasonable adjustment in the CM's fixed or lump sum fee consistent with the provisions of this Agreement, and a determination of the length of the extensions of the duration of this Agreement.

5.1.3 Changes in the CM's Basic Services

Changes in the CM's Basic Services in Paragraphs 3.2, 3.3 and 3.4 and entitlement to additional compensation shall be made by a written change order to this Agreement executed by the Owner and the CM. The change order shall be executed by the Owner and CM prior to the CM performing the services required by the change order. The CM shall proceed to perform the services required by the change order only after receiving notice directing the CM to proceed. The CM shall not be entitled to compensation for work performed without a written change order.

5.1.4 Payment of Additional Compensation

The CM shall submit invoices for additional compensation with its invoice for Basic Services and payment shall be made pursuant to the provisions of Article 7 of this Agreement.

5.2 Changes to the Work or Construction Phase Basic Services

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, including, but not limited to changes: (1) in the specifications or drawings; (2) in the sequence, method or manner of performance of the work; (3) in the Owner-furnished facilities, equipment, materials, services or site; or (4) directing acceleration in the performance of the work.

The parties agree that notwithstanding any language to the contrary in Paragraphs 5.2.1 through 5.2.4, the CM's fee on any additional work and the fee reduction for any work or allowances removed from the scope of work shall be based on the same percentage fee specified in Paragraph 7.4.1, unless the CM performs the work with its own forces as allowed in this Agreement. The parties agree that Paragraphs 5.2.1.1 through 5.2.1.3 are intended to govern payment to the contractors and their subcontractors for performing work associated with a change, unless the CM performs the work with its own forces as allowed in this Agreement. If the CM performs the work with its own forces, the CM shall also be referred to by the term "contractor" in Paragraphs 5.2.1.1 through 5.2.1.3. The parties specifically agree that any adjustment to the amount that could be reimbursed for general conditions, if any, shall be negotiated in good faith between the parties based upon the additional work actually required to be performed by the CM as a result of the change.

5.2.1 Owner Directed Changes to the Work Requiring an Increase in GMP

If the change in or addition to the work will result in an increase in the Guaranteed Maximum Price, 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).

5.2.1.1 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 CM to the Owner within ten (10) days of the CM's receipt of a request therefor (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 CM's proposal shall be itemized and segregated by labor and materials for the various components of the change in or addition

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to the work (no aggregate labor total will be acceptable) and shall be accompanied by signed proposals of any contractors who will perform any portion of the change in, or addition to, the work and of any persons who will furnish materials or equipment for incorporation therein. The proposal shall also include the CM's estimate of the time required to perform said changes or additional work.

5.2.1.1.1 The portion of the proposal relating to labor, by the forces of any of the contractors, 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 premium costs of overtime time, if overtime is anticipated; a maximum labor burden of thirty nine percent (39%) of the actual cost of labor by any such contractor in connection with such labor; and up to fifteen percent (15%) of such anticipated gross wages, as overhead and profit for any such contractor, as applicable (said overhead and profit to include all extended general conditions and supervision, but it shall not include the labor burden).

5.2.1.1.2 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 of its subcontractors (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 any of the contractors, as applicable (said overhead and profit to include all extended general conditions and supervision, except it shall not be applied to any sales tax paid for any purpose or shipping costs incurred by the contra tor 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.

5.2.1.1.3 The CM shall provide any documentation that may be requested by the Owner to support the change proposal including payroll records, insurance rates, material quotes or rental quotes. The CM shall also provide an itemized breakdown of all transportation and shipping costs, including receipts documenting the expenses.

5.2.1.1.4 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 the change in the work as a commission to the contractor. The change proposal form attached to this Agreement as Appendix D-1 shall be used to submit the change proposal to the Owner.

5.2.1.1.5 In the event that the CM fails to submit his proposal within the designated period, the Owner may order the CM to proceed with the change or addition to the work and the CM 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 CM.

5.2.1.1.6 In the event that the parties are unable to agree as to the reasonable cost and time to perform the change in or addition to the work based upon the CM'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 their own estimates, the CM's submission or a combination thereof, except for a change order initially establishing the GMP for the Project or initially establishing a partial GMP for a portion of the work included in the original Project scope. A change order shall be issued in this case for the amounts of cost and time determined by the Owner and shall become binding upon the CM unless the CM submits its protest in writing to the Owner within thirty (30) days of the issuance of the change order. Owner has the right to direct in writing the CM to perform the 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 change in the work and/or any pending protest, shall not relieve the CM from performing the change in the work promptly and expeditiously.

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5.2.1.1.7 The Owner reserves the right to reject the CM's proposal for a change in the work and to elect to perform said work using a separate contractor. Under such circumstances, the CM shall coordinate the performance of the work.

5.2.1.2 If the Owner elects to have the change in the work performed on a time and material basis, the same shall be performed, by the forces of any of the contractors, at actual cost to the entity performing the change in the work. The change proposal form attached as Appendix D-2 shall be used to submit the initial change proposal to the Owner for approval to proceed. The CM shall maintain records to submit to the Owner such as daily time and material tickets, 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 employee 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 CM to secure any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the CM 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.

The change proposal form attached as Appendix D-1 shall be used to submit the final change proposal to the Owner after the work is complete. The final change proposal shall document all costs and expenses. Appendix D-1 shall be filled out in accordance with the instructions in Paragraph 5.2.1.1, and its subparagraphs.

5.2.1.3 Changes in the work to be completed on a unit price basis shall be quantified by the Design Consultant or an independent third party and shall be completed at an all inclusive rate established in the bid proposal, unless a mutually agreed upon price is established by the Owner and CM. The unit prices include the cost of all materials, taxes, shipping and delivery charges, labor and labor burden, insurance, supervision, overhead and profit. Time to complete any work done on a unit price basis for quantities within the base bid allowance amount is included in the base bid. The unit price does not include bonds. Procedures for quantifying units of measure shall be proposed by the Design Consultant and agreed to by the CM and Owner prior to the commencement of the work to be completed on a unit base price. Work performed without such agreement in place shall be deemed to have been done at the sole risk and expense of the CM. Time for quantities exceeding the base bid allowance will be evaluated based on the effect of the change in the work on the critical path of the Project.

5.2.1.3.1 No overhead and profit will be paid by the Owner on account of a change in the work except as specifically provided in this section. Overhead and profit, as allowed in this section, shall be deemed to include all costs and expenses which the CM or any of the contractors may incur in the performance of a change in the work and which are not otherwise specifically recoverable by them pursuant to this section.

5.2.1.4 The Owner may direct in writing the CM to begin changes in the work prior to the issuance of a formal change order. The CM shall promptly perform the changes in the work directed by the Owner in a manner that shall result in minimum impact on the critical path.

5.2.2 CM Notice of Change

If the CM or any of the contractors 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 GMP 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 CM shall, within ten (10) days of such event unless such event was not discovered in the exercise of reasonable diligence, in which event the ten (10) day notice period shall commence upon discovery or when the CM should have discovered 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 CM's best estimate of the cost and time involved.

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If the CM intends to assert a claim under this section, he must, within ten (10) days after the furnishing of a written notice as outlined above, submit to the Owner a written statement setting forth the specific nature and anticipated cost of such claim, unless this period is extended by the Owner. The statement of claim hereunder may be included in the notice required above. The statement of claim shall include all direct, indirect and impact costs associated with the change, as well as the CM's estimate of the schedule impact of the change, if any. The CM and the contractors shall not be entitled to reimbursement or an increase in the GMP for any claims that are not filed in strict conformance with this section. The CM shall indemnify and hold the Owner harmless against any claims by the contractors that are waived because they are not filed in strict conformance with this section.

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 this section. The CM shall proceed with the work pursuant to the provisions of this section.

5.2.3 General Provisions Related to Changes

The CM 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 this section, and which the CM, the contractors 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 section, unless the delay is caused solely by the Owner or Design Consultant. It is understood and agreed that the CM's and the contractors' sole and exclusive remedy in such event shall be recovery of direct costs as compensable hereunder and an extension of the contract time, but only in accordance with the provisions of the contract documents. o claim by the CM hereunder shall be allowed if asserted after final payment for the construction or the Project under this Agreement. 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 CM, except as specifically provided in this section.

If any dispute should arise between the parties with respect to an increase or decrease in the GMP or an expansion or contraction in the contract time as a result of a change in the work, the CM 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 CM 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. The CM's acceptance of payment following a unilateral decision by the Owner shall not constitute a waiver of any claim the CM may have for additional compensation or time. However, any claim the CM may have shall be filed in strict conformance with the contract documents.

5.2.4.1 If the change in the work will result in a decrease in the contract sum, the CM shall provide a quotation detailing the proposed amount of such decrease. The portion of the proposal relating to labor, whether by the CM's forces or the forces of any of the contractors, shall include reasonably anticipated gross wages of job site labor, including foremen, who would have been directly involved in the work that has been deleted from the contract (for such time as they would have been so involved), plus payroll costs (including premium costs of overtime time, if overtime was anticipated, social security, federal or state unemployment insurance taxes and fringe benefits required by collective bargaining Agreements entered into by the contractor or any subcontractor in connection with such labor) and seven percent (7%) of such anticipated gross wages, but not payroll costs, as overhead and profit not incurred or earned by the contractor or any subcontractor, as applicable (said overhead and profit to include all supervision except foremen). If applicable, the fee percentage to be applied to the CM's forces shall be the percentage stated in section 7.4.1.

5.2.4.2 The portion of the proposal relating to materials shall include the reasonably anticipated direct costs

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which would have been incurred by the contractor or to any subcontractors for materials which would have been purchased or incorporation in the work but which has been deleted from the contract, plus transportation and applicable sales and use taxes which will be avoided, and seven percent (7%) of said direct material costs incurred by the contractor or subcontractor (excluding transportation and sales and use taxes) as overhead and profit not incurred or earned by the contractor or any subcontractor (said overhead and profit to include all small tools), and shall further include the contractor's and subcontractor's reasonably anticipated rental costs which will be avoided (either actual or discounted local published rates), plus five percent (5%) thereof as overhead and profit not incurred or earned by the contractor or subcontractor, as applicable. If any of the items included in the lump sum proposal are covered by unit prices contained in the contract documents, the Owner may elect to use these unit prices in determining the amount of reduction to the GMP as a result of a deletion of work from the contract. No overhead and profit shall be applied to any unit prices for purposes of calculation such reduction in the contract sum. The lump sum proposal for work which would have been performed by any subcontractors shall include four percent (4%) of that amount as an estimate of the contractor's overhead and profit that will not be earned by contractor due to the decrease in the contract sum. In the event the construction work would have been performed by the CM in the limited circumstances allowed in this Agreement, the fee percentages stated in this section shall apply to the work that would have been performed by the CM as the contractor and its subcontractors.

5.2.4.3 The CM'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 a 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 overhead and profit as stated above the CM's acceptance of payment following a unilateral decision by the Owner shall not constitute a waiver of any claim the CM may have for additional compensation. However, any claim the CM may have shall be filed in strict conformance with the contract documents.

5.2.5. Minor Changes in the Work

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 CM. The CM shall carry out such written orders promptly.

The CM shall not perform any changes in the work unless authorized in writing by the Design Consultant or Owner. The CM's performance of minor changes pursuant to this Section shall not constitute a waiver of any claim the CM may have for additional compensation or time. However, any claim the CM may have shall be filed in strict conformance with the contract documents.

5.2.6 Differing Site Conditions

Should the CM 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 Agreement, 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 that could have been reasonably determined from any geotechnical, soils and other reports, surveys and analyses made available for the CM's review or that could of been discovered by the CM through the performance of its obligations pursuant to this Agreement.

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5.3 General Provisions Regarding Changes in Contractor Work. In the event the work included in the original contract issued to a contractor is changed, or new contracts are issued, the CM shall notify the Owner of the change or the new contract, including the nature and reason for the change or new contract and the associated cost. Regardless of whether the change or new contract is believed to result in an increase or decrease in the GMP. The Owner and CM shall review all changes or new contracts that were not incorporated into a change order between the Owner and CM or resulted in the use of either of the CM's contingencies at the conclusion of the Project in order to determine whether the Owner is entitled to a reduction in the cost of work portion of the GMP as it is defined in Paragraph 7.4.1.

ARTICLE 6
OWNER'S RESPONSIBILITIES

6.1 The Owner shall provide to the CM complete information regarding the Owner's requirements for the Project.

6.2 The Owner shall examine information submitted by the CM and shall render decisions thereto promptly.

6.3 The Owner shall contract with a Design Consultant to furnish design counseling services as may be necessary for the Project.

6.4 The Owner shall furnish insurance for the Project only as specified in Article 8.

6.5 If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, the Owner shall give prompt written notice thereof to the CM.

6.6 The Owner shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the Work in cooperation with the CM, consistent with this Agreement, and in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by the CM.

6.7 The Owner shall retain a Design Consultant whose services, duties and responsibilities shall be described in a written Agreement between the Owner and Design Consultant. The services, duties, and responsibilities of the Design Consultant set out in the agreement between the Owner and Design Consultant shall be compatible and consistent with this Agreement and the Contract Documents. The Owner shall, in its agreement with the Design Consultant, require that the Design Consultant perform its services in cooperation with the CM, consistent with this Agreement and in accordance with the planning, scheduling and budgetary requirements of the Project as determined by the Owner and documented by the CM.

6.8 The Owner shall approve the Project and Construction Budget and any subsequent revisions as provided in Paragraph 3.2.3.2 of this Agreement.

6.9 If the Owner contracts separately with any other parties, the Owner shall cause all such Agreements to be compatible and consistent with this Agreement.

6.10 At the request of the CM, sufficient copies of interim and bidding drawings, specifications and contract documents shall be furnished to or printed by the CM at the Owner's expense. The CM shall be solely responsible for the cost of any drawings, specifications and contract documents required after bidding the Project.

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6.11 The Owner or Design Consultant shall in a timely manner secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use or occupancy of permanent structures, or for permanent changes in existing facilities.

6.12 The Owner shall furnish evidence satisfactory to the CM that sufficient funds are available and committed for the entire cost of the Project. The Owner may authorize the CM to proceed with the work on the Project in discrete phases if all of the funds required for the entire Project are not identified at the time this Agreement is executed by the parties.

6.13 The Owner, its representatives and consultants, including Design Consultants, shall endeavor to communicate with the Contractors only through the CM.

6.14 The Owner shall send to the CM and shall require the Design Consultant to send the CM copies of all notices and communications sent to or received by the Owner or Design Consultant relating to the Project.

6.15 The Owner shall designate, in writing, an officer, employee or other authorized representatives to act in the Owner's behalf with respect to the Project. This representative shall be available during working hours and as often as may be required to render decisions and furnish information so as not to delay the Project. The CM acknowledges that some changes in the scope of the Project may require approval by the Board of Education. The CM shall notify the Owner in writing of any deadlines for responses and how the Owner's failure to respond by the stated deadline will impact the Project schedule.

6.16 The Owner shall make payments to the CM on the basis of the Contractors' payment applications that are certified by the CM and on the basis of the CM's invoices for its services performed. Prior to payment by the Owner, the Design Consultant shall review and approve the contractors' pay applications in accordance with Paragraphs 3.5.3.5 and 3.5.3.6.

ARTICLE 7
COMPENSATION FOR CM SERVICES AND PAYMENT

7.1 Guaranteed Maximum Price

7.1.1 The Owner and CM agree that the Guaranteed Maximum Price GMP shall be Twenty-Two Million, One Hundred Twenty Six Thousand, Six Hundred Nine Dollars ($22,126,609) for this Project. This preliminary pricing is based upon the allowable funding established for the construction phase of the project. It is the intent of this agreement for the CM, Owner, and Design team to work together during the preconstruction process to maintain or improve this number, working through multiple exercises to dial in the scope of the project to ensure the budget is maintained. The parties further agree that in the event the bids received by the CM for the work, including all of the alternates accepted by the Owner, pursuant to Article 3.4 of this Agreement exceed the line item in the GMP for the cost of the work, , the following steps will be taken. 1. The CM will negotiate with the lowest responsive bidder working with the design team to make limited and responsible changes to the plans and specifications without significantly modifying the program 2. The CM will restructure the bid packages, breakdown larger packages, and rebid packages with minor modifications 3. With the assistance of the designer, at no cost to the CM, the plans and specifications will be modified, and the package re-advertised and re-bid 4. Owner may seek additional funding or deploy reserve funds, or 5. -. this Agreement is terminated by the CM pursuant to Paragraph 7.1.1.1In the event that the bids received by the CM for the work, including all alternatives accepted by the Owner, are less than the line item in the GMP for the cost of the work, the remaining funds shall be added to the Owner's contingency. The scope of work included in the bid documents, including any alternates accepted by the Owner, shall form the basis of the work to be performed by the CM. The CM and Owner agree that the cost for Pre-Construction shall be $147,459. and that line items in the GMP shall consist of the Cost Of The Work, CM's Contingency, Owners Contingency, General Conditions, CM's Fee, and Bond/Insurance). The CM and Owner further agree that the dollar values for the line items in the GMP stated above consist

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of the cost of the work ($18,610,000), CM Construction Contingency ($558,300), Owner Construction Contingency ($558,300), General Conditions ($1,120,209), And CM's Fee (4%, $744,400), and Bond/Insurance ($535,400).

7.1.1.1The parties agree that in the event the bids received by the CM for the work, including all of the alternates accepted by the Owner, pursuant to Article 3.4 of this Agreement exceed the line item in the GMP for the cost of the work, then the CM shall have the right to terminate this Agreement. The CM shall provide the Owner with notice of intent to terminate pursuant to this provision within fifteen (15) days of the CM's receipt of bids for the Project. Prior to a termination pursuant to this provision becoming effective, the Owner and CM will review the list of alternates, other modifications or value engineering requests in order to determine whether an Agreement can be reached between the Owner and CM regarding a modified scope of work or an adjustment to the GMP. In the event an Agreement regarding the modified scope of the work and/or a revision to the GMP cannot be reached within fifteen (15) days of the Owner's receipt of notice of intent to terminate pursuant to this section, then the termination shall become immediately effective

7.1.1.2 The parties specifically agree that none of the provisions in Article 10 shall apply to any termination of this Agreement pursuant to section 7.1.1.1, but the CM shall be entitled to payment for work actually performed through the procurement phase (section 3.4) pursuant to the compensation set forth in Paragraph 7.4.1; however, CM shall not be compensated for any services provided after the date of termination. In the event a modified scope of work and/or a revision to the GMP is agreed upon by the parties, the modified scope shall form the basis of the work to be performed by the CM for the established GMP. The CM construction contingency, general conditions, and/or CM's fee for construction may be reduced by mutual consent of both parties in order to provide funding for the Project. The CM and Owner shall document any changes to the GMP, scope of work, cost of the work, general conditions, CM fee, or CM contingency prior to the Owner issuing notice to proceed with the work. Any reduction in the cost of the work as a result of a modification of the Project scope shall be added to the Owner's contingency

7.1.1.3 In the event the Owner does not request the CM to establish a Guaranteed Maximum Price or does not accept the CM's Guaranteed Maximum Price, then this Agreement may be terminated by the Owner with seven (7) days written notice. In the event this Agreement is terminated pursuant to this provision, the CM shall only be entitled to receive compensation for services as outlined in Article 10.

7.1.1.4. In the event that the Guaranteed Maximum Price is accepted by the Owner, a change order shall be completed and executed by both parties to this Agreement and the CM shall become responsible for the means, methods, sequences, and procedures used in the construction of the Project and shall proceed with the CM's basic services.

7.1.1.5 Construction contracts for the Work required for the Project shall be between the CM and Contractors. The CM shall request and receive bids for each contract and shall solicit and award the contracts in accordance with N.C. Gen. Stat. § 128.1, 143-128.2 to -128.4 and 143-135.8. The contractor and CM shall comply in all respects with the Owner's MBE policies, rules and regulations. The CM shall enter into contracts with the lowest responsible and responsive bidders within sixty (60) days after notice of approval of the GMP by the Owner; however, the CM shall not be entitled to additional time to complete the Project due to any delay in entering into contracts with a bidder unless the delay is due solely to the actions or inactions of the Owner.

7.1.1.6 The CM may perform a portion of the work only if (1) bidding produces no responsible, responsive bidder for that portion of the work, the lowest, responsive, responsible bidder will not execute a contract for the bid portion of the work, or a contractor defaults and a pre-qualified replacement cannot be obtained in a timely manner, and (2) the Owner approves of the CM's self-performing of the work. In the event the CM self-performs a portion of the work pursuant to either method noted above, it shall be paid for the direct cost of the work with no reimbursement for office overhead or for any other work otherwise included in the general conditions. The fee for the work will be at the same CM fee percentage stated in 7.4.1. This paragraph shall not govern compensation for work self-performed by the CM pursuant to Paragraph 5.2.

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7.1.1.7 The Guaranteed Maximum Price is the total cost of the Project, as defined herein. The Guaranteed Maximum Price includes the cost of labor, equipment, supplies, materials, services and allowances to complete the Project. The cost data shall be directly correlated to the specific design drawings and specifications in existence at the time the Guaranteed Maximum Price is prepared. The assumptions used in the preparation of the Guaranteed Maximum Price shall be identified by the CM as part of the Guaranteed Maximum Price documentation, and incorporated into the change order establishing the GMP. If the Owner directs the CM to award a contract to a bidder other than the lowest responsible and responsive bidder for any portion of the Project, the Guaranteed Maximum Price shall be increased by the amount of the difference between the award price and the price submitted by the lowest responsible and responsive bidder. The Contingency shall not be changed.

The GMP shall include the cost of the work, CM's general conditions, bonds/insurance, the CM's fee for construction and post-construction phase basic services. The GMP shall also include a CM construction contingency fund. The CM construction contingency fund and the Owner's contingency fund shall only be utilized as outlined in Paragraphs 7.1.1.7.1, and 7.1.1.7.2. The CM's fee shall be paid pursuant to Section 7.4. The general conditions shall be reimbursed as described in 7.1.1.7.3. 7.1.1.7.1 Unless otherwise agreed in writing, the CM's construction contingency may be used by the CM to expedite the work, address scheduling and coordination problems, respond to a default by a non-bonded contractor, and repair damaged work in place where the responsible contractor cannot be identified by the CM after reasonable efforts to identify the responsible party. The CM's construction contingency may also be used by the CM to correct design issues that reasonably should have been discovered by the CM during the performance of its obligations pursuant to Paragraphs 3.3.1.5 and 3.3.1.6, correct scope gaps in the bidding of the Project, , and any issues that are the fault of the CM. The CM's use of the CM's construction contingency fund shall be documented in writing by the CM and approved by the Owner in writing prior to the CM billing for the work. The CM shall not be entitled to receive any fee for the use of the CM's contingency. In the event of a default by a contractor, the CM shall not use the CM's contingency to cover any costs covered by a performance or payment bond provided by the contractor or covered by a program paid for by the CM to insure the performance of the contractors. The CM shall vigorously pursue reimbursement of all expenses from the contractor's surety or through the program provided by the CM.

7.1.1.7. Unless otherwise agreed in writing, the Owner's contingency fund shall be used to correct any design issues that could not reasonably have been discovered by the CM during the performance of its obligations during the design and bidding phases, and any changes requested by the Owner. The use of the Owner's contingency fund shall be documented in writing by the CM and approved by the Owner in writing prior to the CM billing for the work.

7.1.1.7.3The General Conditions shall be paid monthly on a pro-rata basis based upon the project schedule in an amount that shall not exceed the amount included in the GMP. The Owner and CM agree that the items to be reimbursed as general conditions are indicated in Appendix E. The Owner reserves the right to take Ownership and possession of any equipment or other item purchased by the CM as part of general conditions at the conclusion of the Project. The CM shall be notified of the Owner's intent to take possession of any such items prior to final payment.

7.1.1.8 The Guaranteed Maximum Price shall include those taxes applicable to the Project. Any sales tax refunds paid to the Owner shall be exclusively for the Owner's use and shall not in any way reduce the cost of the Project or impact the Guaranteed Maximum Price.

7.1.1.9 The Owner may change the scope of the Project or a part thereof and the Guaranteed Maximum Price shall then be adjusted as provided in Paragraph 7.1.3.

7.1.1.10 In the event that the cost of the Project exceeds the Guaranteed Maximum Price and any adjustments therein as may be due pursuant to the terms hereof, the CM shall continue to perform at no additional cost to the Owner until the Project, defined by this Agreement and attachments hereto, is complete and achieves final completion. The CM shall be responsible for paying all costs and expenses, in

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accordance with the terms of this Agreement, that may be necessary to complete the Project, even if such amounts are in excess of the Guaranteed Maximum Price.

7.1.2 Cost of the Project

The term “cost of the Project” shall include all amounts paid by the Owner to the CM for construction and post-construction phase basic services provided by the CM in Paragraphs 3.5 and 3.6 and payment to all separate Contractors, suppliers and equipment lessors for all work, material, and equipment supplied to the Project including general conditions items.

7.1.2.1 The cost of the Project shall not include the following:

7.1.2.1.1 The CM’s fee for Basic Services;

7.1.2.1.2 All professional fees paid by the Owner to the Design Consultant or other consultants retained directly by the Owner;

7.1.2.1.3 All costs paid directly by the Owner to contractors or suppliers retained directly by the Owner and outside the scope of the Guaranteed Maximum Price;

7.1.2.1.4 All Additional Services costs as defined herein; or

7.1.2.1.5 All other costs identified as being not within the Guaranteed Maximum Price.

7.1.2.2 The cost of the Project may be further defined in the change order identifying the scope of the work and the final Guaranteed Maximum Price. If the requirements of this Paragraph 7.1.2 and the documentation required by the change order establishing the Guaranteed Maximum Price differ, then the CM shall identify and explain the difference, but the documentation provided in accordance with change order establishing the final Guaranteed Maximum Price shall be the basis for determining the scope of the Guaranteed Maximum Price.

7.1.3 Adjustments to the Guaranteed Maximum Price

The CM understands, confirms and agrees that its responsibility hereunder is to construct the Project in accordance with the drawings and specifications. It is recognized that the Guaranteed Maximum Price may be determined based upon incomplete design documents and in those instances in which the drawings and specifications are not complete at the time the Guaranteed Maximum Price is established, the CM shall exercise reasonable care and judgment to determine the intent of the design and shall calculate the Guaranteed Maximum Price on the basis of the quality of construction, materials, and finishes that can be reasonably inferred from the design documents or other specified sources. The CM shall determine unit prices and the cost of the Project and shall make those assumptions regarding the Project scope and the quality of the intended construction as may be necessary to fully document the Guaranteed Maximum Price. The Owner and CM shall use the most recently approved Project scope in determining whether or not the scope of the Project or a part thereof has been changed and in determining entitlement to an adjustment to the Guaranteed Maximum Price. A determination regarding all requests for adjustment to the Guaranteed Maximum Price shall be made in writing within thirty (30) days from the date of a written request for an adjustment.

7.1.3.1 The amount of adjustment to increase or decrease the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:

7.1.3.1.1 By mutual acceptance of a lump sum, properly itemized and supported by cost data; or

7.1.3.1.2 By unit prices defined and listed in the GMP documentation; or

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7.1.3.1.3 If neither of the methods set forth in 7.1.3.1.1 or 7.1.3.1.2 is agreed upon by the Owner, the CM provided it receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined on a time and material basis pursuant to Article 5. Choice of this method shall not restrict the Owner or the CM from disputing the justification or right of the CM to an increase in the Guaranteed Maximum Price due to such work. In such case, the CM shall keep and present in such form as may be agreeable to the Owner an itemized accounting together with appropriate supporting data of the actual cost of the Project.

7.1.3.2 If the unit prices are stated and if the quantities originally contemplated by the CM are so changed in a proposed change order or as a result of several change orders that application of the agreed unit prices to the quantities or work proposed cause substantial inequity to the Owner or the CM, the applicable unit prices and Guaranteed Maximum Price shall be adjusted.

7.1.3.3 Should concealed or unknown physical conditions be encountered that differ materially from those identified in the drawings or specifications, the Guaranteed Maximum Price may be adjusted by change order in accordance with Paragraph 5.2.2.

7.1.3.4 The Design Consultant shall have the authority to order minor changes in the Project consistent with the intent of the drawings and specifications and not involving an adjustment in the Guaranteed Maximum Price or change of the construction completion date. Such changes may be affected by written order only and shall be signed by the Owner and the CM prior to the work being performed.

7.1.3.5 In the event that the bids for the construction of the Project are less than the line item(s) in the GMP for the construction of the Project, the GMP shall be reduced dollar for dollar to reflect the savings. The parties agree that any savings based upon the receipt of bids shall be retained solely by the Owner.

7.1.4 Unused Funds

7.1.4.1 In the event that there are any funds remaining in any contingency, those funds shall be retained solely by the Owner.

7.1.4.2 In the event that all of the funds allocated for the CM's general conditions are not used, the CM shall retain all of those funds.

7.1.4.3 In the event that there are unused allowances or other cost of work funds, all of those funds, plus the associated CM fee, shall be retained by the Owner.

7.1.4.4 In the event that the bids for the construction of the Project are less than the line item(s) in the GMP for the construction of the Project, the Owner's contingency shall be increased dollar for dollar to reflect the savings. The parties agree that any savings based upon the receipt of bids shall be retained solely by the Owner

7.4 Lump Sum

The Owner shall compensate the CM for Basic Services on the basis of a Lump Sum in accordance with the terms and conditions of this Agreement as follows:

7.4.1 Compensation for Basic Services

The CM shall be compensated for performing Basic Services described in the pre-design phase (Paragraph 3.2), design phase (Paragraph 3.3) and the procurement phase (Paragraph 3.4) for a total lump sum in the amount of One Hundred Forty Seven Thousand, Four Hundred and Fifty Nine dollars ($147,459) that shall be divided by the number of months scheduled for the basic services in Paragraphs 3.2, 3.3 and 3.4 and paid in equal monthly installments as the services are performed. The CM shall be compensated for performing basic services described in the construction phase

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(Paragraph 3.5) and post-construction phase (Paragraph 3.6) for In the event there are changes in the work that require an adjustment in the CM's construction/post-construction fee, the fee adjustment shall be based upon 4% of the cost of the work added or deleted from the Project. The fee for these phases shall be paid in proportion to the percentage of the actual cost of the work paid by the Owner. The cost of the work as used in this section shall be the total dollar amount of the construction contracts awarded by the CM to contractors for the performance of the work, minus any unused allowances or other deductive change orders. The CM's contingency shall not be included in the calculation or payment of the CM's fee. Progress payments for the work performed by the contractors shall be paid as the work is performed and approved in accordance with this Agreement. The CM acknowledges that the Owner only has funds for the basic services in Paragraphs 3.2, 3.3, and 3.4 at the time this Agreement is being executed and that the CM is not authorized to perform any services in Paragraphs 3.5 and 3.6 or any other provisions of this Agreement without the express written permission of the Owner.

7.4.2 Payments

Payments to the CM shall be made monthly, not later than thirty (30) days after receipt of the CM's Invoice by the Owner.

7.4.2.2 Payments due to the CM that are unpaid for more than thirty (30) days from the due date of the CM's invoice shall not bear interest from the due date.

7.4.3 Compensation for Additional Services

The CM shall be compensated, and payments shall be made for performing Additional Services in an amount and on terms mutually agreeable between the Owner and CM.

7.4.4 Auditing Rights

The CM shall keep all records and supporting documentation which concern or relate to the work, general conditions, or other monies paid hereunder for a minimum of three (3) years from the date of termination of this Agreement or the date the Project achieves final completion. The CM shall require all of its subcontractors to likewise retain all of their Project records and supporting documentation. The Owner, and any duly authorized agents or representatives of the Owner, shall be provided access to all such records and supporting documentation during normal business hours upon reasonable request by the Owner. Further, the Owner, and any duly authorized agents or representatives of the Owner, shall have the right to audit, inspect and copy all of the CM's and any contractor's Project records and documentation. The access, inspection, copying and auditing rights shall survive the termination of this Agreement.

7.5 Adjustments to the CM's Compensation

The CM shall notify the Owner as specified in this Agreement when material changes to the scope of the Project or a part thereof or when delays caused in whole or in part by the Owner or Design Consultant are expected to increase or extend the Project's critical path or the scope or duration of the CM's services. If the change results in a delay to the Project's critical path or a material increase in the Project's scope, the CM shall be entitled to receive an increase in the duration of this Agreement and/or additional compensation for the change in accordance with this Agreement.

7.6 Liquidated Damages

7.6.1 Should the CM fail to substantially complete the Project or phase on or before the date stipulated for substantial completion of the Project (or such later date as may result from extension of time granted by Owner), the CM shall pay or the Owner may retain from the funds otherwise to be paid to the CM the sum of $1,000.00 per day as substantial completion liquidated damages for each consecutive calendar day beyond the date established in this Agreement that Project fails to achieve substantial

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completion as defined in this Agreement, which sum is agreed upon as a reasonable and proper measure of damages which the Owner will sustain per day by failure of the CM to complete work within time as stipulated; it being recognized by the Owner and the CM that the injury to the Owner which could result from a failure of the CM to complete on schedule is uncertain and cannot be computed exactly. This amount is the minimum measure of damages the Owner will sustain due to delay in the completion of the work, which shall include but not be limited to the loss of use of the facilities, the relocation of students and services, the cost of Owner's time and resources, damage to Owner's reputation, and storage of furniture and other materials. The inability of the Owner to quantify actual damages shall not prevent the recovery of liquidated damages.

7.6.2 For each consecutive calendar day that the work remains incomplete after the date established for final completion of the Project, the CM shall pay or Owner will retain from the compensation otherwise to be paid to the CM the sum of $500.00 per day as final completion liquidated damages. This amount is agreed upon as a reasonable and proper 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 Owner's time and resources, damage to Owner's reputation, and the inability to use the facilities fully. This amount is in addition to the liquidated damages prescribed above for substantial completion.

7.6.3 The amount of liquidated damages set forth in Paragraphs 7.6.1 and 7.6.2 hereinabove shall be assessed cumulatively. The items of cost included in the assessment of liquidated damages are defined above. This provision of liquidated damages does not bar Owner's right to enforce other rights and remedies against CM, including but not limited to, specific performance or injunctive relief. In no way shall costs for liquidated damages be construed as a penalty to the CM.

7.6.4 Notwithstanding any other provisions of the Agreement, if there is concurrent delay in the completion of the work, the CM shall be liable for liquidated damages as specified in this Agreement during such period of concurrent delay. For the purpose of this section 7.6, concurrent delay means (a) a delay event caused in part by the Owner or its agent and in part by the CM or its contractors, subcontractors, sub-subcontractos, or (b) one or more delay event caused solely by the Owner, its agents, or the Design Consultant, and one or more delay event caused in part by the CM, subcontractors, sub-subcontractors or agents, each of which would have resulted in a delay without the other and which delays run concurrently, or at the same time. In the event that the foregoing provision making the CM liable for liquidated damages during a period of concurrent delay is found to be unenforcable, then the parties agree that in the event of a concurrent delay, the extent of the delay will be apportioned between the Owner and the CM, and the CM will be responsible for liquidated damages as set forth in the section 7.6 for those portions of the delay which are apportioned to the CM, its subconctractors, sub-subcontractors, agents or material suppliers.

7.6.5 The amount of liquidated damages set forth in Paragraphs 7.6.1 and 7.6.2 hereinabove shall not include additional legal or design professional costs that may result from the CM's default. If such legal or design professional costs are incurred by the Owner, the CM shall be liable to the Owner for those costs in addition to the liquidated damages amount set forth hereinabove and in 7.7 Summary of Monetary Amounts.

7.7 The following summary is intended to provide a single location for all relevant monetary amounts included in this Agreement as of the date of execution of the Agreement. The following list shall take precedence over any inconsistencies in the amounts otherwise incorporated into this Agreement. The amounts in this Agreement shall only be revised by written agreement between the parties. The monetary amounts follow:

CM Preconstruction Fee	**$147,459.**
GMP	$22,126,609
Cost of Work	$18,610,000

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CM Construction Fee	$744,400
CM Construction Contingency	$558,300
Owner Contingency	$558,300
General Conditions	$1,120,209
Bonds/Insurance	$535,400
Pre-Construction + GMP	$22,274,068
Liquidated Damages-Substantial	$1,000.00/day
Liquidated Damages – Final	$500.00/day

7.8 Non-Appropriation. If the Board of County Commissioners does not appropriate the funding needed by the Owner to make payments under this Agreement for a given fiscal year, the Owner 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 Owner will promptly notify the CM 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 Owner which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement

ARTICLE 8
INSURANCE AND MUTUAL INDEMNITY

8.1 CM's Liability Insurance

8.1.1 The CM shall purchase at their own expense and maintain in companies properly licensed by the department of insurance of the State of North Carolina and rated "a" or better by a.m. best company as will protect it, the Owner, the Design Consultant and their agents, representatives, and employees from claims as set forth below which may arise out of or result from the CM's operations under the Agreement, whether such operations be by itself or by any contractor or subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be legally liable:

8.1.1.1 Worker's compensation, including occupational disease and employer's liability insurance.

8.1.1.1.1 Statutory coverage as required by the State of North Carolina worker's compensation laws.

8.1.1.1.2 Employer's Liability - at least $1,000,000 each accident, $1,000,000 disease - each employee, $1,000,000 disease - policy limit (or sufficient limits to meet the requirements of the umbrella insurance.

8.1.1.2 Commercial General Liability Insurance - the CM shall obtain and maintain during the life of this Agreement such commercial general liability insurance as shall protect it and any contractor or subcontractor performing work under this Agreement from claims for damages for bodily injury, including accidental death, as well as from claims for property damage which may arise either from the operations or from a contractor or subcontractor or by anyone directly or indirectly employed by them. The CM shall procure insurance coverage for direct operations, sublet work, elevators, contractual liability and completed operations with limits not less than those stated below:

8.1.1.2.1 Bodily Injury & Property Damage Liability: $1,000,000 each occurrence

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8.1.1.2.2 Personal Injury & Advertising Liability - $1,000,000 each occurrence

8.1.1.2.3 General Aggregate - $2,000,000

8.1.1.2.4 Products/completed operations aggregate - $2,000,000

8.1.1.2.5 Aggregate limits shall be endorsed to apply on a 'per Project' basis as respects this Agreement.

8.1.1.2.6 Completed Operations Liability: continuous coverage shall be maintained in force for a period of six (6) years following the date of final completion of the work.

8.1.1.3 Business Automobile Liability Insurance, including coverage for owned, non-owned and hired vehicles (symbol 1) - with limits not less than those stated below:

8.1.1.3.1 Combined single limit for bodily injury & property damage $1,000,000 each accident.

8.1.1.4 Excess/Umbrella Liability Insurance: policy to "pay on behalf of the insured"

Limits of liability: the following shall apply based upon the original Projected GMP:

GMP: < $25,000,000	$5,000,000
GMP: > $25,000,000	$10,000,000

Umbrella shall schedule as underlying coverage employer's liability, business auto liability, and commercial general liability at limits required in Section 8.1.1 above.

8.1.1.5 Required limits may be met in total by any combination of primary and excess/umbrella limits.

8.1.1.7 Contractor's Pollution Liability

CM shall obtain and maintain in effect during the term of this Agreement a policy of pollution liability in the minimum amount of $5,000,000 each claim, $5,000,000 policy pollution policy aggregate. This coverage may be placed via combined contractor's professional and pollution liability policy, separate contractor's pollution liability policy or by use of the limited jobsite pollution liability endorsement to the commercial general liability policy. Continuous coverage shall be maintained in force for a period of six (6) years following the date of final completion of the work. CM is responsible for any applicable deductible.

8.1.1.8 If the Project includes any environmental abatement or remediation work (e.g. asbestos, mold, lead paint, or UST), the CM shall obtain and maintain in effect during the term of this Agreement policies for pollution liability covering this specific type of work, which policies shall protect the Owner and CM from claims in an amount not less than $5,000,000 for each claim. Coverage may be procured directly by the CM or through policy placed on behalf of the environmental abatement subcontractor.

8.1.2 CM's business, auto, commercial general liability, builder's risk and excess/umbrella policies shall include an endorsement naming the Owner and the Brunswick County Board of Education as additional insureds and certificate holders. The additional insured endorsement for commercial liability shall specify coverage on a primary and non-contributory basis and included completed operations. All insurance policies shall be endorsed to provide for waiver of subrogation in favor of Owner. All insurance policies shall contain an endorsement providing the coverage afforded under the policies will not be canceled until at least thirty (30) days' prior written notice has been given to the Owner. Endorsements above may be provided on a Project specific or blanket basis as required by written contract.

8.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner by the start date established in the master schedule and thereafter on renewal or replacement of each required policy of insurance. The certificate of insurance shall certify the existence of all required policies which satisfy

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the requirements listed in Section 8.1 above. The following language shall be typed into the section of the certificate of insurance labeled description of operations/locations/vehicles/special items: “policies certified on this certificate have been amended by specific or blanket endorsement to provide 30 days prior notice of cancellation to Owner.” Updated certificates of insurance shall be maintained on file with Owner and by CM throughout the term of the work and for a period of six (6) years from the date of final completion of the work.

Notwithstanding any provision above, contractor shall provide at least five (5) business days direct prior notice to Owner of the cancellation, non-renewal (without replacement), or the material reduction of coverage or limits of any policy of insurance required by Section 8.1.1 above and for a term of six (6) years following the date of final completion of the work.

8.1.4 The CM shall not allow any contractor or subcontractor to commence work on its contract until all similar insurance required of the contractor or subcontractor has been so obtained and a certificate of insurance has been filed with the CM. CM shall determine and approve the excess/umbrella liability insurance requirements and the term for certification of completed operations liability (following the date of final completion) for all contractors and subcontractors. Approval of the insurance by the Owner shall not relieve or decrease the liability of the CM hereunder. Failure of the CM to provide all required certificates could delay the issuance of notice to proceed. Such delay shall not entitle the CM to an extension of any milestone or completion dates required by the master schedule.

8.2 Builder’s Risk Insurance

8.2.1 The CM shall purchase and at all times maintain such insurance as will protect the CM, the Owner, the Owner’s representatives, agents and employees, the Design Consultant, contractors and subcontractors from loss or damage to work or property in the course of construction, including all machinery, materials and supplies on the premises, in storage or in transit and intended to become a part of the finished work until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. This insurance shall be in the form of "builder’s risk" policy insuring “risks of direct physical loss except those as specifically excluded by the policy”, or equivalent. The policy shall not exclude the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, vandalism, theft, malicious mischief, riot, debris removal, flood, water damage, earthquake, earth movement, testing, architect’s and engineering fees, mechanical or electrical breakdown, collapse however caused, and/or damage resulting from defective design, workmanship or material. Limits shall be written for the value of the GMP and insure the full cost of replacement at the time of loss. Sub-limits for flood or earthquake are subject to approval by Owner. The CM shall cause such policy or policies of insurance required under this subparagraph to be endorsed so as to provide that the insurer or insurers waive any right of subrogation against the Owner. Notwithstanding any deductible provision, the CM shall remain solely liable for the full replacement cost of any item covered by such insurance, including any applicable deductible or co-insurance penalty. Prior to commencement of work, CM shall provide to Owner a copy of the builder’s risk policy obtained in compliance with Section 8.2.1.

8.2.2 All insurance companies providing the above insurance shall be properly licensed by the department of insurance of the State of North Carolina and rated “a” or better by a.m. best company.

8.2.3 Any loss insured under subparagraph 8.2.1 is to be adjusted with the Owner and made payable to the Owner as trustee for the insured, as their interests may appear, subject to the requirements of any applicable mortgagee clause and of subparagraph 8.2.5. The CM shall pay each contractor and/or subcontractor a just share of any insurance moneys received by the CM, and by appropriate agreement, written where legally required for validity, shall require each contractor or subcontractor to make payments in similar manner.

8.2.4 The Owner and CM waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph 8.2, or any other property insurance applicable to the work, except such rights as they may have to the proceeds of such

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insurance held by the Owner as trustee. The CM shall require, by appropriate agreement, written where legally required for validity, similar waivers in favor of the Owner and the CM by contractors and subcontractors. With respect to the waiver of rights of recovery, the term Owner shall be deemed to include, to the extent covered by property insurance applicable thereto, its consultants, employees, and agents and representatives. The CM waives as against any separate contractor all rights for damages caused by fire or other perils in the same manner as is provided above as against the Owner. The Owner shall require, by appropriate agreement, written where legally required for validity, similar waivers in favor of the CM by any separate contractor and its subcontractors.

8.2.5 If required in writing by any party in interest, the Owner as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of its duties. It shall deposit in a separate account any money so received, and it shall distribute it in accordance with such agreement as the parties in interest may reach, or in accordance with a court order or award. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate change order.

8.2.6 The Owner as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within five (5) days after the occurrence of loss to the Owner's exercise of this power, and if such objection is made, the matter shall be decided by a court of competent jurisdiction or as the parties in interest otherwise agree. The Owner as trustee shall, in that case, make settlement with the insurers in accordance with the orders of the court or as otherwise agreed by the parties in interest.

8.2.7 If the 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 the Owner and CM 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 the CM and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

8.3 Indemnity

8.3.1 To the fullest extent permitted by law, the CM shall, at its sole cost and expense, indemnify, defend, and hold harmless the Owner and 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 and/or resulting from the performance of the work by the CM, any contractor or subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be legally 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 8.3.1. 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.

8.3.2 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 CM, any contractor or 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 Paragraph 8.3.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CM or any contractor or subcontractor from any of the insurance coverage required in Section 8.1 herein.

8.3.3 The Owner hereby indemnifies and holds harmless the CM and its employees, agents, and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage caused solely by the Owner that arise out of or result solely from breach of this Agreement or from negligent acts, errors or omissions of the Owner, and its employees.

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8.3.4 The CM shall cause each contractor and subcontractor to indemnify and hold harmless the Owner, CM, and Design Consultant from and against any and all claims, demands, suits, damages resulting from bodily injury, personal injury, damage to tangible property (including loss of use), costs, and expenses and fees that are asserted against the Owner, CM, and the Design Consultant and that arise out of or result from negligent acts, errors or omissions or the breach of the construction contract by the contractor or subcontractor, its employees, agents, and representatives in performing the work.

8.4 Performance and Payment Bonds

8.4.1 Within 10 days of the establishment of the final GMP via change order, the CM shall provide a performance bond and payment bond each in the amount of the GMP, minus the Owner's contingency if the Owner's contingency is included in the GMP. The amount of the performance and payment bonds may be adjusted if the Guaranteed Maximum Price is reduced after the bids are received.

8.4.2 All insurance companies providing the above bonds shall be properly licensed by the Department of Insurance of the State of North Carolina and rated "A" or better by a.m. best company. The bonds shall be in the form approved by the Owner and attached hereto as Appendix F.

ARTICLE 9
SUSPENSION

9.2 Suspension

9.2.1 The Owner may order, in writing, the CM to suspend all or any part of the CM's services for the Project for the convenience of the Owner or for work stoppage beyond the control of the Owner or the CM. If the performance of all or any part of the services for the Project is suspended, the Owner and CM may negotiate an adjustment in the CM's compensation for the CM's performance of this Agreement caused by such suspension and this Agreement may be modified in writing accordingly.

9.2.2 In the event the CM's services on the Project are suspended, the Owner shall reimburse the CM for all of the costs of its construction site staff, assigned Project home office staff and other costs provided for by this Agreement for the first seven (7) days of such suspension. The CM shall reassign the staff for the remainder of the suspension period unless directed otherwise by the Owner in writing and if the Owner directs the CM to maintain all or part of its staff, the Owner shall reimburse the CM for all costs of staff remaining dedicated to the Project. Upon cessation of the suspension, the CM shall restore the construction site and home office staff to its former size.

9.2.3 Persons assigned to another Project during such suspension or period and not available to return to this Project upon cessation of the suspension shall be replaced. The Owner shall reimburse the CM for costs incurred in relocating staff persons returning to the Project or new persons assigned to the Project.

9.2.4 If the Project is resumed after being suspended, the CM shall have the right to request that its compensation, including rates and fees, be renegotiated. Subject to the provisions of this Agreement relating to termination, a delay or suspension of the Project does not void this Agreement.

ARTICLE 10
TERMINATION

10.1 Termination by the CM

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10.1.1 If the work is stopped for a period of one hundred eighty (180) days by the Owner or 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, and through no act or fault of the CM or a contractor or their agents or employees or any other persons performing any of the work under a contract with the CM, then the CM may, upon seven (7) additional days' written notice to the Owner and the design consultant, terminate the contract and recover from the Owner payment for all work executed. The CM shall not be entitled to collect and hereby expressly waives any profit on work not performed and any damages related to that portion of the contract which has been terminated.

10.2 Termination for Convenience of the Owner

10.2.1 The Owner may, at any time upon ten (10) days' written notice to the CM and to the CM's surety, 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 CM's sole remedy, in the event of such termination, will be the allowable termination costs permitted by Paragraph 10.4. CM shall include termination clauses identical to Article 10 in each of his subcontracts.

10.3 Default Termination

10.3.1 Ten (10) days' after written notice is mailed to the CM and to the CM's surety, 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 CM 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 CM or its surety 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 CM is in material default in carrying out any provisions of the contract for a cause within his control;

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

.4 If the CM fails to make payment to the contractors or for materials or labor when due, unless he otherwise provides the Owner reasonable evidence that payment is not legally or contractually due;

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

.6 If the CM substantially violates any provisions of the contract documents; or

.7 If the CM 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.

10.3.2 The right of the CM to proceed shall not be so terminated under this Paragraph 10.3 if the delays in the completion of the work are due to causes beyond the control and without the fault or negligence of the CM or the contractors.

10.3.3 If, after the CM has been terminated for default pursuant to Paragraph 10.3, it is determined that none of the circumstances set forth in Paragraph 10.3.1 exist, then such termination shall be considered a

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termination for convenience pursuant to Paragraph 10.2. In such case, the CM's sole remedy will be the costs permitted by Paragraph 10.4.

10.3.4 If the Owner so terminates the employment of the CM, the CM shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the compensation that would have been paid to the CM for the actual work completed, excluding the CM's unused contingency, shall exceed the expense of so completing the work (including compensation for additional construction management, managerial, administrative, consultant, legal, design and inspection services and any damages for delay) such excess shall be paid to the CM.

10.3.5 If such expenses shall exceed the unpaid balance, the CM and his sureties shall be liable to the Owner for such excess. If the right of the CM 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 CM to proceed, the CM shall continue to perform the part of the work that is not terminated.

10.3.6 If the Owner terminates the whole or any part of the work pursuant to Paragraph 10.3, 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 CM shall be liable to the Owner for any excess costs for such similar supplies or services. The CM shall continue the performance of the contract to the extent not terminated hereunder.

10.4 Allowable termination costs

10.4.1 If the Owner terminates the whole or any portion of the work pursuant to Paragraph 10.2, then the Owner shall only be liable to the CM for those costs reimbursable to the CM in accordance with Paragraph 10.4.2, plus a markup of ten percent for profit and overhead on the actual fully accounted costs paid by the Owner under 10.4.2; provided however, that if there is evidence that the CM would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed hereunder for the work performed and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss. Under no circumstances shall the CM be entitled to any loss profit or fee on the work terminated pursuant to section 10.2.

10.4.1.1 After receipt of a notice of termination, the CM 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 thirty (30) days from the effective date of termination, unless one or more extensions in writing are granted by the Owner upon request of the CM made in writing within such thirty (30) day 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 thirty (30) day period or any extension thereof. Upon failure of the CM 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 CM by reason of the termination.

10.4.2 If the Owner terminates the whole or any portion of the work pursuant to section 10.2, the Owner shall pay the CM an amount for supplies, services, or property accepted by the Owner, and which is in accordance with the contract documents, in an amount as if the Agreement had not been terminated. In addition, in such event, the Owner shall pay to CM an amount representing CM's actual cost, excluding any overhead and profit for the items and things specified in subparagraph 10.5.1.6 and not heretofore paid for, appropriately adjusted for any saving of freight or other charges. Under no circumstances, shall the CM be entitled to any loss profit or fee on the work terminated pursuant to section 10.2.

10.4.2.1 The CM agrees that neither the Owner nor the Design Consultant will be liable for payments to contractors or subcontractors pursuant to Paragraph 10.4.2 unless each contract or subcontract

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contains termination provisions identical to those set forth in this Article 10. The Owner and the design consultant will not be liable to the CM or any of the contractors or subcontractors for any costs associated with termination if the contract or subcontract of the party involved does not include the required termination language.

10.4.3 In arriving at any amount due the CM pursuant to Paragraph 10.4, there shall be deducted the following:

.1 All unliquidated advance or other payments on account theretofore made to the CM applicable to the terminated portion of the contract;

.2 Any amount which the Owner reasonably believes the CM or any of the contractors owes to the Owner;

.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 CM or sold, pursuant to the provisions of Paragraph 10.5.1.7, and not otherwise recovered by or credited to the Owner.

10.4.4 The total sum to be paid to the CM under Paragraph 10.4 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 CM, as provided in Paragraph 10.4.2, the replacement cost of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to Paragraph 10.5.1.7.

10.5 General Termination Provisions

10.5.1 After receipt of a notice of termination from the Owner, pursuant to Paragraph 10.2 or 10.3, and except as otherwise directed by the Owner, the CM 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 CM for the performance of such portion of the work as had been terminated, the following:

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(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 commercially reasonable 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 Paragraph 10.5.1.6; provided, however, that the CM:

(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 CM 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 CM and in which the Owner has or may acquire an interest.

10.5.2 The CM 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 CM, but without direct charge to the Owner, all his books, records, documents and other evidence bearing on the costs and expenses of the CM 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.

10.5.3 If the termination, pursuant to Paragraph 10.2, be partial, the CM 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 CM for an equitable adjustment under this Paragraph must be asserted within six (6) months from the effective date of the notice of termination.

10.5.4 The CM shall refund to the Owner any amounts paid by the Owner to the CM in excess of costs reimbursable under Paragraph 10.4.

10.5.5 The CM shall be entitled to only those damages and that relief from termination by the Owner as specifically provided in Article 10.

ARTICLE 11
ADDITIONAL PROVISIONS

11.1 Limitation and Assignment

11.1.1 The Owner and the CM each bind itself, its successors, assigns, insurers, and legal representatives to the terms of this Agreement.

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11.1.2 Neither the Owner nor the CM shall assign or transfer its rights or interest in this Agreement without the written consent of the other, except that the CM may assign accounts receivable to a commercial bank for securing loans without approval of the Owner and the Owner may assign the Agreement to Brunswick County for any reason without the consent of the CM. However, nothing contained in this paragraph can prevent the CM from employing contractors or such consultants, associates or subcontractors as the CM may deem appropriate to assist in performance of the services and of the Work hereunder.

11.2 Governing Law and Venue

11.2.1 This Agreement 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 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.

11.2.2 CM shall comply with all applicable laws and regulations in providing services under this Agreement. CM shall not employ any individuals to provide services to the Owner who are not authorized by federal law to work in the United States. CM 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. CM further warrants that it will use the E-Verify system to verify employment eligibility of all its employees throughout the term of this Agreement, and that it will remain in compliance with all i-9 requirements throughout the term of this Agreement. CM shall also ensure that any subcontractors use the E-Verify system at all times while providing subcontracted services in connection with this Agreement.

11.2.3 Lunsford Act/Criminal Background Checks. The CM 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 Owner 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 administrative office is not located at a school site; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites where no minors are present. 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 CM’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 CM shall provide certification on the sexual offender registry check certification form (Appendix G) 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 CM 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, CM 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. CM further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. CM 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. CM 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. CM 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 school system’s expense. If the Owner exercises this right to conduct additional criminal records checks, CM agrees to provide within seven (7) days of request the full name, date of birth, state of residency for the past ten years,

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and any additional information requested by the Owner for all contractual personnel who may deliver goods or perform services under this Agreement. CM 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. Owner reserves the right to prohibit any contractual personnel of CM from delivering goods or providing services under this Agreement if 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.

11.2.4 The CM represents that as of the date of this Agreement, neither the CM nor its principals are included on the final divestment list created by the North Carolina state treasurer pursuant to N.C. Gen. Stat. § 147-86.58. The CM also represents that as of the date of this Agreement, neither the CM nor its principals are 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. The CM further represents that as of the date of this Agreement, neither the CM 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. The CM must notify Owner within thirty (30) days if debarred by any governmental entity during this Agreement.

11.2.5 Anti-Nepotism. The CM 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 Owner's Board of Education or of any principal or central office staff administrator employed by the Owner. 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 the CM 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, the CM shall immediately disclose the family relationship in writing to the superintendent. Unless formally waived by the Owner, the existence of a family relationship covered by this Agreement is grounds for immediate termination by Owner without further financial liability to the CM.

11.2.6 Sales and Use Tax. CM 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 CM has been contracted with to oversee "new construction" or "reconstruction" as defined in G.S. 105-164.4h, CM shall be responsible for issuing and maintaining an "affidavit of capital improvement.

11.2.7 Non-Discrimination. CM 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. CM shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event CM 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 Owner, and CM may be declared ineligible for further agreements with Owner.

11.2.8 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.

11.2.9 Governmental Immunity. Owner, 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.

11.2.10 The CM shall comply with the above listed and all applicable laws and regulations in providing services under this Agreement.

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11.3 Extent of Agreement

11.3.1 This Agreement represents the entire and integrated agreement between the Owner and the CM and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified or amended only by written instrument signed by both the Owner and the CM. Nothing contained in this Agreement is intended to benefit any third party. The Contractors and Design Consultant are not intended third party beneficiaries of this Agreement. This Agreement shall not be construed more strictly against one party than the other merely by virtue of the fact that it has been prepared initially by the Owner, it being recognized that both parties and their respective counsel have had a full and fair opportunity to negotiate and review the terms and provisions of this Agreement and to contribute to its substance and form.

11.4 Severability

11.4.1 If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.

11.5 Meaning of Terms

11.5.1 References made in the singular shall include the plural and the masculine shall include the feminine or neuter.

11.6 Notices

11.6.1 Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended or if delivered or sent by registered or certified mail, postage prepaid, or by facsimile, addressed as follows:

To the Owner:
Brunswick County
Brunswick County Manager
30 Government Center Dr (via courier service or overnight services)
PO Box 249 (via mail)
Bolivia, NC 28422

With a copy to:
Brunswick County Board of Education
Executive Director of Operations
35 Referendum Dr.
Bolivia, NC 28422

To the CM:

Barnhill Contracting Company
John Smith VP
4312 Henson Dr
Wilmington, NC 28405

11.7 Compliance with Brunswick County and Brunswick County Board of Education Board Policies and Procedures.

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11.7.1 The CM acknowledges that the Owner's policies governing conduct on the Owner's property are available for review on the Owner's website at www.bcswan.net. In addition to complying with the Owner's policies, the CM agrees to comply with the following:

11.7.2 The CM, the contractors and their 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 CM, the contractors and their 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.

11.7.3 The CM, the contractors and their employees, are prohibited from profane, lewd, obscene or offensive conduct or language, including engaging in sexual harassment.

11.7.4 The CM and the contractors 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.

11.7.5 The CM and the contractors 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 Agreement, "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.

11.7.6 The CM, the contractors and their 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.

11.7.7 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.

11.7.8 The CM, the contractors and their 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 Owner's schools. The CM 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 CM or the contractors.

11.7.9 The CM, the contractors and their employees shall not interact with any students. Nothing in this Paragraph shall be construed to prevent the CM, the contractors and their employees from taking necessary measures to protect students, staff or other employees.

11.7.10 The CM shall at all times enforce strict discipline and good order among its employees and shall not employ any unfit person or anyone not skilled in the task assigned to it. The Owner may require the CM to remove any employee, contractor or subcontractor the Owner deems incompetent, careless or otherwise objectionable.

11.7.11 All agents and workers of the CM and the contractors shall wear identification badges provided by the CM at all times they are on the Owner's property. The identification badges shall at a minimum display the company name, telephone number, employee name and a picture of the employee. The CM and the contractors shall comply with the Owner's site or school building access procedures when working on any existing school campus.

11.8 Construction Project Policies

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The CM acknowledges the Owner's, minority business participation policy, and prequalification of bidders for construction Projects, including their regulations and procedures, attached as Appendixes H and I be incorporated into this Agreement.

11.9 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 § 66-58.1 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.

This Agreement is executed the day and year first written above.

OWNER:

BRUNSWICK COUNTY

_____

Chairman, Board of Commissioners

Attest:

_____

Clerk to the Board

[Seal]

CONSTRUCTION MANAGER:

BARNHILL CONTRACTING COMPANY_

_____

John W. Smith, Vice President Building Division Eastern

Attest:

_____

Stephen Smith, Senior Project Manager

[Corporate Seal]

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"This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act."

_____
Freyja Cahill, Finance Officer
Brunswick County Board of Education

4.9020.697.527.326.875.00

"This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act."

_____
Aaron C. Smith, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

_____
Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney
Brunswick County, North Carolina

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APPENDIX A
DESIGN CONSULTANT AGREEMENT - CM at RISK

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APPENDIX A
DESIGN CONSULTANT AGREEMENT - CM at RISK

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EXHIBIT A

CONSTRUCTION CONTRACT AWARD PRICE

DocuSign Envelope ID: EF675A48-4743-46DB-947E-4FC75EA71A44

Design, Construction And Equipment Budget- Nbhs Addition And Improvements

DESIGN FEE	$1,057,000
PRECONSTRUCTION (CM)	$147,459
CONSTRUCTION CONTRACT AWARD PRICE-INCLUDES COST OF WORK, GENERAL CONDITIONS, CM FEE, CM CONTINGENCY, BONDS/INS.	$21,568,309
OWNER CONTINGENCY	$558,300
FURNITURE, EQUIPMENT, FEES, TESTING	$649,070
TOTAL	$23,980,138

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EXHIBIT B

PROGRAM OF REQUIREMENTS

DocuSign Envelope ID: EF675A48-4743-46DB-947E-4FC75EA71A44

PROGRAM OF REQUIREMENTS

The program consists of the design and construction of new classrooms and athletic field/playing areas. The project will generally follow the master plan included in this section, described and/or modified herein. Specifically, the project program includes

- A 12-classroom addition. The building design will include a new band room and ancillary spaces as a bid alternate, and the provisions for a 4-classroom future addition. Provisions shall include adequate number of plumbing fixtures for build-out, electrical circuits sized for future build-out, and all other interfacing utility infrastructure wireways routed from the natural point of origination to the to the common expansion wall.
- Relocation of underground utilities from under building (and future classroom) footprints and paved athletic surfaces.
- The relocation and on-site set-up of 2 doublewide modular units
- Construction of a fire road to replace demolished sections of the existing fire road
- Construction of a new softball field, press box, dugouts, and scoreboard. Field shall be fenced and irrigated. Scope work shall include the relocation of LED field lights and poles.
- Construction of a 6-tennis court playing area adjacent to Old Fayetteville Road. The area will include male and female restrooms, a small concession (package goods) disbursement area, and a small storage area.
- Construction of 3 practice fields adjacent to the 12-classroom addition. The fields will be irrigated
- Modification of the front stormwater pond, completion of a new pond in the rear, and installation of required piping and appurtenances per the approved stormwater plan. Installation of erosion control measures. The civil engineer is to submit the stormwater and erosion control plan applications to the authority having jurisdiction.
- One additional parking lot for parking of the staff in the new addition and local road improvements if necessary.
- All demolition required to perform the scope of services. Items to include but are not limited to paving, masonry structures, electrical services, plumbing services, and fencing.
- And other non-specified items required for a complete design.

The design is by architect/engineer unless identified as a delegated design. Demolition and construction is through the CM unless indicated otherwise in the contract documents.

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EXHIBIT C

MANAGEMENT PLAN

DocuSign Envelope ID: EF675A48-4743-46DB-947E-4FC75EA71A44

MILESTONES TO SUPPORT AUGUST 1, 2024 SUBSTANTIAL COMPLETION

Construction Manager at Risk Notice to Proceed..... September 8, 2022

Architect/Engineer Notice to Proceed..... September 8, 2022

Design/Permitting/Construction Drawings.....March 31, 2023

GMP Acceptance/Construction Notice to Proceed .....June 1, 2023

Construction Substantial Completion.....August 1, 2024

Project Completion ..... September 1, 2024

Construction Manager to Generate Detailed Comprehensive Management/Construction Schedules with Interim Dates for use During Design and Construction

DocuSign Envelope ID: EF675A48-4743-46DB-947E-4FC75EA71A44

EXHIBIT D

AGREEMENT FOR CONSULTANTS SERVICES

DocuSign Envelope ID: EF675A48-4743-46DB-947E-4FC75EA71A44

EXHIBIT D

AGREEMENT FOR CONSULTANT'S SERVICES

The undersigned Consultant and Architect agree as follows on the furnishing of services by the consultant for: (structural) (mechanical) (electrical) work for this Project to be executed under Agreement for Design Consultant Services with the Owner, dated _____ for the following Project:

Pertinent provisions of this Agreement for Design Consultant Services shall govern work to be performed by the Consultant and the Architect. By signing this document, the Consultant verifies that he has read and is thoroughly familiar with this Agreement for Design Consultant Services, and that he has not otherwise relied on any representations or assurances by any person as to the terms of the said Agreement for Design Consultant Services.

Services rendered by the Consultant shall be complete, including drawings and specifications, visits to the site at intervals appropriate to the stage of construction, reports, shop drawing approval and final certificate of compliance.

The Architect will act as principal coordinator and prime designer.

CONSULTANT:	**ARCHITECT:**
BY:_____	BY:_____
President	President
ATTEST:	ATTEST:
_____	_____
Secretary	Secretary
DATE: _____	DATE: _____

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EXHIBIT E

DESIGN CONSULTANT FEES

DocuSign Envelope ID: EF675A48-4743-46DB-947E-4FC75EA71A44

HOURLY RATE SCHEDULE

Principal	$225-275/hr
Senior Associate	$150-200/hr
Associate	$120-160/hr
Architect/Engineer/Interior Designer	$145-165/hr
Designer	$100-145/hr
Technician	$ 50-110/hr
Support	$ 50-150/hr
Expert Witness	1.5 x billing rate
3D Scanner	$200

**Rates subject to change each January*

Any consultants required and authorized by the Owner will be billed at cost plus (10) ten percent

Reproduction Expenses

Plots	Size	Regular	Color
	18x24	$ 5.00	$10.00
	24x36	$10.00	$15.00
	30x42	$15.00	$20.00
Photocopies	8 1⁄2 x 11	$ .15	$ .50
	8 1⁄2 x 14	$ .20	$ .75
	11x17	$ .25	$ 1.00
Prints	18x24	$ 2.00	
	24x36	$ 3.00	
	30x42	$ 4.00	

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EXHIBIT F

SEXUAL OFFENDER CERTIFICATION FORMS

DocuSign Envelope ID: EF675A48-4743-46DB-947E-4FC75EA71A44

Sexual Offender Registry Check Certification Form

Check the appropriate box to indicate the type of check:
□ Initial
□ Supplemental
□ Annual

I, _____ (insert name), _____ (insert title) of _____ (insert company name) hereby certify that I have performed all of the required sexual offender registry checks required under this Agreement for all contractual personnel (employees, agents, ownership personnel, or contractors) who may be used to deliver goods or provide services under this Agreement, including the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry. I further certify that none of the individuals listed below appears on any of the above-named registries and that I will not assign any individual to deliver goods or perform services under this Agreement if said individual appears on any of the sex offender registries. I agree to maintain all records and documents associated with these registry checks, and that I will provide such records and documents to the school system upon request. I specifically acknowledge that the school system retains the right to audit these records to ensure compliance with this section at any time in the school system's sole discretion. I acknowledge that I am required to perform these checks and provide this certification form before any work is performed under the Agreement (initial check), any time additional contractual personnel may perform work under the Agreement (supplemental check), and at each anniversary date of the Agreement (annual check).

Contractual Personnel Names	**Job Title**
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

(attach additional page(s) if needed)

I attest that the forgoing information is true and accurate to the best of my knowledge.

_____ (print name) _____ (signature)
_____ (title) _____ (date)

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EXHIBIT G

OWNER AND CONSTRUCTION MANAGER AT RISK AGREEMENT

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APPENDIX B-1
MANAGEMENT PLAN (PRELIMINARY)

DocuSign Envelope ID: EF675A48-4743-46DB-947E-4FC75EA71A44

MANAGEMENT PLAN - MILESTONES TO SUPPORT AUGUST 2024 SUBSTANTIAL COMPLETION

Construction Manager at Risk Notice to Proceed..... September 8, 2022

Architect/Engineer Notice to Proceed..... September 8, 2022

Design/Permitting/Construction Drawings.....March 31, 2023

GMP Acceptance/Construction Notice to Proceed .....June 1, 2023

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Project Completion ..... September 1, 2024

Construction Manager to Generate Detailed Comprehensive Management/Construction Schedules with Interim Dates for use During Design and Construction

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APPENDIX B-2
CONSTRUCTION SCHEDULE AND REPORTING

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CONSTRUCTION SCHEDULES AND REPORTS

1.01 GENERAL REQUIREMENTS

A. The work under this contract shall be planned, scheduled, executed and reported using the Critical Path Method (hereinafter referred to as: CPM), pursuant to the provisions of the Standard Form of Agreement Between Owner and Construction Manager (hereinafter referred to as: Agreement).

B. The primary objectives of the project scheduling program are to insure the adequate planning, scheduling and execution of the construction activities so they may be prosecuted in an orderly and expeditious manner, within the Contract Time and the milestones stipulated by the Contract, to provide optimum coordination between contractors, to establish the basis for measuring and monitoring individual contractor progress and overall project progress, to detect problems for the purpose of taking corrective action to maintain the scheduled program and to provide a mechanism or tool for determining and monitoring such corrective actions.

C. Any schedules prepared for this project by the Owner are made available by the Owner solely as an aid to the Construction Manager (CM). The Owner's plan may not optimize, and it is not intended to optimize, the CM's costs or resources. It is intended that these schedules will reflect the milestones and completion dates established by the Owner. However, the services provided by the Owner, the existence of schedules, networks, or any other charts or services prepared or performed by the Owner or Design Consultant shall in no way relieve the CM of the responsibility of complying with all of the requirements of the Agreement, including but not limited to the responsibility of completing the Work within the Contract Time and the responsibility of planning, scheduling and coordinating the work. The CM is required to comply with all control procedures specified herein and with any reasonable changes that may be necessary, in the opinion of the Owner and Design Consultant, during the contract duration.

D. Any and all milestone or specific dates listed in these specifications, or elsewhere in the Agreement, represent only the major items of construction/erection work or interface dates. The milestone completion dates indicated are considered essential to the satisfactory performance of this Agreement and to the coordination of all work on the project.

1. The milestone dates listed are not intended to be a complete listing of all work under this Agreement or of all interfaces between project contractors.

2. The milestone dates listed represent the latest allowable completion dates. Earlier completion dates may be established by the CM as agreed by the Design Consultant and the Owner.

E. If the CM should desire or intend to complete the work earlier than any required Milestone or Completion date, the Owner and Design Consultant shall not be liable to the CM for any costs or other damages should the Construction manager be unable to complete the Work before such Milestone or Completion Dates. The duties, obligations and warranties of the Owner to the CM shall be consistent with and applicable only to the completion of the Work on the Milestone and completion dates required in the Agreement, unless the Owner and CM otherwise agree in writing.

1.02 PRE-BID

In conjunction with the preparation of Construction Documents, the CM shall prepare a detailed milestone schedule which displays a construction plan to complete the Project in compliance with specific dates listed in the Agreement.

1.03 POST AWARD ACTIVITIES

A. The CM, Owner and Design Consultant shall perform the following after receipt of the Notice to Proceed (NTP): (The agreement to and approval of a Guaranteed Maximum Price (GMP) for a portion, or all, of the Project shall constitute an NTP for that portion of the Project.)

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Immediately following the receipt of the Notice to Proceed, the CM shall commence the preparation of its Detailed Project Construction Schedule. The CM shall assemble, with the assistance and input from the Contractors, Subcontractors, and Suppliers, information regarding the project that includes but is not limited to:

1. A Detailed Project Construction Schedule that represents the CM's best judgment in how it shall prosecute and complete the work in compliance with the Milestone Dates and any Specific Dates stipulated in the Agreement.
2. The identity and duration of all activities to be included in this construction plan. Activities shall meet the following criteria:
    a. Activity descriptions shall be clear and concise. The beginning and end of each activity shall be readily verifiable.
    b. Responsibility for each activity shall be identified with a single performing organization. (i.e., Prime contractor)
    c. An activity must be no more than 14 calendar days in duration unless approved in advance by the Owner and Design Consultant.
    d. Include relevant predecessors and successors for each activity as well as the type of relationships between, and any lag time required. All activities except the first activity (i.e., NTP) and last activity (i.e., Final Completion) shall have both predecessors and successors.
    e. Listing of Project submittals, approvals, and material/equipment site deliveries dates.
3. The identity of planned and reasonably anticipated inclement weather as identified in Article 4 of the Agreement.
4. The identity of long lead items and delivery dates of all major pieces of equipment or materials.

B. The CM shall, within fourteen (14) calendar days following NTP, submit to the Owner and Design Consultant a Computerized 90-Day, Detailed Project Construction Schedule in precedence format for its construction/erection work scope utilizing Primavera's P3®, or Primavera 5.0 scheduling software (compatible software is not acceptable). Provide two (2) hard copies of the 90-Day Detailed Project Construction Schedule and one (1) electronic file copy utilizing Primavera's Scheduling Software. This schedule shall provide complete details, as outlined in this section and related sections, of all activities included for the first 90 contractual days of work (from NTP), as well as, the proposed summary of work activities for the remaining contractual scope and divisions of work (utilizing summary activities) for the project beyond the first 90 days through final completion. The work beyond the first 90 days shall be broken down by subcontractor and division of work and shall show logic, sequencing, and responsibility. This initial schedule shall incorporate the work of all contractors, subcontractors, vendors, and outside agencies and contractors associated with the entire scope of work for this project.

   The Detailed Project Construction Schedule shall show:

   1. The order and interdependencies of the Contractors' activities and the major points of interface or interrelation with the activities of others, including specific dates for completion.
   2. Conformance with and identification of the specified mandatory milestone dates specified in the Agreement.
   3. The description and quantity of work by activity.
   4. The time required for engineering, preparation and approval of shop drawings, manufacturing, and delivery of Contractor-furnished permanent materials.

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5. The time required for procurement, delivery, and erection of the Contractor's permanent materials.
6. Delivery of Owner-furnished material and equipment.
7. Shop fabrication and delivery.
8. Clearly defined Critical Path (or Paths).
9. Erection and installation.
10. Testing of equipment and materials.
11. Technology Data Systems Installation and Testing
12. Activity calendars, incorporating potential weather delays, or multi- work periods.

C. The Detailed Project Construction Schedule shall indicate an early completion date for the project that is no later than the project's required completion date. All activity durations shall be given in calendar days. The Schedule shall also indicate each of the following:

1. Interfaces with the work of outside contractors, e.g., utilities, power, and with any separate contractor.
2. Estimated duration time for each activity.
3. Early start date for each activity.
4. Late start date for each activity.
5. Early finish date for each activity.
6. Late finish date for each activity.
7. Float available for each path of activities containing float.
8. Identification of all critical path activities in the schedule analysis.
9. The critical path for the project, with said path of activities being clearly and easily recognizable on the time-scaled network diagram. The relationship between all non-critical activities and activities on the critical path shall be clearly shown on the network diagram.
10. The responsibility code for the Contractor or Subcontractor performing each activity or portion thereof.
11. The area of work (i.e. Gymnasium, Media Center, etc.) and the floor (i.e. 1st floor, 2nd floor, etc.).

D. The Owner and Design Consultant will review the CM’s Detailed Project Construction Schedule for compatibility with the Project Milestones, the Completion Schedule, and the requirements of the Agreement. If requested, a meeting will be held between the Owner, Design Consultant and CM to resolve any conflicts in the CM's schedule. The CM shall revise its schedule as required by the Owner and Design Consultant to ensure completion of the Project in accordance with the Project’s Milestone and Completion Dates and shall submit its revised schedule to the Owner and Design Consultant within seven (7) calendar days of this meeting.

E. If the CM thereafter desires to make changes in its method of operating and scheduling, he shall follow the procedures set out in Paragraph 2.03, Network Revisions, of this Section.

F. Approval by the Owner and Design Consultant of the CM’s Detailed Project Construction Schedule is advisory only and shall not relieve the Contractors of the responsibility for accomplishing the Work within each and every Contract-required Milestone and Completion date. Omissions and errors in the approved Project Construction Schedule shall not excuse performance which is not in compliance with the contract. Approval by the Owner and Design Consultant in no way makes the Owner or the Design Consultant an insurer of the Detailed

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Project Construction Schedule's success or liable for time or cost overruns flowing from its shortcomings. The Owner hereby disclaims any obligation or liability by reason of Owner or Design Consultant approval of or acquiescence to the Detailed Project Construction Schedule

G. The CM shall compile, organize, and present a fully integrated Computerized Detailed Project Construction Schedule to the Owner and Design Consultant within sixty (60) days of Notice to Proceed. This schedule shall include the 90-Day Construction Schedule as well as the detailed activities for that portion of the work beyond the first 90 days of the construction through final completion to create the complete project schedule. The details of this schedule shall follow the same requirements as those outlined above in this section for the 90-Day Schedule. The CM shall provide two (2) hard copies of the Detailed Project Construction Schedule, and one electronic file copy utilizing Primavera's P3 Scheduling Software (compatible formats are not acceptable), the Schedule of Values and Computer Reports to the Owner and Design Consultant for final review and approval. Approval shall be signified by the Design Consultant, CM, and Owner jointly signing the schedule agreement (Attachment at the end of this section). The CM shall use the approved Detailed Project Construction Schedule in planning, organizing, directing, coordinating, performing and executing the work (including all activities of Contractors, Subcontractors, equipment deliveries, vendors, and suppliers) and shall be the basis for evaluating the progress of the Work, subject to such revisions made in such schedule as provided for herein, in the Agreement, or in the Construction Documents.

H. The CM will develop and maintain the overall Detailed Project Construction Schedule. This schedule will be in precedence format and will be computer generated and updated and will be the controlling schedule document utilized for managing overall project construction.

1.04 COMPUTER COST AND SCHEDULE REPORTS

A. Every month the CM will generate all monthly progress documents from the Detailed Project Construction Schedule, based on the Progress Reports received from the Contractors. These Reports will reflect the progress of the project.

B. Report Content:

1. The initial and subsequent computer-generated Schedule Reports shall include the following minimum information for each activity:

    a. activity number,

    b. activity description,

    c. original and remaining duration in days,

    d. early and late start dates,

    e. early and late finish dates,

    f. actual start dates for activities which have commenced,

    g. actual finish dates for activities which have completed,

    h. percentage of activity completed as of each report,

    i. total float for each activity, and

    j. responsibility for activity.

2. The CM will produce four (4) schedule reports each month. The reports are:

    a. All activities on the Project Construction Schedule sorted by early start and then by total float.

    b. All activities sorted by Contractor, and further sorted by activity number.

    c. All activities sorted by total float.

    d. All activities sorted by late start.

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2.00 CONSTRUCTION MANAGER'S ORGANIZATION

The CM shall maintain, as part of its organization, a staff/or consultant of sufficient knowledge in the use and application of CPM utilizing and whose responsibility will be to prepare input information for the Detailed Project Construction Schedule, monitor progress, provide input for updating and revise logic diagrams when necessary.

2.01 RECOVERY SCHEDULE

Pursuant to paragraph 3.5.2.5 of the Agreement, should any conditions exist such that any of the mandatory specific or milestone dates or completion dates on the CM's approved Detailed Project Construction Schedule fall behind by 14 calendar days or more, the CM shall be required to, at no extra cost to the Owner, prepare and submit to the Owner and Design Consultant, within 14 calendar days of notification, a supplementary Recovery Schedule, in a form and detail appropriate to the need, to explain and display how they intend to reschedule those activities to regain compliance with the Detailed Project Construction Schedule during the immediate subsequent pay period.

2.03 NETWORK REVISIONS

A. Should the CM, after approval of the Detailed Project Construction Schedule, desire to change its plan of construction, the CM shall submit its requested revisions to the Owner and Design Consultant along with a written statement of the revisions including a description of the logic for rescheduling the work, methods of maintaining adherence to intermediate milestones and Specific Dates and the reasons for the revisions. The CM shall revise its schedule to include the effect of Changes, acts of God, or other conditions or events which have affected the network. If the requested changes are acceptable to the Design Consultant, and the Owner, and they do not adversely impact any Milestone or Completion Dates, they will be incorporated into a revised Approved Detailed Project Construction Schedule, to be compiled and produced by the CM in the next reporting period. The resultant cost, if any, to the Owner and the Design Consultant shall be paid for by the CM.

B. When the Owner orders changes by Change Order which have the potential to impact the Construction milestones or Specific Dates stipulated in the Agreement, a Revised Network will be prepared by the CM and provided to the Owner and Design Consultant for concurrence or revision. After the revised network has been mutually agreed upon, it will be incorporated into a revised Detailed Project Construction Schedule, to be compiled and produced by the CM. Change Order logic will affect only those activities and performance dates directly concerned.

C. Any change to the approved Detailed Project Construction Schedule must be approved in writing by the Owner, Design Consultant and CM.

D. Neither the updating or revision of the approved Detailed Project Construction Schedule nor the submission, updating, change or revision of any report or schedule submitted to the Owner and/or Design Consultant by the CM under this Section nor the Owner's review or non-objection of any such report or schedule shall have the effect of amending or modifying, in any way, the Contract Time, any Contract Completion Date, or Contract Milestone Dates or of modifying or limiting in any way the CM's obligations under this Contract.

2.04 FLOAT TIME

A. Float or slack time is defined as the amount of time between the earliest start date and the latest start date or between the earliest finish date and the latest finish date of a chain of activities on the Detailed Construction Network. Float or slack time is not for the exclusive use or benefit of either the CM or the Owner. The CM's work shall proceed according to early start dates, and the Owner and Design Consultant shall have the right to reserve and apportion float time according to the needs of the project. The CM acknowledges and agrees that actual delays, affecting paths of activities containing float time, will not have any affect upon contract completion times, providing that the actual delay does not exceed the float time associated with those activities.

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B. Extensions of time for performance as described in the Agreement will be granted only to the extent that the time adjustment for the activity or activities affected by any condition or event which entitles the CM to a time extension exceeds the total float or slack along the path of activities affected at the time of the owner's authorization to proceed with the Change Order or the commencement of any delay or condition for which an adjustment is warranted under the Agreement.

2.05 REQUESTED TIME ADJUSTMENT SCHEDULE:

A. The updated approved Detailed Project Construction Schedule submitted by the CM shall not show a completion date later than the Agreement, subject to any time extensions approved by the Owner. If the CM believes it is entitled to an extension of the Contract Time under the Agreement, the CM shall submit to the Owner and Design Consultant, a separate schedule analysis (entitled "Requested Time Adjustment Schedule") indicating suggested adjustments in the Contract Time which should, in the opinion of the CM, be made in accordance with the Agreement by time extension, due to changes, delays or conditions occurring during the past month or previously, or which are expected or contemplated by the CM (whether such conditions are excusable under the Agreement or are alleged to be due to fault of the CM or Owner). This separate schedule, if submitted, shall be time-scaled utilizing a computer generated and computer-drawn network analysis schedule, unless otherwise approved by the Owner and Design Consultant, and shall be accompanied or preceded by a formal time extension request as required by the Agreement and a detailed narrative justifying the time extension requested. All time extension requests must be submitted, in writing, to the owner within ten (10) days of the event causing the potential delay or extension in order to be accepted for review and consideration by the owner.

B. Neither the Owner nor the Design Consultant shall have any obligation to consider any time extension request unless the requirements of the Agreement are complied with. The Owner shall not be responsible or liable to the CM for any constructive acceleration due to failure of the Owner to grant time extensions under the Agreement should the CM fail to comply with the submission requirements and the justification requirements of this Agreement for time extension requests. The CM's failure to perform in accordance with the approved Detailed Project Construction Schedule shall not be excused, nor be chargeable to the Owner, because the CM has submitted time extension requests or a "Requested Time Adjustment Schedule."

2.06 COORDINATION

A. The CM shall coordinate its work and that of the Contractors and shall cooperate fully with the Owner and Design Consultant in maintaining orderly progress toward completion of the work as scheduled. The CM's decisions regarding priority between the work of the contractors at the site shall be final. If the CM's critical path work is delayed by the Owner or Design Consultant, the CM shall submit any required time extension requests to the Owner in accordance with the Agreement.

B. The milestone dates referred to in the Agreement for delivery of Owner-furnished equipment and materials and interface activities of other Contractors on the site are based on dates set forth in separate contracts with the Owner.

C. Failure of Owner-furnished equipment and materials to arrive as scheduled, or failure of other construction contractors to meet their schedule, shall not be justification for an extension of time, except where such failure causes, in the opinion of the Owner and Design Consultant, a delay in the CM's critical path work, in which case the provisions of the Agreement regarding extensions of time and extra work shall apply.

D. The CM shall keep itself, and its contractors and subcontractors, advised at all times during the course of the Work regarding delivery status of Owner-furnished equipment and materials and of the progress of construction work being performed under separate contracts.

E. The Owner and Design Consultant will, upon written request by the CM, furnish delivery information which may be available to the Owner or Design Consultant.

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2.07 SCHEDULE OF OFF-SITE ACTIVITIES

A. The CM shall include in its Detailed Project Construction Schedule all procurement related activities which lead to the delivery of materials to the site in a timely manner. Upon written approval by the Owner, these activities may be submitted as a separate Off-Site Activities Schedule, properly correlated to the Detailed Construction Project Schedule. The schedule of off-site activities shall include, but is not limited to, the following:

1. Dates for submittals, ordering, manufacturing or fabricating, and delivery of equipment and materials. Long lead items requiring more than one month between ordering and delivery to site shall be clearly noted;
2. All significant activities to be performed by or for the CM during the fabrication and erection/installation in a plant or on a job site, including materials/equipment purchasing, delivery; and
3. Contractor's drawings and submittals to be prepared and submitted to the Design Consultant.

B. The CM shall be solely responsible for expediting the delivery of all material to be furnished by the CM so that the construction progress shall be maintained according to the approved Detailed Project Construction Schedule for the Work as approved by the Owner and Design Consultant.

C. The Owner and Design Consultant shall be advised in writing by the CM whenever it is anticipated by the CM that the delivery date of any material and/or equipment will be later than the delivery date shown on the schedule, subject to schedule updates.

D. Submittals, equipment orders and similar items are to be treated as schedule activities.

E. The CM, in developing its Off-Site and Procurement Schedules, will ensure that off-site activities do not control the critical path of on-site activities.

2.08 CONSTRUCTION MANAGER COVENANTS AND GUARANTEES

A. The CM covenants and guarantees that it will not:

1. Misrepresent to the Owner or Design Consultant its planning, scheduling, or execution of the Work;
2. Utilize schedules materially different from those made available by the CM to the Owner or Design Consultant or any Subcontractor or separate Contractors for the direction, execution and coordination of the Work, or which are not feasible or realistic.
3. Prepare schedules, updates, revisions or reports for the work which do not accurately reflect the actual intent or reasonable and actual expectations of the CM and its Contractors and Subcontractors as to:
    a. The sequences of activities,
    b. The duration of activities,
    c. The responsibility of activities,
    d. Resources availability,
    e. Labor availability or efficiency,
    f. Foreseeable weather conditions,
    g. The percentage complete of any activity,
    h. Completion of any item of work or activity,
    i. Project milestone completion,
    j. Delays, slippage's, or problems encountered or expected,

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k. Subcontractor requests for time extensions or delay claims of subcontractors,

l. Float time

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BCS Schedule Agreement

Date: _____

Re: North Brunswick High School Addition Construction Schedules and Reports
CPM Approval

We the undersigned, acknowledge receipt and acceptance of the Project Schedule dated _____,2022, as presented in accordance with Construction Schedules and Reports required pursuant to the Agreement Between Owner and Construction Manager for this Project:

Construction Manager _____ _____
Barnhill Contracting Company *Authorized Signature*

_____
(Printed Authorized Signature)

Design Consultant _____ _____
Becker Morgan Group *Authorized Signature*

_____
(Printed Authorized Signature)

Brunswick County Board
of Education

_____
Authorized Signature

_____
(Printed Authorized Signature

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APPENDIX C
SALES TAX REPORTING

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

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

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

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

Sworn to and subscribed before me,

This the ____ day of _____, 20____

Signed: _____

Print Name: _____

___ _____ Seal
Notary Public

Title: _____

My Commission Expires: _____

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APPENDIX D-1
LUMP SUM CHANGE ORDER

DocuSign Envelope ID: EF675A48-4743-46DB-947E-4FC75EA71A44

CMAR CHANGE ORDER #__

Project:

Contract:

Contractor:

Description of change:

				SUBTOTALS
Materials	(Attach list with Qty, Item, Unit $, Unit mh, Total mh, OT mh, Total $)			
1	Total Direct Cost of Materials		**$0.00**	
2	Overhead & Profit on Item 1. (15% maximum, includes small tools & consumables)		**$0.00**	
3	Sales Tax		**$0.00**	
4	Shipping & Transportation		**$0.00**	**$0.00**
Labor				
5	Total Manhours:	**0** MH @ **$0.00** /hr.	**$0.00**	
6	Overhead & Profit on Item 5. (15% maximum on straight labor cost, not premium portion) (O & P includes supervisor's time)		**$0.00**	
7	Payroll Taxes & Insurance	**0.0%**	**$0.00**	**$0.00**
Equipment Rental	(Include quotes)			
8	Equipment Rental		**$0.00**	
9	Overhead & Profit on Item 8. (6% maximum)		**$0.00**	**$0.00**
Subcontractors	(Include quotes with material & equipment backup)			
10	Subcontractors - Cost of Work		**$0.00**	
11	CMAR Fee on Item 10. 4%		**$0**	**$0**
			Subtotal of Proposal	**$0**
12	Bonds (% of subtotal of proposal)	**0.0%**		**$0.00**
			TOTAL OF CHANGE PROPOSAL	**$0**

Time Extension Requests: 0 day(s) Schedule Activity # Affected: All

STARTING GMP	**$0**
CHANGES TO GMP PRIOR TO THIS CHANGE PROPOSAL	**$0**
THIS CHANGE PROPOSAL	**$0**
NEW GMP	**$0**

The Construction Manager agrees to perform the work outlined in this change proposal for the amount specified above and in accordance with all terms and conditons of the CMAR Document CMAR-1, Standard Form of Agreement Between Owner and Construction Manager dated the __ Day of _____, 20__ if the work is authorized by the Owner.

OWNER:

COUNTY OF BRUNSWICK, NORTH CAROLINA

_____

Chair - BOARD OF COMMISSIONERS

Attest:

_____

CLERK TO BOARD OF COMMISSIONERS

[Corporate Seal]

CONSTRUCTION MANAGER:

_____

Attest:

_____

Corporate Secretary

[Corporate Seal]

PRE-AUDIT CERTIFICATION: THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT.

_____ _____

FINANCE OFFICER DATE

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APPENDIX D-2
T&M CHANGE ORDER FORM

DocuSign Envelope ID: EF675A48-4743-46DB-947E-4FC75EA71A44

CHANGE PROPOSAL FORM
Time and Material / Unit Price Estimate

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

Description of change:

	SUBTOTALS
Materials & Labor Estimated cost of labor & materials including shipping, overtime, payroll taxes and insurance, and overhead and profit. Maintain accurate records for billing purposes.	**$0.00**
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.	**$0.00**
Equipment Rental Estimated cost of equipment rental including shipping, taxes and overhead and profit. Maintain accurate records for billing purposes.	**$0.00**
Subcontractors Estimated cost of subcontracts including all subcontractor expenses. Maintain accurate records for billing purposes.	**$0.00**
Subtotal of Proposal	**$0.00**
Bonds (% of subtotal of proposal) **0.0%**	**$0.00**
*** TOTAL NOT TO EXCEED CHANGE PROPOSAL ESTIMATE**	**$0.00**

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

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

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

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

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

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

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APPENDIX E
DIVISION OF PROJECT COST ELEMENTS

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APPENDIX E
DIVISION OF PROJECT COST ELEMENTS

I. Construction Management Services					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Project Superintendent(s)		X			
Assistant Superintendent(s)		X			
Field Engineer		X			
Sr. Project Manager		X			
Project Manager		X			
BIM Coordinator		X			
MEP Superintendent		X			
Safety Manager		X			
Staff Vehicles		X			
Fuel/Repairs/Maintenance		X			
Corporate Executives	X				
Principal in Charge	X				
Project Executive	X				
Legal Services	X				
Accounting	X				
Scheduling		X			
Purchasing		X			
Value Engineering	X				
Estimating	X				
E.E.O. Officer	X				
Mechanical Coordinator		X			
Electrical Coordinator		X			
Scheduling Services		X			
Off-Site Staff Travel Costs	X				
Off-Site Staff Transportation	X				
Project Budget Estimating	X				

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APPENDIX E
DIVISION OF PROJECT COST ELEMENTS

II. Safety, Security and Services					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Safety Equipment		X			
First Aid Supplies		X			
Handrails and Toe Boards					X
Opening Protection					X
Fire Extinguishers/Fire Watch		X			X
Security Guard/Watchman Svcs.					X
Weekly General Cleanup					X
Weekly Trade Specific Cleanup					X
Final Cleanup					X
Dumpster Rental/Pull/Dump Fees		X			
Temporary Fencing					X
Covered Walkways					X
Barricades					X
Safety Nets					X
Debris Hauling/Removal					X
Traffic Control					X
Roadway Maintenance					X
Dust Controls					X
Communication Equipment		X			
Trash Chute & Hoppers					X
Snow and Ice Removal					X
Site Dewatering					X

III. Facilities, Equipment and Services					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Office Trailer Rental		X			
Tool/Utility Trailer Rental		X			
Water/Ice		X			
Temporary Lighting/Wiring					X
Temporary Utilities – Trailers		X			
Temporary Utilities - Construction		X			
Permanent Power Usage				X	
Temporary Toilets		X			
Temporary Stairs					X
Temporary Enclosures/Partitions					X
Project Signs/Bulletin Boards		X			
Telephone/Communication Expenses		X			
Temporary Roads					X
Air Compressors					X
Dewatering Equipment					X
Generators					X
Fuel/Repairs/Maintenance		X			

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APPENDIX E
DIVISION OF PROJECT COST ELEMENTS

IV. Vertical Hoisting					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Hoist & Tower Rental					X
Small Material Hoist Rental					X
Hoist Landings and Fronts					X
Hoist Operators					X
Hoist Safety Inspections					X
Hoist Material Skips					X
Hoist Material Hoppers					X
Erect & Dismantle Hoists					X
Fuel/Repairs/Maintenance					X
Hoist Communication					X
Crane Rental					X
Crane Operators					X
Crane Safety Inspections					X
Erect & Dismantle Crane					X
Fuel/Repairs/Maintenance					X
Crane Raising/Jumping Cost					X
Lull Lift					X
Temporary Elevator Rental					X
Elevator Operation Cost					X
Elevator Repairs & Maintenance					X
Hoist Safety Inspections					X
Forklift Rental					X
Forklift Operators					X
Forklift Safety Inspections		X			X
Fuel/Repairs/Maintenance		X			X
Elevator Service Costs					X

V. Reproduction and Printing					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Accounting Forms	X				
Field Reporting Forms	X				
Contract Agreements	X				
Schedule Report Forms	X				
Estimating Forms	X				
Cost Reporting Forms	X				
Presentation Charts and Graphics	X				
Value Analysis Studies	X				
Data Processing (In-House)	X				
Reference Materials	X				
Duplication Expense (Misc.)		X			
Shop Drawing Printing		X			
Maintenance Manuals		X			
Operation Manuals		X			
Special Forms (CM's Own Special Items)	X				
Postage and Delivery Expense		X			

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APPENDIX E
DIVISION OF PROJECT COST ELEMENTS

VI. Quality Control					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
AE Inspectors' Office Space			X		
QA/QC		X			
Special Inspection Consultants [a]				X	
Special Testing Consultants [a]				X	
Concrete Testing [a]				X	
Masonry Testing [a]				X	
Compaction Testing [a]				X	
Welding Inspections [a]				X	
Soils Investigations [a]				X	
Special Testing Services [a]				X	
Field Office Supplies/Materials		X			
Project Photographs/Video		X			
Air & Water Balancing CM's QC					X
Air & Water Balancing - Final					X
Commissioning [a]				X	X
Operator On-site Training		X			
Prepare Operation Manuals		X			
Prepare Maintenance Manuals		X			

a. The Owner is responsible for initial testing and inspections only. Costs for retesting / re-inspections due to poor quality control are the responsibility of the CMR.

VII. Permits and Special Fees					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Storage Yard Rental					X
Permits (Allowance)		X			
Staking & Layout Fees/Costs – Coordinate with General Prov.					X
A/E Design/Admin Fee/Charge				X	
Water Connection/Tap/Impact Fee				X	
Sanitary Connection/Tap/Impact Fee				X	
Storm Connection Fee				X	
Gas Service/Relocation Charge				X	
Special Tap Fees				X	
Contractors' Licenses	X				
Zoning Fees/Consultants				X	
Use Fees				X	
A.G.C. Fees	X				

VIII. Insurance and Bonds					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Builder's Risk Insurance [a]		X			
General Liability [a]		X			
Completed Operations Liability [a]		X			
Excess Liability Coverage [a]		X			
Workman's Compensation [a b]		X			
Payment Bond [a]				X	
Performance Bond [a]				X	

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APPENDIX E
DIVISION OF PROJECT COST ELEMENTS

Subcontractor Default Insurance					X
Off-Site Insurance	X				
Off-Site Taxes	X				

a. All owner cost items in this section shall be direct costs from the CMR to the Owner. No mark-ups permitted. Not included in GC Total
b. Workman's compensation for on-site staff only.

IX. Other Costs					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Project Taxes					X
Construction Equipment					X
Construction Labor Costs					X
Construction Materials					X
Preliminary Soils Inspections				X	
Title/Development Cost				X	
Land Costs				X	
Wetland Delineation Cost				X	
Financing/Interest Cost				X	
Interim Financing Costs				X	
Owner Contingency				X	
Building Operation after Move-in				X	
Building Maint. after Move-in				X	
Owner Moving Costs				X	
CMR. General Overhead Cost	X				
CMR. Profit/Margin	X				

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APPENDIX F
BOND FORMS

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PERFORMANCE BOND

IT IS HEREBY AGREED that (Insert full name and address of Contractor)

as Principal, hereinafter called Contractor, and, (Insert full name and address of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto the

as Obligee, hereinafter called Owner, in the amount of _____ _____ Dollars ($), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these obligations.

WHEREAS, Contractor has by written agreement dated _____, 20___, entered into a contract with Owner for the construction of (Insert the name of the Project)

in accordance with Drawings and Specifications prepared by (Insert full name and address of Architect/Engineer)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect. The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default, under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1) Complete the Contract in accordance with its terms and conditions, or

2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the

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Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of any applicable statute of limitations under the Contract.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed and sealed this _____ day of _____ 20_____.

PRINCIPAL

[Affix corporate seal]

_____

(Name)_____

(Title)_____

_____

(Witness)

SURETY

[Affix corporate seal]

_____

(Name)_____

(Title)_____

_____

(Witness)

R1726188

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LABOR AND MATERIAL PAYMENT BOND

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

IT IS HEREBY AGREED that (Insert full name and address of Contractor)

as Principal, hereinafter called "Principal," and, (Insert full name and address of Surety)

as Surety, hereinafter called "Surety," are held and firmly bound unto the

as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of _____ Dollars ($),
for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these obligations.

WHEREAS, Principal has by written agreement dated _____, 20_____,
entered into a contract with Owner for the construction of (Insert the name of the Project)

in accordance with Drawings and Specifications prepared by (Insert full name and address of Architect/Engineer)

which contract is by reference made a part hereof, and is hereinafter referred to as the "Contract."

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

   a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days, after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is

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made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail; postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which Principal ceased Work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this _____ day of _____ 20 _____.

PRINCIPAL

[Affix corporate seal]

_____

(Name)_____

(Title)_____

_____

(Witness)

SURETY

[Affix corporate seal]

_____

(Name)_____

(Title)_____

_____

(Witness)

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APPENDIX G
SEXUAL OFFENDER CHECK CERTIFICATION

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Sexual Offender Registry Check Certification Form

Check the appropriate box to indicate the type of check:
□ Initial
□ Supplemental
□ Annual

I, _____ (insert name), _____ (insert title) of _____ (insert company name) hereby certify that I have performed all of the required sexual offender registry checks required under this Agreement for all contractual personnel (employees, agents, ownership personnel, or contractors) who may be used to deliver goods or provide services under this Agreement, including the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry. I further certify that none of the individuals listed below appears on any of the above-named registries and that I will not assign any individual to deliver goods or perform services under this Agreement if said individual appears on any of the sex offender registries. I agree to maintain all records and documents associated with these registry checks, and that I will provide such records and documents to the school system upon request. I specifically acknowledge that the school system retains the right to audit these records to ensure compliance with this section at any time in the school system's sole discretion. I acknowledge that I am required to perform these checks and provide this certification form before any work is performed under the Agreement (initial check), any time additional contractual personnel may perform work under the Agreement (supplemental check), and at each anniversary date of the Agreement (annual check).

Contractual Personnel Names	**Job Title**
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

(attach additional page(s) if needed)

I attest that the forgoing information is true and accurate to the best of my knowledge.

_____ (print name) _____ (signature)
_____ (title) _____ (date)

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APPENDIX H
MINORITY BUSINESS ENTERPRISES (MBE)

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MBE DOCUMENTATION FOR CONTRACT PAYMENTS

Prime Contractor/Architect: _____

Address & Phone: _____

Project Name: _____

Pay Application #: _____ Period: _____

The following is a list of payments made to Minority Business Enterprises on this project for the above-mentioned period.

MBE FIRM NAME	* TYPE OF MBE	AMOUNT PAID THIS MONTH (With This Pay App)	TOTAL PAYMENTS TO DATE	TOTAL AMOUNT COMMITTED

*Minority categories: Black (B), Hispanic (H), Asian American (AA), American Indian (AI), White Female (WF), Socially and Economically Disadvantaged (SED)

Approved/Certified By:

_____ _____

Name Title

_____ _____

Date Signature

SUBMIT WITH EACH PAY REQUEST - FINAL PAYMENT - FINAL REPORT

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Policy Code: 9125 Participation by Minority Businesses

The Board affirms the State's commitment to encouraging the participation of minority businesses in the school system's construction contracts. The Board shall provide minority businesses equal opportunity to participate in all aspects of the school system's contracts for the construction, renovation or repair of school facilities. The Board prohibits discrimination against any person or business enterprise on the basis of race, color, creed, national origin, sex, disability, age or religion and shall conduct its building contract programs so as to prevent such discrimination.

It is the policy of the Board in concert with other local, state and federal agencies and with the assistance of minority groups and agencies, actively to seek and identify qualified minority business enterprises and to offer them the opportunity to participate and to encourage them to participate, in the school system's construction contracting program.

It is not the policy of this Board to provide information or other opportunities to minority business enterprises that will not be available to all other business enterprises. It is the intent of this policy to establish procedures designed to assure minority business enterprises access to information and opportunities available to other business enterprises.

The Board will award public building contracts without regard to race, religion, color, creed, national origin, sex, age, or disability, as defined in N.C. Gen. Stat. § 168A-3. The Board will award contracts to the lowest responsible, responsive bid.

A "minority business" is defined as one in which at least fifty-one percent (51%) is owned by minority persons or socially and economically disadvantaged individuals or the management and daily business operations are controlled by minority or economically disadvantaged persons. Minority/economically disadvantaged persons include African-Americans, those of Hispanic descent, Asian Americans, American Indians and females. Beginning July 1, 2009, the Board shall use only those businesses listed in the State Department of Administration database of historically underutilized businesses for purposes of this policy.

After notice and public hearing, the Board has adopted the following verifiable percentage goals for participation in the school system's contracts by historically underutilized businesses:

1. Projects in which the cost exceeds $100,000 and the Board has received state appropriations or grants for the project:
   Ten percent (10%) participation by minority businesses in the total value of work for each building project involving erection, construction, alteration or repair
   2. Projects in which the cost exceeds $300,000:
   Ten percent (10%) participation by minority businesses in the total value of work for each building project involving erection, construction, alteration or repair
   3. Projects in which the costs are at least $30,000 but do not exceed $300,000:

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Except as otherwise required for projects in subsection 1 above, the Board will solicit participation by minority business enterprises and maintain a record of contractors solicited and efforts to recruit minority participation. The Board also will comply with any reporting and documentation requirements of the Department of Administration.

A. SCHOOL SYSTEM GOOD FAITH EFFORTS

The Board adopts the following guidelines to ensure that the school system will make good faith efforts to reach diverse contractors and to encourage participation in the school system's construction contracts by such contractors. The superintendent is directed to:

1. make information about the school system's formal and informal bidding process readily available;
2. develop and implement a minority business participation outreach plan to identify minority businesses that can perform building projects and to implement outreach efforts to encourage minority business participation in such projects;
3. advertise for bids in media that reach minority businesses and provide notice to minority businesses as provided in G.S. 143-128.2;
4. ensure that everyone who requests it has access to building documents needed for making bids on projects;
5. encourage businesses experiencing difficulty in meeting the bonding, licensing and bid deposits required by state law in larger construction projects to utilize resources and assistance offered by local, state and federal agencies; and
6. encourage contractors to attend the scheduled pre-bid conference.

B. GOOD FAITH EFFORTS REQUIRED BY CONTRACTORS

All bidders on major school construction and renovation projects who intend to subcontract any part of the project must provide affidavits indicating that a good faith effort has been made in preparing the bid to meet the Board of Education's verifiable goal for participation by minority businesses.

The failure to make a good faith effort to meet the Board's goal may result in the bid being considered non-responsive and being rejected.

The superintendent is directed to establish administrative procedures to verify which businesses are qualified and to evaluate good faith efforts by bidders.

Legal References: *City of Richmond v. J.A. Croson Co*., 488 U.S. 469 (1989); G.S. 143-128, -128.2, -128.3, -128.4

Cross References:

Adopted: August 17, 1994 (as policy 2901)

Revised: January 6, 2009

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APPENDIX I
DISPUTE RESOLUTION

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Brunswick County Schools Board Policy Code 9120

DISPUTE RESOLUTION PROCESS

The Board establishes the following dispute resolution process to resolve issues arising out of construction and repair projects or contracts related to such projects. The dispute resolution process may be used by any party involved in the construction project for those disputes in which the amount in controversy is at least $15,000.

The Board strives to resolve disputes without animosity between or among parties. To this end, prior to initiating litigation concerning a dispute, parties to the dispute must do the following: (1) submit the dispute for review by the superintendent or other designated school official and the project architect or engineer, as appropriate, and (2) participate in mediation, if the matter cannot be resolved by school officials and the architect or engineer. In no event shall the Board be subject to arbitration proceedings pursuant to this policy. The cost of the dispute resolution process will be divided between the parties to the dispute. If the Board is a party to the dispute, the Board will pay at least one-third of the cost.

The superintendent or designee shall adopt regulations necessary to implement this policy.

Legal References: 2 C.F.R. 200.317-200.326; G.S. 64, art. 2; 115C-521, -522; 143-64.31 and art. 8;147, art. 6E, art. 6G

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Agreement Between
Owner and Construction Manager at Risk

AGREEMENT

Made this 7th day of September in the year of Two Thousand and Twenty-Two.

BETWEEN: The Owner, Brunswick County by and through its authorized agent, Brunswick County Board of Education

And the Construction Manager (hereinafter referred to as the "CM"): Barnhill Contracting Company

For services in connection with the Project known as:

North Brunswick High School Addition and Improvement.

As further described in Article 2:

_____

Design Consultant:

Becker Morgan Group
3333 Jaeckle Dr. Ste 120
Wilmington, NC 28403

The Owner and CM, in consideration of their mutual covenants herein, agree as set forth below:

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Article:

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A. Design Consultant Agreement - CM at Risk Projects
B-1 Management Plan (preliminary)
B-2 Construction Schedules and Reports
C. Sales Tax Reporting Form
D-1. Lump Sum Change Proposal Form
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I. Dispute Resolution

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ARTICLE 1
RELATIONSHIP OF THE PARTIES

1.1 Owner and Construction Manager

The CM and the Owner shall perform as stated in this Agreement and each accepts the relationship between them that is established by this Agreement.

1.1.1 Standard of Care

The CM covenants with the Owner to furnish its skill and judgment with due care in accordance with applicable federal, state, and local laws and regulations that are in effect on the date of this Agreement first written above. The CM shall perform its services, including but not limited to the Basic Services and any Additional Services authorized in writing by the Owner, consistent with the professional skill and care ordinarily provided by CMs practicing in or around the state of North Carolina area under the same or similar circumstances. The CM shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

1.1.2 CM Representations

The CM represents and warrants that at the time of execution of this Agreement the CM has and will retain all licenses and certifications required of him to perform the work identified in this Agreement and associated contract documents. The CM shall keep this licensure in good standing without lapse throughout the term of this Agreement. The CM shall provide proof of this licensure to the Owner and/or Design Consultant upon request.

By execution of this Agreement, the CM warrants that (a) it is an experienced and duly licensed having the ability and skill necessary to perform all the work required of it under this Agreement in connection with the design and construction of a project having the scope and complexity of the Project contemplated herein; (b) it has the capabilities and resources necessary to perform its obligations hereunder; and (c) it is familiar with all current laws, rules and regulations which are applicable to the construction of the Project, and that the CM's work on the Project shall be performed in accordance with all such applicable laws, rules and regulations.

1.2 Owner and Design Consultant

The Owner shall contract separately with one or more Design Consultants to provide architectural and engineering design for the Project. The Project is defined in Article 2 of this Agreement. The Design Consultant's services shall be as stated in this Agreement and as defined in the form agreement between the Owner and Design Consultant attached as Appendix A.

1.3 Owner and Contractors

The Owner will require the CM to contract directly with such Contractors as may be necessary for construction or supply of the Project. All such contracts shall be issued consistent with the applicable provisions of this Agreement and N.C. Gen. Stat. § 143-128.1, 143-128.2 to -128.4, 143.129, 143-135.8, and are subject to review and final approval by Brunswick County.

1.4 Relationship of the CM to the Design Consultant and Other Project Participants

In providing construction management services described in this Agreement, the CM shall maintain a working relationship with the Design Consultant. The Design Consultant is solely responsible for the Project design and shall perform in accordance with the Design Consultant Agreement with the Owner and nothing in this Agreement shall be construed to mean that the CM is responsible for the design of the Project or that the

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CM assumes any of the contractual or customary duties of the Design Consultant or any other persons or parties not specified by this Agreement.

ARTICLE 2
PROJECT DEFINITION

The term “Project” when used in the Agreement shall mean the total construction of which the Work may be a whole or part of the Project. The term “Work” required for the “Project” used in this Agreement shall mean the various parts of total construction to be performed under this Agreement.

The Project name and locations are as follows:
North Brunswick High School Addition and Improvements
114 Scorpion Dr.
Leland, NC 28451

The Project is intended for use as:

The project will consist of a 2-story 12-classroom addition, a bid alternate band room, and provisions for a future 4-classroom expansion. The site layout will generally conform with but not be limited by the District’s Master Plan for the site, which locates the new addition, relocates the fire apparatus access road, relocates the existing tennis courts (adding lighting, a restroom/concession building) relocates the softball field, dugouts, pressbox, and lighting, and constructs 3 new irrigated practice fields of various sizes. Demolition of the certain existing athletic amenities and sections of the existing fire apparatus access road will be required. Required Offsite Road Improvement ($250,000 plus fee allowance included). New staff parking for the addition will also be required. Other miscellaneous items necessary to complete items above may be required.

ARTICLE 3
CONSTRUCTION MANAGER’S BASIC SERVICES

3.1 CM Basic Services

The CM shall perform the Basic Services described herein. It is not required that the Basic Services be performed in the sequence in which they are described.

3.2 Design Phase – Project Management

3.2.1 Project Management

3.2.1.1 Construction Management Plan

The CM shall prepare a Construction Management Plan for the Project within the time mutually established by the Owner and CM and shall make recommendations for revisions to the plan throughout the duration of the Project, as may be appropriate. In preparing the Construction Management Plan, the CM shall consider the Owner’s schedule, budget, and design requirements for the Project. The CM shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the Owner. The Construction Management Plan shall also include a description of the various bid packages recommended for the Project. The Construction Management Plan shall be presented to the Owner for acceptance. The CM shall develop a Master Schedule for the Project. The CM shall determine the appropriate bid packages based on the available resources. The CM shall familiarize itself with all available Project funding and work with the Owner and Design Consultant to maximize the scope and quality of the Project based upon the available funds. The CM shall make recommendations regarding communication among the parties in an effort to ensure the prompt and proper flow of Project information. The CM shall outline its plan for minority

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business enterprise participation goals required by state law and the Owner, including providing all information necessary for the Owner to make the required reports to the North Carolina Department of Administration, Office of Historically Underutilized Businesses. The CM shall include a Project safety plan covering all critical areas of the Project.

3.2.2 Time Management

3.2.2.1 Master Schedule

In accordance with the Construction Management Plan, the CM shall prepare a Master Schedule for the Project in accordance with the deadlines established by the Owner. The Master Schedule shall specify the proposed start and finish dates for each major Project activity. The CM shall submit the Master Schedule to the Owner for acceptance.

3.2.2.2 Design Phase Milestone Schedule

After the Owner accepts the Master Schedule the CM shall prepare a Milestone Schedule for the Design Phase. The Design Phase Milestone Schedule may be used in the request for proposals and contract for the Design Consultant and shall be a method for judging progress during the Design Phase. The CM shall track the Design Consultant's progress during the design phase and alert the Owner of any delays in the Design Consultant's timely completion of its services.

3.2.3 Cost Management

3.2.3.1 Construction Market Survey

The CM shall conduct a Construction Market Survey to provide current information regarding the general availability of local construction services, labor, materials and equipment cost and other economic factors related to the Project.

3.2.3.2 Project and Construction Budget

Based on the Construction Management Plan and the Construction Market Survey, the CM shall prepare a Project and Construction Budget based on separate divisions of the Work required for the Project and shall identify contingencies for design and construction. The CM shall submit the Project and Construction Budget to the Owner for acceptance. The CM shall make recommendations to the Owner and Design Consultant regarding whether the Owner should conduct any additional geotechnical, environmental or other inspections of the Project site reasonably necessary for the CM to estimate the cost of the work and minimize change orders due to unforeseen conditions. If the Project involves renovation work, the CM shall perform inspections of the existing building and Project conditions and perform any destructive testing reasonably necessary for the Design Consultant to prepare a complete and accurate set of construction documents and allowing the CM to estimate the cost of the work in order to minimize change orders due to unforeseen conditions. The cost of any destructive testing shall be billed as a reimbursable and shall not be included in the CM's fee for basic services. The Project and Construction Budget shall be revised as directed by the Owner.

3.2.3.3 Preliminary Estimate and Budget Analysis

The CM shall analyze and report to the Owner the cost of various design and construction alternatives, including CM's assumptions in preparing its analysis, a variance analysis between budget and preliminary estimate, and recommendations for any adjustments to the budget. As a part of the cost analysis, the CM shall consider costs relating to efficiency, usable life, maintenance, energy, and operation.

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3.3 Design Phase – Design Support

3.3.1 Project Management

3.3.1.1 Revisions to the Construction Management Plan

During the Design Phase, the CM shall make the recommendations to the Owner regarding revisions to the Construction Management Plan. Revisions approved by the Owner shall be incorporated into the Construction Management Plan.

3.3.1.2 Project Conference

At the start of the Design Phase, the CM shall conduct a Project conference attended by the Design Consultant, the Owner and others as necessary. During the Project Conference, the CM shall review the Construction Management Plan, the Master Schedule, the Design Phase Milestone Schedule, the Project and Construction Budget, and the Management Information Systems ("MIS"), as more fully set forth below. The CM shall be responsible for tracking the progress of the design in relation to the Design Phase Milestone Schedule and shall promptly notify Owner of any delay. The CM shall make recommendations to the Owner, with a copy to the Design Consultant, regarding strategies for overcoming any delay in the design of the Project.

3.3.1.3 Design Phase Information

The CM shall monitor the Design Consultant's compliance with the Construction Management Plan and the MIS and the CM shall coordinate and expedite the flow of information between the Owner, Design Consultant, and others as necessary.

3.3.1.4 Progress Meetings

The CM shall conduct periodic progress meetings attended by the Owner, Design Consultant and others as necessary. Such meetings shall serve as a forum for the exchange of information concerning the Project and the review of design progress. The CM shall prepare and distribute minutes of these meetings to the Owner, Design Consultant and others. During the periodic progress meetings the CM shall update the Owner and Design Consultant regarding the estimated cost of the design and make recommendations to the Owner and Design Consultant regarding constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction, and any other information reasonably necessary to assist the Design Consultant with cost, budget and schedule requirements.

3.3.1.5 Review of Design Documents

The CM shall review the design documents and any addenda or other information from the Design Consultant for clarity, consistency, constructability and coordination among the Contractors. If the Project is a prototype that has been previously constructed, the CM shall verify that all applicable change orders from previous Projects have been incorporated into the bidding documents. The results of the review shall be provided in writing as notations on the documents. The CM is not responsible for providing, nor does the CM control, the Project design and contents of the design documents. By performing the reviews described herein, the CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design and design documents. The CM's actions in reviewing the Project design and design documents and in making recommendations as provided herein are for the use of the Owner and Design Consultant.

3.3.1.6 Design Recommendations

The CM shall make recommendations to the Owner and Design Consultant with respect to constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction, and separation of the Project contracts for various categories

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of Work. In addition, the CM shall give to the Design Consultant all data of which it or the Owner is aware concerning patents or copyrights for inclusion in Contract Documents.

3.3.1.6.1 On renovation Projects, the CM shall:

.1 Conduct thorough evaluation of existing conditions of building(s), all building systems, site, and site infrastructure;

.2 Conduct destructive and non-destructive testing as necessary to thoroughly evaluate existing conditions of the building(s), building systems, site, and site infrastructure (all testing, whether destructive or non-destructive, is to be approved in advance by the Owner and shall be coordinated to occur at a time that will reasonably allow the information to be used by the Design Consultant in the in the preparation of the contract documents);

.3 Report to Owner and Design Consultant during design phase regarding findings of evaluation of existing building(s), building systems, site, and site infrastructure and make recommendations to the Owner and Design Consultant that will assist with establishing cost, budget, and schedule requirements;

.4 Work with Owner and Design Consultant during design phase to create phasing plans that allow the work to be conducted in the most expedient manner while taking into account both cost and time;

.5 Develop a plan to address the safety and security of all students, staff, visitors that will be on a site that is being used as a school during construction, including a plan that minimizes noise levels that would be disruptive to the educational environment without the prior approval of the Owner.

3.3.1.7 Owner Design Reviews

The CM shall coordinate the Owner's design reviews by compiling and conveying the Owner's comments to the Design Consultant.

3.3.1.8 Approvals by Regulatory Agencies

The CM shall monitor transmittal of documents to regulatory agencies for review and shall advise of potential problems in completing such reviews of which the CM is aware.

3.3.1.9 General Conditions

The General Conditions for use in the contracts between the CM and the Contractors for construction of the Project shall be developed by the CM. Separate General Conditions for materials and equipment procurement shall be prepared by the CM to meet the specific requirements of the Project and all of the requirements of this Agreement.

In interpreting the requirements of this Agreement, anything shown on the Design Consultant's drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings shall have the same effect as if shown or mentioned respectively in both. The Design Consultant's technical specifications take priority over general specifications and detail drawings take precedence over general drawings. Any work shown on one drawing shall be construed to be shown in all relevant drawings, and the CM will coordinate the work and the drawings. If any portion of the Design Consultant's plans and specifications shall be in conflict with any other portion, the various documents comprising the contract documents shall govern in the following order of precedence: this Agreement; any addendum issued by the Design Consultant; the specifications; the drawings; as between schedules and information given on drawings, the schedules shall govern; as between figures given on drawings and the scaled measurements, the figures shall govern; as between large-scale drawings and small scale drawings, the larger scale drawings shall govern. Any such conflict or inconsistency between or in the drawings shall be submitted to the Design Consultant whose decision thereon shall be final and conclusive.

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3.3.1.10 Public Relations

The CM shall assist the Owner in public relations activities and shall prepare information for and attend public meetings regarding the Project.

3.3.1.11 Project Funding

The CM shall assist the Owner in preparing documents concerning the Project and Construction Budget and for use in obtaining or reporting on Project funding. The documents shall be prepared in a form approved by the Owner.

3.3.2 Time Management

3.3.2.1 Revisions to Master Schedule

While performing the services provided in Paragraphs 3.3.1.1, 3.3.1.2 and as necessary throughout the Design Phase, the CM shall recommend revisions to the Master Schedule. The Owner shall issue change orders as needed to the appropriate parties to implement the Master Schedule revisions.

3.3.2.2 Monitoring the Design Phase Milestone Schedule

While performing the services provided in Paragraphs 3.3.1.3, and 3.3.1.4, the CM shall monitor compliance with the Design Phase Milestone Schedule.

3.3.2.3 Pre-Bid Construction Schedules

Prior to transmitting Contract Documents to bidders, the CM shall prepare a Pre-Bid Construction Schedule for each part of the Project and make the schedule available to the bidders during the Procurement Phase.

3.3.3 Cost Management

3.3.3.1 Cost Control

Following the completion of each design phase milestone, the CM shall prepare an estimate of the construction cost for the Design Drawings and Specifications furnished by the Design Consultant. Each estimate shall be accompanied by a report to the Owner and Design Consultant identifying variances from the Project and Construction Budget as well as CM's assumptions in preparing the estimate. The CM shall coordinate the activities of the Owner and Design Consultant when changes to the design are required to remain within the Project and Construction Budget.

3.3.3.2 Project and Construction Budget Revision

The CM shall make recommendations to the Owner concerning the design changes that may result in revisions to the Project and Construction Budget and divisions of the Work required for the Project.

3.3.3.3 Value Engineering Studies

The CM shall provide value engineering recommendations to the Owner and Design Consultant for major construction components, including cost evaluations of alternative materials and systems.

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3.3.4 Management Information System (MIS)

3.3.4.1 Schedule Reports

In conjunction with the services provided by Paragraph 3.3.2.1, the CM shall prepare and distribute schedule maintenance reports that shall contrast actual progress against scheduled progress for the Design Phase and the overall Project and shall make recommendations to the Owner for corrective action.

3.3.4.2 Project Cost Reports

The CM shall prepare and distribute Project cost reports that shall indicate estimated costs compared to the Project and Construction Budget and shall make recommendations to the Owner for corrective action.

3.3.4.3 Cash Flow Report

The CM shall upon request by owner prepare and distribute a cash flow report.

3.3.4.4 Design Phase Change Order Report

The CM shall prepare and distribute Design Phase change order reports that shall list all Owner-approved change orders as of the date of the report and shall state the effect of the change orders on the Project and Construction Budget and the Master Schedule.

3.4 Procurement Phase

3.4.1 Project Management

The CM shall procure bids in accordance with N.C. Gen. Stat. § 143-128.1, 143-128.2 to -128.4, 143-135.8. The CM shall prequalify all bidders in accordance with G.S. 143-135.8 and this Agreement. The CM shall ensure that all minority business participation goal requirements are followed in the solicitation and award of contracts. The CM shall report its efforts to solicit minority business participation to the Owner in writing. Unless approved otherwise by the Owner, a minimum of three bids following N.C. Gen Stat. § 143-132 shall be required for first-round opening if bids are received in advance of the guaranteed maximum price ("GMP") having been established.

3.4.1.1 Prequalifying Bidders

The CM shall develop lists of possible bidders and prequalify-bidders. This service shall be performed in accordance with G.S. 143-128.1, 143-128.2 to -128.4, 143-135.8, and the Owner's prequalification of bidders for construction projects policy. The CM shall also prepare and transmit to the Owner a list of prequalified and disqualified bidders for each bid package. The CM shall provide the Owner with the reasons that any prospective bidders have been disqualified. The Owner shall notify the CM promptly of any reasonable objections to a proposed bidder, and the CM shall remove that bidder from the bidders list.

The CM shall provide the Owner with a list of all businesses in which the CM's Owners have any ownership interest if the business is engaged in the construction industry, including demolition and the supply of materials for construction, and the CM intends to solicit bids for any work on the Project from the business. The CM shall provide said list to the Owner prior to prequalifying bidders for the work. The Owner shall determine whether any business listed may submit a bid or perform any work on the Project.

3.4.1.2 Bidder's Interest Campaign

The CM shall conduct a thorough campaign to create interest among qualified bidders. The CM shall provide written documents of these efforts to the Owner prior to bidding the work.

3.4.1.3 Notices and Advertisements

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The CM shall prepare and place notices and advertisements to solicit bids for the Project as prescribed by N.C. Gen. Stat. § 143-128.1, 143-128.2 to -128.4, and 143-135.8.

3.4.1.4 Delivery of Bid Documents

The CM shall expedite the delivery of bid documents to the bidders. The CM shall obtain documents from the Design Consultant and arrange for printing, binding, wrapping and delivery to the bidders. The CM shall maintain a record of bidders receiving documents. The CM shall notify the Owner in advance, in writing, of the anticipated number of bid documents to be produced. The Owner shall reimburse the CM for the actual cost of bid documents.

3.4.1.5 Pre-Bid Conference

In conjunction with the Design Consultant, the CM shall conduct a Pre-Bid Conference. These conferences shall be forums for the CM and Design Consultant to explain to the bidders the Project requirements, including information concerning schedule requirements, time and cost control requirements, access requirements, contractor interfaces, the Project administrative requirements and technical information.

3.4.1.6 Information to Bidders

The CM shall develop and coordinate procedures to provide answers to bidders' questions.

3.4.1.6.1 Site Access for Bidders

In the event bidders require access to the site in order to gain information necessary to prepare their bids, the CM shall be responsible for coordinating access with the Owner. Any access shall be during regular business hours or otherwise at a time that would not unreasonably disturb the adjacent property Owners or interfere with the school day. If the information sought by the bidders requires any alteration to the existing building or site or destructive testing, the CM shall notify the Owner in advance and coordinate said work so that it does not cause any disruption to the current use of the site or building. The CM shall ensure that any disturbed areas are repaired if the building is currently being used by the Owner. In all situations, the CM shall ensure that the site or building is left in a safe and secure condition and that the disturbed area is cleaned of any debris resulting from the access. In the event that the bidders' access disturbs any adjacent property, including depositing dirt, soil or debris on the roads adjacent to the site, the CM shall promptly clean any and all areas and be responsible for any claims, fines or penalties resulting from said access.

3.4.1.7 Addenda

The CM shall receive from the Design Consultant a copy of all addenda. The CM shall review addenda for clarity, consistency and coordination. By performing the reviews described herein, the CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design. The CM shall also distribute a copy of all addenda to each bidder receiving documents.

3.4.1.8 Bid Opening

The CM shall act as the fiduciary of the public entity in handling and opening bids. All bids shall be received and opened in a manner agreed upon by the Owner. The CM shall conduct bid openings and shall evaluate the bids to determine the lowest responsive and responsible bidder, taking into consideration quality, performance, and time specified to perform. The contracts shall be awarded in accordance with N.C. Gen. Stat. § 143-128.1.

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3.4.1.9 Construction Contracts

The CM shall prepare, execute, and deliver the contract documents between the CM and the Contractors. The contract documents shall consist of the plans and specifications, any addendum, the general conditions, the form of Agreement between the CM and the contractor, and any other documents incorporated by the CM. The CM shall also issue the notices to proceed. The CM shall not issue contract documents or notices to proceed with the work to the contractors until the Owner and CM have agreed upon the amount of the GMP and the Owner has notified the CM that it can proceed with the work.

3.4.1.10 Permits, Insurance and Labor Affidavits

The CM shall verify that the Contractors have secured the required building permits, bonds, insurance, labor affidavits, and waivers.

3.4.2 Time Management

3.4.2.1 Pre-Bid Construction Schedule

The CM shall inform the bidders of their responsibilities regarding the Pre-Bid Construction Schedule specified in the Instructions to Bidders or Contract Documents. The CM shall inform the bidders of the Owner's requirements for scheduling and communication between the parties.

3.4.2.2 Construction Schedule

The CM shall provide a copy of the Master Schedule to the bidders. The CM shall prepare a Construction Schedule and all updates in accordance with the Owner's scheduling requirements. The Owner shall provide the CM with its scheduling requirements prior to receipt of bids for the Project.

3.4.3 Cost Management

3.4.3.1 Estimates for Addenda

Unless the Owner has elected to establish the GMP after bids have been received, the CM shall prepare an estimate of costs for all addenda and shall submit the estimates to the Owner for approval. After approval by the Owner, the addenda shall be transmitted to bidders and the Guaranteed Maximum Price and the CM's compensation shall be adjusted as provided in this Agreement.

3.4.3.2 Analyzing Bids: Upon receipt of bids, the CM shall evaluate the bids, including alternate prices and unit prices.

3.4.4 Management Information System (MIS)

3.4.4.1 Schedule Maintenance Reports

The CM shall prepare and distribute schedule maintenance reports during the Procurement Phase. The reports shall compare the actual bid and award dates to scheduled bid and award dates and shall summarize the progress of the Project.

3.4.4.2 Project Cost Reports

The CM shall prepare and distribute the Project cost reports during the Procurement Phase. The reports shall specify the actual award prices and construction costs for the Project, compared to the Project and Construction Budget. The CM shall provide updated Project cost reports to the Owner, with a copy to the Design Consultant, on at least a monthly basis.

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3.4.4.3 Cash Flow Reports

The CM shall prepare and distribute cash flow reports during the Procurement Phase. The reports shall be based on actual award prices and construction costs for the Project and the reports shall specify the actual cash flow compared to the projected cash flow.

3.5 Construction Phase

3.5.1 Project Management

3.5.1.1 Pre-Construction Conference

In connection with the Design Consultant, the CM shall conduct a Pre-Construction Conference during which the CM shall review the reporting procedures, site operations and other contractual requirements.

3.5.1.2 Onsite Management and Construction Phase Communication Procedures

The CM shall provide and maintain a management team on the Project site to provide contract administration and the CM shall establish and implement coordination and communication procedures among the CM, Owner, Design Consultant, and Contractors. The CM's Project manager and superintendent shall be approved by the Owner. The Owner reserves the right to require the removal of a particular PM or superintendent at any time the Owner reasonably believes the PM or superintendent is adversely impacting the Project. A PM or superintendent approved by the Owner shall not be reassigned by the CM unless they cease to be on the CM's payroll or the Owner otherwise agrees the CM shall observe the work as required for general conformance with the contract documents. The CM shall be responsible for Project site safety and the means and methods for the construction of the Project.

3.5.1.3 Contract Administration Procedures

The CM shall establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, Contractor schedule adjustments, change orders, substitutes, payment requests and the maintenance of logs. The CM shall maintain daily job reports. The CM shall be the party to whom requests for information, submittals, Contractor schedule adjustments, substitutes, change order requests and payment requests shall be submitted. The CM shall provide periodic reports to the Owner, with a copy to the Design Consultant, updating the status of the Project. The reports shall be provided not less than bi-weekly. The Owner shall have no duty to respond to any information in the periodic reports, unless the CM specifically requests a response or action by the Owner in writing in a separate document.

3.5.1.4 Project Site Meetings

Periodically the CM shall conduct meetings at the Project site with each Contractor and the CM shall conduct coordination meetings with all Contractors, the Owner and Design Consultant. The CM shall conduct weekly progress meetings with the Owner and Design Consultant. The CM shall record, transcribe and distribute minutes to all attendees, the Owner and Design Consultant.

3.5.1.5 Coordination of Other Independent Consultants

Technical inspection and testing provided by the Design Consultant or others shall be coordinated by the CM. The CM shall be provided with a copy of all inspection and testing reports on the day of the inspection or test or when issued. The CM is not responsible for providing, nor does the CM control, the actual performance of technical inspection and testing. The CM is performing a coordination function and is not acting in a manner so as to assume responsibility, in part or in whole, for all or any part of such inspection and testing.

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3.5.1.6 Review of Requests for Changes to the Contract Time and Price

The CM shall review the contents of a request for changes to the construction contract time or price submitted by a Contractor, assemble information concerning the request and endeavor to determine the cause of the requests. In instances where the CM's analysis reveals that the request is valid, the CM shall prepare a detailed report to the Owner and Design Consultant for review. If the Owner approves the change, the Design Consultant shall prepare the necessary change order documents for signing by the CM and Owner. The CM shall prepare the necessary change order documents for execution by the CM and contractors.

3.5.1.7 Quality Review

The CM shall establish and implement a program to monitor the quality of construction. The CM shall observe the work as required for general conformance with the contract documents. The purpose of the program shall be to guard the Owner against defects and deficiency in the work of the Contractor. The CM shall transmit to the Contractor a notice of nonconforming work and may reject work when it is the opinion of the CM that the work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the CM is not authorized as part of this service to change, evoke, enlarge, relax, alter, or to release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents. The Design Consultant shall have the final authority to decide the acceptability of the work.

3.5.1.8 Operation and Maintenance Materials

The CM shall receive from the Contractors operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project, in accordance with the Contract Documents.

3.5.1.9 Substantial Completion

The date of substantial completion of the work or designated portion thereof is the date certified by the Design Consultant 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, including a preliminary test and balance report for the mechanical system. The CM acknowledges and agrees that the intercom, telephone, data, security, building automation system (including functional graphics at the site), MATV, and other educational operational systems are required for the Owner's use of the building for its intended purpose. The CM shall provide operation & maintenance manuals to the Owner as required by the contract documents prior to substantial completion and shall provide the required training on the operation of the equipment and systems within two weeks of substantial completion of the Project.The Owner's occupancy of incomplete work shall not alter the CM's responsibilities pursuant to this paragraph. 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.

When the CM considers that the work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined above, the CM shall prepare for and submit to the Design Consultant and Owner a list of all items which in the CM's opinion are to be completed or corrected and shall attach it to a request in writing that the Design Consultant perform a substantial completion inspection. The Owner's occupancy of incomplete work shall not alter the contractor's responsibilities. The Design Consultant shall review the CM's list and shall compile a punch list of items to be corrected and completed. The failure to include any items on such list does not alter the responsibility of the CM to complete all work in accordance with the contract documents. When the Design Consultant and CM on the basis of an inspection jointly determine that the work or designated portion thereof is substantially complete, the Design Consultant 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 CM for security, maintenance, heat, utilities, damage to the work, and insurance, and shall signify the beginning of the time within which the CM shall complete the items listed therein. Warranties required by the contract documents shall commence on the date of substantial

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completion of the work or designated portion thereof, unless otherwise provided in the certificate of substantial completion. The certificate of substantial completion shall be submitted to the Owner and the CM for their written acceptance of the responsibilities assigned to them in such certificate.

Upon substantial completion of the work or designated portion thereof and upon application by the CM and certification by the Design Consultant, the Owner shall make payment, except retainage held pursuant to the contract documents and state law, for such work or portion thereof as provided in the contract documents.

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

The Owner shall have the option to correct or complete any and all punch list items not completed by the CM to the satisfaction of the Design Consultant and the Owner within the time specified for final completion by utilizing its own forces or by hiring others. The cost of such correction of remaining punch list items by the Owner or others shall be deducted from the final payment to the CM. If CM does not complete certain punch list items within the required time period, all warranties and guarantees for such incomplete punch list items shall become effective upon issuance of final payment for the Project.

The issuance of the certificate of substantial completion does not indicate final acceptance of the Project by the Owner, and the CM is not relieved of any responsibility for the Project except as specifically stated in the certificate of substantial completion.

Should the Design Consultant and the Owner determine that the work or a designated portion thereof is not substantially complete, they shall provide the CM with written notice stating why the Project or designated portion is not substantially complete. The CM shall expeditiously complete the work and shall re-request in writing that the Design Consultant perform another substantial completion inspection. Costs, if any, associated with such reinspection shall be assessed to the CM at the rate specified in the Design Consultant's contract.

3.5.1.10 Final Completion

In consultation with the CM and Owner, the Design Consultant shall determine when the Project and the contractors' work is finally completed and, following completion of corrections, the Design Consultant shall issue a certificate of final completion to the Owner. 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 Project 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. If more than two (2) final completion inspections are required by the Design Consultant due to the CM's failure to complete the work, the additional inspections shall be charged to the CM at the rate specified in the Design Consultant's contract all punch list work shall be complete. If any change order is issued for work to be performed after the substantial completion certificate is issued, the completion date for that work shall be established separately and shall not prevent the Project from achieving final completion for purposes of Sections 7.6 and 7.7 of this Agreement. Following the receipt of payment from the Owner, the CM shall make all payments due to contractors within ten (10) days.

For multi-phased projects, final completion of each phase shall include the completion of all work for the phase with the exception of any system that is required to be integrated into a phase that has a later contract date for final completion. This exception might apply to the HVAC, data, intercom, or similar systems. Notwithstanding the above, complete and proper operation of all systems shall be required for the Project to achieve final completion.

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3.5.2 Schedule

3.5.2.1 Master Schedule

The CM shall adjust and update the Master Schedule and distribute copies to the Owner and Design Consultant. All adjustments to the Master Schedule shall be made for the benefit of the Project.

3.5.2.2 Construction Schedule

The CM shall adjust and update the Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Owner noted in Paragraph 3.4.2.2 and that it establishes completion dates that comply with the requirements of the Master Schedule. The CM agrees that the construction schedule is for the benefit of the entire Project team and by execution of this Agreement gives permission and direction to its scheduler to provide copies of the schedule in a format as required by the Owner.

3.5.2.3 Construction Schedule Report

The CM shall review the progress of construction of each Contractor on a monthly basis, shall evaluate the percentage complete of each construction activity as indicated in the Construction Schedule and shall review such percentages with the Contractor. This evaluation shall serve as data for input to the periodic Construction Schedule report that shall be prepared and distributed to the Contractor, the Owner and Design Consultant. The report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payment to the Contractor. The CM shall determine and implement alternative courses of action that may be necessary to achieve contract compliance by the Contractor.

3.5.2.4 CM Review of Time Extension Requests

The CM shall, prior to the issuance of a change order, determine the effect on the construction and Master Schedules of time extensions requested by the Contractor.

3.5.2.5 Recovery Schedules

The CM shall prepare and submit a recovery schedule in accordance with the Owner's scheduling requirements specified in Appendix B-2.

3.5.3 Cost Management

3.5.3.1 Schedule of Values (Each Contract)

The CM shall, in participation with the Contractors, determine a Schedule of Values for each of the construction contracts. The Schedule of Values shall be the basis for payment to the contractors.

3.5.3.2 Change Order Control

The CM shall establish and implement a change order control system that is approved by the Owner.

3.5.3.2.1 All proposed Owner-initiated change orders shall first be described in detail in writing. In response to the request for a proposal, the Contractor shall submit to the CM for evaluation detailed information concerning the costs and time adjustments, if any, necessary to perform the proposed change order work. The CM shall review the Contractor's proposal, shall discuss the proposed change order with the Contractor and endeavor to determine the Contractor's basis for the cost and time to perform the Work and, as applicable, the effect, if any, on the Guaranteed Maximum Price. The CM shall present its findings to the Owner and, following Owner acceptance, the Design Consultant shall prepare the change order documents for signature by the CM and Owner. Upon execution of the change order documents between the CM and Owner, the CM shall prepare change order documents for signature by the affected Contractor. The CM shall verify that the

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Work, and any adjustment of time required by approved change orders has been incorporated into the Contractor's Construction Schedule.

3.5.3.2.2 The CM shall review the contents of all Contractor-requested changes to the contract time or price, endeavor to determine the effect, if any, on the Guaranteed Maximum Price. The CM shall provide the Design Consultant a copy of each change request, and the CM shall, in its evaluations of the Contractor's request, consider the Design Consultant's comments regarding the proposed changes. The CM shall present its findings to the Owner regarding the proposed changes and at the Owner's direction, shall prepare the change order documents for signature by the CM and Owner. Upon execution of the change order documents between the CM and Owner, the CM shall prepare change order documents for signature by the affected contractor.

3.5.3.3 Cost Records

In instances where a lump sum or unit price is not determined prior to performing Work described in a request for proposal as provided in Paragraph 3.5.3.2, the CM shall request from the Contractor records of the cost of payroll, materials and equipment and the amount of payments to subcontractors incurred by the Contractor in performing the Work.

3.5.3.4 Trade-Off Studies

The CM shall provide trade-off studies for various minor construction components. The results of the trade-off studies shall be in report form and distributed to the Owner and Design Consultant.

3.5.3.5 Progress Payments

In consultation with the Design Consultant, the CM shall inspect the work in order to ensure compliance with the contract documents, review the payment applications submitted by each contractor and determine whether the amount requested reflects the progress of the Contractor's Work. The CM shall make appropriate adjustments to each payment application and shall prepare and forward to the Owner a progress payment report. The report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a certificate of payment that shall be signed by the CM and delivered to the Owner. The CM shall make payments that are due to all contractors, suppliers, and material men within ten (10) days following the receipt of payment for the work from the Owner. In addition, the CM shall keep the Project and the site on which Work is performed free and clear of all liens from Contractors, subcontractors, or suppliers. The CM shall provide sales tax information using the form attached as Appendix C with each payment application.

Payments may be made by the Owner, at its sole discretion, on account of materials or equipment not incorporated in the work but delivered and suitably stored at the site or in a bonded warehouse by the CM or contactor. Payments for materials or equipment stored shall only be considered upon submission by the CM of satisfactory evidence (for example, releases or paid invoices from the seller) that the CM or the contractor has acquired title to such material, that it will be utilized on the work under this Agreement and that it is satisfactorily stored, protected, and insured or that other procedures satisfactory to the Owner that will protect the Owner's interests have been taken. In the event the materials are stored in a bonded warehouse that is not located in the county of the Project, the CM shall reimburse the travel cost and hourly billing expenses incurred by the Design Consultant for travel to view and assess whether the materials meet the requirements of the contract documents. Materials once paid for by the Owner become the property of the Owner and may not be removed from the work site or bonded warehouse, other than to be delivered from the warehouse to the site, without the Owner's written permission. Responsibility for such stored materials and equipment shall remain with the CM and the contractor regardless of Ownership.

The Owner will retain five percent of the amount for each progress payment on the Project, excluding the amount billed for general conditions, for as long as is authorized by G.S. 143-134.1. At all times during the Project, the Owner shall retain the maximum funds allowed by G.S. 143-134.1. The Owner specifically reserves the right to withhold additional funds as authorized by this Agreement or G.S. 143-134.1.

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3.5.3.6 Decisions to Withhold Payment

The Design Consultant may withhold a certificate for payment in whole or in part, to the extent reasonably necessary to protect the Owner. If the Design Consultant is unable to certify payment in the amount of the application, the Design Consultant will notify the CM and the Owner in writing. If the CM and Design Consultant cannot agree on a revised amount, the Design Consultant will promptly issue a certificate for payment for the amount for which the Design Consultant is able to make such representations to the Owner. The Design Consultant may also withhold a certificate for payment, in whole or in part, to such extent as may be necessary in the Design Consultant's opinion to protect the Owner from loss for which the CM or the contractor(s) is responsible, including loss resulting from acts and omissions, because of:

.1 Defective work not remedied;

.2 Third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the CM;

.3 Failure of the CM or contractor(s) to make payments properly to sub-contractors or for labor, materials or equipment;

.4 Reasonable evidence that the work cannot be completed for the unpaid balance of the contract sum;

.5 Damage to the Owner or another contractor;

.6 Reasonable evidence that the work will not be completed within the contract time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

.7 Failure to carry out the work in accordance with the contract documents;

.8 Failure to provide sales tax documentation as required by the Owner;

.9 Failure or refusal of the contractor to submit the required information on minority business enterprises;

.10 Any other reason deemed necessary by the Design Consultant to protect the Owner; or

.11 Subsequently discovered evidence that work previously approved was not performed in accordance with the contract documents.

3.5.3.7 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

3.5.3.8 No interest shall be added to any amounts withheld pursuant to Paragraph 3.5.3.6.

3.5.4 Management Information System (MIS)

3.5.4.1 Schedule Maintenance Reports

The CM shall prepare and distribute monthly schedule maintenance reports during the Construction Phase. The reports shall compare the actual construction dates to scheduled construction dates of each separate construction contract and to the Master Schedule for the Project.

3.5.4.2 Project Cost Reports

The CM shall prepare and distribute monthly Project cost reports during the Construction Phase. The reports shall specify actual Project and construction costs compared to the Project and Construction Budget.

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3.5.4.3 Project and Construction Budget Revisions

The CM shall make recommendations to the Owner concerning construction changes that may result in revisions to the Project and Construction Budget or Guaranteed Maximum Price.

3.5.4.4 Cash Flow Reports

The CM shall prepare and distribute cash flow reports during the Construction Phase. The reports shall specify actual cash flow as compared to projected cash flow.

3.5.4.5 Progress Payment Reports (Each Contract)

The CM shall prepare and distribute the progress payment reports. The reports shall state the total construction contract price, payment to date, current payment requested, retainage, sales tax paid, and actual amounts owed this period. A portion of this report shall be a certificate of payment that shall be signed by the CM certifying that the work complies with the contract documents and delivered to the Owner for use by the Owner in making payments to the CM.

3.5.4.6 Change Order Reports

The CM shall periodically prepare and distribute change order reports during the Construction Phase. The report shall list all Owner-approved change orders by number, a brief description of the change order work, the cost established in the change order and percent of completion of the change order work. The report shall also include similar information for potential change orders of which the CM may be aware. The report shall also include a summary of the impact of the change orders on the Project schedule and completion dates.

3.5.4.7 Contractor's Safety Program

The CM shall review the safety programs of each Contractor and confirm that each Contractor has established safety programs as required by the Contract Documents.

3.6 Post Construction Phase

3.6.1 Project Management

3.6.1.1 Record Documents

The CM Project superintendent shall maintain a field set of drawings for the duration of the construction period. The CM Project manager shall review the superintendent's field set to confirm that all addenda and bulletin drawings have been accurately incorporated. During construction the field set shall be updated to include all RFI responses, approved change orders and any minor plan clarifications made by the Design Consultant during site visits. The CM shall provide evidence to the Design Consultant on a monthly basis that it is maintaining an accurate and complete copy of all changes in the work in a form that will facilitate the prompt and accurate creation of record drawings. Within 30 days of substantial completion, the field set (including general, plumbing, mechanical and electrical as-built drawings) shall be delivered to the architect for preparation of record drawings. Prior to delivery, the CM Project manager shall thoroughly review the as-built field set for completeness and transmit said drawings to the Design Consultant with a letter stating that the drawings are complete and accurately reflect the construction.

3.6.1.2 Organize and Index Operations and Maintenance Materials

Prior to substantial completion of the Project, the CM shall compile manufacturers' operations and maintenance manuals, warranties and guarantees and bind such documents in an organized manner. A minimum of three (3) copies of this information shall then be provided to the Owner.

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3.6.1.3 Occupancy Permit

The CM shall be responsible for obtaining the final occupancy permit by accompanying governmental officials during inspections of the Project, preparing and submitting documentation to governmental agencies and coordinating final testing and other activities.

3.6.1.4 Closeout Documents and Test Reports

The CM shall organize and provide the Owner all closeout documents and test reports that the contractors are required to provide for the Project.

3.6.1.5 Owner Training

The CM shall coordinate or provide all training of the Owner's personnel required by the contract documents.

3.6.2 Time Management

3.6.2.1 Occupancy Plan the CM shall prepare an Occupancy Plan for the Project. This plan shall be provided to the Owner. The plan shall include early access, training on the use of equipment and systems, delivery of furniture and any other activities requested by the Owner. The plan shall comply with all deadlines provided by the Owner.

3.6.3 Cost Management

3.6.3.1 Change Orders

The CM shall continue to provide services related to change orders as specified in Paragraph 3.5.3.3.

3.6.4 Management Information System (MIS)

3.6.4.1 Closeout Reports

At the conclusion of the Project, the CM shall prepare final Project accounting and closeout reports.

3.6.4.2 Reports for Move-in and Occupancy

The CM shall prepare and distribute reports associated with the Occupancy Plan.

3.7 Additional Services

3.7.1 At the request of the Owner, the CM shall perform the following Additional Services and shall be compensated for same as provided in Article 7 of this Agreement, unless the need for the service is due to the CM's actions or inactions on the Project, and regardless Paragraphs 3.7.1.2, 3.7.1.7, 3.7.1.8, 3.7.1.10, 3.7.1.12, 3.7.1.15, 3.7.1.16 and 3.7.1.17 shall be provided as part of the basic services. The CM shall perform Additional Services only after the Owner and CM have executed a written change order to this Agreement providing for such services. Additional Services may include:

3.7.1.1 Services related to investigation, appraisal, or evaluation of existing conditions, facilities, or equipment or determination of the accuracy of existing drawings or other information furnished by the Owner that are not required to be performed by the CM in the basic services;

3.7.1.2 Services related to procurement, storage, maintenance and installation of Owner-furnished equipment, materials, supplies and furnishings;

3.7.1.3 Services related to determination of space needs;

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3.7.1.4 Preparation of space programs;

3.7.1.5 Services related to building site investigations and analyses that are not required to be performed by the CM in the basic services;

3.7.1.6 Services for tenant or rental spaces;

3.7.1.7 Preparation of a Project financial feasibility study;

3.7.1.8 Preparation of financial, accounting or MIS reports not provided under Basic Services;

3.7.1.9 Performance of technical inspection or testing;

3.7.1.10 Preparation of an Operations and Maintenance Manual for all materials and equipment reasonably required for the Owner's use of the Project;

3.7.1.11 Services related to recruiting and training of maintenance personnel;

3.7.1.12 Performance of warranty inspections and correction of warranty items during the warranty period of the Project;

3.7.1.13 Services related to interfacing or working with the Design Consultant or other consultants that are beyond the scope of this Agreement;

3.7.1.14 Consultation regarding replacement of work damaged by fire or other cause during construction and furnishing services in connection with the replacement of such work;

3.7.1.15 Preparation for and serving as a witness regarding the CM's observations on the Project in connection with any public or private hearing or arbitration mediation or legal proceeding;

3.7.1.16 Assisting the Owner in public relations activities and preparing information for and attending public meetings; and

3.7.1.17 Services related to move-in, including preparing and soliciting responses to requests for proposals, preparing and coordinating the execution of contracts, conducting pre-moving conferences, administering the contract for moving activities in conjunction with the move-in for the Project and providing on-site personnel to oversee the relocation of furniture and equipment by the movers while actual move-in is in progress.

3.8 Warranty

3.8.1 The CM warrants to the Owner and the Design Consultant that all materials and equipment furnished under this Agreement will be new unless otherwise specified, and that all workmanship will be in accordance with generally accepted industry standards, 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 CM shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.8.2 The CM will be required to complete the work specified and to provide all items needed for construction of the Project, complete and in good order.

3.8.3 The warranties set forth in this section and elsewhere in the contract documents shall survive final completion of the work.

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3.8.4 The CM guarantees and warrants to the Owner all work as follows:

.1 that all materials and equipment furnished under this Agreement will be new and the best of its respective kind unless otherwise specified;

.2 that all work will be in accordance with generally accepted industry standards and free of omissions and faulty, poor quality, imperfect and defective material or workmanship;

.3 that the work shall be entirely watertight and leak proof in accordance with all applicable industry customs and practices, and shall be free of shrinkage and settlement;

.4 that the work, including but not limited to, mechanical and electrical machines, devices and equipment, shall be fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care;

.5 that consistent with requirements of the contract documents, the work shall be installed and oriented in such a manner as to facilitate unrestricted access for the operation and maintenance of fixed equipment;

.6 that the work will be free of abnormal or unusual deterioration which occurs because of poor quality materials, workmanship or unsuitable storage; and

.7 that the products or materials incorporated in the work will not contain asbestos.

3.8.5 All work not conforming to guarantees and warranties specified in the contract documents, including substitutions not properly approved and authorized, may be considered defective. If required by the Design Consultant or Owner, the CM shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.8.5.1 The CM will submit a written affidavit certifying that none of the materials incorporated in the Project contain asbestos.

3.8.6 If, within one (1) year after the date of substantial completion of the work or designated portion thereof 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 CM shall correct it within five (5) working days or such other period as mutually agreed, after receipt of notice from the Owner to do so. The Owner shall give such notice with reasonable promptness after discovery of the condition. For items that remain incomplete or uncorrected on the date of substantial completion, the one (1) year warranty shall begin on the date of final completion of the work or upon correction of the defective work.

3.8.7 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 CM, any contractor or supplier, the CM 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.

3.8.8 Any materials or other portions of the work, installed, furnished or stored on site which are not of the character or quality required by the specifications, or are otherwise not acceptable to the Design Consultant or the Owner, shall be immediately removed and replaced by the CM to the satisfaction of the Design Consultant and Owner, when notified to do so by the Design Consultant or Owner.

3.8.9 If the CM fails to correct defective or non-conforming work as required, or if the CM fails to remove defective or non-conforming work from the site, the Owner may elect to either correct such work or remove

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and store materials and equipment at the expense of the CM. If the CM does not pay the cost of such 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 CM, including compensation for the Design Consultant's additional services and Owner's reasonable attorney's fees made necessary thereby. If such proceeds of sale do not cover all costs, which the CM should have borne, the difference shall be charged to the CM and an appropriate change order shall be issued. If the payments then or thereafter due the CM are not sufficient to cover such amount, the CM shall pay the difference to the Owner.

3.8.10 The CM shall bear the cost of making good all of the work of the Owner, separate contractors or others, destroyed or damaged by such correction or removal required under this section or elsewhere in the contract documents.

ARTICLE 4
DURATION OF THE CONSTRUCTION MANAGER'S SERVICES

4.1 The duration of the CM's Basic services under this Agreement shall be from the date of this Agreement through the issuance of final payment. The CM shall provide any warranty phase services at no additional cost to the Owner.

4.1.1 The commencement date for the CM's Basic Services shall be the date of execution of this Agreement by the Owner as stated herein or the date on which the Owner issues to the CM a written instruction to proceed with Basic Services, whichever is earlier.

4.1.2 The CM's Basic Services shall be performed for the periods of time indicated in this Agreement. If portions of design and construction occur simultaneously, some of the phase durations may overlap.

4.1.2.1 The CM's Basic Services during the Pre-Design Phase shall be performed as required during the pre-design phase.

4.1.2.2 The CM's Basic Services during the Design Phase shall be performed as required during the design phase.

4.1.2.3 The CM's Basic Services during the Procurement Phase shall be performed as required during the procurement phase.

4.1.2.4 The CM's Basic Services during the Construction Phase shall be performed as required during the construction phase.

4.1.3 The CM's Basic Services during the Post-Construction Phase shall be performed as required during the post-construction phase

4.1.4. The CM shall achieve substantial completion of the Project on or before August 1, 2024, unless the Owner and CM agree to a different date in writing. The date for final completion shall be thirty (30) days after substantial completion.

4.2 Delays and Extensions of Time

4.2.1 The time during which the CM or any of the contractors is delayed in the performance of the work by the issuance of any required permits, acts of god, excessive inclement weather, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotions or freight embargoes, or other conditions beyond the

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CM's or the contractors' control and which the CM or the contractors could not reasonably have foreseen and provided against, except for delays caused solely by the Owner, Design Consultant or their consultants, shall be added to the time for completion of the work stated in the Agreement. Neither the Owner nor the Design Consultant shall be obligated or liable to the CM or the contractors for indirect or direct damages, costs or expenses of any nature which the CM, the contractors, or any other person may incur as a result of any of the delays, interferences, or changes in sequence in the work included in this section 4.2.1. The CM hereby expressly waives any claims against the Owner and the Design Consultant on account of any indirect or direct damages, lost profits, costs or expenses of any nature which the CM, the contractors or any other person may incur as a result of any delays, interferences, changes in sequence or the like, and it is understood and agreed that the CM's sole and exclusive remedy in any such events shall be an extension of the contract time in accordance with the contract documents.

4.2.1.1 Currently a known global pandemic has caused material shortages that are unprecedented. If critical path delays that are greater than 10 days are incurred in material deliveries solely due to new disruptions occurring after the issuance of a Change Order authorizing the material procurement he CM shall be entitled to a 50% reimbursement of additional general conditions for staffing, temporary facilities, and other costs associated with the delay. If the project is impacted because of these circumstances that are out of the control of the CM the owner shall grant the contractor an extension of time to the contract. Construction contingency funds may be utilized to assist the CM with reconciliation of the general conditions however if contingency funds are depleted the owner will work with the CM to cover these costs.

4.2.2 In the event Project delays arise from or out of any act or omission of the Owner, Design Consultant or their consultants, the time during which the Project is delayed shall be added to the Agreement and the CM may be reimbursed for its direct Project damages, excluding general overhead expenses and indirect costs, if the CM strictly complies with this Article 4.2. Notwithstanding the previous sentence, if the CM, a contractor and/or subcontractor in any way shares in responsibility for the delay, neither the Owner nor the Design Consultant shall be obligated or liable to the CM or the contractors for indirect or direct damages, costs or expenses of any nature which the CM, the contractors, or any other person may incur as a result of any of the delays, interferences, changes in sequence of the work, and the CM's sole remedy, if any, shall be an extension of the contract time.

4.2.3 In the event Project delays arise solely from or out of any act or omission of the CM, contractors, subcontractors or their agents, the CM shall not be entitled to extension of the contract time and shall be subject to the payment of liquidated damages as provided in this Agreement.

4.2.4 The contract time shall be adjusted only for changes authorized pursuant to this Agreement, suspension or the work by the Owner, and excusable delays pursuant to section 4.2.4.2. In the event the CM requests an extension of the contract time or files a claim related to any form of delay, it shall furnish such justification and supporting evidence as the Owner may deem necessary for a determination of whether or not the CM is entitled to an extension of time under the provisions of the contract, and shall further outline the alleged impact on the schedule's critical path. The burden of proof to substantiate a claim shall rest with the CM, including evidence that the cause was beyond its control. The Owner shall base its findings of fact and decision on such justification and supporting evidence, including a finding that the alleged delay impacted the Project's critical path, and shall advise the CM in writing thereof. If the Owner finds that the CM is entitled to any extension of the contract time, the Owner's determination of the total number of days extension shall be based upon the currently approved progress schedule and on all data relevant to the extension. Such data will be incorporated into the schedule in the form of a revision thereto, accomplished in a timely manner. The CM acknowledges and agrees that actual delays (due to said changes, suspension of work or excusable delays) in activities which, according to the schedule, do not affect the contract time, do not have any effect upon the contract time and therefore will not be the basis for a change therein. The CM acknowledges and agrees that time extensions will be granted only to the extent that excusable delays exceed the available float in the critical path activities in the currently approved schedule.

4.2.4.1 Extensions in the contract time by change orders are subject to extension-in-time audit by the Owner as follows:

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4.2.4.1.1 The CM agrees that, even though the Owner, CM and Design Consultant have previously signed a change order containing an extension-in-time resulting from a change in or addition to the work that said extension in the contract time may be adjusted by an audit after the fact by the Owner. If such an audit is to be made, the Owner must undertake the audit and make a ruling within 30 days after the completion of the work under the change order.

4.2.4.1.2 The CM agrees that any extension of the contract time to which it is entitled arising out of a change order undertaken on a force accounting (labor and materials) basis, shall be determined by an extension-in-time audit by the Owner after the work of the change order is completed. Such rulings shall be made by the Owner within 30 days after a request for same is made by the CM or Design Consultant, except said 30 days will not start until the work under the change order is completed.

4.2.4.1.3 Should a time extension be granted for substantial completion the date for final completion shall be appropriately adjusted unless specifically stated otherwise.

4.2.4.2 Subject to other provisions of the contract, the CM may be entitled to an extension of the contract time (but no increase in the GMP) for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the CM, the contractors or suppliers as follows:

4.2.4.2.1 Labor disputes and strikes (including strikes affecting transportation), that do, in fact, directly delay the progress of the work on the critical path; however, an extension of contract time on account of an individual labor strike shall not exceed the number of days of said strike;

4.2.4.2.2 Acts of God: tornado, fire, hurricane, blizzard, earthquake, or flood that damage completed work or stored materials and affecting the critical path;

4.2.4.2.3 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 Agreement, 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 Agreement, 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 total cumulative time from the notice-to-proceed with on-site activities until the date established for Substantial Completion using data from the National Oceanic and Atmospheric Administration (“NOAA”) weather service stations in the Brunswick County, NC area (Wilmington, NC and Myrtle Beach, SC) 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 F or less as recorded at the approved weather station. Rain days from hurricanes and tropical storms not causing damage in Brunswick County shall be deemed inclement weather days.

If the total accumulated number of calendar days lost to excessive inclement weather, from the notice-to-proceed with on-site activities until the date established for Substantial Completion, exceeds the total accumulated number to be reasonably anticipated for the same period based upon the five-year average, 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 or work out of doors that is not on the critical path. No change in Contract Sum will be authorized because of adjustment of Contract time due to excessive inclement weather.

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4.2.4.2.4 Delays in the issuance of a required permit, acts of the public enemy, acts of the state, federal or local government in its sovereign capacity, and acts of another contractor in the performance of a contract with the Owner relating to the Project.

4.2.5 If the CM shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the CM does hereby agree, as a part consideration for the awarding of this Agreement, to pay the Owner the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the CM shall be in default after the time stipulated in the contract for completing the work. The said amount is fixed and agreed upon by and between the CM and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates.

4.2.6 The CM and the contractors shall not be entitled to and hereby expressly waive 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 for all delays, except excessive inclement weather which shall be made in writing to the Owner within forty-five (45) days after the date the structure is enclosed. Circumstances and activities leading to such claim shall be indicated or referenced in a daily field inspection report for the day(s) affected. In every such written claim, the CM shall provide the following information:

4.2.6.1 Nature of the delay;

4.2.6.2 Date (or anticipated date) of commencement of delay;

4.2.6.3 Activities on the progress schedule affected by the delay, and/or new activities created by the delay and their relationship with existing activities;

4.2.6.4 Identification of person(s) or organization(s) or event(s) responsible for the delay;

4.2.6.5 Anticipated extent of the delay; and

4.2.6.6 Recommended action to avoid or minimize the delay.

4.2.7 If no schedule or agreement is made stating the dates upon which written interpretations shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until twenty (20) days after request is made for them, and not then unless such claim is reasonable.

4.2.8 No claim by the CM for an extension of time for delays will be considered unless made in strict compliance with the requirements of this Article. All claims not filed in accordance with this Paragraph shall be waived by the CM.

ARTICLE 5
CHANGES IN THE CONSTRUCTION MANAGER'S BASIC SERVICES AND ADDITIONAL COMPENSATION

5.1 Changes - Preconstruction Basic Services

5.1.1 The Owner, without invalidating this Agreement, may make changes in the CM's Basic Services specified in Paragraphs 3.2, 3.3 and 3.4 of this Agreement. The CM shall promptly notify the Owner of changes which increase or decrease the CM's compensation, the duration of the CM's Basic Services, or both.

5.1.2 Additional Compensation and Extended Duration

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The CM shall be entitled to receive additional compensation and additional time when the scope of Paragraphs 3.2, 3.3 and 3.4 is increased or extended through no fault of the CM. If the scope of these Basic Services is increased or the duration of these Basic Services is extended or the duration of the Basic Services to be performed within a phase duration specified in Article 4 is extended, the CM shall be entitled to receive additional compensation, and the duration of the Agreement shall be extended. A written request for additional compensation shall be given by the CM to the Owner within ten (10) days of the occurrence of the event giving rise to such request. The amount of additional compensation to be paid and the amount of extension of the duration of this Agreement shall be determined on the basis of the CM's cost, a customary and reasonable adjustment in the CM's fixed or lump sum fee consistent with the provisions of this Agreement, and a determination of the length of the extensions of the duration of this Agreement.

5.1.3 Changes in the CM's Basic Services

Changes in the CM's Basic Services in Paragraphs 3.2, 3.3 and 3.4 and entitlement to additional compensation shall be made by a written change order to this Agreement executed by the Owner and the CM. The change order shall be executed by the Owner and CM prior to the CM performing the services required by the change order. The CM shall proceed to perform the services required by the change order only after receiving notice directing the CM to proceed. The CM shall not be entitled to compensation for work performed without a written change order.

5.1.4 Payment of Additional Compensation

The CM shall submit invoices for additional compensation with its invoice for Basic Services and payment shall be made pursuant to the provisions of Article 7 of this Agreement.

5.2 Changes to the Work or Construction Phase Basic Services

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, including, but not limited to changes: (1) in the specifications or drawings; (2) in the sequence, method or manner of performance of the work; (3) in the Owner-furnished facilities, equipment, materials, services or site; or (4) directing acceleration in the performance of the work.

The parties agree that notwithstanding any language to the contrary in Paragraphs 5.2.1 through 5.2.4, the CM's fee on any additional work and the fee reduction for any work or allowances removed from the scope of work shall be based on the same percentage fee specified in Paragraph 7.4.1, unless the CM performs the work with its own forces as allowed in this Agreement. The parties agree that Paragraphs 5.2.1.1 through 5.2.1.3 are intended to govern payment to the contractors and their subcontractors for performing work associated with a change, unless the CM performs the work with its own forces as allowed in this Agreement. If the CM performs the work with its own forces, the CM shall also be referred to by the term "contractor" in Paragraphs 5.2.1.1 through 5.2.1.3. The parties specifically agree that any adjustment to the amount that could be reimbursed for general conditions, if any, shall be negotiated in good faith between the parties based upon the additional work actually required to be performed by the CM as a result of the change.

5.2.1 Owner Directed Changes to the Work Requiring an Increase in GMP

If the change in or addition to the work will result in an increase in the Guaranteed Maximum Price, 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).

5.2.1.1 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 CM to the Owner within ten (10) days of the CM's receipt of a request therefor (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 CM's proposal shall be itemized and segregated by labor and materials for the various components of the change in or addition

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to the work (no aggregate labor total will be acceptable) and shall be accompanied by signed proposals of any contractors who will perform any portion of the change in, or addition to, the work and of any persons who will furnish materials or equipment for incorporation therein. The proposal shall also include the CM's estimate of the time required to perform said changes or additional work.

5.2.1.1.1 The portion of the proposal relating to labor, by the forces of any of the contractors, 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 premium costs of overtime time, if overtime is anticipated; a maximum labor burden of thirty nine percent (39%) of the actual cost of labor by any such contractor in connection with such labor; and up to fifteen percent (15%) of such anticipated gross wages, as overhead and profit for any such contractor, as applicable (said overhead and profit to include all extended general conditions and supervision, but it shall not include the labor burden).

5.2.1.1.2 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 of its subcontractors (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 any of the contractors, as applicable (said overhead and profit to include all extended general conditions and supervision, except it shall not be applied to any sales tax paid for any purpose or shipping costs incurred by the contra tor 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.

5.2.1.1.3 The CM shall provide any documentation that may be requested by the Owner to support the change proposal including payroll records, insurance rates, material quotes or rental quotes. The CM shall also provide an itemized breakdown of all transportation and shipping costs, including receipts documenting the expenses.

5.2.1.1.4 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 the change in the work as a commission to the contractor. The change proposal form attached to this Agreement as Appendix D-1 shall be used to submit the change proposal to the Owner.

5.2.1.1.5 In the event that the CM fails to submit his proposal within the designated period, the Owner may order the CM to proceed with the change or addition to the work and the CM 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 CM.

5.2.1.1.6 In the event that the parties are unable to agree as to the reasonable cost and time to perform the change in or addition to the work based upon the CM'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 their own estimates, the CM's submission or a combination thereof, except for a change order initially establishing the GMP for the Project or initially establishing a partial GMP for a portion of the work included in the original Project scope. A change order shall be issued in this case for the amounts of cost and time determined by the Owner and shall become binding upon the CM unless the CM submits its protest in writing to the Owner within thirty (30) days of the issuance of the change order. Owner has the right to direct in writing the CM to perform the 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 change in the work and/or any pending protest, shall not relieve the CM from performing the change in the work promptly and expeditiously.

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5.2.1.1.7 The Owner reserves the right to reject the CM's proposal for a change in the work and to elect to perform said work using a separate contractor. Under such circumstances, the CM shall coordinate the performance of the work.

5.2.1.2 If the Owner elects to have the change in the work performed on a time and material basis, the same shall be performed, by the forces of any of the contractors, at actual cost to the entity performing the change in the work. The change proposal form attached as Appendix D-2 shall be used to submit the initial change proposal to the Owner for approval to proceed. The CM shall maintain records to submit to the Owner such as daily time and material tickets, 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 employee 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 CM to secure any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the CM 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.

The change proposal form attached as Appendix D-1 shall be used to submit the final change proposal to the Owner after the work is complete. The final change proposal shall document all costs and expenses. Appendix D-1 shall be filled out in accordance with the instructions in Paragraph 5.2.1.1, and its subparagraphs.

5.2.1.3 Changes in the work to be completed on a unit price basis shall be quantified by the Design Consultant or an independent third party and shall be completed at an all inclusive rate established in the bid proposal, unless a mutually agreed upon price is established by the Owner and CM. The unit prices include the cost of all materials, taxes, shipping and delivery charges, labor and labor burden, insurance, supervision, overhead and profit. Time to complete any work done on a unit price basis for quantities within the base bid allowance amount is included in the base bid. The unit price does not include bonds. Procedures for quantifying units of measure shall be proposed by the Design Consultant and agreed to by the CM and Owner prior to the commencement of the work to be completed on a unit base price. Work performed without such agreement in place shall be deemed to have been done at the sole risk and expense of the CM. Time for quantities exceeding the base bid allowance will be evaluated based on the effect of the change in the work on the critical path of the Project.

5.2.1.3.1 No overhead and profit will be paid by the Owner on account of a change in the work except as specifically provided in this section. Overhead and profit, as allowed in this section, shall be deemed to include all costs and expenses which the CM or any of the contractors may incur in the performance of a change in the work and which are not otherwise specifically recoverable by them pursuant to this section.

5.2.1.4 The Owner may direct in writing the CM to begin changes in the work prior to the issuance of a formal change order. The CM shall promptly perform the changes in the work directed by the Owner in a manner that shall result in minimum impact on the critical path.

5.2.2 CM Notice of Change

If the CM or any of the contractors 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 GMP 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 CM shall, within ten (10) days of such event unless such event was not discovered in the exercise of reasonable diligence, in which event the ten (10) day notice period shall commence upon discovery or when the CM should have discovered 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 CM's best estimate of the cost and time involved.

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If the CM intends to assert a claim under this section, he must, within ten (10) days after the furnishing of a written notice as outlined above, submit to the Owner a written statement setting forth the specific nature and anticipated cost of such claim, unless this period is extended by the Owner. The statement of claim hereunder may be included in the notice required above. The statement of claim shall include all direct, indirect and impact costs associated with the change, as well as the CM's estimate of the schedule impact of the change, if any. The CM and the contractors shall not be entitled to reimbursement or an increase in the GMP for any claims that are not filed in strict conformance with this section. The CM shall indemnify and hold the Owner harmless against any claims by the contractors that are waived because they are not filed in strict conformance with this section.

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 this section. The CM shall proceed with the work pursuant to the provisions of this section.

5.2.3 General Provisions Related to Changes

The CM 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 this section, and which the CM, the contractors 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 section, unless the delay is caused solely by the Owner or Design Consultant. It is understood and agreed that the CM's and the contractors' sole and exclusive remedy in such event shall be recovery of direct costs as compensable hereunder and an extension of the contract time, but only in accordance with the provisions of the contract documents. o claim by the CM hereunder shall be allowed if asserted after final payment for the construction or the Project under this Agreement. 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 CM, except as specifically provided in this section.

If any dispute should arise between the parties with respect to an increase or decrease in the GMP or an expansion or contraction in the contract time as a result of a change in the work, the CM 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 CM 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. The CM's acceptance of payment following a unilateral decision by the Owner shall not constitute a waiver of any claim the CM may have for additional compensation or time. However, any claim the CM may have shall be filed in strict conformance with the contract documents.

5.2.4.1 If the change in the work will result in a decrease in the contract sum, the CM shall provide a quotation detailing the proposed amount of such decrease. The portion of the proposal relating to labor, whether by the CM's forces or the forces of any of the contractors, shall include reasonably anticipated gross wages of job site labor, including foremen, who would have been directly involved in the work that has been deleted from the contract (for such time as they would have been so involved), plus payroll costs (including premium costs of overtime time, if overtime was anticipated, social security, federal or state unemployment insurance taxes and fringe benefits required by collective bargaining Agreements entered into by the contractor or any subcontractor in connection with such labor) and seven percent (7%) of such anticipated gross wages, but not payroll costs, as overhead and profit not incurred or earned by the contractor or any subcontractor, as applicable (said overhead and profit to include all supervision except foremen). If applicable, the fee percentage to be applied to the CM's forces shall be the percentage stated in section 7.4.1.

5.2.4.2 The portion of the proposal relating to materials shall include the reasonably anticipated direct costs

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which would have been incurred by the contractor or to any subcontractors for materials which would have been purchased or incorporation in the work but which has been deleted from the contract, plus transportation and applicable sales and use taxes which will be avoided, and seven percent (7%) of said direct material costs incurred by the contractor or subcontractor (excluding transportation and sales and use taxes) as overhead and profit not incurred or earned by the contractor or any subcontractor (said overhead and profit to include all small tools), and shall further include the contractor's and subcontractor's reasonably anticipated rental costs which will be avoided (either actual or discounted local published rates), plus five percent (5%) thereof as overhead and profit not incurred or earned by the contractor or subcontractor, as applicable. If any of the items included in the lump sum proposal are covered by unit prices contained in the contract documents, the Owner may elect to use these unit prices in determining the amount of reduction to the GMP as a result of a deletion of work from the contract. No overhead and profit shall be applied to any unit prices for purposes of calculation such reduction in the contract sum. The lump sum proposal for work which would have been performed by any subcontractors shall include four percent (4%) of that amount as an estimate of the contractor's overhead and profit that will not be earned by contractor due to the decrease in the contract sum. In the event the construction work would have been performed by the CM in the limited circumstances allowed in this Agreement, the fee percentages stated in this section shall apply to the work that would have been performed by the CM as the contractor and its subcontractors.

5.2.4.3 The CM'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 a 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 overhead and profit as stated above the CM's acceptance of payment following a unilateral decision by the Owner shall not constitute a waiver of any claim the CM may have for additional compensation. However, any claim the CM may have shall be filed in strict conformance with the contract documents.

5.2.5. Minor Changes in the Work

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 CM. The CM shall carry out such written orders promptly.

The CM shall not perform any changes in the work unless authorized in writing by the Design Consultant or Owner. The CM's performance of minor changes pursuant to this Section shall not constitute a waiver of any claim the CM may have for additional compensation or time. However, any claim the CM may have shall be filed in strict conformance with the contract documents.

5.2.6 Differing Site Conditions

Should the CM 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 Agreement, 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 that could have been reasonably determined from any geotechnical, soils and other reports, surveys and analyses made available for the CM's review or that could of been discovered by the CM through the performance of its obligations pursuant to this Agreement.

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5.3 General Provisions Regarding Changes in Contractor Work. In the event the work included in the original contract issued to a contractor is changed, or new contracts are issued, the CM shall notify the Owner of the change or the new contract, including the nature and reason for the change or new contract and the associated cost. Regardless of whether the change or new contract is believed to result in an increase or decrease in the GMP. The Owner and CM shall review all changes or new contracts that were not incorporated into a change order between the Owner and CM or resulted in the use of either of the CM's contingencies at the conclusion of the Project in order to determine whether the Owner is entitled to a reduction in the cost of work portion of the GMP as it is defined in Paragraph 7.4.1.

ARTICLE 6
OWNER'S RESPONSIBILITIES

6.1 The Owner shall provide to the CM complete information regarding the Owner's requirements for the Project.

6.2 The Owner shall examine information submitted by the CM and shall render decisions thereto promptly.

6.3 The Owner shall contract with a Design Consultant to furnish design counseling services as may be necessary for the Project.

6.4 The Owner shall furnish insurance for the Project only as specified in Article 8.

6.5 If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, the Owner shall give prompt written notice thereof to the CM.

6.6 The Owner shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the Work in cooperation with the CM, consistent with this Agreement, and in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by the CM.

6.7 The Owner shall retain a Design Consultant whose services, duties and responsibilities shall be described in a written Agreement between the Owner and Design Consultant. The services, duties, and responsibilities of the Design Consultant set out in the agreement between the Owner and Design Consultant shall be compatible and consistent with this Agreement and the Contract Documents. The Owner shall, in its agreement with the Design Consultant, require that the Design Consultant perform its services in cooperation with the CM, consistent with this Agreement and in accordance with the planning, scheduling and budgetary requirements of the Project as determined by the Owner and documented by the CM.

6.8 The Owner shall approve the Project and Construction Budget and any subsequent revisions as provided in Paragraph 3.2.3.2 of this Agreement.

6.9 If the Owner contracts separately with any other parties, the Owner shall cause all such Agreements to be compatible and consistent with this Agreement.

6.10 At the request of the CM, sufficient copies of interim and bidding drawings, specifications and contract documents shall be furnished to or printed by the CM at the Owner's expense. The CM shall be solely responsible for the cost of any drawings, specifications and contract documents required after bidding the Project.

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6.11 The Owner or Design Consultant shall in a timely manner secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use or occupancy of permanent structures, or for permanent changes in existing facilities.

6.12 The Owner shall furnish evidence satisfactory to the CM that sufficient funds are available and committed for the entire cost of the Project. The Owner may authorize the CM to proceed with the work on the Project in discrete phases if all of the funds required for the entire Project are not identified at the time this Agreement is executed by the parties.

6.13 The Owner, its representatives and consultants, including Design Consultants, shall endeavor to communicate with the Contractors only through the CM.

6.14 The Owner shall send to the CM and shall require the Design Consultant to send the CM copies of all notices and communications sent to or received by the Owner or Design Consultant relating to the Project.

6.15 The Owner shall designate, in writing, an officer, employee or other authorized representatives to act in the Owner's behalf with respect to the Project. This representative shall be available during working hours and as often as may be required to render decisions and furnish information so as not to delay the Project. The CM acknowledges that some changes in the scope of the Project may require approval by the Board of Education. The CM shall notify the Owner in writing of any deadlines for responses and how the Owner's failure to respond by the stated deadline will impact the Project schedule.

6.16 The Owner shall make payments to the CM on the basis of the Contractors' payment applications that are certified by the CM and on the basis of the CM's invoices for its services performed. Prior to payment by the Owner, the Design Consultant shall review and approve the contractors' pay applications in accordance with Paragraphs 3.5.3.5 and 3.5.3.6.

ARTICLE 7
COMPENSATION FOR CM SERVICES AND PAYMENT

7.1 Guaranteed Maximum Price

7.1.1 The Owner and CM agree that the Guaranteed Maximum Price GMP shall be Twenty-Two Million, One Hundred Twenty-Six Thousand, Six Hundred Nine Dollars ($22,126,609) for this Project. This preliminary pricing is based upon the allowable funding established for the construction phase of the project. It is the intent of this agreement for the CM, Owner, and Design team to work together during the preconstruction process to maintain or improve this number, working through multiple exercises to dial in the scope of the project to ensure the budget is maintained. The parties further agree that in the event the bids received by the CM for the work, including all of the alternates accepted by the Owner, pursuant to Article 3.4 of this Agreement exceed the line item in the GMP for the cost of the work, , the following steps will be taken. 1. The CM will negotiate with the lowest responsive bidder working with the design team to make limited and responsible changes to the plans and specifications without significantly modifying the program 2. The CM will restructure the bid packages, breakdown larger packages, and rebid packages with minor modifications 3. With the assistance of the designer, at no cost to the CM, the plans and specifications will be modified, and the package re-advertised and re-bid 4. Owner may seek additional funding or deploy reserve funds, or 5. this Agreement is terminated by the CM pursuant to Paragraph 7.1.1.1In the event that the bids received by the CM for the work, including all alternatives accepted by the Owner, are less than the line item in the GMP for the cost of the work, the remaining funds shall be added to the Owner's contingency. The scope of work included in the bid documents, including any alternates accepted by the Owner, shall form the basis of the work to be performed by the CM. The CM and Owner agree that the cost for Pre-Construction shall be $147,459. and that line items in the GMP shall consist of the Cost Of The Work, CM's Contingency, Owners Contingency, General Conditions, CM's Fee, and Bond/Insurance). The CM and Owner further agree that the dollar values for the line items in the GMP stated above consist

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of the cost of the work ($18,610,000), CM Construction Contingency ($558,300), Owner Construction Contingency ($558,300), General Conditions ($1,120,209), And CM's Fee (4%, $744,400), and Bond/Insurance ($535,400).

7.1.1.1The parties agree that in the event the bids received by the CM for the work, including all of the alternates accepted by the Owner, pursuant to Article 3.4 of this Agreement exceed the line item in the GMP for the cost of the work, then the CM shall have the right to terminate this Agreement. The CM shall provide the Owner with notice of intent to terminate pursuant to this provision within fifteen (15) days of the CM's receipt of bids for the Project. Prior to a termination pursuant to this provision becoming effective, the Owner and CM will review the list of alternates, other modifications or value engineering requests in order to determine whether an Agreement can be reached between the Owner and CM regarding a modified scope of work or an adjustment to the GMP. In the event an Agreement regarding the modified scope of the work and/or a revision to the GMP cannot be reached within fifteen (15) days of the Owner's receipt of notice of intent to terminate pursuant to this section, then the termination shall become immediately effective

7.1.1.2 The parties specifically agree that none of the provisions in Article 10 shall apply to any termination of this Agreement pursuant to section 7.1.1.1, but the CM shall be entitled to payment for work actually performed through the procurement phase (section 3.4) pursuant to the compensation set forth in Paragraph 7.4.1; however, CM shall not be compensated for any services provided after the date of termination. In the event a modified scope of work and/or a revision to the GMP is agreed upon by the parties, the modified scope shall form the basis of the work to be performed by the CM for the established GMP. The CM construction contingency, general conditions, and/or CM's fee for construction may be reduced by mutual consent of both parties in order to provide funding for the Project. The CM and Owner shall document any changes to the GMP, scope of work, cost of the work, general conditions, CM fee, or CM contingency prior to the Owner issuing notice to proceed with the work. Any reduction in the cost of the work as a result of a modification of the Project scope shall be added to the Owner's contingency

7.1.1.3 In the event the Owner does not request the CM to establish a Guaranteed Maximum Price or does not accept the CM's Guaranteed Maximum Price, then this Agreement may be terminated by the Owner with seven (7) days written notice. In the event this Agreement is terminated pursuant to this provision, the CM shall only be entitled to receive compensation for services as outlined in Article 10.

7.1.1.4. In the event that the Guaranteed Maximum Price is accepted by the Owner, a change order shall be completed and executed by both parties to this Agreement and the CM shall become responsible for the means, methods, sequences, and procedures used in the construction of the Project and shall proceed with the CM's basic services.

7.1.1.5 Construction contracts for the Work required for the Project shall be between the CM and Contractors. The CM shall request and receive bids for each contract and shall solicit and award the contracts in accordance with N.C. Gen. Stat. § 128.1, 143-128.2 to -128.4 and 143-135.8. The contractor and CM shall comply in all respects with the Owner's MBE policies, rules and regulations. The CM shall enter into contracts with the lowest responsible and responsive bidders within sixty (60) days after notice of approval of the GMP by the Owner; however, the CM shall not be entitled to additional time to complete the Project due to any delay in entering into contracts with a bidder unless the delay is due solely to the actions or inactions of the Owner.

7.1.1.6 The CM may perform a portion of the work only if (1) bidding produces no responsible, responsive bidder for that portion of the work, the lowest, responsive, responsible bidder will not execute a contract for the bid portion of the work, or a contractor defaults and a pre-qualified replacement cannot be obtained in a timely manner, and (2) the Owner approves of the CM's self-performing of the work. In the event the CM self-performs a portion of the work pursuant to either method noted above, it shall be paid for the direct cost of the work with no reimbursement for office overhead or for any other work otherwise included in the general conditions. The fee for the work will be at the same CM fee percentage stated in 7.4.1. This paragraph shall not govern compensation for work self-performed by the CM pursuant to Paragraph 5.2.

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7.1.1.7 The Guaranteed Maximum Price is the total cost of the Project, as defined herein. The Guaranteed Maximum Price includes the cost of labor, equipment, supplies, materials, services and allowances to complete the Project. The cost data shall be directly correlated to the specific design drawings and specifications in existence at the time the Guaranteed Maximum Price is prepared. The assumptions used in the preparation of the Guaranteed Maximum Price shall be identified by the CM as part of the Guaranteed Maximum Price documentation, and incorporated into the change order establishing the GMP. If the Owner directs the CM to award a contract to a bidder other than the lowest responsible and responsive bidder for any portion of the Project, the Guaranteed Maximum Price shall be increased by the amount of the difference between the award price and the price submitted by the lowest responsible and responsive bidder. The Contingency shall not be changed.

The GMP shall include the cost of the work, CM's general conditions, bonds/insurance, the CM's fee for construction and post-construction phase basic services. The GMP shall also include a CM construction contingency fund. The CM construction contingency fund and the Owner's contingency fund shall only be utilized as outlined in Paragraphs 7.1.1.7.1, and 7.1.1.7.2. The CM's fee shall be paid pursuant to Section 7.4. The general conditions shall be reimbursed as described in 7.1.1.7.3. 7.1.1.7.1 Unless otherwise agreed in writing, the CM's construction contingency may be used by the CM to expedite the work, address scheduling and coordination problems, respond to a default by a non-bonded contractor, and repair damaged work in place where the responsible contractor cannot be identified by the CM after reasonable efforts to identify the responsible party. The CM's construction contingency may also be used by the CM to correct design issues that reasonably should have been discovered by the CM during the performance of its obligations pursuant to Paragraphs 3.3.1.5 and 3.3.1.6, correct scope gaps in the bidding of the Project, , and any issues that are the fault of the CM. The CM's use of the CM's construction contingency fund shall be documented in writing by the CM and approved by the Owner in writing prior to the CM billing for the work. The CM shall not be entitled to receive any fee for the use of the CM's contingency. In the event of a default by a contractor, the CM shall not use the CM's contingency to cover any costs covered by a performance or payment bond provided by the contractor or covered by a program paid for by the CM to insure the performance of the contractors. The CM shall vigorously pursue reimbursement of all expenses from the contractor's surety or through the program provided by the CM.

7.1.1.7. Unless otherwise agreed in writing, the Owner's contingency fund shall be used to correct any design issues that could not reasonably have been discovered by the CM during the performance of its obligations during the design and bidding phases, and any changes requested by the Owner. The use of the Owner's contingency fund shall be documented in writing by the CM and approved by the Owner in writing prior to the CM billing for the work.

7.1.1.7.3The General Conditions shall be paid monthly on a pro-rata basis based upon the project schedule in an amount that shall not exceed the amount included in the GMP. The Owner and CM agree that the items to be reimbursed as general conditions are indicated in Appendix E. The Owner reserves the right to take Ownership and possession of any equipment or other item purchased by the CM as part of general conditions at the conclusion of the Project. The CM shall be notified of the Owner's intent to take possession of any such items prior to final payment.

7.1.1.8 The Guaranteed Maximum Price shall include those taxes applicable to the Project. Any sales tax refunds paid to the Owner shall be exclusively for the Owner's use and shall not in any way reduce the cost of the Project or impact the Guaranteed Maximum Price.

7.1.1.9 The Owner may change the scope of the Project or a part thereof and the Guaranteed Maximum Price shall then be adjusted as provided in Paragraph 7.1.3.

7.1.1.10 In the event that the cost of the Project exceeds the Guaranteed Maximum Price and any adjustments therein as may be due pursuant to the terms hereof, the CM shall continue to perform at no additional cost to the Owner until the Project, defined by this Agreement and attachments hereto, is complete and achieves final completion. The CM shall be responsible for paying all costs and expenses, in

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accordance with the terms of this Agreement, that may be necessary to complete the Project, even if such amounts are in excess of the Guaranteed Maximum Price.

7.1.2 Cost of the Project

The term “cost of the Project” shall include all amounts paid by the Owner to the CM for construction and post-construction phase basic services provided by the CM in Paragraphs 3.5 and 3.6 and payment to all separate Contractors, suppliers and equipment lessors for all work, material, and equipment supplied to the Project including general conditions items.

7.1.2.1 The cost of the Project shall not include the following:

7.1.2.1.1 The CM’s fee for Basic Services;

7.1.2.1.2 All professional fees paid by the Owner to the Design Consultant or other consultants retained directly by the Owner;

7.1.2.1.3 All costs paid directly by the Owner to contractors or suppliers retained directly by the Owner and outside the scope of the Guaranteed Maximum Price;

7.1.2.1.4 All Additional Services costs as defined herein; or

7.1.2.1.5 All other costs identified as being not within the Guaranteed Maximum Price.

7.1.2.2 The cost of the Project may be further defined in the change order identifying the scope of the work and the final Guaranteed Maximum Price. If the requirements of this Paragraph 7.1.2 and the documentation required by the change order establishing the Guaranteed Maximum Price differ, then the CM shall identify and explain the difference, but the documentation provided in accordance with change order establishing the final Guaranteed Maximum Price shall be the basis for determining the scope of the Guaranteed Maximum Price.

7.1.3 Adjustments to the Guaranteed Maximum Price

The CM understands, confirms and agrees that its responsibility hereunder is to construct the Project in accordance with the drawings and specifications. It is recognized that the Guaranteed Maximum Price may be determined based upon incomplete design documents and in those instances in which the drawings and specifications are not complete at the time the Guaranteed Maximum Price is established, the CM shall exercise reasonable care and judgment to determine the intent of the design and shall calculate the Guaranteed Maximum Price on the basis of the quality of construction, materials, and finishes that can be reasonably inferred from the design documents or other specified sources. The CM shall determine unit prices and the cost of the Project and shall make those assumptions regarding the Project scope and the quality of the intended construction as may be necessary to fully document the Guaranteed Maximum Price. The Owner and CM shall use the most recently approved Project scope in determining whether or not the scope of the Project or a part thereof has been changed and in determining entitlement to an adjustment to the Guaranteed Maximum Price. A determination regarding all requests for adjustment to the Guaranteed Maximum Price shall be made in writing within thirty (30) days from the date of a written request for an adjustment.

7.1.3.1 The amount of adjustment to increase or decrease the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:

7.1.3.1.1 By mutual acceptance of a lump sum, properly itemized and supported by cost data; or

7.1.3.1.2 By unit prices defined and listed in the GMP documentation; or

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7.1.3.1.3 If neither of the methods set forth in 7.1.3.1.1 or 7.1.3.1.2 is agreed upon by the Owner, the CM provided it receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined on a time and material basis pursuant to Article 5. Choice of this method shall not restrict the Owner or the CM from disputing the justification or right of the CM to an increase in the Guaranteed Maximum Price due to such work. In such case, the CM shall keep and present in such form as may be agreeable to the Owner an itemized accounting together with appropriate supporting data of the actual cost of the Project.

7.1.3.2 If the unit prices are stated and if the quantities originally contemplated by the CM are so changed in a proposed change order or as a result of several change orders that application of the agreed unit prices to the quantities or work proposed cause substantial inequity to the Owner or the CM, the applicable unit prices and Guaranteed Maximum Price shall be adjusted.

7.1.3.3 Should concealed or unknown physical conditions be encountered that differ materially from those identified in the drawings or specifications, the Guaranteed Maximum Price may be adjusted by change order in accordance with Paragraph 5.2.2.

7.1.3.4 The Design Consultant shall have the authority to order minor changes in the Project consistent with the intent of the drawings and specifications and not involving an adjustment in the Guaranteed Maximum Price or change of the construction completion date. Such changes may be affected by written order only and shall be signed by the Owner and the CM prior to the work being performed.

7.1.3.5 In the event that the bids for the construction of the Project are less than the line item(s) in the GMP for the construction of the Project, the GMP shall be reduced dollar for dollar to reflect the savings. The parties agree that any savings based upon the receipt of bids shall be retained solely by the Owner.

7.1.4 Unused Funds

7.1.4.1 In the event that there are any funds remaining in any contingency, those funds shall be retained solely by the Owner.

7.1.4.2 In the event that all of the funds allocated for the CM's general conditions are not used, the CM shall retain all of those funds.

7.1.4.3 In the event that there are unused allowances or other cost of work funds, all of those funds, plus the associated CM fee, shall be retained by the Owner.

7.1.4.4 In the event that the bids for the construction of the Project are less than the line item(s) in the GMP for the construction of the Project, the Owner's contingency shall be increased dollar for dollar to reflect the savings. The parties agree that any savings based upon the receipt of bids shall be retained solely by the Owner

7.4 Lump Sum

The Owner shall compensate the CM for Basic Services on the basis of a Lump Sum in accordance with the terms and conditions of this Agreement as follows:

7.4.1 Compensation for Basic Services

The CM shall be compensated for performing Basic Services described in the pre-design phase (Paragraph 3.2), design phase (Paragraph 3.3) and the procurement phase (Paragraph 3.4) for a total lump sum in the amount of One Hundred Forty Seven Thousand, Four Hundred and Fifty Nine dollars ($147,459) that shall be divided by the number of months scheduled for the basic services in Paragraphs 3.2, 3.3 and 3.4 and paid in equal monthly installments as the services are performed. The CM shall be compensated for performing basic services described in the construction phase

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(Paragraph 3.5) and post-construction phase (Paragraph 3.6) for In the event there are changes in the work that require an adjustment in the CM's construction/post-construction fee, the fee adjustment shall be based upon 4% of the cost of the work added or deleted from the Project. The fee for these phases shall be paid in proportion to the percentage of the actual cost of the work paid by the Owner. The cost of the work as used in this section shall be the total dollar amount of the construction contracts awarded by the CM to contractors for the performance of the work, minus any unused allowances or other deductive change orders. The CM's contingency shall not be included in the calculation or payment of the CM's fee. Progress payments for the work performed by the contractors shall be paid as the work is performed and approved in accordance with this Agreement. The CM acknowledges that the Owner only has funds for the basic services in Paragraphs 3.2, 3.3, and 3.4 at the time this Agreement is being executed and that the CM is not authorized to perform any services in Paragraphs 3.5 and 3.6 or any other provisions of this Agreement without the express written permission of the Owner.

7.4.2 Payments

Payments to the CM shall be made monthly, not later than thirty (30) days after receipt of the CM's Invoice by the Owner.

7.4.2.2 Payments due to the CM that are unpaid for more than thirty (30) days from the due date of the CM's invoice shall not bear interest from the due date.

7.4.3 Compensation for Additional Services

The CM shall be compensated, and payments shall be made for performing Additional Services in an amount and on terms mutually agreeable between the Owner and CM.

7.4.4 Auditing Rights

The CM shall keep all records and supporting documentation which concern or relate to the work, general conditions, or other monies paid hereunder for a minimum of three (3) years from the date of termination of this Agreement or the date the Project achieves final completion. The CM shall require all of its subcontractors to likewise retain all of their Project records and supporting documentation. The Owner, and any duly authorized agents or representatives of the Owner, shall be provided access to all such records and supporting documentation during normal business hours upon reasonable request by the Owner. Further, the Owner, and any duly authorized agents or representatives of the Owner, shall have the right to audit, inspect and copy all of the CM's and any contractor's Project records and documentation. The access, inspection, copying and auditing rights shall survive the termination of this Agreement.

7.5 Adjustments to the CM's Compensation

The CM shall notify the Owner as specified in this Agreement when material changes to the scope of the Project or a part thereof or when delays caused in whole or in part by the Owner or Design Consultant are expected to increase or extend the Project's critical path or the scope or duration of the CM's services. If the change results in a delay to the Project's critical path or a material increase in the Project's scope, the CM shall be entitled to receive an increase in the duration of this Agreement and/or additional compensation for the change in accordance with this Agreement.

7.6 Liquidated Damages

7.6.1 Should the CM fail to substantially complete the Project or phase on or before the date stipulated for substantial completion of the Project (or such later date as may result from extension of time granted by Owner), the CM shall pay or the Owner may retain from the funds otherwise to be paid to the CM the sum of $1,000.00 per day as substantial completion liquidated damages for each consecutive calendar day beyond the date established in this Agreement that Project fails to achieve substantial

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completion as defined in this Agreement, which sum is agreed upon as a reasonable and proper measure of damages which the Owner will sustain per day by failure of the CM to complete work within time as stipulated; it being recognized by the Owner and the CM that the injury to the Owner which could result from a failure of the CM to complete on schedule is uncertain and cannot be computed exactly. This amount is the minimum measure of damages the Owner will sustain due to delay in the completion of the work, which shall include but not be limited to the loss of use of the facilities, the relocation of students and services, the cost of Owner's time and resources, damage to Owner's reputation, and storage of furniture and other materials. The inability of the Owner to quantify actual damages shall not prevent the recovery of liquidated damages.

7.6.2 For each consecutive calendar day that the work remains incomplete after the date established for final completion of the Project, the CM shall pay or Owner will retain from the compensation otherwise to be paid to the CM the sum of $500.00 per day as final completion liquidated damages. This amount is agreed upon as a reasonable and proper 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 Owner's time and resources, damage to Owner's reputation, and the inability to use the facilities fully. This amount is in addition to the liquidated damages prescribed above for substantial completion.

7.6.3 The amount of liquidated damages set forth in Paragraphs 7.6.1 and 7.6.2 hereinabove shall be assessed cumulatively. The items of cost included in the assessment of liquidated damages are defined above. This provision of liquidated damages does not bar Owner's right to enforce other rights and remedies against CM, including but not limited to, specific performance or injunctive relief. In no way shall costs for liquidated damages be construed as a penalty to the CM.

7.6.4 Notwithstanding any other provisions of the Agreement, if there is concurrent delay in the completion of the work, the CM shall be liable for liquidated damages as specified in this Agreement during such period of concurrent delay. For the purpose of this section 7.6, concurrent delay means (a) a delay event caused in part by the Owner or its agent and in part by the CM or its contractors, subcontractors, sub-subcontractos, or (b) one or more delay event caused solely by the Owner, its agents, or the Design Consultant, and one or more delay event caused in part by the CM, subcontractors, sub-subcontractors or agents, each of which would have resulted in a delay without the other and which delays run concurrently, or at the same time. In the event that the foregoing provision making the CM liable for liquidated damages during a period of concurrent delay is found to be unenforcable, then the parties agree that in the event of a concurrent delay, the extent of the delay will be apportioned between the Owner and the CM, and the CM will be responsible for liquidated damages as set forth in the section 7.6 for those portions of the delay which are apportioned to the CM, its subconctractors, sub-subcontractors, agents or material suppliers.

7.6.5 The amount of liquidated damages set forth in Paragraphs 7.6.1 and 7.6.2 hereinabove shall not include additional legal or design professional costs that may result from the CM's default. If such legal or design professional costs are incurred by the Owner, the CM shall be liable to the Owner for those costs in addition to the liquidated damages amount set forth hereinabove and in 7.7 Summary of Monetary Amounts.

7.7 The following summary is intended to provide a single location for all relevant monetary amounts included in this Agreement as of the date of execution of the Agreement. The following list shall take precedence over any inconsistencies in the amounts otherwise incorporated into this Agreement. The amounts in this Agreement shall only be revised by written agreement between the parties. The monetary amounts follow:

CM Preconstruction Fee	**$147,459.**
GMP	$22,126,609
Cost of Work	$18,610,000

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CM Construction Fee	$744,400
CM Construction Contingency	$558,300
Owner Contingency	$558,300
General Conditions	$1,120,209
Bonds/Insurance	$535,400
Pre-Construction + GMP	$22,274,068
Liquidated Damages-Substantial	$1,000.00/day
Liquidated Damages – Final	$500.00/day

7.8 Non-Appropriation. If the Board of County Commissioners does not appropriate the funding needed by the Owner to make payments under this Agreement for a given fiscal year, the Owner 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 Owner will promptly notify the CM 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 Owner which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement

ARTICLE 8
INSURANCE AND MUTUAL INDEMNITY

8.1 CM's Liability Insurance

8.1.1 The CM shall purchase at their own expense and maintain in companies properly licensed by the department of insurance of the State of North Carolina and rated "a" or better by a.m. best company as will protect it, the Owner, the Design Consultant and their agents, representatives, and employees from claims as set forth below which may arise out of or result from the CM's operations under the Agreement, whether such operations be by itself or by any contractor or subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be legally liable:

8.1.1.1 Worker's compensation, including occupational disease and employer's liability insurance.

8.1.1.1.1 Statutory coverage as required by the State of North Carolina worker's compensation laws.

8.1.1.1.2 Employer's Liability - at least $1,000,000 each accident, $1,000,000 disease - each employee, $1,000,000 disease - policy limit (or sufficient limits to meet the requirements of the umbrella insurance.

8.1.1.2 Commercial General Liability Insurance - the CM shall obtain and maintain during the life of this Agreement such commercial general liability insurance as shall protect it and any contractor or subcontractor performing work under this Agreement from claims for damages for bodily injury, including accidental death, as well as from claims for property damage which may arise either from the operations or from a contractor or subcontractor or by anyone directly or indirectly employed by them. The CM shall procure insurance coverage for direct operations, sublet work, elevators, contractual liability and completed operations with limits not less than those stated below:

8.1.1.2.1 Bodily Injury & Property Damage Liability: $1,000,000 each occurrence

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8.1.1.2.2 Personal Injury & Advertising Liability - $1,000,000 each occurrence

8.1.1.2.3 General Aggregate - $2,000,000

8.1.1.2.4 Products/completed operations aggregate - $2,000,000

8.1.1.2.5 Aggregate limits shall be endorsed to apply on a 'per Project' basis as respects this Agreement.

8.1.1.2.6 Completed Operations Liability: continuous coverage shall be maintained in force for a period of six (6) years following the date of final completion of the work.

8.1.1.3 Business Automobile Liability Insurance, including coverage for owned, non-owned and hired vehicles (symbol 1) - with limits not less than those stated below:

8.1.1.3.1 Combined single limit for bodily injury & property damage $1,000,000 each accident.

8.1.1.4 Excess/Umbrella Liability Insurance: policy to "pay on behalf of the insured"

Limits of liability: the following shall apply based upon the original Projected GMP:

GMP: < $25,000,000	$5,000,000
GMP: > $25,000,000	$10,000,000

Umbrella shall schedule as underlying coverage employer's liability, business auto liability, and commercial general liability at limits required in Section 8.1.1 above.

8.1.1.5 Required limits may be met in total by any combination of primary and excess/umbrella limits.

8.1.1.7 Contractor's Pollution Liability

CM shall obtain and maintain in effect during the term of this Agreement a policy of pollution liability in the minimum amount of $5,000,000 each claim, $5,000,000 policy pollution policy aggregate. This coverage may be placed via combined contractor's professional and pollution liability policy, separate contractor's pollution liability policy or by use of the limited jobsite pollution liability endorsement to the commercial general liability policy. Continuous coverage shall be maintained in force for a period of six (6) years following the date of final completion of the work. CM is responsible for any applicable deductible.

8.1.1.8 If the Project includes any environmental abatement or remediation work (e.g. asbestos, mold, lead paint, or UST), the CM shall obtain and maintain in effect during the term of this Agreement policies for pollution liability covering this specific type of work, which policies shall protect the Owner and CM from claims in an amount not less than $5,000,000 for each claim. Coverage may be procured directly by the CM or through policy placed on behalf of the environmental abatement subcontractor.

8.1.2 CM's business, auto, commercial general liability, builder's risk and excess/umbrella policies shall include an endorsement naming the Owner and the Brunswick County Board of Education as additional insureds and certificate holders. The additional insured endorsement for commercial liability shall specify coverage on a primary and non-contributory basis and included completed operations. All insurance policies shall be endorsed to provide for waiver of subrogation in favor of Owner. All insurance policies shall contain an endorsement providing the coverage afforded under the policies will not be canceled until at least thirty (30) days' prior written notice has been given to the Owner. Endorsements above may be provided on a Project specific or blanket basis as required by written contract.

8.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner by the start date established in the master schedule and thereafter on renewal or replacement of each required policy of insurance. The certificate of insurance shall certify the existence of all required policies which satisfy

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the requirements listed in Section 8.1 above. The following language shall be typed into the section of the certificate of insurance labeled description of operations/locations/vehicles/special items: “policies certified on this certificate have been amended by specific or blanket endorsement to provide 30 days prior notice of cancellation to Owner.” Updated certificates of insurance shall be maintained on file with Owner and by CM throughout the term of the work and for a period of six (6) years from the date of final completion of the work.

Notwithstanding any provision above, contractor shall provide at least five (5) business days direct prior notice to Owner of the cancellation, non-renewal (without replacement), or the material reduction of coverage or limits of any policy of insurance required by Section 8.1.1 above and for a term of six (6) years following the date of final completion of the work.

8.1.4 The CM shall not allow any contractor or subcontractor to commence work on its contract until all similar insurance required of the contractor or subcontractor has been so obtained and a certificate of insurance has been filed with the CM. CM shall determine and approve the excess/umbrella liability insurance requirements and the term for certification of completed operations liability (following the date of final completion) for all contractors and subcontractors. Approval of the insurance by the Owner shall not relieve or decrease the liability of the CM hereunder. Failure of the CM to provide all required certificates could delay the issuance of notice to proceed. Such delay shall not entitle the CM to an extension of any milestone or completion dates required by the master schedule.

8.2 Builder’s Risk Insurance

8.2.1 The CM shall purchase and at all times maintain such insurance as will protect the CM, the Owner, the Owner’s representatives, agents and employees, the Design Consultant, contractors and subcontractors from loss or damage to work or property in the course of construction, including all machinery, materials and supplies on the premises, in storage or in transit and intended to become a part of the finished work until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. This insurance shall be in the form of "builder’s risk" policy insuring “risks of direct physical loss except those as specifically excluded by the policy”, or equivalent. The policy shall not exclude the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, vandalism, theft, malicious mischief, riot, debris removal, flood, water damage, earthquake, earth movement, testing, architect’s and engineering fees, mechanical or electrical breakdown, collapse however caused, and/or damage resulting from defective design, workmanship or material. Limits shall be written for the value of the GMP and insure the full cost of replacement at the time of loss. Sub-limits for flood or earthquake are subject to approval by Owner. The CM shall cause such policy or policies of insurance required under this subparagraph to be endorsed so as to provide that the insurer or insurers waive any right of subrogation against the Owner. Notwithstanding any deductible provision, the CM shall remain solely liable for the full replacement cost of any item covered by such insurance, including any applicable deductible or co-insurance penalty. Prior to commencement of work, CM shall provide to Owner a copy of the builder’s risk policy obtained in compliance with Section 8.2.1.

8.2.2 All insurance companies providing the above insurance shall be properly licensed by the department of insurance of the State of North Carolina and rated “a” or better by a.m. best company.

8.2.3 Any loss insured under subparagraph 8.2.1 is to be adjusted with the Owner and made payable to the Owner as trustee for the insured, as their interests may appear, subject to the requirements of any applicable mortgagee clause and of subparagraph 8.2.5. The CM shall pay each contractor and/or subcontractor a just share of any insurance moneys received by the CM, and by appropriate agreement, written where legally required for validity, shall require each contractor or subcontractor to make payments in similar manner.

8.2.4 The Owner and CM waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph 8.2, or any other property insurance applicable to the work, except such rights as they may have to the proceeds of such

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insurance held by the Owner as trustee. The CM shall require, by appropriate agreement, written where legally required for validity, similar waivers in favor of the Owner and the CM by contractors and subcontractors. With respect to the waiver of rights of recovery, the term Owner shall be deemed to include, to the extent covered by property insurance applicable thereto, its consultants, employees, and agents and representatives. The CM waives as against any separate contractor all rights for damages caused by fire or other perils in the same manner as is provided above as against the Owner. The Owner shall require, by appropriate agreement, written where legally required for validity, similar waivers in favor of the CM by any separate contractor and its subcontractors.

8.2.5 If required in writing by any party in interest, the Owner as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of its duties. It shall deposit in a separate account any money so received, and it shall distribute it in accordance with such agreement as the parties in interest may reach, or in accordance with a court order or award. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate change order.

8.2.6 The Owner as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within five (5) days after the occurrence of loss to the Owner's exercise of this power, and if such objection is made, the matter shall be decided by a court of competent jurisdiction or as the parties in interest otherwise agree. The Owner as trustee shall, in that case, make settlement with the insurers in accordance with the orders of the court or as otherwise agreed by the parties in interest.

8.2.7 If the 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 the Owner and CM 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 the CM and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

8.3 Indemnity

8.3.1 To the fullest extent permitted by law, the CM shall, at its sole cost and expense, indemnify, defend, and hold harmless the Owner and 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 and/or resulting from the performance of the work by the CM, any contractor or subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be legally 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 8.3.1. 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.

8.3.2 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 CM, any contractor or 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 Paragraph 8.3.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CM or any contractor or subcontractor from any of the insurance coverage required in Section 8.1 herein.

8.3.3 The Owner hereby indemnifies and holds harmless the CM and its employees, agents, and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage caused solely by the Owner that arise out of or result solely from breach of this Agreement or from negligent acts, errors or omissions of the Owner, and its employees.

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8.3.4 The CM shall cause each contractor and subcontractor to indemnify and hold harmless the Owner, CM, and Design Consultant from and against any and all claims, demands, suits, damages resulting from bodily injury, personal injury, damage to tangible property (including loss of use), costs, and expenses and fees that are asserted against the Owner, CM, and the Design Consultant and that arise out of or result from negligent acts, errors or omissions or the breach of the construction contract by the contractor or subcontractor, its employees, agents, and representatives in performing the work.

8.4 Performance and Payment Bonds

8.4.1 Within 10 days of the establishment of the final GMP via change order, the CM shall provide a performance bond and payment bond each in the amount of the GMP, minus the Owner's contingency if the Owner's contingency is included in the GMP. The amount of the performance and payment bonds may be adjusted if the Guaranteed Maximum Price is reduced after the bids are received.

8.4.2 All insurance companies providing the above bonds shall be properly licensed by the Department of Insurance of the State of North Carolina and rated "A" or better by a.m. best company. The bonds shall be in the form approved by the Owner and attached hereto as Appendix F.

ARTICLE 9
SUSPENSION

9.2 Suspension

9.2.1 The Owner may order, in writing, the CM to suspend all or any part of the CM's services for the Project for the convenience of the Owner or for work stoppage beyond the control of the Owner or the CM. If the performance of all or any part of the services for the Project is suspended, the Owner and CM may negotiate an adjustment in the CM's compensation for the CM's performance of this Agreement caused by such suspension and this Agreement may be modified in writing accordingly.

9.2.2 In the event the CM's services on the Project are suspended, the Owner shall reimburse the CM for all of the costs of its construction site staff, assigned Project home office staff and other costs provided for by this Agreement for the first seven (7) days of such suspension. The CM shall reassign the staff for the remainder of the suspension period unless directed otherwise by the Owner in writing and if the Owner directs the CM to maintain all or part of its staff, the Owner shall reimburse the CM for all costs of staff remaining dedicated to the Project. Upon cessation of the suspension, the CM shall restore the construction site and home office staff to its former size.

9.2.3 Persons assigned to another Project during such suspension or period and not available to return to this Project upon cessation of the suspension shall be replaced. The Owner shall reimburse the CM for costs incurred in relocating staff persons returning to the Project or new persons assigned to the Project.

9.2.4 If the Project is resumed after being suspended, the CM shall have the right to request that its compensation, including rates and fees, be renegotiated. Subject to the provisions of this Agreement relating to termination, a delay or suspension of the Project does not void this Agreement.

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ARTICLE 10
TERMINATION

10.1 Termination by the CM

10.1.1 If the work is stopped for a period of one hundred eighty (180) days by the Owner or 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, and through no act or fault of the CM or a contractor or their agents or employees or any other persons performing any of the work under a contract with the CM, then the CM may, upon seven (7) additional days' written notice to the Owner and the design consultant, terminate the contract and recover from the Owner payment for all work executed. The CM shall not be entitled to collect and hereby expressly waives any profit on work not performed and any damages related to that portion of the contract which has been terminated.

10.2 Termination for Convenience of the Owner

10.2.1 The Owner may, at any time upon ten (10) days' written notice to the CM and to the CM's surety, 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 CM's sole remedy, in the event of such termination, will be the allowable termination costs permitted by Paragraph 10.4. CM shall include termination clauses identical to Article 10 in each of his subcontracts.

10.3 Default Termination

10.3.1 Ten (10) days' after written notice is mailed to the CM and to the CM's surety, 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 CM 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 CM or its surety 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 CM is in material default in carrying out any provisions of the contract for a cause within his control;

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

.4 If the CM fails to make payment to the contractors or for materials or labor when due, unless he otherwise provides the Owner reasonable evidence that payment is not legally or contractually due;

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

.6 If the CM substantially violates any provisions of the contract documents; or

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.7 If the CM 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.

10.3.2 The right of the CM to proceed shall not be so terminated under this Paragraph 10.3 if the delays in the completion of the work are due to causes beyond the control and without the fault or negligence of the CM or the contractors.

10.3.3 If, after the CM has been terminated for default pursuant to Paragraph 10.3, it is determined that none of the circumstances set forth in Paragraph 10.3.1 exist, then such termination shall be considered a termination for convenience pursuant to Paragraph 10.2. In such case, the CM's sole remedy will be the costs permitted by Paragraph 10.4.

10.3.4 If the Owner so terminates the employment of the CM, the CM shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the compensation that would have been paid to the CM for the actual work completed, excluding the CM's unused contingency, shall exceed the expense of so completing the work (including compensation for additional construction management, managerial, administrative, consultant, legal, design and inspection services and any damages for delay) such excess shall be paid to the CM.

10.3.5 If such expenses shall exceed the unpaid balance, the CM and his sureties shall be liable to the Owner for such excess. If the right of the CM 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 CM to proceed, the CM shall continue to perform the part of the work that is not terminated.

10.3.6 If the Owner terminates the whole or any part of the work pursuant to Paragraph 10.3, 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 CM shall be liable to the Owner for any excess costs for such similar supplies or services. The CM shall continue the performance of the contract to the extent not terminated hereunder.

10.4 Allowable termination costs

10.4.1 If the Owner terminates the whole or any portion of the work pursuant to Paragraph 10.2, then the Owner shall only be liable to the CM for those costs reimbursable to the CM in accordance with Paragraph 10.4.2, plus a markup of ten percent for profit and overhead on the actual fully accounted costs paid by the Owner under 10.4.2; provided however, that if there is evidence that the CM would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed hereunder for the work performed and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss. Under no circumstances shall the CM be entitled to any loss profit or fee on the work terminated pursuant to section 10.2.

10.4.1.1 After receipt of a notice of termination, the CM 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 thirty (30) days from the effective date of termination, unless one or more extensions in writing are granted by the Owner upon request of the CM made in writing within such thirty (30) day 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 thirty (30) day period or any extension thereof. Upon failure of the CM 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 CM by reason of the termination.

10.4.2 If the Owner terminates the whole or any portion of the work pursuant to section 10.2, the Owner shall

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pay the CM an amount for supplies, services, or property accepted by the Owner, and which is in accordance with the contract documents, in an amount as if the Agreement had not been terminated. In addition, in such event, the Owner shall pay to CM an amount representing CM's actual cost, excluding any overhead and profit for the items and things specified in subparagraph 10.5.1.6 and not heretofore paid for, appropriately adjusted for any saving of freight or other charges. Under no circumstances, shall the CM be entitled to any loss profit or fee on the work terminated pursuant to section 10.2.

10.4.2.1 The CM agrees that neither the Owner nor the Design Consultant will be liable for payments to contractors or subcontractors pursuant to Paragraph 10.4.2 unless each contract or subcontract contains termination provisions identical to those set forth in this Article 10. The Owner and the design consultant will not be liable to the CM or any of the contractors or subcontractors for any costs associated with termination if the contract or subcontract of the party involved does not include the required termination language.

10.4.3 In arriving at any amount due the CM pursuant to Paragraph 10.4, there shall be deducted the following:

.1 All unliquidated advance or other payments on account theretofore made to the CM applicable to the terminated portion of the contract;

.2 Any amount which the Owner reasonably believes the CM or any of the contractors owes to the Owner;

.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 CM or sold, pursuant to the provisions of Paragraph 10.5.1.7, and not otherwise recovered by or credited to the Owner.

10.4.4 The total sum to be paid to the CM under Paragraph 10.4 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 CM, as provided in Paragraph 10.4.2, the replacement cost of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to Paragraph 10.5.1.7.

10.5 General Termination Provisions

10.5.1 After receipt of a notice of termination from the Owner, pursuant to Paragraph 10.2 or 10.3, and except as otherwise directed by the Owner, the CM 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;

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.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 CM 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 commercially reasonable 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 Paragraph 10.5.1.6; provided, however, that the CM:

(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 CM 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 CM and in which the Owner has or may acquire an interest.

10.5.2 The CM 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 CM, but without direct charge to the Owner, all his books, records, documents and other evidence bearing on the costs and expenses of the CM 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.

10.5.3 If the termination, pursuant to Paragraph 10.2, be partial, the CM 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 CM for an equitable adjustment under this Paragraph must be asserted within six (6) months from the effective date of the notice of termination.

10.5.4 The CM shall refund to the Owner any amounts paid by the Owner to the CM in excess of costs reimbursable under Paragraph 10.4.

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10.5.5 The CM shall be entitled to only those damages and that relief from termination by the Owner as specifically provided in Article 10.

ARTICLE 11
ADDITIONAL PROVISIONS

11.1 Limitation and Assignment

11.1.1 The Owner and the CM each bind itself, its successors, assigns, insurers, and legal representatives to the terms of this Agreement.

11.1.2 Neither the Owner nor the CM shall assign or transfer its rights or interest in this Agreement without the written consent of the other, except that the CM may assign accounts receivable to a commercial bank for securing loans without approval of the Owner and the Owner may assign the Agreement to Brunswick County for any reason without the consent of the CM. However, nothing contained in this paragraph can prevent the CM from employing contractors or such consultants, associates or subcontractors as the CM may deem appropriate to assist in performance of the services and of the Work hereunder.

11.2 Governing Law and Venue

11.2.1 This Agreement 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 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.

11.2.2 CM shall comply with all applicable laws and regulations in providing services under this Agreement. CM shall not employ any individuals to provide services to the Owner who are not authorized by federal law to work in the United States. CM 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. CM further warrants that it will use the E-Verify system to verify employment eligibility of all its employees throughout the term of this Agreement, and that it will remain in compliance with all i-9 requirements throughout the term of this Agreement. CM shall also ensure that any subcontractors use the E-Verify system at all times while providing subcontracted services in connection with this Agreement.

11.2.3 Lunsford Act/Criminal Background Checks. The CM 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 Owner 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 administrative office is not located at a school site; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites where no minors are present. 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 CM’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 CM shall provide certification on the sexual offender registry check certification form (Appendix G) 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 CM 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, CM 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. CM further agrees to conduct annual registry checks

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of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. CM 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. CM 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. CM 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 school system's expense. If the Owner exercises this right to conduct additional criminal records checks, CM 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. CM 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. Owner reserves the right to prohibit any contractual personnel of CM from delivering goods or providing services under this Agreement if 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.

11.2.4 The CM represents that as of the date of this Agreement, neither the CM nor its principals are included on the final divestment list created by the North Carolina state treasurer pursuant to N.C. Gen. Stat. § 147-86.58. The CM also represents that as of the date of this Agreement, neither the CM nor its principals are 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. The CM further represents that as of the date of this Agreement, neither the CM 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. The CM must notify Owner within thirty (30) days if debarred by any governmental entity during this Agreement.

11.2.5 Anti-Nepotism. The CM 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 Owner's Board of Education or of any principal or central office staff administrator employed by the Owner. 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 the CM 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, the CM shall immediately disclose the family relationship in writing to the superintendent. Unless formally waived by the Owner, the existence of a family relationship covered by this Agreement is grounds for immediate termination by Owner without further financial liability to the CM.

11.2.6 Sales and Use Tax. CM 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 CM has been contracted with to oversee "new construction" or "reconstruction" as defined in G.S. 105-164.4h, CM shall be responsible for issuing and maintaining an "affidavit of capital improvement.

11.2.7 Non-Discrimination. CM 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. CM shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event CM 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 Owner, and CM may be declared ineligible for further agreements with Owner.

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11.2.8 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.

11.2.9 Governmental Immunity. Owner, 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.

11.2.10 The CM shall comply with the above listed and all applicable laws and regulations in providing services under this Agreement.

11.3 Extent of Agreement

11.3.1 This Agreement represents the entire and integrated agreement between the Owner and the CM and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified or amended only by written instrument signed by both the Owner and the CM. Nothing contained in this Agreement is intended to benefit any third party. The Contractors and Design Consultant are not intended third party beneficiaries of this Agreement. This Agreement shall not be construed more strictly against one party than the other merely by virtue of the fact that it has been prepared initially by the Owner, it being recognized that both parties and their respective counsel have had a full and fair opportunity to negotiate and review the terms and provisions of this Agreement and to contribute to its substance and form.

11.4 Severability

11.4.1 If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.

11.5 Meaning of Terms

11.5.1 References made in the singular shall include the plural and the masculine shall include the feminine or neuter.

11.6 Notices

11.6.1 Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended or if delivered or sent by registered or certified mail, postage prepaid, or by facsimile, addressed as follows:

To the Owner:
Brunswick County
Brunswick County Manager
30 Government Center Dr (via courier service or overnight services)
PO Box 249 (via mail)
Bolivia, NC 28422

With a copy to:
Brunswick County Board of Education
Executive Director of Operations
35 Referendum Dr.
Bolivia, NC 28422

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To the CM:

Barnhill Contracting Company
John Smith VP
4312 Henson Dr
Wilmington, NC 28405

11.7 Compliance with Brunswick County and Brunswick County Board of Education Board Policies and Procedures.

11.7.1 The CM acknowledges that the Owner's policies governing conduct on the Owner's property are available for review on the Owner's website at www.bcswan.net. In addition to complying with the Owner's policies, the CM agrees to comply with the following:

11.7.2 The CM, the contractors and their 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 CM, the contractors and their 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.

11.7.3 The CM, the contractors and their employees, are prohibited from profane, lewd, obscene or offensive conduct or language, including engaging in sexual harassment.

11.7.4 The CM and the contractors 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.

11.7.5 The CM and the contractors 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 Agreement, "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.

11.7.6 The CM, the contractors and their 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.

11.7.7 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.

11.7.8 The CM, the contractors and their 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 Owner's schools. The CM 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 CM or the contractors.

11.7.9 The CM, the contractors and their employees shall not interact with any students. Nothing in this Paragraph shall be construed to prevent the CM, the contractors and their employees from taking necessary measures to protect students, staff or other employees.

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11.7.10 The CM shall at all times enforce strict discipline and good order among its employees and shall not employ any unfit person or anyone not skilled in the task assigned to it. The Owner may require the CM to remove any employee, contractor or subcontractor the Owner deems incompetent, careless or otherwise objectionable.

11.7.11 All agents and workers of the CM and the contractors shall wear identification badges provided by the CM at all times they are on the Owner's property. The identification badges shall at a minimum display the company name, telephone number, employee name and a picture of the employee. The CM and the contractors shall comply with the Owner's site or school building access procedures when working on any existing school campus.

11.8 Construction Project Policies

The CM acknowledges the Owner's, minority business participation policy, and prequalification of bidders for construction Projects, including their regulations and procedures, attached as Appendixes H and I be incorporated into this Agreement.

11.9 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 § 66-58.1 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.

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This Agreement is executed the day and year first written above.

OWNER:

BRUNSWICK COUNTY

_____

Chairman, Board of Commissioners

Attest:

_____

Clerk to the Board

[Seal]

CONSTRUCTION MANAGER:

BARNHILL CONTRACTING COMPANY

John W. Smith

_____

John W. Smith, Vice President Building Division Eastern

Attest:

Stephen Smith

_____

Stephen Smith, Senior Project Manager

[Corporate Seal]

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“This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act.”

_____
Freyja Cahill, Finance Officer
Brunswick County Board of Education

4.9020.697.527.326.875.00

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

_____
Aaron C. Smith, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

_____
Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney
Brunswick County, North Carolina

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APPENDIX A
DESIGN CONSULTANT AGREEMENT - CM at RISK

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AGREEMENT FOR

DESIGN CONSULTANT SERVICES

BETWEEN

BRUNSWICK COUNTY BY AND THROUGH ITS AUTHORIZED AGENT, BRUNSWICK COUNTY BOARD OF EDUCATION

hereinafter referred to as the Owner

AND

BECKER MORGAN GROUP

hereinafter referred to as the Design Consultant

PROJECT: North Brunswick High School Addition and Site Improvements

DATE: September 7, 2022

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AGREEMENT FOR DESIGN CONSULTANT SERVICES

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AGREEMENT FOR

DESIGN CONSULTANT SERVICES

This Agreement is made this 7th day of September**,** 2022 between the Owner Brunswick County by and through its authorized agent, Brunswick County Board of Education, and the Design Consultant, Becker Morgan Group, for Professional Services in connection with the Project known as:

North Brunswick High School Addition and Site Improvements

The Owner and the Design Consultant agree as set forth below:

ARTICLE 1

DEFINITIONS

The following words and phrases where appearing in initial capitalization, shall for the purposes of this Agreement have the following meanings:

1.1 Project. The project will consist of a 2-story 12-classroom addition, a bid alternate band room, and provisions for a future 4-classroom expansion. The site layout will generally conform with but not be limited by the District's Master Plan for the site, which locates the new addition, relocates the fire apparatus access road, relocates the existing tennis courts (adding lighting, a restroom/package concession building) relocates the softball field, dugouts, press box, and lighting, and constructs 3 new irrigated practice fields of various sizes. Demolition of the certain existing athletic amenities and sections of the existing fire apparatus access road will be required. Offsite local road improvement and new staff parking for the addition if required are also included. Other miscellaneous items necessary to complete items above may be required

1.1.1 The new North Brunswick School addition square footage is to be approximately 24,000 square feet.

1.1.2 Project Parameters

1.1.2.1 The physical parameters are: the new North Brunswick High School addition and site improvements will be constructed on the site owned by Brunswick County located at 114 Scorpion Dr., Leland, NC 28451.

1.1.2.2 Overview of Design Consultant's Scope: The Design Consultant's fee includes the complete design of a new facility including all architectural, sitework, extensions of utilities, civil, structural, mechanical, plumbing, electrical, landscape, fire suppression, food service, technology infrastructure (including all required cabling, but excluding servers, smartboards, laptops, phones, cameras, flat panel TVs, and other such devices), and any other work required for a complete set of design documents. The Design Consultant's fee shall also include structured cabling and raceways for phone system, paging system, data systems, intrusion detection system, video surveillance system, audio systems and video distribution system.

1.2 Design Consultant. Design Consultant as used herein shall mean the architect or engineer identified above.

1.3 Sub-Consultant. Sub-Consultant as used herein shall mean any consultant or sub-consultant retained by or on the behalf of the Design Consultant for the performance of any Services pursuant to this Agreement. The Design Consultant's use of a Sub-Consultant shall not relieve the Design Consultant of any responsibility for providing the Services outlined in this Agreement.

1.4 Services. The Services to be performed by the Design Consultant under this Agreement shall consist of the Basic Services described in Article 3, any Additional Services under Article 7, and any other obligations of the Design Consultant included in this Agreement.

1.5 Construction Contract. The Construction Contract shall consist of the plans and specifications prepared by the Design Consultant, and any addenda and change orders thereto, and the Owner and Construction Manager at Risk Agreement, and all General Conditions, Amended Conditions, and Supplemental Conditions

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thereto, all of which shall be compatible and consistent with this Agreement. In the event of any conflict between the terms of this Agreement and the Owner-Construction Manager Agreement, the terms of this Agreement shall control.

1.6 Construction Contract Award Price. The amount established in the Design, Construction and Equipment Budget, attached as Exhibit A, for the total cost of the work to be performed by the Construction Manager pursuant to the Construction Contract shall be referred to as the Construction Contract Award Price or CCAP. The CCAP shall include the cost of the work, CM fee, CM contingency, CM's general conditions, and bonds/insurance. The cost of the work shall be defined as the construction bids received by the CM for all portions of the work.

1.7 Construction Manager. The Owner intends to hire a Construction Manager at Risk ("CM") for the Project pursuant to N.C. Gen. Stat. Sec. 143-128.1. The term "Construction Manager" or "CM" means the Construction Manager or its authorized representative. The Construction Manager's services shall be as stated in this Agreement and generally in the form Owner-Construction Manager Agreement attached to this Agreement as Exhibit G and incorporated by reference. If and when the Owner selects a Construction Manager, the Design Consultant shall have the opportunity to consult with the Owner on the final Agreement prior to execution.

1.8 Program of Requirements. The Program of Requirements or "Program" is the detailed written summary of the requirements of the facility which sets forth the Owner's design objectives, constraints and criteria, including space requirements and relationships, quality levels, flexibility and expandability, special equipment and systems and site requirements, as described in Exhibit B.

1.9 Management Plan. The Management Plan is the description and definition of the phasing, sequencing and timing of the major project activities for design, construction procurement, construction and occupancy as described in Exhibit C. The Management Plan shall be incorporated into the CM's schedule for the Project.

1.10 Design Phase Change Order. A Design Phase Change Order is the form of documentation from the Owner approving and authorizing a modification to Exhibits A, B and/or C attached hereto, or previously approved Design Phase documents.

ARTICLE 2

RELATIONSHIP OF THE PARTIES

2.1 Design Consultant Services. The Design Consultant shall provide professional architectural/engineering services for the Project in accordance with the terms and conditions of this Agreement. The Design Consultant's performance of the Services shall be as professional consultant to the Owner and as a cooperating partner with the Construction Manager to carry out the activities of Project design and construction administration and to provide the technical documents and supervision to achieve the Owner's Project objectives. The Design Consultant may employ Sub-Consultants to provide discreet portions of the Services pursuant to this Agreement. The Design Consultant shall ensure that all services provided by a Sub-Consultant are provided in accordance with the terms and conditions of this Agreement. The Design Consultant shall coordinate the services of any Owner provided professional consultants and any vendors for furniture and equipment to design spaces.

2.1.1 The consultants retained at the Design Consultant's expense include the following:

Structural:	Woods Engineering
Plumbing:	CBHF Engineers, PLLC
Mechanical:	CBHF Engineers, PLLC
Electrical:	CBHF Engineers, PLLC
Civil/Landscape:	Paramounte Engineering

2.1.2 The Design Consultant shall require each of its consultants to execute an agreement similar to the agreement attached as Exhibit D certifying that the consultant has read and is thoroughly familiar with the terms of this

Agreement and that the pertinent provisions of this Agreement shall govern the work performed by the consultant.

2.2 Owner Representation. The Owner shall employ and assign a Project Manager from the Brunswick County Board of Education to serve as the Owner's Representative on the Project ("Owner's Representative"). The Owner's Representative has no design responsibilities of any nature. None of the activities of the Owner's Representative supplant or conflict with the design, budget or any other services and responsibilities customarily furnished by the Design Consultant or Sub-Consultant in accordance with generally accepted architectural/engineering practices except as otherwise modified by this Agreement. Instructions by the Owner to the Design Consultant relating to the Services will be issued or made by or through and in accordance with procedural, organizational, and documentation standards established by the Owner's Representative. Communications and submittals of the Design Consultant to the Owner and Construction Manager shall be in writing and issued or made in accord with similar procedural and documentation standards established by the Owner's Representative. The Owner's Representative shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Design Consultant and Construction Manager and to call periodic conferences to be attended by the Design Consultant, its Sub-Consultants, the CM and the CM's contractors, throughout the term of this Agreement.

2.3 Other Consultants. The Owner may provide drawings, consultation, recommendations, suggestions, data and/or other information relating to the Project from other consultants under separate contract with the Owner, including but not limited to: Land Surveying Consultant, Geotechnical Consultant, and/or Materials Testing Consultant.

2.4 Design Consultant Representation.

2.4.1 The Design Consultant shall provide a list to the Owner and the Construction Manager of all Sub-Consultants which the Design Consultant intends to utilize relating to the Project prior to commencing work on the Project. The list shall include such information on the qualifications of the Sub-Consultants as may be requested by the Owner or Construction Manager. The Owner will review the Sub-Consultants proposed. The Design Consultant shall not retain a Sub-Consultant to which the Owner has a reasonable objection. The Design Consultant shall be and use only individuals or firms that are properly licensed in North Carolina and regularly engaged in the fields of expertise required for this Project. In addition, the Design Consultant shall use an individual or firm with specific expertise in roofing certified by licensure as a Registered Roofing Consultant for the design of roofing system.

2.4.2 The Design Consultant shall provide to the Owner and the Construction Manager a list of the proposed key project personnel of the Design Consultant by position, including Sub-Consultants, to be assigned to the Project. This list shall include such information on the professional background of each of the assigned personnel as may be requested by the Owner or Construction Manager, through the Owner's Representative. Such key personnel and consultants shall be satisfactory to the Owner and shall not be changed except with the consent of the Owner unless said personnel cease to be employed.

2.4.3 The Design Consultant shall include normal structural, plumbing, mechanical, electrical and other engineering services necessary to produce a reasonably complete and accurate set of Construction Documents. All consultants who will perform services required by this Agreement shall execute an agreement with the Design Consultant with terms not inconsistent with this Agreement.

2.4.4 The Design Consultant shall require each of its consultants to execute an agreement similar to the agreement attached as Exhibit D certifying that the consultant has read and is thoroughly familiar with the terms of this Agreement and that the pertinent provisions of this Agreement shall govern the work performed by the consultant.

2.4.5 The Design Consultant represents and warrants that at the time of execution of this Agreement he has and will retain all licenses and certifications required of him to perform the services and other work identified in this Agreement and associated contract documents. The Design Consultant further represents and warrants that it is lawfully licensed to practice architecture in the jurisdiction where the project is located. The Design

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Consultant shall keep this licensure in good standing without lapse throughout the term of this Agreement. The Design Consultant shall provide proof of this licensure to the Owner and/or Contractor upon request.

2.5 Division of Responsibilities/Services. The Design Consultant understands and agrees that should the Owner's Representative, Construction Manager, or consultant retained by the Owner provide the Design Consultant with any estimating assistance, cost or time control recommendations or other consultation, recommendations or suggestions, any or all such activities on the part of the Owner or any other representative of the Owner shall in no way relieve the Design Consultant of the responsibility of fulfilling its obligations and responsibilities under this Agreement.

2.6 Design Consultant's Relationship with the Construction Manager. The Design Consultant acknowledges that the Owner shall employ a Construction Manager for the Project. The Construction Manager shall perform all the Construction Manager's Services outlined in the agreement between the Construction Manager and the Owner attached as Exhibit G (Owner-Construction Manager Agreement). The Construction Manager's Basic Services shall include the pre-design phase, design phase, procurement phase, construction phase and post-construction phase services. During the performance of the Services the Design Consultant shall cooperate and work in good faith with the Construction Manager as a cooperating partner with the Construction Manager (so long as such cooperation serves the Owner's best interests and the Owner's Project objectives) on all relevant issues including those associated with constructability, construction cost, sequence of construction, construction duration, time for construction, separation of the Project contracts for various categories of work and any other services reasonably necessary to assist the Construction Manager with the pre-construction services of the Project within the CCAP. If and when the Owner executes a CM-at-Risk Agreement, the tenets of cooperation as outlined in this paragraph shall carry forward.

ARTICLE 3

BASIC SERVICES

3.1 Scope of Services. The Basic Services, as defined in this Article, to be provided by the Design Consultant shall be performed in the phases described hereinafter and shall include architectural, landscape architectural, civil engineering, structural engineering, mechanical engineering, electrical engineering, roofing engineering, and all other services customarily furnished by an architect/engineer on similar projects in accordance with generally accepted architectural and engineering practices consistent with the terms of this Agreement. The Design Consultant shall utilize an individual or firm with specific expertise in acoustics for any middle or high school auditorium or music room. The Basic Services to be performed by the Design Consultant consist of professional tasks which have as their objective design, production of technical documents and construction administration to provide the Owner with a complete and properly functioning facility. The Basic Services shall be performed in accordance with the standard of care set forth in this Agreement. The facility shall be suitable for the Owner's purposes, be structurally sound, satisfy the Owner's requirements, comply with all applicable codes and laws, and be completed on a timely basis and within the approved CCAP. To provide the optimal constructed value, the Design Consultant shall analyze alternative materials and building systems at the appropriate phases throughout the Basic Services phases.

3.1.1 This Agreement describes the Design Consultant's Basic Services in seven (7) phases. Each of these phases (Design Narrative, Schematic Design, Design Development, Construction Contract, Permitting and Bid/ Negotiation, Construction, and Post Construction) may be divided to facilitate bidding of separate trade contracts or phased construction activities. The Owner and/or the Construction Manager shall have the right to determine early, late and other separate contract awards and may modify the Management Plan to change the number and times of issue of various contract document packages at no additional compensation to the Design Consultant so long as there are no more than two (2) bid packages for the various portions of the Project (which packages do not include individual material purchase orders, bid package alternates and rework by the Design Consultant of documents already completed, which shall be provided at no additional cost).

3.1.1.1 The Services described below are under the Project phases in which they customarily occur. This order is for convenience only and does not necessarily reflect the sequence in which a service will actually be performed, or necessarily limit the Project, or a designated portion of the Project, to one of each phase. The

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Owner, through its Representative and/or the Construction Manager, reserves the right to designate the phasing of segregated portions of the Services and to modify the Management Plan, within the terms and conditions of this Agreement.

3.1.2 Design Narrative Phase.

3.1.2.1 The Design Consultant shall examine and analyze available information provided by the Owner and Construction Manager and shall advise and recommend as to additional information necessary to begin specific design work on the Project.

3.1.2.2 Upon analysis of all available information and prior to initiating any design tasks, the Design Consultant shall participate in a pre-design Project analysis on the dates specified in the Management Plan contained in Exhibit C or as may subsequently be approved. The Design Consultant shall have in attendance the individuals who will represent the primary architectural and engineering disciplines on the Project and others as may be requested by the Owner's Representative or Construction Manager. The Design Consultant shall take and transcribe minutes of the sessions.

3.1.2.3 Upon conclusion of the pre-design Project analysis and in accordance with the Management Plan, the Design Consultant shall prepare a report to the Owner and Construction Manager (hereinafter referred to as the Design Narrative) which is the Design Consultant's interpretation of the Project requirements, design parameters and objectives, and results of the pre-design Project analysis. To the maximum extent possible, the Design Narrative will contain diagrammatic studies and pertinent text relative to: design concept; Program of Requirements; analysis of alternatives; internal functions; human, vehicle and material flow patterns; general space allocations; detailed review of operating functions; studies of adjacency, vertical and horizontal affinities; and outline descriptions of major building components and systems.

3.1.2.4 Upon written authorization from the Owner to proceed, and based on the approved Design Narrative, the CCAP, Program of Requirements, and the Management Plan (Exhibit C), the Design Consultant shall prepare Schematic Design studies consisting of drawings and other documents illustrating the design concept, scale and relationship of the Project components for approval by the Owner.

3.1.2.5 The Owner and the Design Consultant recognize the volatility of the current construction marketplace and agree that in the event that during the Design Narrative phase, the statement of probable construction cost predicts a CCAP beyond the target budget, that the parties will work together in good faith to address the scope and budget of the Project. Any proposed resolution shall be subject to the approval of the governing boards of Brunswick County and the Board of Education.

3.1.3 Schematic Design Phase.

3.1.3.1 The Design Consultant shall periodically provide the Owner's Representative and the Construction Manager with copies of Schematic Design studies for their review during the Schematic Design Phase. The Design Consultant shall review any recommendations from the Construction Manager, including any recommendations regarding the constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project contracts for various categories of construction, to confirm that they are architecturally sound and do not adversely impact the scope, functionality or requirements of the Project. The Design Consultant’s review of these recommendations shall not relieve or in any way diminish the Construction Manager’s responsibilities pursuant to the Owner-Construction Manager Agreement. At the end of the Schematic Design Phase, the Design Consultant shall provide the Owner's Representative with up to two (2) full size complete sets of the drawings and other documents for approval by the Owner. The Design Consultant also shall provide the Construction Manager with two (2) full size complete sets of the drawings and other documents identical to those provided to the Owner.

3.1.3.2 The Design Consultant, and the relevant Sub-Consultants, shall participate as requested in meetings with Owner's staff and/or the Construction Manager to review the project, receive the Owner's and the Construction Manager’s input and provide responses to input.

3.1.3.3 The Design Consultant shall prepare the necessary documents and make presentations as scheduled to the Board of Education and/or its committees as determined by the Facility Planning & Construction Department. Documents required for presentation shall include mounted and colored site plans, floor plans and elevations.

3.1.3.4 Documents prepared by the Design Consultant for final Schematic Design Phase submittal shall include drawings and a written report. The drawings shall include, but not be limited to, a proposed site utilization study of the property of the Project, schematic plans of all floor plan conditions, and simplified elevations indicating the fundamentals of the architectural concept. The report shall include the status of the work in accordance with Exhibit C – Management Plan, a summary of programmed versus actual square footage by room or area and net to gross comparisons in a format defined by the Owner; such discussion of design factors, if any, as are pertinent in the opinion of the Design Consultant; and descriptions of proposed engineered systems, proposed construction methods, proposed materials and proposed work to be included in the construction contracts. Further, the report should include any minutes from meetings or telephone conferences with, or letters from review agencies with responses, and responses to all review comments from the Owner and the Construction Manager from previous reviews. The Design Consultant shall submit its estimate and breakdown of the anticipated construction cost no later than two (2) business days in advance of the scheduled Schematic Design review meeting. The Design Consultant shall prepare such estimates to assure that the Project cost is within the CCAP or include specific alternates to the design that do not impact the scope of the Project to bring the Project estimate into alignment with the CCAP.

3.1.3.5 A statement from the Design Consultant with the final Schematic Design Phase submittal shall be included that acknowledges that Design Consultant has reviewed all of the applicable Design Guidelines and Educational Specifications and confirms that they have been incorporated in the documents unless specifically noted in writing.

3.1.3.6 The Design Consultant shall submit a written statement indicating that local governing authorities are aware of the Project, and the necessary requirements of such agency will be met.

3.1.3.7 To be considered acceptable for final Schematic Design Phase submittal, the documents shall contain all of the following unless otherwise agreed in writing:

3.1.3.7.1 <u>Architectural</u>

(i) Plans (at 1/8" scale) showing complete building layout, and identifying areas, room by room, showing square footage with comparisons to program standards, and core areas and their relationships.

(ii) Preliminary building section and elevations indicating location and size of fenestration.

(iii) Preliminary furniture layouts of critical spaces (i.e. dining area, media center).

(iv) Site plan(s) with building located and an overall grading plan with a minimum of 1’-0” contour lines. All major site development such as orientation, access road paving, walls, and outside support buildings, structured parking facilities, programmed play areas, and paved parking lots, along with preliminary stormwater management and erosion control features should be shown.

(v) Gross and net area calculations separated to show conformance with the Program of Requirements.

(vi) Preliminary Building Code Summary.

3.1.3.7.2 <u>Structural</u>

(i) Narrative of structural system (precast, structural steel with composite deck, structural steel with bar joists, etc.).

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(ii) Identification of foundation requirements (fill requirements, piles, caissons, spread, footings, etc.).

3.1.3.7.3 Mechanical

(i) Block heating, ventilating and cooling loads calculations including skin versus internal loading.

(ii) Single-line drawings of all mechanical equipment spaces, duct chases and pipe chases.

(iii) Location of all major equipment in allocated spaces.

(iv) Location of all service entrances.

3.1.3.7.4 Electrical

(i) Lighting fixtures outlined in the plan and roughly scheduled showing types of fixtures to be used.

(ii) Major electrical equipment roughly scheduled indicating size and capacity.

(iii) Complete preliminary one-line electrical distribution diagrams with indications of final location of service entry, transformers and emergency generator, if required.

(iv) Description of specialized electrical systems (fire alarm, intercom, voice/data, MATV).

(v) Legend showing all symbols used on drawings.

(vi) Projected energy use.

3.1.3.8 Documents not complying with Subparagraph 3.1.3.7 shall be returned to the Design Consultant for correction at no additional charge to the Owner and with no change to the overall Project design schedule.

3.1.3.9 Upon Owner acceptance and approval of the Schematic Design, the structural bay sizes, floor elevations and exterior wall locations (building “footprint”) may not be changed except by a design phase change order. Interior wall locations shall not be changed unless approved in writing by the Owner.

3.1.4 Design Development Phase.

3.1.4.1 The Design Consultant shall prepare from the approved Schematic Design Studies, for further approval by the Owner, the Design Development documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to structural, mechanical and electrical systems, materials and such other essentials as may be appropriate.

3.1.4.2 Design Development documents prepared by the Design Consultant shall include drawings and a written report in more detail than the Schematic Design documents and shall take into account the Owner's and the Construction Manager’s comments on the previous submittal. The report shall include the status of the Services in accordance with the Management Plan, a summary of programmed versus actual square footage by room or area in a format defined by the Owner, such discussion of design factors, if any, as are pertinent in the opinion of the Design Consultant; and outline descriptions of proposed engineered systems, proposed construction methods, proposed materials and proposed work to be included in the construction contracts. Drawings shall include dimensioned site development plan, floor plans, elevations, and typical sections indicating proposed construction. Drawings shall also include information on major finishes as well as diagrammatic drawings illustrating fundamentals of major engineered systems, i.e., structural, mechanical and electrical. The Design Consultant, in conjunction with the Construction Manager, shall submit its estimate and breakdown of the anticipated construction cost no later than two (2) business days in advance of the scheduled Design Development review meeting.The Design Consultant, in conjunction with the Construction Manager, shall prepare such estimates in the form prescribed by the Owner to assure itself that the project cost is within the CCAP.

3.1.4.3 A statement from the Design Consultant with the final Design Development Phase submittal shall be included that acknowledges that Design Consultant has reviewed all of the applicable Design Guidelines and Educational Specifications and confirms that they have been incorporated in the documents unless specifically noted in writing. The Design Consultant shall not incorporate asbestos-containing materials in the Project.

3.1.4.4 The Design Consultant shall submit the final Design Development package, meeting minutes, etc. to show how review comments made in Schematic Design have been addressed. It should be clear from the notes where the specific item was incorporated into the Design Development submittal or an explanation if it was not incorporated.

3.1.4.5 The Design Consultant shall provide the Owner's Representative and the Construction Manager periodically with copies of in-progress Design Development documents during the Design Development Phase. The Design Consultant shall review any recommendations from the Construction Manager, including any recommendations regarding the constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project contracts for various categories of construction, to confirm that they are architecturally sound and do not adversely impact the scope, functionality or requirements of the Project. The Design Consultant's review of these recommendations shall not relieve or in any way diminish the Construction Manager's responsibilities pursuant to the Owner-Construction Manager Agreement. At the end of the Design Development Phase the Design Consultant shall provide the Owner's Representative with up to two (2) full size complete sets of the drawings and design phase report for approval by the Owner at no charge to Owner. The report shall incorporate the status of the work in accordance with Exhibit C–Management Plan and a summary of programmed versus actual square footage in a format defined by the Owner by room or area. The Design Consultant also shall provide the Construction Manager with two (2) full size complete sets of the drawings and other documents identical to those provided to the Owner. The Design Consultant shall work cooperatively with the Construction Manager at Risk on the preparation of their respective Project estimates at the conclusion of the design development phase. The documents for this final Design Development Phase submittal shall contain all of the following unless otherwise agreed in writing:

3.1.4.5.1 Architectural

(i) Project phasing plan.

(ii) Building Code Summary Sheet.

(iii) Life safety plans showing all fire walls and egress calculations.

(iv) Site plan(s) with building located and an overall grading plan with a minimum of 1'-0" contour lines. All major site development such as orientation, access road paving, walls and outside support buildings, structured parking facilities, programmed play areas, and paved parking lots, along with preliminary stormwater management and erosion control features should be shown.

(v) Floor plans (at 1/8" scale) with final room locations including all openings.

(vi) Roof plan (at 1/8" scale) indicating structural slope, drainage areas and drain locations.

(vii) Wall sections showing final dimensional relationships, materials and component relationships.

(viii) Identification of all fixed and loose equipment, furniture, and furnishings.

(ix) Room inventory data sheets showing locations of furniture and equipment for each room. Owner will provide lists of furniture and equipment and format to Design Consultant. Hard copies and digital formats (if desired) will be provided to the Design Consultant.

(x) Finish schedule identifying all finishes.

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(xi) Preliminary door and window and hardware schedule showing final quantity plus type and quality levels.

(xii) Virtually complete site plan including grading and drainage.

(xiii) Preliminary development of details, including millwork details and large scale blow-ups.

(xiv) Legend showing all symbols used on drawings.

(xv) Outline specifications of materials to be specified in the Construction Contract Phase.

(xvi) Reflective ceiling development including ceiling grid and all devices that penetrate the ceiling (i.e., light fixtures, sprinkler heads, ceiling register or diffusers, etc.).

3.1.4.5.2 Structural

(i) Plan drawings with all structural members located and sized.

(ii) Final building elevations.

(iii) Outline of materials to be specified in the CD phase.

(iv) Foundation drawings.

3.1.4.5.3 Plumbing

(i) Piping, fixtures and equipment substantially located and sized.

(ii) Outline specifications of materials to be specified in the Construction Contract Phase.

3.1.4.5.4 Mechanical

(i) Heating and cooling load calculations for each space and major duct or pipe runs sized to interface structural.

(ii) Major mechanical equipment scheduled indicating size and capacity.

(iii) Ductwork and piping substantially located and sized.

(iv) Above ceiling and/or mechanical room layouts to verify all, structural, mechanical, plumbing, electrical and fire protection systems fit in available spaces.

(v) Location of devices in ceiling.

(vi) Legend showing all symbols used on drawings.

(vii) Outline specifications of materials to be specified in the Construction Contract Phase.

(viii) Completed life cycle cost analysis in a format acceptable to the Owner and Design Consultant.

3.1.4.5.5 Electrical

(i) All power consuming equipment and load characteristics.

(ii) Total electric load.

(iii) Major electrical equipment (switchgear, distribution panels, emergency generator, transfer switches, UPS system, etc.) dimensioned and drawn to scale into the space allocated.

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(iv) Preliminary site lighting design coordinated with the power company.

(v) Outline specifications of materials to be specified in the Construction Contract Phase.

(vi) Lighting, power, telecommunications and office automation devices and receptacles shown in plan.

(vii) Preliminary light fixture schedule.

(viii) One line diagram of specialized electrical systems (fire alarm, intercom, voice/data, MATV) showing location of control equipment/panels and devices.

(ix) Interior electrical loads estimate for systems furniture, receptacles, lighting, food service equipment, and any other special use areas, etc.

3.1.4.5.6 Fire Protection

(i) Provide flow test information.

(ii) Provide narrative of proposed fire protection system.

3.1.4.6 Upon Owner acceptance and approval of the Design Development Phase, the structural bay sizes, floor elevations and exterior wall locations (building "footprint") may not be changed except by a Design Phase Change Order. Interior wall locations shall not be changed unless approved in writing by the Owner.

3.1.4.7 Documents not complying with Subparagraph 3.1.4.5 shall be returned to the Design Consultant for correction at no additional charge to the Owner and with no change to the overall Project design schedule.

3.1.5 Construction Contract Phase.

3.1.5.1 Upon written authorization from the Owner to proceed, the Design Consultant shall prepare from the approved Design Development documents, working drawings and specifications setting forth in detail the requirements for the construction of the entire Project. In bidding the Project, the Construction Manager will be responsible for providing the bidders the conditions of the contract, advertisement for bids, instructions to bidders, time control specification provisions, bid proposal forms, and a form agreement between the Construction Manager and the contractors to the bidders.

3.1.5.2 Construction Contract documents shall be completed within the time prescribed in Exhibit C – Management Plan.

3.1.5.3 Detailed drawings shall cover all work included in the Project or designated portion thereof. It is the responsibility of the Design Consultant to assure that the Construction Contract requires that no asbestos-containing materials are to be incorporated in the Project.

3.1.5.4 Detailed drawings suitable for use by the Construction Manager for the contractors shall be prepared by the Design Consultant.

3.1.5.5 Specifications shall be prepared using the Construction Specifications Institute 33 division format. Specifications for products, materials and equipment shall be written in full compliance with N. C. Gen. Stat. § 133-3 and all other relevant laws and building codes. Brand names may be used to specify a particular product to be bid as an alternate only in accordance with North Carolina law.

3.1.5.6 The Design Consultant shall work with the Owner to show preliminary furniture and equipment layouts as needed and requested by the Owner for each room to coordinate with electrical and technology service layouts. Furniture design and procurement is not within the Basic Services of the Design Consultant. When preliminary layouts are completed, final hard copies and digital information will be provided by the Design Consultant to the Owner and Construction Manager.

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3.1.5.7 The Design Consultant shall provide to the Owner and the Construction Manager a preliminary color board with exterior and interior color selection for review, approval and use by the Owner. The approved color board shall be submitted for use by the Owner with, or before, the 80% Construction Contract documents submittal.

3.1.5.8 The Design Consultant shall provide the Owner's Representative and the Construction Manager periodically with copies of in-progress Construction Contract documents during this phase. The Design Consultant shall review any recommendations from the Construction Manager, including any recommendations regarding the constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project contracts for various categories of Services, to confirm that they are architecturally sound and do not adversely impact the scope, functionality or requirements of the Project. The Design Consultant's review of these recommendations shall not relieve or in any way diminish the Construction Manager's responsibilities pursuant to the Owner-Construction Manager Agreement. Additionally, and in accordance with the Management Plan, the Design Consultant shall submit to the Owner up to four (4) full complete sets, and to the Construction Manager two (2) full size complete sets, of the drawings of preliminary Construction Contract documents at the stage of 60% completeness along with the design phase report for approval by the Owner. The report shall incorporate the status of the Services in accordance with Exhibit C – Management Plan and a summary of programmed versus actual square footage in a format defined by the Owner by room or area. The Design Consultant shall submit its estimate and breakdown of the anticipated construction cost no later than two (2) business days in advance of the scheduled 60% Construction Contract documents review meeting. The Design Consultant shall prepare such estimates to assure that the Project cost is within the CCAP or include specific alternates to the design that do not impact the scope of the Project to bring the Project estimate into alignment with the CCAP. The documents for this 60% Construction Contract submittal shall, at a minimum, satisfy all of the requirements of the Design Development Phase, plus all of the following unless otherwise agreed in writing:

3.1.5.8.1 <u>General</u>

(i) Complete index of drawings.

(ii) Vicinity plan.

(iii) Building Code Summary.

(iv) Life safety plans.

(v) Energy data.

(vi) Accessibility summary.

(vii) U.L. details.

(viii) Outline specifications of materials to be specified in Construction Contract Phase.

3.1.5.8.2 <u>Civil / Landscaping</u>

(i) Copy of the Site Survey.

(ii) Site plan satisfactory for site plan approval.

(iii) Site demolition plan.

(iv) Staking plan.

(v) Erosion control plan.

(vi) Grading plan.

(vii) Site utility plan.

(viii) Storm drainage plan, details and schedule.

(ix) Paving plans and details.

(x) Landscaping plans and details, plant schedule.

(xi) Outline specifications of materials to be specified in the Construction Contract Phase.

3.1.5.8.3 Architectural

(i) Demolition plans.

(ii) Key plans with final room numbers as approved by Owner.

(iii) Critical sections and details identified and drawn.

(iv) Roof plan with all penetrations.

(v) Kitchen layout and equipment schedule.

(vi) Exterior elevations with control joints located.

(vii) Enlarged toilet room layout with all fixtures and dimensions.

(viii) Toilet room elevations.

(ix) Reflected ceiling plan with all fixtures located and ceiling height identified.

(x) Bulkhead and lintel details.

(xi) Finish plan and schedule.

(xii) Door and hardware schedule, elevations, and head and jamb details.

(xiii) Masonry details.

(xiv) Roof details.

(xv) Stair details.

(xvi) Elevator sections and details if applicable.

(xvii) Furniture layout.

(xviii) Casework elevations.

(xix) Air Barrier System details for all penetrations and terminations.

(xx) Outline specifications of materials to be specified in the Construction Contract Phase.

3.1.5.8.4 Structural

(i) Demolition plans.

(ii) Footing plans and details.

(iii) Reinforcing steel plans.

(iv) Structural steel plans.

(v) Outline specifications of materials to be specified in the Construction Contract Phase.

3.1.5.8.5 Plumbing

(i) Demolition plan.

(ii) Fixture schedule.

(iii) Plumbing plans.

(iv) Enlarged toilet room plans.

(v) Riser diagrams for waste and vent, water, storm drainage, and gas.

(vi) Plumbing site plan.

(vii) Plumbing details.

(viii) Outline specifications of materials to be specified in the Construction Contract Phase.

3.1.5.8.6 Mechanical

(i) Demolition plan.

(ii) Ductwork and piping completely located and sized.

(iii) Complete equipment schedules.

(iv) Mechanical room enlarged plans and sections.

(v) Schematic control diagrams.

(vi) Mechanical details.

(vii) Outline specifications of materials to be specified in the Construction Contract Phase

3.1.5.8.7 Electrical

(i) Demolition plan.

(ii) Fixture schedule.

(iii) Electrical site plan.

(iv) Power plan with panels located and identified.

(v) Lighting plan.

(vi) Complete plans for auxiliary systems including but not limited to, fire alarm, voice/data, intercom, MATV, and security.

(vii) Riser diagrams for all systems.

(viii) Panel schedule.

(ix) Outline specifications of materials to be specified in the Construction Contract Phase.

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3.1.5.8.8 Fire Protection

(i) Demolition plan.

(ii) Fire protection plan with location of all hose and valve cabinets identified.

(iii) Preliminary fire protection design calculations.

(iv) Outline specifications of materials to be specified in the Construction Contract Phase.

3.1.5.9 Documents not complying with Subparagraph 3.1.5.8 shall be returned to the Design Consultant for correction at no additional charge to the Owner and with no change to the overall Project design schedule.

3.1.5.10 After review and approval of the 60% Construction Contract documents by the Owner, the Design Consultant shall continue with preparation of final Construction Contract and bid documents, including final specifications for all authorized work on the Project and shall incorporate in those final documents the comments and any modifications and changes desired by the Owner and any modifications required for compliance with all applicable codes, regulations, standards, the approved program, and prior written approvals and instructions of the Owner. The resulting final Construction Contract submittal is to be a complete, fully coordinated, integrated package, suitable for bidding distribution, without any significant addenda or further significant clarification required. If the Project is a prototype that has been previously constructed, the Design Consultant shall verify that all applicable change orders from previous projects have been incorporated into the bidding documents.

3.1.5.11 The Design Consultant, and any relevant Sub-Consultants, shall participate in such reviews and meetings as are necessary to ensure that the Project design conforms to all applicable codes and all requirements of responsible agencies and will make any changes to the Construction Contract which are required for issuance of all permits and legal authorizations needed to construct the Project.

3.1.5.12 The Design Consultant shall submit all relevant applications for all required building permits within a reasonable time to receive final comments in time to issue any required addenda to the bidding documents.

3.1.5.13 At the completion of the Construction Contract Phase, the Design Consultant shall submit to the Owner up to four (4) full size complete sets of the drawings and design phase report at 100% completeness prepared by the Design Consultant for final Construction Contract Phase submittal which shall include the final working drawings and specifications. At this same time, the Design Consultant also shall submit to the Construction Manager two (2) full size sets of 100% complete documents identical to those provided to the Owner.

3.1.5.14 A statement from the Design Consultant with the final Construction Contract Phase submittal shall be included that acknowledges that Design Consultant has reviewed all of the applicable Design Guidelines and Educational Specifications and represents that they have been incorporated in the documents, and that the actual versus programmed square footage has not changed from the approved Schematic Design and 60% Construction Contract submittals unless specifically noted in writing.

3.1.5.15 The Design Consultant shall submit with the final Construction Contract package, meeting minutes, etc. to show how review comments made in Design Development have been addressed. It should be clear from the notes if the specific item was incorporated into the Construction Contract submittal or not (with an explanation).

3.1.6 Permitting and Bidding/Negotiation Phase.

3.1.6.1 There may be more than one Permitting and Bidding/Negotiation Phase at no additional compensation to the Design Consultant so long as there are no more than two (2) bid packages for the various portions of the Project (which packages do not include individual material purchase orders, bid package alternates and rework by the Design Consultant of documents already completed, which shall be provided at no additional cost).

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3.1.6.2 The Design Consultant shall facilitate the filing of applications, endeavor to expedite and coordinate obtaining all necessary permits, licenses and approvals, required for the construction, use or occupancy of permanent structures. The Owner will pay all fees. Copies of all correspondence and applications shall be provided to the Owner. The Owner shall reimburse the Design Consultant for the actual cost of any fees or assessments paid by the Design Consultant pursuant to this subparagraph if needed to expedite approvals.

3.1.6.3 After receiving written authorization from the Owner, the Construction Manager will proceed with bidding and negotiation of the construction contracts for the Project. The Construction Manager shall coordinate and document the reproduction, distribution and retrieval of the bidding documents. Further, the Construction Manager will coordinate and document the collection and return of deposits or payments. The Design Consultant shall be responsible for submitting the relevant Construction Contract documents to all required code authorities and others, as the Owner designates.

3.1.6.4 The Design Consultant shall prepare such clarifications and addenda to the bidding documents as may be required. The Design Consultant will provide these to the Owner and the Construction Manager for review prior to issuance to all holders of bid documents. The Design Consultant shall review any recommendations from the Construction Manager, including any recommendations regarding the constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project contracts for various categories of Services, to ensure that they are architecturally sound and do not adversely impact the scope, functionality or requirements of the Project. The Design Consultant will incorporate into the addenda comments of the Owner and Construction Manager as appropriate and provide the Owner and the Construction Manager with final addenda for the Construction Manager's distribution to all holders of bid documents.

3.1.6.5 The Construction Manager will schedule and conduct Pre-Bid Conferences with bidders to review the Project requirements. The Design Consultant shall provide knowledgeable representatives, including Sub-Consultants, to participate in these conferences as requested by the Construction Manager to explain and clarify the bidding documents. Within two (2) days after the Pre-Bid Conference the Design Consultant shall deliver to the Owner and Construction Manager, if needed, an addendum, incorporating any changes required from the Pre-Bid Conference. The Design Consultant shall issue any required final addendum at least three (3) days prior to the bid date.

3.1.6.6 The Design Consultant shall assist the Owner and Construction Manager in obtaining bids.

3.1.6.7 Should first bidding or negotiation produce prices in excess of the approved CCAP, the Design Consultant shall participate with the Owner and Construction Manager in such re-bidding, re-negotiation, and re-design, at no additional expense to the Owner, as may be necessary to obtain price(s) within the approved CCAP or price(s) acceptable to the Owner. The Owner and Construction Manager will assist in re-design decisions. All re-design must be approved by the Owner.

3.1.6.8 Should the Design Consultant re-design under its responsibilities set out in the preceding paragraph, its Construction Phase and Post Construction Services shall be extended to take re-design/re-bid delays into account at no additional expense to the Owner.

3.1.6.9 At the conclusion of bidding, the Design Consultant shall provide a copy of the conformed bid drawings and specifications (not 100% review set or bid set), in a source file format, with file names consistent with the Owner's requirements, for the Owner's use in updating its property accounting drawings for the Project.

3.1.7 Construction Phase.

3.1.7.1 The Construction Phase for each portion of the Project will commence with the establishment of the Guaranteed Maximum Price, as defined in the Owner-Construction Manager Agreement, and will terminate when the Construction Manager achieves final completion of the Project.

3.1.7.2 The Design Consultant and Owner shall consult with the Construction Manager and participate in all decisions as to the acceptability of contractors and other persons and organizations proposed by the Construction Manager for various portions of the construction.

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3.1.7.3 The Design Consultant shall review and approve shop drawings, samples, and other submissions of the Construction Manager and its contractors for conformance with the design concept of the Project and for compliance with the Construction Contract. The Design Consultant shall prepare one final color board for the use by the Owner and one to be kept on the jobsite containing the Owner-approved submittal samples. The review and return of submittals shall be accomplished by the Design Consultant within fourteen (14) calendar days from date of receipt except when otherwise authorized by the Owner's Representative.

3.1.7.4 The Design Consultant shall provide necessary Project drawings, in electronic format, to the Construction Manager for use on the Project.

3.1.7.5 The Design Consultant shall adhere to the procedures established by the Owner's Representative and/or the Construction Manager for review and processing of all shop drawings, catalog submissions, project reports, test reports, maintenance manuals, and other necessary documentation, as well as requests for changes and applications for extensions of time.

3.1.7.6 The Design Consultant shall, when requested by the Owner's Representative, prepare documentation related to change orders between the Owner and Construction Manager.

3.1.7.7 The Design Consultant shall render to the Owner's Representative, within two (2) working days unless otherwise authorized by the Owner's Representative, interpretations of requirements of the Construction Contract. The Design Consultant shall make all interpretations consistent with the intent of and reasonably inferable from the Construction Contract. The Design Consultant's decision in matters relating to artistic effect shall be final if consistent with the intent of the Construction Contract.

3.1.7.8 Should errors, omissions or conflicts in the drawings, specifications or other Construction Contract documents by the Design Consultant be discovered, the Design Consultant will prepare and submit to the Owner's Representative and the Construction Manager, within two (2) working days unless otherwise authorized by the Owner's Representative, such amendments or supplementary documents and provide consultation as may be required, for which the Design Consultant shall make no additional charges to the Owner.

3.1.7.9 The Owner's Representative shall be the point of contact for the Owner, except when the Owner shall direct otherwise by Board policy or in writing. All instructions to the Construction Manager shall be issued by the Design Consultant except when directed otherwise by the Owner's Representative.

3.1.7.10 The Design Consultant, including Sub-Consultants, will have access to the Project site at all times. All site visits, observations and other activities by the Design Consultant shall be coordinated with the Construction Manager and a written report of such visits shall be made promptly to the Construction Manager and Owner's Representative.

3.1.7.11 The Design Consultant, including Sub-Consultants, shall make such periodic visits to the Project site as may be necessary to familiarize themselves generally with the progress and quality of the construction and to determine in general if the construction is proceeding in accordance with the Construction Contract. On the basis of such on-site observations, the Design Consultant, including Sub-Consultants, shall take reasonable steps to guard the Owner against defects and deficiencies in the construction of the Construction Manager or its contractor(s). If the Design Consultant or a Sub-Consultant observes any construction that does not conform to the Construction Contract, the Design Consultant shall immediately make an oral and written report of all such observations to the Construction Manager and Owner's Representative. The Design Consultant and its Sub-Consultants shall not be required to make exhaustive or full-time on-site observations to check the quality or quantity of the Construction Manager's work but shall make as many observations as may be reasonably required to fulfil their obligations to the Owner. The Design Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the construction.

3.1.7.12 Periodic visits by the Design Consultant shall be not less than once weekly. Each Sub-Consultant shall make periodic visits not less than once every two weeks, during the course of the Project applicable to its discipline. During critical construction phases, each Sub-Consultant may be required to make periodic visits weekly.

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The Sub-Consultants shall prepare and submit a report on each visit, submitted via the Design Consultant to the Owner's Representative and the Construction Manager within three (3) working days of the visit.

3.1.7.13 The Design Consultant shall render written field reports relating to the periodic visits and observations of the Project required by Subparagraph 3.1.7.11 within three (3) working days to the Owner's Representative and the Construction Manager in the form required by the Owner's Representative.

3.1.7.14 The Design Consultant and the relevant Sub-Consultants shall attend weekly construction progress meetings scheduled by the Construction Manager.

3.1.7.15 The Design Consultant shall review payment applications made by the Construction Manager to determine whether the construction reflected in the payment application has been satisfactorily completed as represented on the payment application. The Design Consultant's signing of a certificate of payment shall constitute a representation by the Design Consultant to the Owner, based upon the Design Consultant's observations at the Project site and the data comprising the application for payment, that the construction has progressed to the point indicated, that to the best of the Design Consultant's knowledge, information and belief, the quality of the construction appears to be in accordance with the Construction Contract (subject to: an evaluation of the Project for conformance with the Construction Contract upon substantial completion, as defined in the Owner-Construction Manager Agreement; the results of any subsequent tests required by the Construction Contract; minor deviations from the Construction Contract correctable prior to completion; and to any specific qualifications stated in the certificate for payment), and that the Construction Manager is entitled to payment in the amount certified. By signing a certificate for payment to the Owner, the Design Consultant shall not be deemed to represent that it has made any examination to ascertain how and for what purpose the Construction Manager has used the monies paid since the previous pay application, except the Design Consultant shall inquire into and notify the Owner of the status of any payment issues of which it is aware.

3.1.7.16 The Design Consultant and the Owner shall have authority to reject the Construction Manager’s work when in the Owner's or the Design Consultant's opinion the work does not conform to the Construction Contract. Whenever in the Owner's or the Design Consultant's reasonable opinion it is considered necessary or advisable to enforce the proper implementation of the intent of the Construction Contract, the Owner shall have the authority to require special inspection or testing of the Construction Manager’s work in accordance with the provisions of the Construction Contract whether or not such work is fabricated, installed or completed.

3.1.7.17 When the Construction Manager notifies the Design Consultant that it considers the construction or a designated portion of the construction substantially complete, the Design Consultant and its Sub-Consultants, after notice to the Owner, shall review and evaluate the construction and prepare and submit to the Owner and the Construction Manager punch lists of the construction which is not in conformance with the Construction Contract. When the Design Consultant and the Construction Manager on the basis of an inspection determine that the construction or designated portion thereof is substantially complete, the Design Consultant will then prepare a certificate of substantial completion which shall state the responsibilities of the Owner and the Construction Manager for security, maintenance, heat, utilities, damage to the construction and insurance. Should the Design Consultant determine that the construction or a designated portion thereof is not substantially complete after the Construction Manager notifies the Design Consultant that it considers such construction to be substantially complete, the Design Consultant shall provide the Construction Manager with written notice stating why the construction or designated portion is not substantially complete. The Owner may request that the Design Consultant review and evaluate the construction and prepare a punch list on any portion of the Project.

3.1.7.18 The Design Consultant shall obtain governing agency occupancy approval if any exceptions arise related to the design or specified materials.

3.1.7.19 The Design Consultant shall review requests by the Owner or the Construction Manager for changes in the Project including adjustments to the Construction Contract sum or time and shall promptly make a recommendation to the Owner who may authorize such changes in writing.

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3.1.7.20 The Design Consultant shall render initial decisions on claims, disputes or other matters in question between the Owner and the Construction Manager as provided in this Agreement and the Construction Contract.

3.1.7.21 The Design Consultant shall be a point of contact with the Construction Manager, except when the Owner shall direct the Design Consultant otherwise. All instructions to the Construction Manager shall be issued by the Design Consultant, except when directed otherwise by the Owner.

3.1.7.22 The Design Consultant and the relevant Sub-Consultant shall review test data to determine that equipment is performing in accordance with the requirements of the design. In addition, the Design Consultant and the relevant Sub-Consultant will witness the Construction Manager's demonstration to the Owner of all such systems.

3.1.7.23 The Design Consultant and the relevant Sub-Consultant shall provide assistance in the original operation of any equipment or system such as initial start-up, testing, adjusting and balancing.

3.1.7.24 The Design Consultant and the relevant Sub-Consultant shall observe, review test data, and certify the original operation of any equipment or system such as initial start-up testing, adjusting and balancing to make sure that all equipment and systems are properly installed and functioning in accordance with the design and specifications.

3.1.7.25 The Design Consultant and its Sub-Consultants shall conduct up to two (2) comprehensive substantial completion inspections and two (2) final completion inspections pursuant to the Construction Contract. If more than two (2) substantial completion or two (2) final completion inspections are required, through no fault of the Design Consultant, the additional inspections shall be paid as Additional Services and reimbursed by the Construction Manager.

3.1.7.26 The Design Consultant shall make a recommendation in writing to the Owner regarding liquidated damages as may be applicable. If requested by the Owner or the CM, the Design Consultant shall certify in writing the date that the building is enclosed as defined in the Contract Documents.

3.1.7.27 Upon correction of the deficiency reports (punch lists), and acceptance of all other close-out submittals and certificates from the Construction Manager, the Design Consultant shall review and approve the application for final payment prepared by the Construction Manager and forward it to the Owner for execution. Simultaneously, the Design Consultant shall confirm in writing that the Project conforms to the Construction Contract.

3.1.7.28 The Design Consultant shall obtain from the Construction Manager drawings, prints, and other data necessary for the accurate preparation of the record drawings.

3.1.8 Post Construction Project Phase.

3.1.8.1 The Design Consultant and the relevant Sub-Consultant shall review and confirm the adequacy of the maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection as required by the Construction Contract and forward within two weeks of receipt of approved materials, all approved copies to the Owner's Representative for use by the Owner. In addition, the Design Consultant and the relevant Sub-Consultant shall conduct such observations as necessary to confirm all material and equipment warranties are in compliance with applicable specifications.

3.1.8.2 Educational Commissioning

3.1.8.2.1 The Design Consultant shall produce two or more presentation boards (approximately 24" x 36", full-color, with hanging apparatus) for each project for use by the Owner. Boards will include photos, floor plans, elevations, and written documentation related to sustainable design features, community use, site development, flexibility of educational spaces, etc. These boards will be left at the school to be shared with students, parents, faculty/staff, school visitors, etc., for the first year of operation, at a minimum.

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3.1.8.2.2 The Design Consultant shall provide input/review for development of PowerPoint presentation. The PowerPoint presentation will be used to educate faculty & staff about the special features available in their new school facility, specifically including the items in section 3.1.8.5. Both the original PowerPoint presentation (Source File) and a pdf version will be delivered electronically and on flash drive. The flash drive will be left with the school principal for future use with PTA, new faculty/staff, etc.

3.1.8.2.3 The Design Consultant shall provide input on signage to be posted in and around the school facility to point out various design features that support sustainability, facility efficiency, energy conservation, learning and teaching as requested by the Owner.

3.1.8.3 The Design Consultant shall prepare and deliver three (3) printed sets, one (1) pdf set, and one (1) AutoCAD or REVIT set of record drawings and all related files, including the design specifications (project manual) and all addenda. The electronic files shall be delivered in PDF, AutoCAD.DWG, and Source File formats via electronic file delivery and CD. These files will reflect and certify significant changes in the Project made during the construction process, based on marked-up contract drawings, prints, and other data furnished by the Construction Manager and the applicable addenda, clarifications, and change orders which occurred during the Project for delivery to the Owner within thirty (30) days after final completion of the Project. All electronic file names shall be consistent with the name of the sheet(s) they represent in accordance with the Owner's criteria.

3.1.8.4 The Construction Manager shall be responsible for creating the master project data file downloaded from the construction management application used for the Project in accordance with the Construction Manager's contract requirements. This master project file will contain all relevant date developed during the progress of the construction phase. The Design Consultant will review the data as necessary and/or requested by the Construction Manager or the Owner to review the completeness of the information.

3.1.8.5 The Design Consultant will report the use of Sub-Consultants, their function, contract amount and MBE classification to the Owner at the conclusion of the Project.

3.2 Design Consultant's Professional Responsibility and Standard of Care.

3.2.1 The Design Consultant shall perform its services, including but not limited to the Basic Services and any Additional Services authorized in writing by the Owner, consistent with the professional skill and care ordinarily provided by design consultants practicing in or around the Research Triangle Park, North Carolina area under the same or similar circumstances. The Design Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

3.2.1.1 By execution of this Agreement, the Design Consultant agrees, warrants, and confirms that (a) it is an experienced and duly licensed firm or individual having the ability and skill necessary to perform all the Services required of it under this Agreement in connection with the design and construction of a project having the scope and complexity of the Project contemplated herein; (b) it has the capabilities and resources necessary to perform its obligations hereunder; and (c) it is familiar with all current laws, rules and regulations which are applicable to the design and construction of the Project (such laws, rules and regulations including, but not limited to, all local ordinances, requirements of building codes of city, county, state and federal authorities which are applicable to the Project, local sanitary laws and rules and regulations, and all orders and interpretations by governing public authorities of such ordinances, requirements, codes, laws, rules and regulations in effect at the time of commencement of Services on the Project), and that all drawings, specifications and other documents prepared by the Design Consultant shall be prepared in accordance with and shall accurately meet, reflect and incorporate all such applicable laws, rules and regulations.

3.2.1.2 The Design Consultant shall ensure that any Sub-Consultants: (a) are an experienced and duly licensed firm or individual having the ability and skill necessary to perform the requested services; (b) have the capabilities and resources necessary to perform its obligations; and (c) are familiar with all current laws, rules and regulations which are applicable to the work of the Sub-Consultant (such laws, rules and regulations including, but not limited to, all local ordinances, requirements of building codes of city, county, state and federal authorities which are applicable to the Sub-Consultant's work, local sanitary laws and

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rules and regulations, and all orders and interpretations by governing public authorities of such ordinances, requirements, codes, laws, rules, and regulation in effect at the time of commencement of services on the Project and relevant to the Sub-Consultant's work), and that all drawings, specifications and other documents prepared for the Project shall be prepared in accordance with and shall accurately meet, reflect and incorporate all such applicable laws, rules and regulations.

3.2.2 The Design Consultant hereby represents and agrees that the drawings, specifications and other documents prepared pursuant to this Agreement shall be complete and functional, except as to any deficiencies which are due to causes beyond the control of the Design Consultant and its Sub-Consultants, and that the Project, if constructed in accordance with the drawings, specifications and other documents, shall be structurally sound and a complete and properly functioning facility in accordance with the terms of this Agreement. Any suggestions, recommendations or review comments by the Owner or the Construction Manager shall not reduce or diminish the Design Consultant's responsibilities pursuant to this Agreement.

3.2.3 The Design Consultant shall be responsible for damages to the Owner that are a result of errors, inconsistencies, and/or omissions in the drawings, specifications, other documents or other Basic Services. In addition, the Design Consultant will correct at no additional cost to the Owner any and all errors and omissions in the drawings, specifications and other documents prepared by the Design Consultant and its Sub-Consultants, and the Design Consultant further agrees to render assistance, at no additional cost to the Owner, in resolving problems relating to the design or specified materials.

3.2.4 It is the responsibility of the Design Consultant to make certain that, at the time the Project is bid, all drawings, specifications and other documents are in accordance with applicable laws, statutes, building codes and regulations and that appropriate reviews and approvals are requested and obtained from federal, state and local governments.

3.2.5 It shall be the responsibility of the Design Consultant and its Sub-Consultants throughout the period of performance under this Agreement to exercise the abilities, skills and care customarily used by Design Consultants and Sub-Consultants of the training and background needed to perform the Services who practice in Brunswick County or similar communities.

3.3 Project Requirements.

3.3.1 A component of Exhibit A – Design, Construction and Equipment Budget is the CCAP. The CCAP for this Project is: twenty-one million, five hundred sixty-eight thousand, three hundred nine dollars ($21,568,309). The CCAP for this Project, or designated portion thereof, may be modified in writing only in the form of a Design Phase Change Order, executed by the Owner and Design Consultant. The Design Consultant shall prepare drawings, specifications and other documents necessary so that the construction bids received by the Construction Manager from responsive, responsible bidding contractors, plus the CM's general conditions, contingency, fee and bonds/insurance, will be within the CCAP.

3.3.1.1

During all phases of the Project the Design Consultant shall prepare such estimates as it deems necessary, at no additional cost to the Owner, to assure itself that the estimated Project cost is within the CCAP and shall supply such data, information or estimates as the Owner may require to substantiate the Design Consultant's contention that the Project cost is within the CCAP.

3.3.1.2

With each Design Phase submittal and each interim, revisionary or subsequent design submittal of the Design Consultant to the Owner and/or Construction Manager, the Design Consultant shall make the following statement in writing:

"The drawings, specifications, and other documents submitted herewith, in my/our professional opinion, fulfill the Program of Requirements and the Project indicated by them may be purchased by the Owner in a construction contract or contracts, the total price of which will not exceed the CCAP, (based on bid date of no later than July 24, 2023, unless the delay in bidding is attributable to the Design Consultant). Further ,in my/our professional opinion, the above-mentioned documents submitted herewith have been prepared in accordance with the Agreement for Design Consultant Services."

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With each Design Phase submittal and each interim, revisionary or subsequent design submittal of the Design Consultant to the Owner and/or Construction Manager and with his approval of the final payment to the Construction Manager and certificate of final completion to the Owner, the Design Consultant shall make the following statement in writing:

"No asbestos-containing building materials have been specified and to the best of my/our knowledge and belief none have been incorporated into this Project."

3.3.2 Incorporated herein and made a part of this Agreement as Exhibit B is the Program of Requirements which defines the physical and environmental parameters for the Project and establishes the design objectives and criteria. No deviations from the Program of Requirements shall be allowed without written approval for change, in the form of a Design Phase Change Order executed by the Owner and Design Consultant.

3.3.3 Incorporated herein and made a part of this Agreement as Exhibit C is the Management Plan for the Project which defines the sequence and timing of the design and construction activities. The Management Plan is the schedule to be adhered to by the Design Consultant. No deviation from the Management Plan shall be allowed without written approval for a change in the Management Plan, in the form of a Design Phase Change Order executed by the Owner and Design Consultant. Should the Owner or the Construction Manager determine that the Design Consultant is behind schedule due to the fault of the Design Consultant; the Design Consultant shall expedite and accelerate its efforts, including additional manpower and/or overtime, to maintain the approved design schedule at no additional cost to the Owner.

3.4 Project Meetings.

3.4.1 Throughout all phases of the Project, the Design Consultant and its Sub-Consultants shall meet periodically with the Owner and/or the Construction Manager when reasonably requested. Participants shall be as determined by the Owner and/or the Construction Manager. As a minimum, regularly scheduled meetings which the Design Consultant will attend include:

3.4.1.1 Design Consultant orientation.

3.4.1.2 Predesign conferences on a biweekly basis.

3.4.1.3 Predesign project analysis sessions.

3.4.1.4 Design conferences on a monthly basis.

3.4.1.5 Prebid conferences conducted by the Construction Manager.

3.4.1.6 Preconstruction conferences conducted by the Construction Manager.

3.4.1.7 Construction progress meetings on a bi-weekly basis.

3.4.1.8 Substantial completion, final completion and completion of warranty period inspections for the Construction Contract.

3.4.2 The Design Consultant shall be responsible for scheduling and attending any meetings necessary to properly coordinate the design effort including, without limitation, meetings with governing agencies, code officials and applicable utilities.

3.4.3 The Design Consultant shall be responsible for preparing accurate and complete minutes of all Project conferences that are not the responsibility of the Construction Manager and distributing same to all participants.

3.5 Serving As Witness.

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3.5.1 The Design Consultant, and any required Sub-Consultant, shall prepare for and provide testimony or otherwise participate in public hearings, and legal proceedings, including as necessary to secure governmental approval of zoning or land use clearances, for the Project as part of Basic Services, unless said testimony or participation is requested by the Owner and consists of expert testimony not related to this Project or the Construction Manager's work.

3.6 Construction Warranty.

3.6.1 The Design Consultant and its Sub-Consultants shall assist the Owner in resolution of warranty issues as may be required to determine responsibility for deficiencies.

3.6.2 The Design Consultant and its Sub-Consultants shall conduct an inspection of the project one (1) month prior to warranty expiration and provide to the Owner a written report specifying any warranty deficiencies which may exist.

ARTICLE 4

COMPENSATION

4.1 Basic Services Compensation.

The Owner shall compensate the Design Consultant in accordance with the terms and conditions of this Agreement, including the following:

4.1.1 For the Basic Services of the Design Consultant, compensation shall be a lump sum fee amount of $1,057,000 (one million, fifty-seven thousand Dollars), plus approved reimbursable expenses ("Basic Services Compensation").

4.1.1.1 For the purposes of Subparagraph 4.1.1, no amount is to be included within the scope of the CCAP for the cost of land, rights-of-way or other non-construction costs which are the responsibility of the Owner.

4.1.1.2 For the purposes of Subparagraph 4.1.1, no labor and materials furnished by the Owner for the Project shall be included with the scope of the CCAP.

4.1.1.3 For the purposes of Subparagraph 4.1.1, should the Owner request additions to the Project which would cause a change or changes in the scope of the Program of Requirements or previously approved designs or design criteria, the CCAP shall be increased by the estimated aggregate amount of such change(s) and the revised and adjusted CCAP shall be the figure used in determining the Design Consultant's fee. The additional fee paid to the Design Consultant shall be negotiated in good faith by the Owner and the Design Consultant based upon the actual additional work to be performed by the Design Consultant.

4.1.1.4 In the event the Owner requests changes to the Project or elects not to complete the Project or any portion thereof, which would decrease the most recently approved CCAP, basic compensation due the Design Consultant, as to such deletion or decrease, shall be adjusted downwards for remaining Services to be performed but not for Services already performed to the date of receipt by the Design Consultant of the written requested change or notice of the intent not to complete part or all of the Project, in accordance with the basic payment schedule set forth in Paragraph 4.2 hereof. Unless otherwise agreed in writing by the parties, the reduction in the Design Consultant's fee shall be calculated by multiplying the dollar amount of the reduction in the CCAP by the fee percentage noted in 4.1.1 above and then multiplying that dollar amount by the percentage of design work not completed.

4.1.2 The Basic Services Compensation stated in Paragraph 4.1.1 includes all compensation and other payments due the Design Consultant (manpower, overhead, profit, direct costs, travel, copies, postage, telephone and facsimile service, etc.) in the performance of the Basic Services.

4.2 Payments to the Design Consultant.

Payments on account of the Design Consultant shall be made as follows:

4.2.1 Payments for Basic Services, including any design phase change orders, shall be made monthly in proportion to services performed so that the compensation at the completion of each Phase shall equal the following percentages of the Basic Services Compensation. Payment shall be made monthly upon presentation of the Design Consultant's statement of services, fully supported by invoices, time cards, and certifications that all Sub-Consultants have been paid, and other documentation as requested by the Owner.

Design Narrative Phase	5%
Schematic Design Phase	15%
Design Development Phase	35%
Construction Contract Phase	60%
Permitting and Bidding/Negotiation Phase	65%
Construction Phase	95%
Post Construction Services Phase	100%

4.2.2 No deductions shall be made from the Basic Services Compensation on account of penalty, liquidated damages, retainage or other sums withheld from payments to the Construction Manager.

4.2.3 Reasonable deductions may be made from the Basic Services Compensation on account of errors and omissions in the drawings, specifications and other documents prepared by the Design Consultant or in the Design Consultant's performance of its obligations under this Agreement following written notice to the Design Consultant regarding the reason for the deductions.

4.2.4 Payments due the Design Consultant under the Agreement shall bear interest at the legal rate commencing forty-five (45) days after the date the billing is received by the Owner, unless the Owner has a good faith basis to withhold payment.

4.2.5 Reimbursable expenses shall include such reasonable, actual expenditures made by the Design Consultant, its employees, or Sub-Consultants, in the interest of the Project, limited to the following: the reasonable expense of transportation and living when traveling from the Design Consultant's or Sub-Consultant's office to a location outside of Brunswick County, North Carolina in connection with the Project; and expense of reproductions, postage and handling of Drawings and Specifications, beyond those for the Design Consultant's and Sub-Consultants' use and those required as the phase submittals ("Reimbursable Expenses"). Before incurring any Reimbursable Expenses, the Design Consultant must request and receive written authorization from the Owner. Reimbursable Expenses incurred while performing Basic or Additional Services shall be computed at a multiple of 1.10 times actual cost.

4.2.6 Notwithstanding Section 7.1, the Parties agree that the Design Consultant is authorized to proceed with the printing and delivery of the following documents, but that said reimbursable cost shall not exceed an aggregate of $2,500 without the express written permission of the Owner:

(a) Agency Submittals;
(b) Bid Documents, including plan rooms; and
(c) Various design phase submissions to the Owner and Construction Manager.

4.2.7 If the Project is suspended for more than six months or abandoned in whole or in part by the Owner, the Design Consultant shall be paid compensation for services performed prior to receipt of written notice from the Owner of such suspension or abandonment. If the Project is resumed after being suspended for more than twelve months, the Design Consultant's Basic Services Compensation shall be equitably adjusted.

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4.3 Additional Services Compensation.

4.3.1 With respect to any Additional Services, as described in Article 7 herein, performed by the Design Consultant hereunder, the Design Consultant and Owner shall negotiate an equitable adjustment to the Basic Services Compensation ("Additional Services Compensation"). However, if negotiations are not successful prior to the time the Additional Services are needed, the Owner may direct the Design Consultant to proceed with the Additional Services on a time spent basis with compensation to be computed as follows:

4.3.1.1 Design Consultant time shall be at the fixed hourly rate included in the fee schedule attached hereto as Exhibit E and made part of this Agreement.

4.3.1.2 Sub-Consultant time shall be at an hourly fixed rate agreed to between the Design Consultant and the Owner prior to the Sub-Consultant performing any Additional Services.

4.3.1.3 Reinspection and resubmittal review time that is billable to the Construction Manager shall be reimbursed to the Design Consultant as noted in 4.3.1.1 and 4.3.1.2 except the total compensation shall not exceed the amount attributable to the Construction Manager.

4.3.2 Payments for Additional Services of the Design Consultant shall be made monthly upon presentation of the Design Consultant's statement of services, fully supported by invoices, time cards, and other documentation as requested by the Owner.

4.4 Accounting Records.

4.4.1 Records of the Design Consultant with respect to Additional Services and payroll, and Sub-Consultant and other expenses (including Reimbursable Expenses) pertaining to the Project, shall be kept according to generally accepted accounting principles and shall be available to the Owner or its authorized representative for inspection and copying at mutually convenient times.

4.4.2 At the request of the Owner or its authorized representative, the Design Consultant will supply in a timely manner and certify as accurate, unaltered copies of all time sheets, invoices, and other documents to substantiate and document any and all Additional Services and Reimbursable Expenses.

4.5 Non-Appropriation. If the Board of County Commissioners does not appropriate the funding needed by the Owner to make payments under this Agreement for a given fiscal year, the Owner 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 Owner will promptly notify the Design Consultant 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 Owner which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

ARTICLE 5

PERIOD OF SERVICE

5.1 Specific dates relating to the period of services are set forth in Exhibit C – Management Plan.

5.2 Unless earlier terminated as provided in Article 10 hereof, this Agreement shall remain in force for a period which may reasonably be required for the Basic Services and Additional Services hereunder. However, the provisions of the Agreement relating to Professional Responsibility (Paragraph 3.2); Professional Liability coverage (Article 9); and Ownership of Documents/Confidential Information (Article 12) shall remain in effect after termination of the other provisions of the Agreement.

5.3 If the Project is delayed through no fault of the Design Consultant, all specific dates noted in the Management Plan that are affected by the delay will be adjusted by the number of calendar days of the delay.

5.4 If the Owner materially revises the Project, a reasonable time extension or reduction shall be negotiated between the Design Consultant and the Owner.

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5.5 Time is of the essence in this Agreement,

ARTICLE 6

OWNER'S RESPONSIBILITIES

6.1 The Owner shall provide full information regarding the requirements for the Project.

6.2 The Owner shall examine documents submitted by the Design Consultant and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Design Consultant's Services.

6.3 If required for this Project, the Owner shall furnish a certified land survey of the site, giving as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines, both public and private, above and below grade, including inverts and depths.

6.4 The Owner shall pay for the services of a soils engineer or other consultant, when such services are deemed necessary by the Design Consultant or Owner's Representative, to provide reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations for determining subsoil, air and water conditions, with appropriate professional interpretations thereof.

6.5 The Owner shall pay for environmental, hazardous material, chemical and other laboratory tests, inspections and reports as required by law that are not otherwise called for in this Agreement.

6.6 The Owner shall furnish such legal, accounting, and insurance counseling services as the Owner may deem necessary for the Project and such auditing services as it may require to ascertain how, or for what purposes, the Construction Manager has used the moneys paid to it under the Construction Contract.

6.7 All services, information, surveys and reports required of the Owner shall be furnished at the Owner's expense and the Design Consultant shall be entitled to rely upon their accuracy and completeness.

6.8 The Owner shall furnish information and approvals required of it expeditiously, for orderly progress of the construction.

6.9 The Owner shall reimburse the Design Consultant for any fees or assessments paid by the Design Consultant pursuant to Article 3.1.6.3.

6.10 The Design Consultant shall coordinate the services of the Owner’s consultants listed below in the section with those services provided by the Design Consultant. Upon the Design Consultant’s request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner’s consultants. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided. If in the opinion of the Architect a particular consultant or engineering service is needed to produce a reasonably complete and accurate set of Construction Documents or to satisfy the Owner’s Program requirements based upon the information available to the Design Consultant as of the date of this Agreement and said consultant or engineering service is not listed as being provided by the Owner below, it is the responsibility of the Architect to provide that service at no additional cost to the Owner.

The Owner shall furnish or provide the following services only if specifically designated:

1. Topographic and Boundary Survey including off-site requirements (as stated in 5.4)
2. Geotechnical Engineering Services including off-site requirements (as stated in 5.5)
   a. Seismic Site Classification (shock-wave testing or equivalent determination)
   b. Soils analysis and consultation

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c. Seasonal High Water Table evaluation and Infiltration Testing
d. Wetlands and Stream delineation and remediation/modification consulting (including USACE jurisdictional determinations)
e. Underground stream mitigation analysis and design
f. Riparian Buffer Analysis
g. Tier 1 Vapor Encroachment Screening
h. Testing commissioning of HVAC, and Solar P.V. System

3. All Environmental Assessments that may be required including but not limited to Phase I and Phase II Environmental Assessments
4. Off-site sewer and water systems design
5. Geothermal Conductivity Tests
6. Historical or Anthropological identification, testing, and reporting
7. Hazardous Materials identification, testing and removal design
8. Underground storage tank identification, testing and removal design
9. Traffic Information Analysis or other information as may be required by NCDOT/MSTA
10. Roadway improvements design as required including off-site requirements
11. Testing Services and Special Inspections
12. Arborist consultation and services

ARTICLE 7

ADDITIONAL SERVICES

7.1 If any of the following Additional Services, as defined in this Article, are authorized in advance by the Owner in writing, the Design Consultant shall furnish or obtain from others the authorized services. If authorized in advance, in writing, by the Owner, the Design Consultant shall be paid for these Additional Services by the Owner pursuant to Article 4.3 to the extent they exceed the obligations of the Design Consultant under this Agreement. If the Design Consultant informs the Owner in writing that additional services are required then the Owner shall agree or not agree that the services are required and if the Owner agrees the services are required, additional services shall be paid to the Design Consultant. The Owner shall respond to the Design Consultant within 7 days of receipt of such notice or quicker if necessary to not delay the Project.

7.1.1 Providing fully detailed presentation models, presentation renderings, or video presentations, not included in Basic Services.

7.1.2 Providing financial feasibility or other special studies, not included in Basic Services.

7.1.3 Providing planning surveys or alternative site evaluations.

7.1.4 Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project other than general and master planning for future work as indicated by the Program of Requirements.

7.1.5 Providing acoustical services by an individual or firm with specific expertise in acoustics for a school project.

7.1.6 Making major revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given by the Owner.

7.1.7 Preparing supporting data and other services in connection with an Owner-initiated change order if the Basic Compensation is not commensurate with the services required of the Design Consultant.

7.1.8 Providing operating and maintenance manuals, training personnel for operation and maintenance, and consultation during operations other than initial start-up, and coordinating with the Construction Manager to provide in electronic format, as designated by the Owner's Representative, detailed product and warranty information for input to the Owner's facility management computer system.

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7.1.9 Providing soils sampling, classification and analysis; however, analysis of existing soils information and soils analysis during the Design Phase and recommendations needed during the Construction Phase of the Project are not considered Additional Services.

7.1.10 Providing services of interior furnishings not included in the Basic Services or otherwise included in this Agreement.

7.1.11 Providing professional services made necessary by the default of the Construction Manager or any of its contractors.

7.1.12 Providing services made necessary by major defects in the Construction Manager's work which were not preventable by the Design Consultant or a Sub-Consultant in the performance of its Services pursuant to this Agreement.

7.1.13 Providing surveying services such as platting; mapping; subdivision agreements or recording subdivision plats.

7.1.14 Providing Services prior to actual substantial completion of the Project made necessary by delays or defects in the Construction Manager's work by more than sixty (60) days from the date agreed to for substantial completion in the Owner-Construction Manager Agreement, which delay the Design Consultant could not reasonably have prevented through the performance of its services pursuant to this Agreement.

7.1.15 Providing Services made necessary by delays or defects in the Construction Manager's work for more than thirty (30) additional days than are provided in the Owner-Construction Manager Agreement for the time period between the scheduled substantial completion and final completion dates, which delay the Design Consultant could not reasonably have prevented through the performance of its Services pursuant to this Agreement.

7.1.16 Providing extensive assistance in the initial start-up and test operations of equipment or systems which is beyond the scope of that normally required to insure proper operation in accordance with the design and specifications.

7.1.17 Providing services necessitated by out-of-town travel required by the Design Consultant and approved by the Owner other than visits to the Project and other than for travel required to accomplish the Basic Services.

7.1.18 Providing consultation concerning replacement of any of the Construction Manager's work on the Project damaged by fire or other cause during construction and furnishing professional services of the type set forth in Basic Services as may be required in connection with the replacement of such work.

7.1.19 Providing services after the Owner makes final payment to the Design Consultant other than services required by this Agreement.

7.1.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural and engineering practices consistent with the terms of this Agreement.

7.1.21 Providing high performance features such as a Geothermal HVAC system and solar P.V. system.

7.1.22 Providing consulting services regarding the procurement of tax credits.

7.1.23 Providing furniture design and consultation with the Owner's furniture vendor(s).

7.1.24 Preparation for, and attendance at a mediation of a dispute regarding the Project between the Owner and Construction Manager, except where the Architect is party thereto.

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ARTICLE 8

NOTICES

8.1 Any notice required by this Agreement or other communications to either party by the other shall be in writing and deemed given when delivered personally or when deposited in the United States Post Office, first class, postage prepaid, addressed as follows, or to such other address as shall be duly given by notice meeting the requirement of this Article.

To Owner:

Brunswick County Manager
30 Government Dr NE (if via courier or overnight delivery)
P. O. Box 249 (if via mail)
Bolivia, NC 28422

With a Copy to:
Executive Director of Operations
Brunswick County Schools
35 Referendum Dr.
Bolivia, NC 28422

Dr. Jerry Oates
Superintendent
Brunswick County Schools
35 Referendum Dr
Bolivia, NC 28422

To Design Consultant:

Ernest Olds
Vice President
Becker Morgan Group
3333 Jaeckle Dr., Suite 120
Wilmington, NC 28403

ARTICLE 9

INSURANCE

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

a. Workers' Compensation:

Statutory

b. Employer’s Liability

$1,000,000.00 Each Accident
$1,000,000.00 Policy Limit
$1,000,000.00 Each Employee

c. Commercial General Liability

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(Standard ISO Occurrence Form)

Combined Single Limit for Bodily Injury, Property Damage or Personal General

Aggregate Injury of:

$2,000,000.00 (Except Products Completed Operations Limit)
$2,000,000.00 Products Completed Operations Aggregate Limit
$1,000,000.00 Personal & Advertising Injury Limit
$1,000,000.00 Each Occurrence Limit

d. Commercial Automobile Insurance including coverage for owned, non-owned and hired vehicles:

$1,000,000.00 Combined Single Limit for Bodily Injury and Personal Damage

e. Professional Liability:

$2,000,000 Each Claim
$2,000,000 Policy Aggregate

f. Umbrella Liability Insurance to “pay on Behalf of the Insured”:

$1,000,000.00 Limit

9.2 Evidence of such insurance shall be furnished to the Owner and Owners Agent, and they shall receive thirty (30) days prior written notice of any cancellation, non-renewal or reduction of coverage of any of the policies. Upon notice of such cancellation, non-renewal or reduction, the Design Consultant shall procure substitute insurance so as to assure the Owner that the minimum limits of coverage are maintained continuously throughout the period of this Agreement. 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 similar rating company of at least an “A”.

9.2.1 The Design Consultant shall deliver to the Owner a certificate of insurance for its professional liability coverage annually, so long as it is required to maintain such coverage under paragraph 9.4.

9.3 The Owner and Owners Agent shall be added as an additional named insureds on all policies, except the professional liability, commercial, automobile and worker’s compensation policies. All insurance policies, except the professional liability policy, shall contain a waiver of subrogation against the Owner.

9.4 The Design Consultant shall maintain in force during the performance of this Agreement and for six (6) years after final completion of the Project, the professional liability insurance coverage referenced above.

9.5 The Design Consultant shall require its Sub-consultants to maintain all types of insurance as mentioned in this Article 9 and shall provide to the Owner certificates of insurance as described in Article 9.2 for all Sub-Consultants.

9.6 The Owner shall be under no obligation to review any certificates of insurance provided by the Design Consultant or to check or verify the Design Consultant's compliance with any or all requirements regarding insurance imposed by this Agreement. The Design Consultant is fully liable for the amounts and types of insurance required herein and is not excused should any policy or certificate of insurance provided by the Design Consultant not comply with any or all requirements regarding insurance imposed by this Agreement.

9.7 Should the Design Consultant or a Sub-Consultant fail to provide and maintain in force any insurance or insurance coverage required by this Agreement or by law, or should a dispute arise between Owner and any insurance company of the Design Consultant or Sub-Consultant over policy coverage or Limits of Liability as required herein, the Owner shall be entitled to recover from the Design Consultant all amounts payable, as a

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matter of law, to Owner or any of its agents, had the required insurance or insurance coverage been in force. Said recovery shall include, but is not limited to interest for the loss of use of such amounts of money, plus all attorney's fees, costs and expenses incurred in securing such determination and any other consequential damages arising out of the failure of the Design Consultant or Sub-Consultant or insurance company to comply with the provisions of this Agreement or any policy required hereby, or any other requirements regarding insurance imposed by law. Nothing herein shall limit any damages for which Design Consultant is responsible as matter of law.

ARTICLE 10

TERMINATION OF AGREEMENT

10.1 If: (a) the Owner abandons the Project or the Project is stopped for more than six (6) months due to actions taken by the Owner, or 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 Design Consultant or its agents or employees, or (b) the Owner has failed to substantially perform in accordance with the provisions of this Agreement due to no fault of the Design Consultant and such non-performance continues without cure for a period of thirty (30) days after the Owner receives from the Design Consultant a written notice of such non-performance (including a detailed explanation of the actions of the Owner required for cure), the Design Consultant may, upon fifteen (15) days additional written notice to the Owner, terminate this Agreement, without prejudice to any right or remedy otherwise available to the Owner, and recover from the Owner payment for all Services performed to the date of the notice terminating this Agreement. The recovery of this payment shall be the sole and exclusive remedy of the Design Consultant as a result of termination under this paragraph. The Owner shall not be liable to the Design Consultant for any special or consequential damages as a result of the termination of this Agreement.

10.2 Upon the appointment of a receiver for the Design Consultant, or if the Design Consultant makes a general assignment for the benefit of creditors, the Owner may terminate this Agreement, without prejudice to any right or remedy otherwise available to the Owner, upon giving three (3) days written notice to the Design Consultant. If an order for relief is entered under the bankruptcy code with respect to the Design Consultant, the Owner may terminate this Agreement by giving three (3) days written notice to the Design Consultant unless the Design Consultant or the trustee: (a) promptly cures all breaches; (b) provides adequate assurances of future performance; (c) compensates the Owner for actual pecuniary loss resulting from such breaches; and (d) assumes the obligations of the Design Consultant within the statutory time limits.

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

10.4 Upon termination of this Agreement by the Owner under Article 10.2 or 10.3 the Owner shall be entitled to furnish or have furnished the Services to be performed hereunder by the Design Consultant by whatever method the Owner may deem expedient. Also, in such cases, the Design Consultant shall not be entitled to receive any further payment until completion of the Project; and the total compensation to the Design Consultant under this Agreement shall be the amount which is equitable under the circumstances. If the Owner and the Design Consultant are unable to agree on the amount to be paid under the foregoing sentence, the Owner shall fix an amount, if any, which it deems appropriate in consideration of all of the circumstances surrounding such termination, and shall make payment accordingly.

10.5 The Owner may, upon thirty (30) days written notice to the Design Consultant, terminate this Agreement, in whole or in part, at any time for the convenience of the Owner, without prejudice to any right or remedy otherwise available to the Owner. Upon receipt of such notice, the Design Consultant shall immediately discontinue all Services affected unless such notice directs otherwise. In the event of a termination for convenience of the Owner, the Design Consultant's sole and exclusive right and remedy is to be paid for all work performed and to receive equitable adjustment for all work performed through the date of termination.

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The Design Consultant shall not be entitled to be paid any amount as profit for unperformed Services or consideration for the termination of convenience by the Owner.

10.6 Should the Owner terminate this agreement as provided for under this Article, the Owner will acquire such drawings, including the ownership and use of all drawings, specifications, documents and materials relating to the Project prepared by or in the possession of the Design Consultant. The Design Consultant will turn over to the Owner in a timely manner and in good unaltered condition all original drawings, specifications, documents, materials, and computer files.

10.7 The payment of any sums by the Owner under this Article 10 shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Design Consultant.

ARTICLE 11

SUCCESSORS/ASSIGNMENT

11.1 This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns, trustees and personal representatives of the Owner, as well as the permitted assigns and trustees of the Design Consultant.

11.2 The Design Consultant shall not assign, sublet or transfer its interest in this Agreement without the written consent of the Owner, except that the Design Consultant may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval of the Owner.

11.3 If the Owner requests the Design Consultant to execute consents reasonably required to facilitate assignment to Brunswick County or Brunswick County's lender, the Design Consultant shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Design Consultant for review at least 7 days prior to execution. The Design Consultant shall not be required to execute consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

ARTICLE 12

OWNERSHIP OF DOCUMENTS/CONFIDENTIAL INFORMATION

12.1 The Project drawings and specifications are instruments of service that shall remain the joint property of the Design Consultant and the Owner whether the Project for which they are made is built or not. The Owner shall retain reproducible copies of the Project drawings and specifications for information and reference and use in connection with the Owner's use and occupancy of the Project and for the Owner's future requirements of the Project facilities including without limitation any alteration or expansion in any manner the Owner deems appropriate without additional compensation to the Design Consultant. The Owner shall indemnify and hold harmless the Design Consultant in connection with the Owner's use of the Project drawings and specifications on a new project without the Design Consultant's consent.

12.2 In order for the Design Consultant to fulfill this Agreement effectively, it may be necessary or desirable for the Owner to disclose to the Design Consultant confidential and proprietary information and trade secrets pertaining to the Owner's past, present and future activities. The Design Consultant hereby agrees to treat any and all information gained by it as a result of the Services performed hereunder as strictly confidential. The Design Consultant further agrees that it will not disclose during the period of this Agreement or thereafter to anyone outside of the authorized Project team (1) Owner's trade secrets or (2) Owner's confidential and proprietary information.

ARTICLE 13
ADDITIONAL PROVISIONS

13.1 The Design Consultant acknowledges receipt of all Board of Education policies through the Board's website

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(http://www.bcswan.net) and agrees to comply with their provisions. The Design Consultant and its Sub-Consultants shall also comply with the Owner's site and school building access procedures when working on the Owner's property.

13.2 Applicable Laws.

13.2.1 This Agreement and the relationship of the parties 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 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.

13.2.2 Design Consultant and its Sub-Consultants shall comply with all applicable laws and regulations in providing the Services. Design Consultant shall not employ any individuals to provide services to the Owner who are not authorized by federal law to work in the United States. The Design Consultant 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 for employers that employ twenty-five (25) or more employees. The Design Consultant specifically represents and warrants that it is and will remain in compliance with these laws at all times while providing the Services. Design Consultant shall also ensure that its Sub-Consultants will remain in compliance with these laws at all times while providing subcontracted services in connection with the Agreement. Design Consultant 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.

13.2.3 Lunsford Act/Criminal Background Checks. The Design Consultant 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 Design Consultant shall conduct or arrange to have conducted at its own expense sexual offender registry checks on each of its employees, agents, ownership personnel, or Sub-Consultants("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 office is not located at a school; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites where no minors are present. 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 Design Consultant'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 Design Consultant shall provide certification on the Owner's Sexual Offender Registry Check Certification Form (attached as Exhibit F) 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 Design Consultant shall conduct a current initial check of the registries (a check done more than thirty (30) days prior to the date of this Agreement shall not satisfy this contractual obligation). In addition, the Design Consultant 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 Design Consultant further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. The Design Consultant 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 Design Consultant 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 Design Consultant 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 Design Consultant 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

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may deliver goods or perform services under this Agreement. The Design Consultant 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 Design Consultant 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.

13.2.4 Design Consultant represents that as of the date of this Agreement, neither Design Consultant nor its principals are included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Design Consultant also represents that as of the date of this Agreement, neither Design Consultant nor its principals are 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. The Design Consultant further represents that as of the date of this Agreement, neither the Design Consultant 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. The Design Consultant must notify Owner within thirty (30) days if debarred by any governmental entity during this Agreement.

13.2.5 Anti-Nepotism. Design Consultant 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 Owner's Board of Education or of any principal or central office staff administrator employed by the Owner. 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 Design Consultant 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, Design Consultant shall immediately disclose the family relationship in writing to the Superintendent. Unless formally waived by the Owner, the existence of a family relationship covered by this Agreement is grounds for immediate termination by Owner without further financial liability to Design Consultant.

13.3 Non-Discrimination. Design Consultant 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. Design Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Design Consultant 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 Owner, and Design Consultant may be declared ineligible for further agreements with Owner.

13.4 Governmental Immunity. Owner, 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.

13.5 The Design Consultant and its Sub-Consultants shall comply with these and all applicable laws and regulations in providing the Services.

13.6 The Owner and Design Consultant agree to endeavor to provide written notification and to negotiate in good faith prior to litigation concerning claims, disputes, and other matters in question arising out of or relating to this Agreement or the breach thereof. The Owner and Design Consultant also agree that the Owner's Policy 9120, adopted in compliance with G.S. 143-128(f1), shall apply to disputes arising between the parties on the Project.

13.7 Nothing herein contained shall be construed to require the parties to provide written notifications or engage in negotiations prior to the institution of litigation nor to submit for alternative dispute resolution by a third party or parties any such claim, dispute, or other matter in question between the parties. Notwithstanding the foregoing, the parties expressly 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.

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13.8 Whenever renderings, photographs of renderings, photographs of models, photographs, drawings, announcements, or other illustration or information of the Project are released for public information, advertisement or publicity, appropriate and proper credit for architectural and other services shall be given to the Design Consultant and Owner respectively.

13.9 The payment of any sums by the Owner shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Design Consultant.

13.10 This Agreement and its Exhibits and Attachments represent the entire and integrated agreement between the Owner and the Design Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Design Consultant.

13.11 If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13.12 Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.

13.13 The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.

13.14 For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.

13.15 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, which shall be sufficient evidence by any one thereof. 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 § 66-58.1 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.

13.16 The language used in this Agreement will be deemed to be the language chosen by each of the parties to express their mutual intent. In the event of an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

13.17 The Design Consultant may apply for and obtain a 179d Tax Deduction for the design of the Project. The Design Consultant shall only apply for the tax deduction if the Design Consultant provides the Owner with a separate written list of all building systems, equipment, and design features included in the Project that support the application for the tax deduction. An updated list will be provided to the Owner with each design phase submission. Each list submitted shall include all building systems, equipment, and design features, including a then current estimate of the additional cost each item is anticipated to add to the cost of the Project at the time the Project is bid when compared to items traditionally used on K-12 public school projects in North Carolina. The Design Consultant shall provide the Owner with any anticipated cost savings over the lift of the Project for any item supporting the 179d Tax Deduction. The Owner's consent to the Design Consultant's efforts to apply for and obtain a 179d Tax Deduction is conditioned upon the Design Consultant's strict compliance with this section.

ARTICLE 14

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EXHIBITS

14.1 The following exhibits are incorporated into this Agreement:

14.1.1 Exhibit A: Construction Contract Award Price

14.1.2 Exhibit B: Program of Requirements

14.1.3 Exhibit C: Management Plan

14.1.4 Exhibit D: Consultant Agreement

14.1.5 Exhibit E: Design Consultant's Fee Schedule

14.1.6 Exhibit F: Owner's Sexual Offender Registry Check Certification Form

14.1.7 Exhibit G: Owner and Construction Manager at Risk Agreement

In witness whereof, each individual executing this agreement acknowledges that he/she/it is authorized to execute this agreement and further acknowledges the execution of this agreement the day and year first written above.

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IN WITNESS WHEREOF the Owner and the Design Consultant have executed this contract, the day and year first above written.

(DESIGN CONSULTANT)

_____
President/Vice President

Attest:

_____
Corporate Secretary

[Corporate Seal]

COUNTY OF BRUNSWICK

_____
Chairman, Board of Commissioners

Attest:

_____
Clerk to the Board

[SEAL]

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

_____
Freyja Cahill, Finance Officer
Brunswick County Board of Education
4.9020.697.526.326.875.00

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

_____
Aaron C. Smith, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

_____
Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney
Brunswick County, North Carolina

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APPENDIX B-1
MANAGEMENT PLAN (PRELIMINARY)

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MANAGEMENT Plan - MILESTONES TO SUPPORT AUGUST 2024 SUBSTANTIAL COMPLETION

Construction Manager at Risk Notice to Proceed..... September 8, 2022

Architect/Engineer Notice to Proceed..... September 8, 2022

Design/Permitting/Construction Drawings.....March 31, 2023

GMP Acceptance/Construction Notice to Proceed .....June 1, 2023

Construction Substantial Completion.....August 1, 2024

Project Completion ..... September 1, 2024

Construction Manager to Generate Detailed Comprehensive Management/Construction Schedules with Interim Dates for use During Design and Construction

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APPENDIX B-2
CONSTRUCTION SCHEDULE AND REPORTING

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CONSTRUCTION SCHEDULES AND REPORTS

1.01 GENERAL REQUIREMENTS

A. The work under this contract shall be planned, scheduled, executed and reported using the Critical Path Method (hereinafter referred to as: CPM), pursuant to the provisions of the Standard Form of Agreement Between Owner and Construction Manager (hereinafter referred to as: Agreement).

B. The primary objectives of the project scheduling program are to insure the adequate planning, scheduling and execution of the construction activities so they may be prosecuted in an orderly and expeditious manner, within the Contract Time and the milestones stipulated by the Contract, to provide optimum coordination between contractors, to establish the basis for measuring and monitoring individual contractor progress and overall project progress, to detect problems for the purpose of taking corrective action to maintain the scheduled program and to provide a mechanism or tool for determining and monitoring such corrective actions.

C. Any schedules prepared for this project by the Owner are made available by the Owner solely as an aid to the Construction Manager (CM). The Owner's plan may not optimize, and it is not intended to optimize, the CM's costs or resources. It is intended that these schedules will reflect the milestones and completion dates established by the Owner. However, the services provided by the Owner, the existence of schedules, networks, or any other charts or services prepared or performed by the Owner or Design Consultant shall in no way relieve the CM of the responsibility of complying with all of the requirements of the Agreement, including but not limited to the responsibility of completing the Work within the Contract Time and the responsibility of planning, scheduling and coordinating the work. The CM is required to comply with all control procedures specified herein and with any reasonable changes that may be necessary, in the opinion of the Owner and Design Consultant, during the contract duration.

D. Any and all milestone or specific dates listed in these specifications, or elsewhere in the Agreement, represent only the major items of construction/erection work or interface dates. The milestone completion dates indicated are considered essential to the satisfactory performance of this Agreement and to the coordination of all work on the project.

1. The milestone dates listed are not intended to be a complete listing of all work under this Agreement or of all interfaces between project contractors.

2. The milestone dates listed represent the latest allowable completion dates. Earlier completion dates may be established by the CM as agreed by the Design Consultant and the Owner.

E. If the CM should desire or intend to complete the work earlier than any required Milestone or Completion date, the Owner and Design Consultant shall not be liable to the CM for any costs or other damages should the Construction manager be unable to complete the Work before such Milestone or Completion Dates. The duties, obligations and warranties of the Owner to the CM shall be consistent with and applicable only to the completion of the Work on the Milestone and completion dates required in the Agreement, unless the Owner and CM otherwise agree in writing.

1.02 PRE-BID

In conjunction with the preparation of Construction Documents, the CM shall prepare a detailed milestone schedule which displays a construction plan to complete the Project in compliance with specific dates listed in the Agreement.

1.03 POST AWARD ACTIVITIES

A. The CM, Owner and Design Consultant shall perform the following after receipt of the Notice to Proceed (NTP): (The agreement to and approval of a Guaranteed Maximum Price (GMP) for a portion, or all, of the Project shall constitute an NTP for that portion of the Project.)

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Immediately following the receipt of the Notice to Proceed, the CM shall commence the preparation of its Detailed Project Construction Schedule. The CM shall assemble, with the assistance and input from the Contractors, Subcontractors, and Suppliers, information regarding the project that includes but is not limited to:

1. A Detailed Project Construction Schedule that represents the CM's best judgment in how it shall prosecute and complete the work in compliance with the Milestone Dates and any Specific Dates stipulated in the Agreement.
2. The identity and duration of all activities to be included in this construction plan. Activities shall meet the following criteria:
    a. Activity descriptions shall be clear and concise. The beginning and end of each activity shall be readily verifiable.
    b. Responsibility for each activity shall be identified with a single performing organization. (i.e., Prime contractor)
    c. An activity must be no more than 14 calendar days in duration unless approved in advance by the Owner and Design Consultant.
    d. Include relevant predecessors and successors for each activity as well as the type of relationships between, and any lag time required. All activities except the first activity (i.e., NTP) and last activity (i.e., Final Completion) shall have both predecessors and successors.
    e. Listing of Project submittals, approvals, and material/equipment site deliveries dates.
3. The identity of planned and reasonably anticipated inclement weather as identified in Article 4 of the Agreement.
4. The identity of long lead items and delivery dates of all major pieces of equipment or materials.

B. The CM shall, within fourteen (14) calendar days following NTP, submit to the Owner and Design Consultant a Computerized 90-Day, Detailed Project Construction Schedule in precedence format for its construction/erection work scope utilizing Primavera's P3®, or Primavera 5.0 scheduling software (compatible software is not acceptable). Provide two (2) hard copies of the 90-Day Detailed Project Construction Schedule and one (1) electronic file copy utilizing Primavera's Scheduling Software. This schedule shall provide complete details, as outlined in this section and related sections, of all activities included for the first 90 contractual days of work (from NTP), as well as, the proposed summary of work activities for the remaining contractual scope and divisions of work (utilizing summary activities) for the project beyond the first 90 days through final completion. The work beyond the first 90 days shall be broken down by subcontractor and division of work and shall show logic, sequencing, and responsibility. This initial schedule shall incorporate the work of all contractors, subcontractors, vendors, and outside agencies and contractors associated with the entire scope of work for this project.

   The Detailed Project Construction Schedule shall show:

   1. The order and interdependencies of the Contractors' activities and the major points of interface or interrelation with the activities of others, including specific dates for completion.
   2. Conformance with and identification of the specified mandatory milestone dates specified in the Agreement.
   3. The description and quantity of work by activity.
   4. The time required for engineering, preparation and approval of shop drawings, manufacturing, and delivery of Contractor-furnished permanent materials.

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5. The time required for procurement, delivery, and erection of the Contractor's permanent materials.
6. Delivery of Owner-furnished material and equipment.
7. Shop fabrication and delivery.
8. Clearly defined Critical Path (or Paths).
9. Erection and installation.
10. Testing of equipment and materials.
11. Technology Data Systems Installation and Testing
12. Activity calendars, incorporating potential weather delays, or multi- work periods.

C. The Detailed Project Construction Schedule shall indicate an early completion date for the project that is no later than the project's required completion date. All activity durations shall be given in calendar days. The Schedule shall also indicate each of the following:

1. Interfaces with the work of outside contractors, e.g., utilities, power, and with any separate contractor.
2. Estimated duration time for each activity.
3. Early start date for each activity.
4. Late start date for each activity.
5. Early finish date for each activity.
6. Late finish date for each activity.
7. Float available for each path of activities containing float.
8. Identification of all critical path activities in the schedule analysis.
9. The critical path for the project, with said path of activities being clearly and easily recognizable on the time-scaled network diagram. The relationship between all non-critical activities and activities on the critical path shall be clearly shown on the network diagram.
10. The responsibility code for the Contractor or Subcontractor performing each activity or portion thereof.
11. The area of work (i.e. Gymnasium, Media Center, etc.) and the floor (i.e. 1st floor, 2nd floor, etc.).

D. The Owner and Design Consultant will review the CM's Detailed Project Construction Schedule for compatibility with the Project Milestones, the Completion Schedule, and the requirements of the Agreement. If requested, a meeting will be held between the Owner, Design Consultant and CM to resolve any conflicts in the CM's schedule. The CM shall revise its schedule as required by the Owner and Design Consultant to ensure completion of the Project in accordance with the Project's Milestone and Completion Dates and shall submit its revised schedule to the Owner and Design Consultant within seven (7) calendar days of this meeting.

E. If the CM thereafter desires to make changes in its method of operating and scheduling, he shall follow the procedures set out in Paragraph 2.03, Network Revisions, of this Section.

F. Approval by the Owner and Design Consultant of the CM's Detailed Project Construction Schedule is advisory only and shall not relieve the Contractors of the responsibility for accomplishing the Work within each and every Contract-required Milestone and Completion date. Omissions and errors in the approved Project Construction Schedule shall not excuse performance which is not in compliance with the contract. Approval by the Owner and Design Consultant in no way makes the Owner or the Design Consultant an insurer of the Detailed

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Project Construction Schedule's success or liable for time or cost overruns flowing from its shortcomings. The Owner hereby disclaims any obligation or liability by reason of Owner or Design Consultant approval of or acquiescence to the Detailed Project Construction Schedule

G. The CM shall compile, organize, and present a fully integrated Computerized Detailed Project Construction Schedule to the Owner and Design Consultant within sixty (60) days of Notice to Proceed. This schedule shall include the 90-Day Construction Schedule as well as the detailed activities for that portion of the work beyond the first 90 days of the construction through final completion to create the complete project schedule. The details of this schedule shall follow the same requirements as those outlined above in this section for the 90-Day Schedule. The CM shall provide two (2) hard copies of the Detailed Project Construction Schedule, and one electronic file copy utilizing Primavera's P3 Scheduling Software (compatible formats are not acceptable), the Schedule of Values and Computer Reports to the Owner and Design Consultant for final review and approval. Approval shall be signified by the Design Consultant, CM, and Owner jointly signing the schedule agreement (Attachment at the end of this section). The CM shall use the approved Detailed Project Construction Schedule in planning, organizing, directing, coordinating, performing and executing the work (including all activities of Contractors, Subcontractors, equipment deliveries, vendors, and suppliers) and shall be the basis for evaluating the progress of the Work, subject to such revisions made in such schedule as provided for herein, in the Agreement, or in the Construction Documents.

H. The CM will develop and maintain the overall Detailed Project Construction Schedule. This schedule will be in precedence format and will be computer generated and updated and will be the controlling schedule document utilized for managing overall project construction.

1.04 COMPUTER COST AND SCHEDULE REPORTS

A. Every month the CM will generate all monthly progress documents from the Detailed Project Construction Schedule, based on the Progress Reports received from the Contractors. These Reports will reflect the progress of the project.

B. Report Content:

1. The initial and subsequent computer-generated Schedule Reports shall include the following minimum information for each activity:

    a. activity number,

    b. activity description,

    c. original and remaining duration in days,

    d. early and late start dates,

    e. early and late finish dates,

    f. actual start dates for activities which have commenced,

    g. actual finish dates for activities which have completed,

    h. percentage of activity completed as of each report,

    i. total float for each activity, and

    j. responsibility for activity.

2. The CM will produce four (4) schedule reports each month. The reports are:

    a. All activities on the Project Construction Schedule sorted by early start and then by total float.

    b. All activities sorted by Contractor, and further sorted by activity number.

    c. All activities sorted by total float.

    d. All activities sorted by late start.

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2.00 CONSTRUCTION MANAGER'S ORGANIZATION

The CM shall maintain, as part of its organization, a staff/or consultant of sufficient knowledge in the use and application of CPM utilizing and whose responsibility will be to prepare input information for the Detailed Project Construction Schedule, monitor progress, provide input for updating and revise logic diagrams when necessary.

2.01 RECOVERY SCHEDULE

Pursuant to paragraph 3.5.2.5 of the Agreement, should any conditions exist such that any of the mandatory specific or milestone dates or completion dates on the CM's approved Detailed Project Construction Schedule fall behind by 14 calendar days or more, the CM shall be required to, at no extra cost to the Owner, prepare and submit to the Owner and Design Consultant, within 14 calendar days of notification, a supplementary Recovery Schedule, in a form and detail appropriate to the need, to explain and display how they intend to reschedule those activities to regain compliance with the Detailed Project Construction Schedule during the immediate subsequent pay period.

2.03 NETWORK REVISIONS

A. Should the CM, after approval of the Detailed Project Construction Schedule, desire to change its plan of construction, the CM shall submit its requested revisions to the Owner and Design Consultant along with a written statement of the revisions including a description of the logic for rescheduling the work, methods of maintaining adherence to intermediate milestones and Specific Dates and the reasons for the revisions. The CM shall revise its schedule to include the effect of Changes, acts of God, or other conditions or events which have affected the network. If the requested changes are acceptable to the Design Consultant, and the Owner, and they do not adversely impact any Milestone or Completion Dates, they will be incorporated into a revised Approved Detailed Project Construction Schedule, to be compiled and produced by the CM in the next reporting period. The resultant cost, if any, to the Owner and the Design Consultant shall be paid for by the CM.

B. When the Owner orders changes by Change Order which have the potential to impact the Construction milestones or Specific Dates stipulated in the Agreement, a Revised Network will be prepared by the CM and provided to the Owner and Design Consultant for concurrence or revision. After the revised network has been mutually agreed upon, it will be incorporated into a revised Detailed Project Construction Schedule, to be compiled and produced by the CM. Change Order logic will affect only those activities and performance dates directly concerned.

C. Any change to the approved Detailed Project Construction Schedule must be approved in writing by the Owner, Design Consultant and CM.

D. Neither the updating or revision of the approved Detailed Project Construction Schedule nor the submission, updating, change or revision of any report or schedule submitted to the Owner and/or Design Consultant by the CM under this Section nor the Owner's review or non-objection of any such report or schedule shall have the effect of amending or modifying, in any way, the Contract Time, any Contract Completion Date, or Contract Milestone Dates or of modifying or limiting in any way the CM's obligations under this Contract.

2.04 FLOAT TIME

A. Float or slack time is defined as the amount of time between the earliest start date and the latest start date or between the earliest finish date and the latest finish date of a chain of activities on the Detailed Construction Network. Float or slack time is not for the exclusive use or benefit of either the CM or the Owner. The CM's work shall proceed according to early start dates, and the Owner and Design Consultant shall have the right to reserve and apportion float time according to the needs of the project. The CM acknowledges and agrees that actual delays, affecting paths of activities containing float time, will not have any affect upon contract completion times, providing that the actual delay does not exceed the float time associated with those activities.

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B. Extensions of time for performance as described in the Agreement will be granted only to the extent that the time adjustment for the activity or activities affected by any condition or event which entitles the CM to a time extension exceeds the total float or slack along the path of activities affected at the time of the owner's authorization to proceed with the Change Order or the commencement of any delay or condition for which an adjustment is warranted under the Agreement.

2.05 REQUESTED TIME ADJUSTMENT SCHEDULE:

A. The updated approved Detailed Project Construction Schedule submitted by the CM shall not show a completion date later than the Agreement, subject to any time extensions approved by the Owner. If the CM believes it is entitled to an extension of the Contract Time under the Agreement, the CM shall submit to the Owner and Design Consultant, a separate schedule analysis (entitled "Requested Time Adjustment Schedule") indicating suggested adjustments in the Contract Time which should, in the opinion of the CM, be made in accordance with the Agreement by time extension, due to changes, delays or conditions occurring during the past month or previously, or which are expected or contemplated by the CM (whether such conditions are excusable under the Agreement or are alleged to be due to fault of the CM or Owner). This separate schedule, if submitted, shall be time-scaled utilizing a computer generated and computer-drawn network analysis schedule, unless otherwise approved by the Owner and Design Consultant, and shall be accompanied or preceded by a formal time extension request as required by the Agreement and a detailed narrative justifying the time extension requested. All time extension requests must be submitted, in writing, to the owner within ten (10) days of the event causing the potential delay or extension in order to be accepted for review and consideration by the owner.

B. Neither the Owner nor the Design Consultant shall have any obligation to consider any time extension request unless the requirements of the Agreement are complied with. The Owner shall not be responsible or liable to the CM for any constructive acceleration due to failure of the Owner to grant time extensions under the Agreement should the CM fail to comply with the submission requirements and the justification requirements of this Agreement for time extension requests. The CM's failure to perform in accordance with the approved Detailed Project Construction Schedule shall not be excused, nor be chargeable to the Owner, because the CM has submitted time extension requests or a "Requested Time Adjustment Schedule."

2.06 COORDINATION

A. The CM shall coordinate its work and that of the Contractors and shall cooperate fully with the Owner and Design Consultant in maintaining orderly progress toward completion of the work as scheduled. The CM's decisions regarding priority between the work of the contractors at the site shall be final. If the CM's critical path work is delayed by the Owner or Design Consultant, the CM shall submit any required time extension requests to the Owner in accordance with the Agreement.

B. The milestone dates referred to in the Agreement for delivery of Owner-furnished equipment and materials and interface activities of other Contractors on the site are based on dates set forth in separate contracts with the Owner.

C. Failure of Owner-furnished equipment and materials to arrive as scheduled, or failure of other construction contractors to meet their schedule, shall not be justification for an extension of time, except where such failure causes, in the opinion of the Owner and Design Consultant, a delay in the CM's critical path work, in which case the provisions of the Agreement regarding extensions of time and extra work shall apply.

D. The CM shall keep itself, and its contractors and subcontractors, advised at all times during the course of the Work regarding delivery status of Owner-furnished equipment and materials and of the progress of construction work being performed under separate contracts.

E. The Owner and Design Consultant will, upon written request by the CM, furnish delivery information which may be available to the Owner or Design Consultant.

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2.07 SCHEDULE OF OFF-SITE ACTIVITIES

A. The CM shall include in its Detailed Project Construction Schedule all procurement related activities which lead to the delivery of materials to the site in a timely manner. Upon written approval by the Owner, these activities may be submitted as a separate Off-Site Activities Schedule, properly correlated to the Detailed Construction Project Schedule. The schedule of off-site activities shall include, but is not limited to, the following:

1. Dates for submittals, ordering, manufacturing or fabricating, and delivery of equipment and materials. Long lead items requiring more than one month between ordering and delivery to site shall be clearly noted;
2. All significant activities to be performed by or for the CM during the fabrication and erection/installation in a plant or on a job site, including materials/equipment purchasing, delivery; and
3. Contractor's drawings and submittals to be prepared and submitted to the Design Consultant.

B. The CM shall be solely responsible for expediting the delivery of all material to be furnished by the CM so that the construction progress shall be maintained according to the approved Detailed Project Construction Schedule for the Work as approved by the Owner and Design Consultant.

C. The Owner and Design Consultant shall be advised in writing by the CM whenever it is anticipated by the CM that the delivery date of any material and/or equipment will be later than the delivery date shown on the schedule, subject to schedule updates.

D. Submittals, equipment orders and similar items are to be treated as schedule activities.

E. The CM, in developing its Off-Site and Procurement Schedules, will ensure that off-site activities do not control the critical path of on-site activities.

2.08 CONSTRUCTION MANAGER COVENANTS AND GUARANTEES

A. The CM covenants and guarantees that it will not:

1. Misrepresent to the Owner or Design Consultant its planning, scheduling, or execution of the Work;
2. Utilize schedules materially different from those made available by the CM to the Owner or Design Consultant or any Subcontractor or separate Contractors for the direction, execution and coordination of the Work, or which are not feasible or realistic.
3. Prepare schedules, updates, revisions or reports for the work which do not accurately reflect the actual intent or reasonable and actual expectations of the CM and its Contractors and Subcontractors as to:
    a. The sequences of activities,
    b. The duration of activities,
    c. The responsibility of activities,
    d. Resources availability,
    e. Labor availability or efficiency,
    f. Foreseeable weather conditions,
    g. The percentage complete of any activity,
    h. Completion of any item of work or activity,
    i. Project milestone completion,
    j. Delays, slippage's, or problems encountered or expected,

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k. Subcontractor requests for time extensions or delay claims of subcontractors,

l. Float time

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BCS Schedule Agreement

Date: _____

Re: North Brunswick High School Addition Construction Schedules and Reports
CPM Approval

We the undersigned, acknowledge receipt and acceptance of the Project Schedule dated _____,2022, as presented in accordance with Construction Schedules and Reports required pursuant to the Agreement Between Owner and Construction Manager for this Project:

Construction Manager _____ _____
Barnhill Contracting Company *Authorized Signature*

_____
(Printed Authorized Signature)

Design Consultant _____ _____
Becker Morgan Group *Authorized Signature*

_____
(Printed Authorized Signature)

Brunswick County Board
of Education

_____
Authorized Signature

_____
(Printed Authorized Signature

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APPENDIX C
SALES TAX REPORTING

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

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

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

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

Sworn to and subscribed before me,

This the ____ day of _____, 20____

Signed: _____

Print Name: _____

___ _____ Seal
Notary Public

Title: _____

My Commission Expires: _____

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APPENDIX D-1
LUMP SUM CHANGE ORDER

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CMAR CHANGE ORDER #__

Project:

Contract:

Contractor:

Description of change:

Materials	(Attach list with Qty, Item, Unit $, Unit mh, Total mh, OT mh, Total $)			**SUBTOTALS**
1	Total Direct Cost of Materials		**$0.00**	
2	Overhead & Profit on Item 1. (15% maximum, includes small tools & consumables)		**$0.00**	
3	Sales Tax		**$0.00**	
4	Shipping & Transportation		**$0.00**	**$0.00**
Labor				
5	Total Manhours:	**0** MH @ **$0.00** /hr.	**$0.00**	
6	Overhead & Profit on Item 5. (15% maximum on straight labor cost, not premium portion) (O & P includes supervisor's time)		**$0.00**	
7	Payroll Taxes & Insurance	**0.0%**	**$0.00**	**$0.00**
Equipment Rental	(Include quotes)			
8	Equipment Rental		**$0.00**	
9	Overhead & Profit on Item 8. (6% maximum)		**$0.00**	**$0.00**
Subcontractors	(Include quotes with material & equipment backup)			
10	Subcontractors - Cost of Work		**$0.00**	
11	CMAR Fee on Item 10. 4%		**$0**	**$0**
			Subtotal of Proposal	**$0**
12	Bonds (% of subtotal of proposal)	**0.0%**		**$0.00**
			TOTAL OF CHANGE PROPOSAL	**$0**

Time Extension Requests: 0 day(s) Schedule Activity # Affected: All

STARTING GMP	**$0**
CHANGES TO GMP PRIOR TO THIS CHANGE PROPOSAL	**$0**
THIS CHANGE PROPOSAL	**$0**
NEW GMP	**$0**

The Construction Manager agrees to perform the work outlined in this change proposal for the amount specified above and in accordance with all terms and conditons of the CMAR Document CMAR-1, Standard Form of Agreement Between Owner and Construction Manager dated the __ Day of _____, 20__ if the work is authorized by the Owner.

OWNER:

COUNTY OF BRUNSWICK, NORTH CAROLINA

_____

Chair - BOARD OF COMMISSIONERS

Attest:

_____

CLERK TO BOARD OF COMMISSIONERS

[Corporate Seal]

CONSTRUCTION MANAGER:

_____

Attest:

_____

Corporate Secretary

[Corporate Seal]

PRE-AUDIT CERTIFICATION: THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT.

_____ _____

FINANCE OFFICER DATE

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APPENDIX D-2
T&M CHANGE ORDER FORM

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CHANGE PROPOSAL FORM
Time and Material / Unit Price Estimate

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

Description of change:

	SUBTOTALS
Materials & Labor Estimated cost of labor & materials including shipping, overtime, payroll taxes and insurance, and overhead and profit. Maintain accurate records for billing purposes.	**$0.00**
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.	**$0.00**
Equipment Rental Estimated cost of equipment rental including shipping, taxes and overhead and profit. Maintain accurate records for billing purposes.	**$0.00**
Subcontractors Estimated cost of subcontracts including all subcontractor expenses. Maintain accurate records for billing purposes.	**$0.00**
Subtotal of Proposal	**$0.00**
Bonds (% of subtotal of proposal) **0.0%**	**$0.00**
*** TOTAL NOT TO EXCEED CHANGE PROPOSAL ESTIMATE**	**$0.00**

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

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

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

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

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

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

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APPENDIX E
DIVISION OF PROJECT COST ELEMENTS

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APPENDIX E
DIVISION OF PROJECT COST ELEMENTS

I. Construction Management Services					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Project Superintendent(s)		X			
Assistant Superintendent(s)		X			
Field Engineer		X			
Sr. Project Manager		X			
Project Manager		X			
BIM Coordinator		X			
MEP Superintendent		X			
Safety Manager		X			
Staff Vehicles		X			
Fuel/Repairs/Maintenance		X			
Corporate Executives	X				
Principal in Charge	X				
Project Executive	X				
Legal Services	X				
Accounting	X				
Scheduling		X			
Purchasing		X			
Value Engineering	X				
Estimating	X				
E.E.O. Officer	X				
Mechanical Coordinator		X			
Electrical Coordinator		X			
Scheduling Services		X			
Off-Site Staff Travel Costs	X				
Off-Site Staff Transportation	X				
Project Budget Estimating	X				

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APPENDIX E
DIVISION OF PROJECT COST ELEMENTS

II. Safety, Security and Services					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Safety Equipment		X			
First Aid Supplies		X			
Handrails and Toe Boards					X
Opening Protection					X
Fire Extinguishers/Fire Watch		X			X
Security Guard/Watchman Svcs.					X
Weekly General Cleanup					X
Weekly Trade Specific Cleanup					X
Final Cleanup					X
Dumpster Rental/Pull/Dump Fees		X			
Temporary Fencing					X
Covered Walkways					X
Barricades					X
Safety Nets					X
Debris Hauling/Removal					X
Traffic Control					X
Roadway Maintenance					X
Dust Controls					X
Communication Equipment		X			
Trash Chute & Hoppers					X
Snow and Ice Removal					X
Site Dewatering					X

III. Facilities, Equipment and Services					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Office Trailer Rental		X			
Tool/Utility Trailer Rental		X			
Water/Ice		X			
Temporary Lighting/Wiring					X
Temporary Utilities – Trailers		X			
Temporary Utilities - Construction		X			
Permanent Power Usage				X	
Temporary Toilets		X			
Temporary Stairs					X
Temporary Enclosures/Partitions					X
Project Signs/Bulletin Boards		X			
Telephone/Communication Expenses		X			
Temporary Roads					X
Air Compressors					X
Dewatering Equipment					X
Generators					X
Fuel/Repairs/Maintenance		X			

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APPENDIX E
DIVISION OF PROJECT COST ELEMENTS

IV. Vertical Hoisting					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Hoist & Tower Rental					X
Small Material Hoist Rental					X
Hoist Landings and Fronts					X
Hoist Operators					X
Hoist Safety Inspections					X
Hoist Material Skips					X
Hoist Material Hoppers					X
Erect & Dismantle Hoists					X
Fuel/Repairs/Maintenance					X
Hoist Communication					X
Crane Rental					X
Crane Operators					X
Crane Safety Inspections					X
Erect & Dismantle Crane					X
Fuel/Repairs/Maintenance					X
Crane Raising/Jumping Cost					X
Lull Lift					X
Temporary Elevator Rental					X
Elevator Operation Cost					X
Elevator Repairs & Maintenance					X
Hoist Safety Inspections					X
Forklift Rental					X
Forklift Operators					X
Forklift Safety Inspections		X			X
Fuel/Repairs/Maintenance		X			X
Elevator Service Costs					X

V. Reproduction and Printing					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Accounting Forms	X				
Field Reporting Forms	X				
Contract Agreements	X				
Schedule Report Forms	X				
Estimating Forms	X				
Cost Reporting Forms	X				
Presentation Charts and Graphics	X				
Value Analysis Studies	X				
Data Processing (In-House)	X				
Reference Materials	X				
Duplication Expense (Misc.)		X			
Shop Drawing Printing		X			
Maintenance Manuals		X			
Operation Manuals		X			
Special Forms (CM's Own Special Items)	X				
Postage and Delivery Expense		X			

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APPENDIX E
DIVISION OF PROJECT COST ELEMENTS

VI. Quality Control					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
AE Inspectors' Office Space			X		
QA/QC		X			
Special Inspection Consultants [a]				X	
Special Testing Consultants [a]				X	
Concrete Testing [a]				X	
Masonry Testing [a]				X	
Compaction Testing [a]				X	
Welding Inspections [a]				X	
Soils Investigations [a]				X	
Special Testing Services [a]				X	
Field Office Supplies/Materials		X			
Project Photographs/Video		X			
Air & Water Balancing CM's QC					X
Air & Water Balancing - Final					X
Commissioning [a]				X	X
Operator On-site Training		X			
Prepare Operation Manuals		X			
Prepare Maintenance Manuals		X			

a. The Owner is responsible for initial testing and inspections only. Costs for retesting / re-inspections due to poor quality control are the responsibility of the CMR.

VII. Permits and Special Fees					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Storage Yard Rental					X
Permits (Allowance)		X			
Staking & Layout Fees/Costs – Coordinate with General Prov.					X
A/E Design/Admin Fee/Charge				X	
Water Connection/Tap/Impact Fee				X	
Sanitary Connection/Tap/Impact Fee				X	
Storm Connection Fee				X	
Gas Service/Relocation Charge				X	
Special Tap Fees				X	
Contractors' Licenses	X				
Zoning Fees/Consultants				X	
Use Fees				X	
A.G.C. Fees	X				

VIII. Insurance and Bonds					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Builder's Risk Insurance [a]		X			
General Liability [a]		X			
Completed Operations Liability [a]		X			
Excess Liability Coverage [a]		X			
Workman's Compensation [a b]		X			
Payment Bond [a]				X	
Performance Bond [a]				X	

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APPENDIX E
DIVISION OF PROJECT COST ELEMENTS

Subcontractor Default Insurance					X
Off-Site Insurance	X				
Off-Site Taxes	X				

a. All owner cost items in this section shall be direct costs from the CMR to the Owner. No mark-ups permitted. Not included in GC Total
b. Workman's compensation for on-site staff only.

IX. Other Costs					
DESCRIPTION	BASIC FEE	GEN CONDS.	A/E COST	OWNER COST	COST OF WORK
Project Taxes					X
Construction Equipment					X
Construction Labor Costs					X
Construction Materials					X
Preliminary Soils Inspections				X	
Title/Development Cost				X	
Land Costs				X	
Wetland Delineation Cost				X	
Financing/Interest Cost				X	
Interim Financing Costs				X	
Owner Contingency				X	
Building Operation after Move-in				X	
Building Maint. after Move-in				X	
Owner Moving Costs				X	
CMR. General Overhead Cost	X				
CMR. Profit/Margin	X				

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APPENDIX F
BOND FORMS

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PERFORMANCE BOND

IT IS HEREBY AGREED that (Insert full name and address of Contractor)

as Principal, hereinafter called Contractor, and, (Insert full name and address of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto the

as Obligee, hereinafter called Owner, in the amount of _____ _____ Dollars ($), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these obligations.

WHEREAS, Contractor has by written agreement dated _____, 20___, entered into a contract with Owner for the construction of (Insert the name of the Project)

in accordance with Drawings and Specifications prepared by (Insert full name and address of Architect/Engineer)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect. The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default, under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1) Complete the Contract in accordance with its terms and conditions, or

2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the

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Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of any applicable statute of limitations under the Contract.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed and sealed this _____ day of _____ 20_____.

PRINCIPAL

[Affix corporate seal]

_____

(Name)_____

(Title)_____

_____

(Witness)

SURETY

[Affix corporate seal]

_____

(Name)_____

(Title)_____

_____

(Witness)

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LABOR AND MATERIAL PAYMENT BOND

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

IT IS HEREBY AGREED that (Insert full name and address of Contractor)

as Principal, hereinafter called "Principal," and, (Insert full name and address of Surety)

as Surety, hereinafter called "Surety," are held and firmly bound unto the

as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of _____ Dollars ($),
for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these obligations.

WHEREAS, Principal has by written agreement dated _____, 20_____,
entered into a contract with Owner for the construction of (Insert the name of the Project)

in accordance with Drawings and Specifications prepared by (Insert full name and address of Architect/Engineer)

which contract is by reference made a part hereof, and is hereinafter referred to as the "Contract."

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

   a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days, after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is

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made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail; postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which Principal ceased Work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this _____ day of _____ 20 _____.

PRINCIPAL

[Affix corporate seal]

_____

(Name)_____

(Title)_____

_____

(Witness)

SURETY

[Affix corporate seal]

_____

(Name)_____

(Title)_____

_____

(Witness)

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APPENDIX G
SEXUAL OFFENDER CHECK CERTIFICATION

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Sexual Offender Registry Check Certification Form

Check the appropriate box to indicate the type of check:

☒ Initial

□ Supplemental

□ Annual

I, John W. Smith, Jr (insert name), Vice President (insert title) of Barnhill Contracting Co. (insert company name) hereby certify that I have performed all of the required sexual offender registry checks required under this Agreement for all contractual personnel (employees, agents, ownership personnel, or contractors) who may be used to deliver goods or provide services under this Agreement, including the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry. I further certify that none of the individuals listed below appears on any of the above-named registries and that I will not assign any individual to deliver goods or perform services under this Agreement if said individual appears on any of the sex offender registries. I agree to maintain all records and documents associated with these registry checks, and that I will provide such records and documents to the school system upon request. I specifically acknowledge that the school system retains the right to audit these records to ensure compliance with this section at any time in the school system's sole discretion. I acknowledge that I am required to perform these checks and provide this certification form before any work is performed under the Agreement (initial check), any time additional contractual personnel may perform work under the Agreement (supplemental check), and at each anniversary date of the Agreement (annual check).

	Contractual Personnel Names	**Job Title**
1.	Brad Martin	Director of Operations
2.	Stephen Smith	Sr. Project Manager
3.	Kyle New	Project Engineer
4.	Layton Lomax	Virtual Construction Manager
5.	Matt Cave	Superintendent

(attach additional page(s) if needed)

I attest that the forgoing information is true and accurate to the best of my knowledge.

John W. Smith (print name)

Vice President (title)

John W. Smith (signature)

8/31/2022 (date)

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APPENDIX H
MINORITY BUSINESS ENTERPRISES (MBE)

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MBE DOCUMENTATION FOR CONTRACT PAYMENTS

Prime Contractor/Architect: _____

Address & Phone: _____

Project Name: _____

Pay Application #: _____ Period: _____

The following is a list of payments made to Minority Business Enterprises on this project for the above-mentioned period.

MBE FIRM NAME	* TYPE OF MBE	AMOUNT PAID THIS MONTH (With This Pay App)	TOTAL PAYMENTS TO DATE	TOTAL AMOUNT COMMITTED

*Minority categories: Black (B), Hispanic (H), Asian American (AA), American Indian (AI), White Female (WF), Socially and Economically Disadvantaged (SED)

Approved/Certified By:

_____ _____

Name Title

_____ _____

Date Signature

SUBMIT WITH EACH PAY REQUEST - FINAL PAYMENT - FINAL REPORT

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Policy Code: 9125 Participation by Minority Businesses

The Board affirms the State's commitment to encouraging the participation of minority businesses in the school system's construction contracts. The Board shall provide minority businesses equal opportunity to participate in all aspects of the school system's contracts for the construction, renovation or repair of school facilities. The Board prohibits discrimination against any person or business enterprise on the basis of race, color, creed, national origin, sex, disability, age or religion and shall conduct its building contract programs so as to prevent such discrimination.

It is the policy of the Board in concert with other local, state and federal agencies and with the assistance of minority groups and agencies, actively to seek and identify qualified minority business enterprises and to offer them the opportunity to participate and to encourage them to participate, in the school system's construction contracting program.

It is not the policy of this Board to provide information or other opportunities to minority business enterprises that will not be available to all other business enterprises. It is the intent of this policy to establish procedures designed to assure minority business enterprises access to information and opportunities available to other business enterprises.

The Board will award public building contracts without regard to race, religion, color, creed, national origin, sex, age, or disability, as defined in N.C. Gen. Stat. § 168A-3. The Board will award contracts to the lowest responsible, responsive bid.

A "minority business" is defined as one in which at least fifty-one percent (51%) is owned by minority persons or socially and economically disadvantaged individuals or the management and daily business operations are controlled by minority or economically disadvantaged persons. Minority/economically disadvantaged persons include African-Americans, those of Hispanic descent, Asian Americans, American Indians and females. Beginning July 1, 2009, the Board shall use only those businesses listed in the State Department of Administration database of historically underutilized businesses for purposes of this policy.

After notice and public hearing, the Board has adopted the following verifiable percentage goals for participation in the school system's contracts by historically underutilized businesses:

1. Projects in which the cost exceeds $100,000 and the Board has received state appropriations or grants for the project:
   Ten percent (10%) participation by minority businesses in the total value of work for each building project involving erection, construction, alteration or repair
   2. Projects in which the cost exceeds $300,000:
   Ten percent (10%) participation by minority businesses in the total value of work for each building project involving erection, construction, alteration or repair
      3. Projects in which the costs are at least $30,000 but do not exceed $300,000:

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Except as otherwise required for projects in subsection 1 above, the Board will solicit participation by minority business enterprises and maintain a record of contractors solicited and efforts to recruit minority participation. The Board also will comply with any reporting and documentation requirements of the Department of Administration.

A. SCHOOL SYSTEM GOOD FAITH EFFORTS

The Board adopts the following guidelines to ensure that the school system will make good faith efforts to reach diverse contractors and to encourage participation in the school system's construction contracts by such contractors. The superintendent is directed to:

1. make information about the school system's formal and informal bidding process readily available;
2. develop and implement a minority business participation outreach plan to identify minority businesses that can perform building projects and to implement outreach efforts to encourage minority business participation in such projects;
3. advertise for bids in media that reach minority businesses and provide notice to minority businesses as provided in G.S. 143-128.2;
4. ensure that everyone who requests it has access to building documents needed for making bids on projects;
5. encourage businesses experiencing difficulty in meeting the bonding, licensing and bid deposits required by state law in larger construction projects to utilize resources and assistance offered by local, state and federal agencies; and
6. encourage contractors to attend the scheduled pre-bid conference.

B. GOOD FAITH EFFORTS REQUIRED BY CONTRACTORS

All bidders on major school construction and renovation projects who intend to subcontract any part of the project must provide affidavits indicating that a good faith effort has been made in preparing the bid to meet the Board of Education's verifiable goal for participation by minority businesses.

The failure to make a good faith effort to meet the Board's goal may result in the bid being considered non-responsive and being rejected.

The superintendent is directed to establish administrative procedures to verify which businesses are qualified and to evaluate good faith efforts by bidders.

Legal References: *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989); G.S. 143-128, -128.2, -128.3, -128.4

Cross References:

Adopted: August 17, 1994 (as policy 2901)

Revised: January 6, 2009

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APPENDIX I
DISPUTE RESOLUTION

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Brunswick County Schools Board Policy Code 9120

DISPUTE RESOLUTION PROCESS

The Board establishes the following dispute resolution process to resolve issues arising out of construction and repair projects or contracts related to such projects. The dispute resolution process may be used by any party involved in the construction project for those disputes in which the amount in controversy is at least $15,000.

The Board strives to resolve disputes without animosity between or among parties. To this end, prior to initiating litigation concerning a dispute, parties to the dispute must do the following: (1) submit the dispute for review by the superintendent or other designated school official and the project architect or engineer, as appropriate, and (2) participate in mediation, if the matter cannot be resolved by school officials and the architect or engineer. In no event shall the Board be subject to arbitration proceedings pursuant to this policy. The cost of the dispute resolution process will be divided between the parties to the dispute. If the Board is a party to the dispute, the Board will pay at least one-third of the cost.

The superintendent or designee shall adopt regulations necessary to implement this policy.

Legal References: 2 C.F.R. 200.317-200.326; G.S. 64, art. 2; 115C-521, -522; 143-64.31 and art. 8;147, art. 6E, art. 6G

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 2.
Clerk to the Board - Meeting Minutes

From:
Daralyn Spivey

Issue/Action Requested:
Request the Board of Commissioners approve the meeting minutes for July 18 2022, August 1, 2022 and August 15, 2022

Background/Purpose of Request:

Fiscal Impact:
Reviewed By Director of Fiscal Operations

Approved By County Attorney:
Yes

County Manager's Recommendation:
Recommend that the Board of Commissioners approve the meeting minutes for July 18 2022, August 1, 2022 and August 15, 2022

ATTACHMENTS:

Description

- Meeting Minutes July 18 2022
- Meeting Minutes August 1, 2022
- Meeting Minutes August 15, 2022

BRUNSWICK COUNTY BOARD OF COMMISSIONERS
OFFICIAL MINUTES
REGULAR MEETING
July 18, 2022
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:	Steve Stone, County Manager Bob Shaver, County Attorney David Stanley, Deputy County Manager Haynes Brigman, Deputy County Manager Aaron Smith, Finance Director Andrea White, Interim Clerk to the Board Meagan Kascsak, Communications Director Currie Elkins, MIS Sgt. Smith, 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 6:01 p.m.

II. INVOCATION/PLEDGE OF ALLEGIANCE

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

III. ADJUSTMENTS/APPROVAL OF AGENDA

Commissioner Sykes moved to amend the agenda to move Board Action Item V-4 Fiscal Items – Dixie Youth Travel Restricted Budget Amendment from the Consent Agenda to Administrative Report under VI-5 for further discussion and clarity. The motion was seconded by Commissioner Williams and passed unanimously (5 to 0).

IV. PUBLIC COMMENTS

Mr. Charlie Walker spoke of his concerns for a traffic signal near Eagle Pines and Sea Pines communities.

Mr. Nicholas Cherasaro spoke to the funding request for the Continuity of Operations Plan.

Mr. Tom Russell spoke to the process of county funding and the Continuity of Operations Plan.

Mr. Steve Womble spoke to the need for speed control in Sea Pines/Eagle Pines communities along with a traffic signal at the Sea Pines/Long Beach Rd intersections.

V. APPROVAL OF CONSENT AGENDA

Vice-Chairman Forte moved to approve the Consent Agenda as amended. The motion was seconded by Commissioner Williams and passed unanimously (5 to 0). See individual items for approval status:

1. **Clerk to the Board - Juvenile Crime Prevention Council Appointment- Approved**
The Board approved and the selection of Deputy Willie McCrae as the Brunswick County Sheriff's Designee, left vacant by Deputy T.K. Nowell.

2. **Clerk to the Board – Meeting Minutes – Approved**
The Board approved the draft minutes from the Regular Meeting of June 20, 2022.

3. **County Attorney - Northern Lights, Phase 3 & 4 DOD– Approved**
The Board approved a Deed of Dedication for water and sewer infrastructure for Northern Lights, Phase 3 & 4.

4. **Finance Fiscal Items – Approved**
The Board approved the following Budget Amendments, Capital Project Ordinances, and Fiscal Items of a routine nature on the consent agenda:

-FY23 JCPC Funding Budget Appropriation
Appropriation of state revenues restricted of $242,486 as awarded by the Juvenile Crime Prevention Council from the NC Department of Public Safety and approved at the 4/19/2021 board meeting. The following has been awarded to the JCPC Programs; JCPC Administration $9,100, Coastal ART $44,990, Guiding Good Choices (GCC) & Systematic Training for Effective Parenting (STEP) $47,289, Providence Home $20,441, Teen Court $57,541, Restitution $63,125.

-Mosquito and Tick State Funding Budget Amendment
Appropriation of $16,000 of state funding Mosquito and Tick Suppression for continue surveillance and efforts to reduce tick and mosquito-borne diseases. Expenditures will be planned based on recommendations from Brunswick County's Vector Control Supervisor.

-American Rescue Plan (ARP) Grant Ordinances
Approved Grant Ordinances for American Rescue Plan Premium Pay and Trailwood Force Main Projects updated to reflect actual project expenditures.

-Insurance Proceeds Budget Amendment
Appropriation $23,196 of fund balance for rollover of insurance proceeds received in FY22 with repairs needed in FY23.

-Breast Feeding Peer Counselor Budget Amendment
Appropriation of $5,900 of additional state revenues restricted awarded in the Breast-Feeding Peer Counselor program for the FY23 program year.

-Dixie Youth Travel Restricted Budget Amendment
Moved to Administrative Report (Board Action Item VI-5).

5. **Health and Human Services – Social Service – Annual Energy Outreach Plan- Approved**
The Board approved the Social Services Energy Outreach Plan for fiscal year 2022-2023.

6. **Parks & Recreation - Renewal of Memorandum of Agreement between Brunswick County Parks & Recreation and Brunswick County Board of Education- Approved**
The Board reviewed and approved the renewal of the Memorandum of Agreement between Brunswick County (Parks & Recreation) and Brunswick County Board of Education.

7. **Sheriff's Office – 911 Recorder Replacement Agreement - Approved**
The Board approved an agreement for the purchase of the 911 Center's primary and backup recording systems to replace the existing system that is end of life. This system is valued at $181,340, is 82% funded by the State, and part of the approved FY22 budget.

8. **Sheriff's Office – GHSP LEL Grant Award Acceptance– Approved**
The Board approved an award with the Governor's Highway Safety Program grant for the Law Enforcement Liaison position currently held by a Sheriff's Office Lieutenant for FY23 by signing a resolution with GHSP. The grant award is valued at $25,000 with no county match requirement.

9. **Sheriff's Office - SCAAP Grant Award Acceptance - Approved**
The Board accepted an award from the BJA FY 2020 State Criminal Alien Assistance Program (SCAAP) grant valued at $15,573 with no county match requirement.

10. **Soil and Water - Streamflow Rehabilitation Assistance Program Grant Award – Approved**

The Board approved the grant award as presented by the NC Division of Soil and Water Conservation and to delegate signature authority to the County Manager.

11. **Tax Admin – May 2022 Releases – Approved**
The Board approved the July 2022 releases.

12. **Utilities – Grinder Pump Package Contract Approval Myers – Approved**
The Board approved a contract with Preferred Sources Inc. (Myers Grinder Pumps) for purchase of grinder pump packages.

13. **Utilities – Harper GC Sea Trail WWTP – Approved**
The Board authorized the Chairman and Clerk to the Board to execute the contract with the Harper Corporation-GC in an amount of $774,900 for the construction of the Sea Trail WWTP improvements project and associated budget amendment.

14. **Utilities – I&E Bay Enclosure– Approved**
The Board authorized the Chairman and Clerk to the Board to execute the construction contract with Enterprises G, Inc. for the I&E Bay Enclosures project for the base bid amount of $258,340.

15. **Utilities – NWWTP SCADA Tower Project- Approved**
The Board authorized the authorize the Chairman and Clerk to the Board to execute the construction contract with Advanced Wireless Solutions, Inc. for the NWWTP SCADA tower project for the base bid amount of $182,824.00.

16. **Utilities - Subsite Sole Source Ditch Witch - Approved**
The Board approved the purchase of specialty products, Subsite Electronics Horizontal Directional Drill Guidance Systems, for Public Utilities as an exception to the bidding requirements in accordance with NCGS 143-129.

17. **Utilities - TA Loving Co, Raw Waterline Repair Black Rock Road -Approved**
The Board authorized the Chairman and Clerk to the Board to execute the contract with TA Loving Company, in an amount of $127,600 for the Raw Waterline Repair at Black Rock Road and associated budget amendment.

18. **Utilities - WBR Office Tract Timber Sale – Approved**
The Board approved the sale of timber on the West Brunswick Regional Office Tracts 41, 42, and 412 as identified in the Forest Management Plan to Canal Wood LLC., in the amount of $79,143.00 and authorize the Chairman and Clerk to the Board to approve the contract.

19. **Utilities - West Brunswick WWTP Drip Site Filter Replacement – Approved**
The Board approve a contract with Waste Water Systems Inc. in the amount of $143,691.00 for the replacement of one of the existing filter trains (south filter) at the West Brunswick Regional WWTP Drip Site, subject to final approval of contract by County Attorney.

VI. ADMINISTRATIVE REPORT

1. **Emergency Services - IEM Services Agreement**
Mr. Ed Conrow, Emergency Operations Director, requested approval of a Services Agreement between IEM and Brunswick County for consulting services to conduct an update of the County-wide Emergency Operations Plan and Continuity of Operations Plan. Commissioner Cooke made the motion to approve the funds. Commissioner Forte seconded the motion. The motion passed (4 to 1) with the following recorded vote:
Chairman Thompson: Aye
Vice-Chairman Forte: Aye
Commissioner Cooke: Aye
Commissioner Sykes: Nay
Commissioner Williams: Aye

2. **Governing Body - NCACC Voting Delegate**
Commissioner Williams made the motion to designate Vice-Chairman Forte as the voting delegate and Chairman Thompson as the alternate voting delegate to represent Brunswick County at the 2022 NCACC Annual Conference and NCACC Legislative

Goals Conference. Commissioner Cooke seconded the motion and passed unanimously (5 to 0).

3. **Utilities - Lead & Copper Mitigation Program**
   Mr. Brent Lockamy requested the Board authorize the use of $1.4 million in County ARP funds to create and fund a Lead & Copper Mitigation Program through December 2026 and approve an associated budget amendment. The program includes approval of a full-time employee position, consulting services for creation of an inventory database, and some anticipated construction costs for service line replacement. Commissioner Williams made the motion to authorize the funding. The motion was seconded by Vice-Chairman Forte and passed unanimously (5 to 0).

4. **Utilities - SE Area Improvements - St. James**
   Commissioner Sykes made the motion to approve the funds of $1,930,278.37 in County ARPA funds to fund a joint water transmission project with St. James and approve an Interlocal Agreement allowing St. James to subaward $1,991,221.63 of ARPA funds to Brunswick County for use in the project. The motion was seconded by Vice-Chairman Forte and passed unanimously (5 to 0).

5. **Parks and Recreations - Dixie Youth Travel Restricted Budget Amendment**
   Commissioner Sykes made the motion to increase the appropriation from $45,000 to $90,000 of fund balance be appropriated for Parks and Recreation Administration Dixie Youth Travel restricted for Dixie Boys and Girls teams attending the world series. The motion was seconded by Commissioner Williams and passed unanimously (5 to 0).

VII. OTHER BUSINESS/INFORMAL DISCUSSION

VIII. ADJOURNMENT

Commissioner Williams moved to adjourn the meeting at 7:12 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:

_____
Daralyn Spivey, NCCCC
Clerk to the Board

BRUNSWICK COUNTY BOARD OF COMMISSIONERS
OFFICIAL MINUTES
REGULAR MEETING
August 1, 2022
3:00 P.M.

The Brunswick County Board of Commissioners met in Regular Session on the above date at 3:00 p.m., Commissioners' Chambers, David R. Sandifer Administration Building, County Government Center, Bolivia, North Carolina.

PRESENT:	Commissioner Randy Thompson, Chairman Commissioner J. Martin Cooke Commissioner Pat Sykes Commissioner Frank Williams
STAFF:	Steve Stone, County Manager Bob Shaver, County Attorney David Stanley, Deputy County Manager Haynes Brigman, Deputy County Manager Aaron Smith, Finance Director Andrea White, Interim Clerk to the Board LeAnn Weigand, Executive Assistant Amber Merklinger, Communications Specialist Currie Elkins, MIS

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 3:00 p.m.

II. INVOCATION/PLEDGE OF ALLEGIANCE

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

III. ADJUSTMENTS/APPROVAL OF AGENDA

Chairman Thompson asked for adjustments to the agenda. No adjustments were requested. Commissioner Williams made the motion to approve the agenda. The motion was seconded by Commissioner Cooke and passed unanimously (4 to 0).

IV. PUBLIC COMMENTS

Ms. Linda Adams spoke of her concerns regarding the budget, ARPA Funding and County funding of the Continuity of Operations Plan.

Mr. Gary Otsby spoke to the stormwater issues in the County and the current FEMA maps.

Mr. Dan Cook spoke to his appreciation of the lead and copper mitigation plan and water testing.

Mr. Nick Cherasaro requested streaming of the meetings to ensure community involvement.

Ms. Linda Drecchio spoke to keeping the citizens informed and looking for the support of the Board in maintaining open meetings for the public to be engaged

V. APPROVAL OF CONSENT AGENDA

Commissioner Cooke moved to approve the Consent Agenda. The motion was seconded by Commissioner Williams and passed unanimously (4 to 0). See individual items for approval status:

1. **Administration - Resolution for International Logistics Park Left Turn Lane-Approved**
   The Board Approved a resolution asking NCDOT to provide economic development funding for a left turn lane on US74/76 W. at the NC International Logistics Park. The Resolution reads as follows:

RESOLUTION IN SUPPORT OF THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR USE OF CONTINGENCY FUNDS FOR A LEFT TURN LANE ON US 74/76 INTERNATIONAL LOGISTICS PARK

WHEREAS, the North Carolina Department of Transportation has submitted a request to use contingency funds for a left turn lane along US 74/76 International Logistics Park; and

WHEREAS, in order to pursue the necessary funding, the Department of Transportation requires a resolution of support for the project from the County Board of Commissioners; and

WHEREAS, the Brunswick County Board of Commissioners has considered the above-described request and is in support of road improvements along US 74/76 International Logistics Park.

NOW, THEREFORE, BE IT RESOLVED, by the Brunswick County Board of Commissioners that it expresses its support of the above-described project recommended by the North Carolina Department of Transportation and requests that the project proceed once the necessary funding has been established.

This the 1st day of August, 2022.

Randy Thompson, Chairman
Brunswick County Commissioners

Attest:
LeAnn Weigand
Clerk to the Board

2. **Health and Human Services - Health Services – 2021 Child Fatality Prevention Team Annual Report - Approved**
The Board reviewed and approved the 2021 Child Fatality Prevention Team Annual Report.

3. **Health and Human Services - Social Services - Brunswick Family Assistance (BFA) Funded Agency Agreement for FY 22-23 – Approved**
The Board approved the renewal of the funded agency agreement between Brunswick County and the non-profit agency - Brunswick Family Assistance.

4. **Operation Services - NCDPS Probation and Parole Leases - Approved**
The Board approved a lease agreement and a sublease agreement for 3 years beginning August 1, 2022 through July 31, 2025 to provide office space for NC Department of Public Safety Probation and Parole at no cost to the state agency.

5. **Operation Services - Tip Fee Exemption Request - Approved**
The Board approved the tip fee exemption at the Brunswick County Landfill for Catholic Charities of the Diocese of Raleigh.

VI. PRESENTATION

1. **Engineering - Presentation - Proposed Update to Stormwater Management Manual**
The Board received a presentation from Brigit Flora, Stormwater Engineer, on updating the Brunswick County Stormwater Management Manual. Commissioner Williams made the motion to approve the update. Chairman Thompson amended the motion to enhance the stormwater capability with more control of stormwater and to engage other stakeholders within the County. Commissioner Sykes seconded the amended motion and passed unanimously (4 to 0).

2. **Health and Human Services - Health Services – Community Health Assessment Update**
The Board received an update from Cris Harrelson, Health Director, on the 2022 Community Health Assessment.

3. **Parks & Recreation - Recognition of 2022 Special Olympics USA Games**
Aaron Perkins, Parks and Recreation Director, requested the Board recognize Brunswick County athletes, Katherine Juda, Jillian Meyer and Ashley Lederer that competed at the Special Olympics USA Games in Bocce. Commissioner Williams made the motion to approve the three Resolutions. Commissioner Sykes seconded the motion and passed unanimously (4 to 0). The Resolutions read as follows:

RESOLUTION IN HONOR OF BRUNSWICK COUNTY SPECIAL OLYMPICS KATHERINE JUDA

WHEREAS, it is in the nature of life to learn many lessons early on, and wherever those places exist that mix the spirit of learning with a fun and competitive environment, the products are usually excellence, pride and a peaceful sense of self-assurance; and

WHEREAS, Katherine Juda has found that balance in the Special Olympics USA Games. She earned a gold medal at the state tournament which qualified her to be considered for the USA Games. At the USA Games she earned a bronze medal during her bocce doubles competition and won a gold medal in her bocce singles match. She put in many hours of practice leading up to the USA Games and did a great job of not only representing Team NC at the USA Games, but Brunswick County as well; and

WHEREAS, all the learning that this young lady does is as American as apple pie, and will be learned and sorted out along with the other great lessons that life teaches; and

WHEREAS, the lessons that are learned now will be kept for many years, and as she has demonstrated, a full measure of devotion, cooperation, ability, and above all, trust.

NOW, THEREFORE, BE IT RESOLVED, that the Brunswick County Board of Commissioners are hereby resolved to recognize and honor Katherine Juda on her achievements and do hereby congratulate her on a job well done, and does hereby encourage her to continue to reach for goals that seems far away, but never out of reach of hope.

This the 1st day of August, 2022.

Randy Thompson, Chairman
Board of Commissioners

ATTEST:
Daralyn Spivey, NCCC
Clerk to the Board

RESOLUTION IN HONOR OF BRUNSWICK COUNTY SPECIAL OLYMPICS JILLIAN MEYER

WHEREAS, it is in the nature of life to learn many lessons early on, and wherever those places exist that mix the spirit of learning with a fun and competitive environment, the products are usually excellence, pride and a peaceful sense of self-assurance; and

WHEREAS, Jillian Meyer has found that balance in the Special Olympics USA Games. She earned a gold medal at the state tournament which qualified her to be considered for the USA Games. At the USA Games she earned a bronze medal during her bocce doubles competition and won a gold medal in her bocce singles match. She put in many hours of practice leading up to the USA Games and did a great job of not only representing Team NC at the USA Games, but Brunswick County as well; and

WHEREAS, all the learning that this young lady does is as American as apple pie, and will be learned and sorted out along with the other great lessons that life teaches; and

WHEREAS, the lessons that are learned now will be kept for many years, and as she has demonstrated, a full measure of devotion, cooperation, ability, and above all, trust.

NOW, THEREFORE, BE IT RESOLVED, that the Brunswick County Board of Commissioners are hereby resolved to recognize and honor Jillian Meyer on her achievements and do hereby congratulate her on a job well done, and does hereby encourage her to continue to reach for goals that seems far away, but never out of reach of hope.

This the 1st day of August, 2022.

Randy Thompson
Chairman Board of Commissioners

ATTEST:
Daralyn Spivey,
NCCCC Clerk to the Board

RESOLUTION IN HONOR OF BRUNSWICK COUNTY SPECIAL OLYMPICS ASHELY LEDERER

WHEREAS, it is in the nature of life to learn many lessons early on, and wherever those places exist that mix the spirit of learning with a fun and competitive environment, the products are usually excellence, pride and a peaceful sense of self-assurance; and

WHEREAS, Ashley Lederer has found that balance in the Special Olympics USA Games. She earned a gold medal at the state tournament which qualified her to be considered for the USA Games. At the USA Games she earned a bronze medal during her bocce doubles competition and won a gold medal in her bocce singles match. She put in many hours of practice leading up to the USA Games and did a great job of not only representing Team NC at the USA Games, but Brunswick County as well; and

WHEREAS, all the learning that this young lady does is as American as apple pie, and will be learned and sorted out along with the other great lessons that life teaches; and

WHEREAS, the lessons that are learned now will be kept for many years, and as she has demonstrated, a full measure of devotion, cooperation, ability, and above all, trust.

NOW, THEREFORE, BE IT RESOLVED, that the Brunswick County Board of Commissioners are hereby resolved to recognize and honor Ashley Lederer on her achievements and do hereby congratulate her on a job well done, and does hereby encourage her to continue to reach for goals that seems far away, but never out of reach of hope.

This the 1st day of August, 2022.

Randy Thompson
Chairman Board of Commissioners

ATTEST:
Daralyn Spivey,
NCCCC Clerk to the Board

VII. ADMINISTRATIVE REPORT

1. **Administration - ARPA Revenue Replacement Project - Radio Upgrades**
   The Board received a presentation from Elizabeth Bynum (Sheriff Department Comptroller) regarding the Revenue Replacement Projects which is part of the overall American Rescue Plan Act (ARPA) implementation. This project, titled "Radio Upgrades" on the approved list, is the overhaul of radios used by the Sheriff's Office, Emergency Management, and Health Department and includes more than 500 radios at a value of $3,156,810.76. Chairman Thompson made the motion to approve the funds. Commissioner Cooke seconded the motion. The motion passed unanimously (4 to 0).

VIII. OTHER BUSINESS/INFORMAL DISCUSSION

No other business to be brought before the Board

IX. ADJOURNMENT

Commissioner Cooke moved to adjourn the meeting at 7:12 p.m. The motion was seconded by Commissioner Williams and passed unanimously (4 to 0).

_____
Randy Thompson, Chairman
Brunswick County Board of Commissioners

Attest:

_____
Daralyn Spivey, NCCCC
Clerk to the Board

BRUNSWICK COUNTY BOARD OF COMMISSIONERS
OFFICIAL MINUTES
REGULAR MEETING
August 15, 2022
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:	Steve Stone, County Manager Bob Shaver, County Attorney David Stanley, Deputy County Manager Haynes Brigman, Deputy County Manager Aaron Smith, Finance Director Andrea White, Interim Clerk to the Board LeAnn Weigand, Executive Assistant Amber Merklinger, Communications Specialist Currie Elkins, MIS Lt. 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

Chairman Thompson gave the Invocation and led the Pledge of Allegiance.

III. ADJUSTMENTS/APPROVAL OF AGENDA

Chairman Thompson asked for adjustments to the agenda. Mr. Shaver, County Attorney advised there would be a need to add a Closed Session to the agenda. Commissioner Williams made the motion to approve the amended agenda. The motion was seconded by Commissioner Cooke and passed unanimously (5 to 0).

IV. PUBLIC COMMENTS

Mr. Clark Harris introduced himself as the Executive Director of Unique Places to Save and work with NC Land and Water Fund and the future of Eagle Island.

Mr. Gary Otsby spoke to the stormwater issues in the county and the current flood plain mapping.

Mr. Joe Carteret spoke to the issue of permitting vendors.

Mr. Nick Cherasaro spoke to request streaming of the meetings into the community.

Mr. Edward Barkley spoke to the reverse osmosis water system and the logo for the County.

V. APPROVAL OF CONSENT AGENDA

Commissioner Cooke moved to approve the Consent Agenda. The motion was seconded by Commissioner Williams and passed unanimously (5 to 0). See individual items for approval status:

1. **Administration - State Courthouse Leases - Approved**
   The Board approved the lease for state highway patrol and juvenile justice in the Brunswick County Courthouse.

2. **County Attorney - Byrd Watch at Sea Trail Plantation, Ph 2, Lots 14-49, Deed of Dedication - Approved**
The Board accepted the deed of Dedication for water and sewer infrastructure in Byrd Watch at Sea Trail Plantation, Phase 2, Lots 14-49.

3. **County Attorney - Refund Request for Excise Tax – Approved**
The Board approved the renewal of the funded agency agreement between Brunswick County and the non-profit agency - Brunswick Family Assistance.

4. **Finance - Fiscal Items - Approved**
Request that the Board approved Budget Amendments, Capital Project Ordinances, and Fiscal Items of a routine nature on the consent agenda.
-2016 Bond Referendum Projects Phase 3 Budget Amendment and CPO
Appropriated proceeds from GO Debt of $45,815,000 and $5,869,432 of bond premium to the 2016 Bond Referendum Phase 3 project.

5. **Health and Human Services - Health Services – Annual Flu Vaccine Order - Approved**
The Board approved the annual flu vaccine order for FY22-23 and authorized staff to execute an agreement subject to County Attorney approval.

6. **Health and Human Services: Social Services - Non-Emergency Medical Transportation - Approved**
The Board approved the Non-Emergency Medicaid Transportation contracts with Brunswick Transit System Inc., Ivory's Accessible Transport Services Inc., and Med Trans of North Carolina LLC.

7. **Planning – NC Map Review Officer Resolution Update – Approved**
The Board approved a North Carolina Map Review Officers Resolution that amends the list of NC Map Review Officers designated within Brunswick County. The Resolution reads as follows:

RESOLUTION AMENDING REVIEW OFFICER DESIGNATION FOR MAPS AND PLATS

WHEREAS, North Carolina General Statute § 47- 30. 2 has been enacted into law by the General Assembly of 1997, and pursuant to that statute, the Brunswick County Commissioners have designated certain persons as review officers, and

WHEREAS, there has been a change in the personnel of Brunswick County, and

WHEREAS, it is the intent of Brunswick County Commissioners to provide that there are an adequate number of review officers to prevent patrons unnecessarily waiting and to avoid customer delay in recording maps or plats.

NOW THEREFORE, the Brunswick County Commissioners hereby amend the Map Review Officer Resolution dated September 15, 1997, to add the names of and hereby charge Nicole Morgan and Gilbert Combs to execute the duties and obligations of that office, as proscribed in the above- named General Statute. Further, the Commissioners hereby amends the said Resolution to delete the name of Robert Lewis and Sharon Elwood. Except as Amended herein, the previous Resolution of September 15, 1997, remains in full force and effect. This instrument shall be duly executed and then filed in the Brunswick County Register of Deeds Office, indexed in the Grantor Index in the name of the Review Officer named above.

This the 15th day of August 2022.

Randy Thompson, Chairman
Brunswick County Board of Commissioners

ATTEST:
Daralyn Spivey NCCCC
Clerk to the Board

8. **Tax Admin - August 2022 Releases**
The Board approved the August 2022 releases.

9. **Utilities - Biosolids RFP Award – Approved**

The Board approved and awarded, in the amount of approximately $715,000 per year, the contract for removal and disposal of biosolids from the Brunswick County Wastewater Treatment Facilities to EMA Resources Inc., based on proposals received on June 9, 2022.

10. Utilities - Grinder Pump Package Contract Approval - Crane – Approved
The Board approved the contract with Crane Pumps and Systems for the continued purchase of Barnes Grinder Pump packages.

11. Utilities - Heritage Sole Source Supplies Contract Approval – Approved
The Board approved a contract with Heritage Water Systems for purchase of replacement grinder pumps and kits as manufactured by Crane Pump Systems (Barnes Grinder Pumps).

12. Utilities - Sole Source List – Approved
The Board approved a resolution excepting the purchase of certain apparatus, supplies, materials, or equipment from certain bidding requirements in accordance with NCGS 143-129(e) (6). The Resolution reads as follows:

RESOLUTION AUTHORIZING PURCHASE OF SPECIALITY PRODUCTS USED BY PUBLIC UTILITIES UNDER SOLE SOURCE EXCEPTION TO FORMAL BIDDING REQUIREMENTS

WHEREAS, N.C.G.S 143-129(e)(6), Procedure for Letting of Public Contracts, allows for the waiver of bidding requirements for purchases of apparatus, supplies, materials, or equipment when performance or price competition for a product are not available, a needed product is available from only one source of supply, or standardization or compatibility is the overriding consideration; and

WHEREAS, the Brunswick County Public Utilities Department utilizes numerous products in the day-to-day operation of the County's water and sewer systems; and

WHEREAS, certain products are often available from only one source of supply because either the products are proprietary to the supplier or standardization or compatibility with existing equipment or processes is an overriding consideration such that performance and/or price competition are not available; and

WHEREAS, the Board of Commissioners last approved a sole source specialty products list and exception to formal bidding requirements on August 5, 2019; and

WHEREAS, pursuant to Section 7.7.1 of the County's Contract, Purchasing, and Property Disposal Policy, any sole source purchase approval intended to apply to reoccurring purchases must be reviewed and approved by the Board of Commissioners at least every three years to ensure that a sole source exception still applies; and

WHEREAS, the attached list specifies apparatus, supplies, materials, or equipment to be purchased under sole source exception to formal bidding requirements and the justification for same; and

WHEREAS, the governing board must approve the purchases of products on the attached list under the bidding exception prior to awarding any contract for same.

NOW, THEREFORE BE IT RESOLVED, that the Brunswick County Board of Commissioners approves the purchases described herein utilizing the exception to formal bidding requirements contained in N.C.G.S. 143- 129(e)(6) and finds that the conditions described in that statute have been met.

Adopted this the 15th day of August, 2022.

Randy Thompson, Chairman
Brunswick County Board of Commissioners

ATTEST:
Clerk to the Board

VI. PRESENTATION

1. **Clerk to the Board - Trillium Annual Report**
   The Board received a presentation from Dennis Williams, Southern Regional Director of Trillium and the introduction of the incoming Regional Director, Cecelia Peers.

VII. OTHER BUSINESS/INFORMAL DISCUSSION

Commissioner Cooke:
Reminded those present that COVID tests are available at the Health Department.

Commissioner Williams:
Thanked the Board for the support over the last year as he completed his term as the NCACC President and for the attendance at the Emergency Preparedness training to include staff's attendance.
Any Legislative Goals that would need to be submitted to the State Association would need to be routed through the County Manager and would need to have them by August 22.
Operation Green Light with to honor Veterans over Veterans Day 2022

VIII. CLOSED SESSION

1. The Board of Commissioner entered into closed session pursuant to G.S. § 143-318.11(a)(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body.

   Mr. Shaver noted the above statutory requirements.

   Commissioner Williams made the motion to enter Closed Session at 6:47 p.m. The motion was seconded by Commissioner Cooke and passed unanimously (5 to 0).

   Chairman Thompson called the Regular Session to order at 6:57 p.m.

IX. ADJOURNMENT

Commissioner Cooke moved to adjourn the meeting at 6:57 p.m. The motion was seconded by Commissioner Williams and passed unanimously (5 to 0).

_____
Randy Thompson, Chairman
Brunswick County Board of Commissioners

Attest:

_____
Daralyn Spivey, NCCCC
Clerk to the Board

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 3.
Emergency Services - Board Appointment - Waccamaw Fire District Fireman's Relief Fund Board

From:
Daralyn Spivey

Issue/Action Requested:
Request the Board to appoint Ellen Milligan to the Waccamaw Fireman's Relief Fund Board. Ms. Milligan will replace Mr. Doug Brown who has passed away.

Background/Purpose of Request:

Fiscal Impact:
Reviewed By Director of Fiscal Operations

Approved By County Attorney:
Yes

ATTACHMENTS:

	Description
🗋	Milligan, Ellen Board Application

Brunswick County NC

Application For Appointment To Boards And Committees

You **must** be a Brunswick County resident to participate on county boards and committees. Please proceed if you are a resident.

* Are you a permanent resident of Brunswick County?

(•) Yes ( ) No

How many years?

69

* Are you registered to vote in Brunswick County?

(•) Yes

( ) No

* Board or Committee of Interest

Other

Other

Waccamaw Fireman Refund Board

Board or Committee of Interest (Second Choice)

Do you anticipate any conflicts of interest if appointed?

( ) Yes (•) No

Are you currently serving on any other Boards?

( ) Yes ( ) No

Applicant Information

First Name * Ellen

Middle Initial G

Last Name * Milligan

Is mailing address same as street address *	(•) Yes ( ) No
Home Phone	910-287-6304
Cell Phone	
Email *	dlmilligan@atmc.net
Present Job/Employer Address	Retired from Brunswick County School System
Past Employment	Brunswick County School System
Current Civic/Community Participation	Trustee at Brunswick Community College. Volunteer at Waccamaw School Secretary with Full Life Fellowship Church

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 4.
Emergency Services - Homeland Security Disaster Preparedness Grant

From:
Edward Conrow

Issue/Action Requested:
Request the Board of Commissioners approve Notification and Grant Application Evaluation Form for the (FY) 2022 Homeland Security Grant Program (HSGP).

Background/Purpose of Request:
Brunswick County was notified that the (FY) 2022 Homeland Security Grant Program (HSGP) was approved for funding. North Carolina Emergency Management (recipient) will be issuing a Memorandum of Agreement (MOA) to Brunswick County (subrecipient) in the amount of $15,000 to purchase (1) mobile light tower as part of the Disaster Preparedness Region 3 preparedness initiatives. This funding will allow for improved capabilities related to Homeland Security and disaster preparedness. The MOA will be presented at a future board meeting for formal approval and appropriation.

Fiscal Impact:
Reviewed By Director of Fiscal Operations

Approved By County Attorney:
Yes

County Manager's Recommendation:
Recommend that the Board of Commissioners approve Notification and Grant Application Evaluation Form for the (FY) 2022 Homeland Security Grant Program (HSGP).

ATTACHMENTS:

Description

- Homeland Security Grant Program Subaward Notification
- Grant Application Evaluation Form

DocuSign Envelope ID: A6F0C48D-E899-4539-ABE1-069745B4542F

North Carolina Department of Public Safety
Emergency Management

Roy Cooper, Governor
Eddie M. Buffaloe Jr., Secretary

William C. Ray, Director

Homeland Security Grant Program (HSGP)
Fiscal Year 2022

SUBAWARD NOTIFICATION

Ed Conrow
Brunswick County Emergency Services
3325 Old Ocean Highway
Bolivia , NC 28422

Period of Performance: September 1, 2022 **to** February 28, 2025
Project Title: Brunswick County Light Tower
Total Amount of Award: $15,000.00
MOA #: 2240009

North Carolina Emergency Management (NCEM) is pleased to inform you that the federal Fiscal Year (FY) 2022 Homeland Security Grant Program (HSGP) has been approved for funding. In accordance with the provisions of FY 2022 HSGP award, NCEM hereby awards to the foregoing subrecipient a grant in the amount shown above.

Payment of funds: The grant shall be effective upon final approval by NCEM of the grant budget and program narrative and the execution of the forthcoming Memorandum of Agreement (MOA). Grant funds will be disbursed (according to the approved project budget) upon receipt of evidence that funds have been invoiced and products received and/or that funds have been expended (i.e., invoices, contracts, itemized expenses, etc.).

Conditions: The subrecipient agrees that funds will only be expended to complete the approved project(s) not to exceed the funding amount for the project(s) during the designated period of performance. The subrecipient also agrees to comply with all terms, conditions and responsibilities specified in the MOA, and to comply with all applicable federal, state, and local laws, and rules and regulations in the performance of this grant.

Supplanting: The subrecipient confirms that grant funds will not be used to supplant or replace local or state funds or other resources that would otherwise have been available for homeland security activities.

Required Documents/Forms: The subrecipient must submit the following documents to (ncemgrants1@ncdps.gov) upon execution of the MOA:

1. Electronic Payment / Vendor Verification Form (09 NCAC 03M .0202)
2. Sworn (Notarized) No Overdue Tax Debt Certification (G.S. 143C-6-23.(c))
3. Conflict of Interest Policy (G.S. 143C-6-23.(b))
4. Copy of the subrecipient's procurement policy

Please provide your Unique Entity ID (sam.gov): MJBMXLN9NJT5

In the box below, list the names and emails authorized as subrecipient signatories for the above-referenced MOA in the preferred order of signature and receipt. Append "cc" to designate copy-only.
Example: *John Smith (john.smith@yahoo.com)*
Mary Jones (mary.jones@hotmail.com) cc
Sam Brown (s.brown@gmail.com)

Steve Stone steve.stone@brunswickcountync.gov

Mailing Address:
4236 Mail Service Center
Raleigh, NC 27699-4236
www.ncdps.gov
www.ReadyNC.gov

Office Location:
1636 Gold Star Drive
Raleigh, NC 27607
Phone: 919-825-2500
Fax: 919-825-2685

An Equal Opportunity Employer

BRUNSWICK COUNTY
Grant Application Evaluation Form

Lead Department: Emergency Services		Date: 8/23/2022
Department Head: Edward Conrow		Department Contact for Grant: Edward Conrow
Co-Applicants / Other Participating Departments/Agencies/Community Organizations:		
Grant Title: Homeland Security Grant Program FY 2022 Disaster Preparedness Region 3		
Funding Organization: FEMA		
Grant Period/Term: 9/1/22 - 2/28/2025	Grant Amount: $ 15,000.00	☑ New Grant ☐ Recurring Grant Multi-Year Grant? ☐ Yes ☐ No
Matching Funds? ☐ Yes ☑ No	If Yes, Amount: $	☐ In Kind_____ ☐ Cash_____ ☐ Other_____
Describe how match will be met.		
Are matching funds in the current budget or does the match require additional funding? Please explain. ☐ Available ☐ Additional Needed ☑ N/A- No matching funds required/requested		
Briefly describe the purpose of the grant. Homeland Security, Disaster Preparedness Region 3 to improve and build capabilities		

Program Duplication / Cost Recovery	
Will this project **in any way** duplicate or compete with another service or program provided by Brunswick County, another local agency or community organization?	☐ Yes ☑ No ☐ Possibly
Will this grant provide support for a mandated service?	☐ Yes ☑ No
Can we capitalize on this funding to meet current and/or future equipment or facility needs?	☑ Yes ☐ No
Will this grant result in supplanting? *Supplanting occurs when a state, local, or Tribal Government reduces state, local, or tribal funds for an activity specifically because federal funds are available (or expected to be available) to fund that same activity.*	☐ Yes ☑ No

Additional Grant Considerations	
Can the scope of work be completed within grant time frame allotted?	☑ Yes ☐ No ☐ Possibly
Can the requirements of this grant be met with current staffing levels?	☑ Yes ☐ No ☐ Possibly
Will new positions be requested (or expiring grant funded positions extended)?	☐ Yes ☑ No
If Yes, how many new positions will be funded by the grant?	_____ new positions
How many existing positions will be funded by the grant?	_____ existing positions
Will the grant create a program or require any County commitment for funding after grant funding ends?	☐ Yes ☑ No
Will the grant contain subcontracts/sub awards or contractual services? If Yes, please explain: Equipment pruchases through vendors	☑ Yes ☐ No
Description of items or services to be purchased with funds: Funding will support the purchase of (1) mobile lighting unit.	
Will any items purchased with grant funds revert back to the granting agency?	☐ Yes ☑ No If yes, explain
Is funding received in advance or on a reimbursement basis?	☐ In Advance ☑ Reimbursement

I have read, and am familiar with Brunswick County's Grant Policy. I acknowledge that as the Department Head, I am agreeing to be responsible for the administration of this grant and will ensure all requirements are fully met in a timely manner.

Department Head Signature — Date: 8/23/2022

Director of Fiscal Operations — Date: 8/26/22

County Manager — Date: 8/26/22

☐ Approved by County Manager
☐ Requires BOCC (Agenda Item Needed)

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 5.
Finance - Fiscal Items

From:
Aaron Smith

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.

-DSS Links Additional Revenue Budget Amendment
-Appropriate $17,500 of additional Links Transitional Revenue for use in the Links Transitional Expense program line.

-WIC Client Services Additional Revenue Budget Amendment
Appropriate $25,697 of additional WIC Client Services Revenue based on the increased client load.

-Airport Grant 36244.58.10.1 Closeout Budget Amendment and CPO
Closeout airport grant 36244.58.10.1 and return unexpended local match of $5,623 to undesignated funds in the County Capital Reserve.

-Code Administration Insurance Proceeds Budget Amendment
Appropriate insurance proceeds of $1,500 for the replacement of damaged drone in Code Administration.

-NC911 Board Ineligible Expenditures Budget Amendment
To move ineligible expenditures associated with the ESInet connection currently budgeted in the emergency telephone system fund. The County will invoice the state for these costs and be reimbursed in the General Fund moving forward.

-Lightning Strike Insurance Proceeds Budget Amendment
Appropriate $11,780 of insurance proceeds to repair and maintenance equipment for emergency repair of tower after lightning strike.

Background/Purpose of Request:

Fiscal Impact:
Budget Amendment Required, Capital Project/Grant Ordinance Required, Reviewed By Director of Fiscal Operations

Approved By County Attorney:
Yes

County Manager's Recommendation:

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

ATTACHMENTS:

Description

- 20220906 Budget Amendment DSS Links Additional Revenue.pdf
- 20220906 Budget Amendment WIC Client Services.pdf
- 20220906 Budget Amendment Grant 36244.58.10.1.pdf
- 20220906 CPO Airport Grants.pdf
- 20220906 Budget Amendment Code Administration Insurance Proceeds.pdf
- 20220906 Budget Amendment NC911 Board Reimbursement ETS.pdf
- 20220906 Budget Amendment NC911 Board Reimbursement GF.pdf
- 20220906 Budget Amendment Lightning Strike Repair.pdf

Request Info	
Type	Budget Amendment
Description	DSS Links Additional Revenue
Justification	Board Meeting 09/06/2022-Appropriate $17,500 of additional Links Transitional Revenue for use in the Links Transitional Expense program line.
Originator	Tiffany Rogers

Items						
Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
145310	332050	DSS-Administration	Links Transitional Revenue	17500	Increase	Credit
145310	449920	DSS-Administration	DSS Links Special/Housing Fund	17500	Increase	Debit

Total	
Grand Total:	35000

Request Info	
Type	Budget Amendment
Description	WIC Client Services Revenue
Justification	Board Meeting 09/06/2022-Appropriate $25,697 of additional WIC Client Services Revenue based on the increased client load.
Originator	Tiffany Rogers

Items						
Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
135169	332000	WIC-Client Services	State Revenues - Restricted	25697	Increase	Credit
135169	426000	WIC-Client Services	Supplies and Materials	4000	Increase	Debit
135169	426100	WIC-Client Services	Equipment Less Than $500	2000	Increase	Debit
135169	426200	WIC-Client Services	Operating Equip $500 - $4 999	3000	Increase	Debit
135169	439900	WIC-Client Services	Contract Services	16697	Increase	Debit

Total	
Grand Total:	51394

Request Info	
Type	Budget Amendment
Description	Close 36244.58.10.1 grant
Justification	Board Meeting 09/06/2022-Closeout airport grant 36244.58.10.1 and return unexpended local match of $5,623 to undesignated funds in the County Capital Reserve.
Originator	Tiffany Rogers

Items

Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
438157	332111	Airport Grants	State Rev-36244.58.10. Term WS	-50617	Decrease	Debit
438157	398110	Airport Grants	Trans Frm General Fund	-5623	Decrease	Debit
438157	449831	Airport Grants	36244.58.10.1 Terminal Wat/Sew	-56240	Decrease	Credit
439801	398110	Interfund Trans Co Cap Reserve	Trans Frm General Fund	5623	Increase	Credit
439801	464299	Interfund Trans Co Cap Reserve	Undesignated Funds	5623	Increase	Debit

Total

Grand Total:	-101234

COUNTY OF BRUNSWICK, NORTH CAROLINA
CAPITAL PROJECT ORDINANCE
Airport Grants Program
Amended (438157)

Be it ordained by the Board of County Commissioners of Brunswick County that pursuant to Section 13.2 of the General Statutes of North Carolina, the following ordinance is hereby adopted:

Section 1. The following amounts are hereby appropriated in the Brunswick County Airport Grants Capital Projects Fund:

Airport Grant Project Fund:		
Revenues:		
36237.45.13.2		3,031,885
36237.45.14.1		449,252
36237.45.15.2		899,841
36237.45.16.1		21,508
36244.58.4.1		62,000
36237.45.10.2		513,265
36237.45.10.3		409,235
36237.45.10.1		150,000
36244.58.5.1		2,853,811
36237.45.11.1		288,401
36244.58.6.1		2,814,516
36237.45.10.4		172,359
36237.45.13.1		229,592
36244.58.7.1		85,000
36237.45.15.1		201,656
46333.1.1		111,000
46333.2.1		251,281
36244.58.8.3		448,107
36244.58.10.1		1,225,567
36244.58.10.2		2,000,000
36244.58.10.3		1,168,447
36244.58.10.4		277,446
36244.58.9.1		1,105,950
36244.58.11.1		309,454
36244.58.11.2		1,492,037
36244.58.8.2		225,000
36244.58.12.1		297,810
36237.45.17.1		127,892
36237.45.18.1		390,244
Cares Act 36237.45.18.3		92,000
ARPA 36237.45.18.3		59,000
46333.3.1		192,646
36244.58.12.2		500,000
36244.58.13.1		3,564,375
36244.58.14.1		3,500,000
Transfer from General Fund		1,167,943
Total Airport Grant Capital Project Fund Revenues	**$**	**30,688,520**
Expenditures:		
36237.45.13.2		3,031,885
36237.45.14.1		449,252
36237.45.15.2		899,911
36237.45.16.1		21,508
36244.58.4.1		62,000
36237.45.10.2		528,873
36237.45.10.3		409,235
36237.45.10.1		150,000
36244.58.5.1		2,853,811
36237.45.11.1		288,401
36244.58.6.1		2,814,516

36237.45.10.4	172,359
36237.45.13.1	229,592
36244.58.7.1	85,000
36237.45.15.1	209,467
46333.1.1	111,000
46333.2.1	251,281
36244.58.8.3	459,932
36244.58.10.1	1,289,008
36244.58.10.2	2,000,000
36244.58.9.1	1,326,412
36244.58.10.3	1,298,277
36244.58.10.4	308,273
36244.58.11.1	309,455
36244.58.8.2	250,000
36244.58.11.2	1,657,818
36244.58.12.1	330,901
36237.45.17.1	142,103
36237.45.18.1	433,603
36237.45.18.3	151,000
46333.3.1	192,646
36244.58.12.2	500,000
36244.58.13.1	3,960,418
36244.58.14.1	3,500,000
Miscellaneous Expense	10,583
Land	-
Total Airport Grant Capital Project Fund Expenditures	**30,688,520**

Section 2. It is estimated that the following revenues will be available in the Brunswick County General Fund:

Current Funds Appropriated	$	1,167,943

Section 3. The following amounts are hereby appropriated in the Brunswick County General Fund:

Contribution to Capital Project Fund	$	1,167,943

Section 4. This Capital Project Ordinance shall be entered into the minutes of the September 6, 2022 meeting of the Brunswick County Board of Commissioners.

Request Info	
Type	Budget Amendment
Description	Code Admin Insurance Proceeds
Justification	Board Meeting 9/6/2022-Appropriate insurance proceeds of $1,500 for the replacement of damaged drone in Code Administration.
Originator	Tiffany Rogers

Items

Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
100000	383913	General Revenues	Insurance Refund	1500	Increase	Credit
104350	426200	Bldg Inspections and CP	Operating Equip $500 - $4 999	1500	Increase	Debit

Total	
Grand Total:	3000

Request Info	
Type	Budget Amendment
Description	NC911 Board reimbursement
Justification	Board Meeting 09/06/2022-To move ineligible expenditures associated with the ESInet connection currently budgeted in the emergency telephone system fund. The County will invoice the state for these costs and be reimbursed in the General Fund moving forward.
Originator	Tiffany Rogers

Items

Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
224376	432100	Emergency Telephone System	Telephone	-34931	Decrease	Credit
224376	399100	Emergency Telephone System	Fund Balance Appropriated	-34931	Decrease	Debit

Total	
Grand Total:	-69862

Request Info	
Type	Budget Amendment
Description	NC911 Board reimbursement
Justification	Board Meeting 09/06/2022-To move ineligible expenditures associated with the ESInet connection currently budgeted in the emergency telephone system fund. The County will invoice the state for these costs and be reimbursed in the General Fund moving forward.
Originator	Tiffany Rogers

Items

Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
104375	432100	Central Communications Center	Telephone	34931	Increase	Debit
104375	332400	Central Communications Center	State Cost Reimbursement	34931	Increase	Credit

Total

Grand Total:	69862

Request Info	
Type	Budget Amendment
Description	Lightning Strike Insurance Proceeds
Justification	Board Meeting 09/06/2022-Appropriate $11,780 of insurance proceeds to repair and maintenance equipment for emergency repair of tower after lightning strike.
Originator	Tiffany Rogers

Items

Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
104375	383913	Central Communications Center	Insurance Refund	11780	Increase	Credit
104375	435200	Central Communications Center	Repair and Maint - Equipment	11780	Increase	Debit

Total

Grand Total:	23560

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 6.
Finance - NC Forest Service Agreement

From:
Aaron Smith

Issue/Action Requested:
Request that the Board of Commissioners approve and authorize the County Manager to sign an agreement with the North Carolina Department of Agriculture and Consumers Services for the protection, development, and improvement of forest land in Brunswick County.

Background/Purpose of Request:
In past years, Brunswick County has entered into agreements with the State for the protection, development and improvement of forest land. The FY22/23 budget appropriation of $286,472 represents the County's share of the annual budget of $716,181 for carrying out the work in Brunswick County and the county is billed monthly. The State has provided an agreement for FY22/23 and requests that the County execute said agreement.

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

Approved By County Attorney:
Yes

County Manager's Recommendation:
Recommend that the Board of Commissioners approve and authorize the County Manager to sign an agreement with the North Carolina Department of Agriculture and Consumers Services for the protection, development, and improvement of forest land in Brunswick County.

ATTACHMENTS:

Description

- 20220906 Attach Forestry Agreement

STATE OF NORTH CAROLINA
Department of
Agriculture and Consumer Services

$ **716,181.00**
Total Cooperative Appropriation

$ **429,709.00** State

$ **286,472.00** County

AGREEMENT FOR THE PROTECTION, DEVELOPMENT AND IMPROVEMENT OF FOREST LANDS IN **BRUNSWICK COUNTY** NORTH CAROLINA

THIS AGREEMENT is made under the authority of **Chapter 106, Article 75, of the North Carolina General Statutes, including N.C. Gen. Stat. § 106-906, titled "Cooperation between counties and State in forest protection and development,"** by and between the North Carolina Department of Agriculture and Consumer Services (hereinafter called the Department), party of the first part, and the Board of Commissioners of **BRUNSWICK COUNTY** in the State of North Carolina (hereinafter called the Board), party of the second part.

WHEREAS, the Board recognizing the need for active forest protection, development, reforestation, management and improvement in **BRUNSWICK COUNTY** has accepted the offer of the Department for cooperation in accomplishing this object; and

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties contract and agree to maintain a legally appointed and equipped Forest Service office to support said county at the joint cost of the State and County, insofar as the joint funds will permit, as follows:

Part I. THE DEPARTMENT AGREES:

1. To select and employ permanent and temporary position(s) in order to successfully execute the mission of the NC Forest Service and to support the forestry program in said county. These positions include:

   A) **0.5** County/Area Ranger(s) assigned for the purposes of controlling forest fires in said County; for detecting and extinguishing fires that break out; for investigating the origin of forest, woodland, and field fires; for enforcing the State's forest fire laws; for taking such preventive measures, educational and otherwise, to prevent forest fires; for developing and improving the forests through reforestation, promotion, and practice of Forest Management practices; and for protection of forests from insects and diseases.
   B) **3** Assistant County Ranger(s) for the purposes of assisting under the direction, supervision, and/or oversight of the County/Area Ranger in controlling forest fires in said County; for detecting and extinguishing fires that break out; for investigating the origin of forest, woodland, and field fires; for enforcing the State's forest fire laws; for taking such preventive measures, educational and otherwise, to prevent forest fires; for developing and improving the forests through reforestation, promotion, and practice of Forest Management practices; and for protection of forests from insects and diseases.

C) **0.17** Forestry Management Clerk for purposes of providing administrative support, serving as the back-up administrative contact for the assigned district, counties within the district, or unit, and serving as the primary contact for forest management administrative business within the assigned district.

D) **3.17** Forest Fire Equipment Operator(s) for purposes of establishing fire suppression control lines in assigned work areas and in other areas as needed using equipment, including crawler tractors (fire dozers), with various attachments, such as a fire plow, hurricane blades, etc., and operate and maintain all types of heavy site preparation equipment.

E) Temporary position(s) on an as-needed basis.

2. To furnish position(s) so employed a badge of office, stationery and report forms, instructional posters for use in the County, leaflets for distributing to landowners and others; to purchase necessary equipment, communication systems, and other Forestry improvements insofar as the joint funds will permit.

3. To pay the identified position(s) for all official services rendered at a fair rate of pay. Rates of pay are to be established by the Department in accordance with existing State salary administration policy.

4. To direct, supervise, instruct, and inspect, through its agents, the work and conduct of each position, to discipline and, when necessary, discharge such position(s).

5. To submit to the Board monthly, or at other mutually satisfactory intervals, an itemized statement of all monies to be paid by the County and those paid by the Department for the work conducted pursuant to this Agreement within said County.

State Funding

6. To make available annually from State, Federal, and other funds allotted to it, the sum of **FOUR HUNDRED TWENTY-NINE THOUSAND SEVEN HUNDRED NINE DOLLARS ($429,709.00)** as its share of an annual budget of **SEVEN HUNDRED SIXTEEN THOUSAND ONE HUNDED EIGHTY-ONE DOLLARS ($716,181.00)** for carrying on the above listed work in said County.

Part II. THE BOARD AGREES:

7. To pay the Department **40** % of the total cost of the salary of position(s) specified in Part I.1 above and expenses and other proper expenditures made in connection with the overall forestry program in said County, upon receipt and consequent approval of the periodic statements submitted by the Department.

County Funding

8. To appropriate annually the sum of **TWO HUNDRED EIGHTY-SIX THOUSAND FOUR HUNDRED SEVENTY-TWO DOLLARS ($286,472.00),** which sum shall be available for expenditure under the terms of this Agreement, and shall represent the County's share of the annual budget for carrying on work listed in this Agreement in said County.

Part III. IT IS EXPRESSLY AGREED AND UNDERSTOOD BY BOTH PARTIES:

9. That this Agreement becomes effective **July 1, 2022**, and lasts through **June 30, 2023**.

10. Payments made for services rendered in a prior contract period will apply toward the contract period in which the services were rendered and not toward the contract period when the payments are made.

That the annual appropriations as set forth above may be revised in writing by mutual agreement between the Department and the Board, based on the amount of annual appropriation desirable for the proper conduct of the Forestry work. Such revision shall become effective at the beginning of the stated Fiscal Year. A Fiscal Year begins on July 1 and ends on June 30. Any unused balance of County funds remaining at the end of a Fiscal Year shall revert to said County unless otherwise mutually agreed upon by both parties.

11. That this Agreement may be modified only in writing and upon execution by both parties.

12. That the Board reimburse the Department as provided in Part II of this Agreement by forwarding a county voucher drawn in favor of the Department for the amount of the County's share of expenditures as set forth in the Department's monthly statement to the Board. That such payments be made by the Board within thirty days following receipt of the Department's billing.

13. The title to all improvements and equipment purchased and/or constructed in connection with this Agreement will rest with the Department; such materials or their equivalent will remain in the County as long as this Agreement is in effect, or as long as they are needed by the Department for the proper conduct of the work therein.

14. That the County/Area Ranger periodically or at the request of the Board, shall present to the Board statements of the work being done within the County, so that said Board may be always informed regarding the Forestry finances and activities within the County.

IN WITNESS WHEREOF, the said parties do hereunto affix their names and seals upon the date herein below specified.

For the Board of County Commissioners of **BRUNSWICK COUNTY**

Date_____ _____ County Manager

Provisions for the payment of the monies to fall due under this Agreement have been made by appropriation duly made or by bonds or notes duly authorized and this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act

Date _____ _____County Finance Officer

For the North Carolina Department of Agriculture and Consumer Services

Date _____ _____ Signature

N. David Smith
Chief Deputy Commissioner

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 7.

From:
David Stanley, Deputy County Manager

Health and Human Services - BSRI - FY 2023 HCCBG County Agreement, Funding Plan, and Lead Agency Designation

Issue/Action Requested:
Request that the Board of Commissioners approve the 2022-2023 Home and Community Care Block Grant for Older Adults (HCCBG) package including the funding plan, grant agreement, Attachment B Federal Certifications, form CD-511, disclosure of lobbying activities, and the county designation of Brunswick Senior Resources Inc. (BSRI) as lead agency for aging services.

Background/Purpose of Request:
The HCCBG Allocation Page, and the 2022-2023 HCCBG Funding Plan for Brunswick County is attached for review and approval. Local match is provided through funds committed to BRSI as the Lead HCCBG agency for the county by approval of the 2022-2023 Budget Ordinance. No additional county funding is required.

Additional approvals requested and attached include the Attachment B Federal Certifications, form CD-511, disclosure of Lobbying Activities, and county designation of lead agency for aging services.

Staff recommends approval of the 2022-2023 HCCBG for Older Adults county funding plan, grant agreement, designation of lead agency, and associated requested forms to complete the HCCBG 2023 budget and contract grant package.

Fiscal Impact:
Reviewed By Director of Fiscal Operations

Approved By County Attorney:
Yes

County Manager's Recommendation:
Recommend that the Board of Commissioners approve the 2022-2023 Home and Community Care Block Grant for Older Adults (HCCBG) package including the funding plan, grant agreement, Attachment B Federal Certifications, form CD-511, disclosure of lobbying activities, and the county designation of Brunswick Senior Resources Inc. (BSRI) as lead agency for aging services.

ATTACHMENTS:

Description

- HCCBG FY23 Grant Agreement
- HCCBG FY23 Forms
- HCCBG FY 23 Disclosure of Lobbying Activities

July 1, 2022 through June 30, 2023

Home and Community Care Block Grant for Older Adults
Agreement for the Provision of County-Based Aging Services

This Agreement, entered into as of this _____ day of _____, 2022, by and between the County of Brunswick (hereinafter referred to as the "County") and the Cape Fear Council of Governments, Lead Regional Organization for the Area Agency on Aging (hereinafter referred to as the "Area Agency").

Witnesseth That:

WHEREAS, the Area Agency and the County agree to the terms and conditions for provision of aging services in connection with activities financed in part by Older Americans Act grant funds, provided to the Area Agency from the United States Department of Health and Human Services through the North Carolina Division of Aging and Adult Services (DAAS) and state appropriations made available to the Area Agency through the North Carolina Division of Aging and Adult Services, as set forth in a) this document, b) the County Funding Plan, as reviewed by the Area Agency and the Division of Aging and Adult Services, c) the Division of Aging and Adult Services Home and Community Care Block Grant Procedures Manual for Community Service Providers, d) the Division of Aging and Adult Services Service Standards, and, e) the Division of Aging and Adult Services Community Service Providers Monitoring Guidelines.

NOW THEREFORE, in consideration of these premises, and mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. As provided in the Area Plan, community service providers specified by the County to encourage maximum collocation and coordination of services for older persons are as follows:

Brunswick Senior Resources, Inc.	Bayada Home Health Care, Inc.
Woodard's Adult Day Health Care	Brunswick Transit System, Inc.

The Community Service Provider(s), shall be those specified in Attachment A on the County Funding Plan Provider Services Summary format(s) (DAAS-732) for the period ending June 30 for the year stated above.

2. Availability of Funds. The terms set forth in this Agreement for payment are contingent upon the receipt of Home and Community Care Block Grant funding by the Area Agency.

3. Grant Administration.
The grant administrator for the Area Agency shall be: Holly Pilson, Area Agency on Aging Director, Cape Fear Council of Governments. The grant administrator for the County shall be: Yvette Gosline, Chief Operating Officer.

It is understood and agreed that the grant administrator for the County shall represent the County in the performance of this Agreement. The County shall notify the Area Agency in writing if the administrator changes during the grant period. Specific responsibilities of the grant administrator for the County are provided in paragraph seven (7) of this Agreement.

4. Services authorized through the County Funding Plan, as specified on the Provider Services Summary format(s) (DAAS-732) in Attachment A, are to commence no later than July 1 of the state fiscal year and shall be undertaken and pursued in such sequence as to assure their expeditious completion. All services required hereunder shall be completed on or before the end of the Agreement period, June 30 of the state fiscal year.

5. Assignability and Contracting. The County shall not assign all or any portion of its interest in this Agreement. Any purchase of services with Home and Community Care Block Grant for Older Adults funding shall be carried out in accordance with the procurement and contracting policy of the community services provider or, where applicable, the Area Agency, which does not conflict with procurement and contracting requirements contained in 45 CFR Part 75, Subpart D-Post Federal Award Requirements, Procurement Standards. Federal funds shall not be awarded to any subrecipients who have been suspended or debarred by the Federal government. In addition, Federal funds may not be used to purchase goods or services costing over $100,000 from a vendor that has been suspended or debarred from Federal grant programs.

6. Compensation and Payments to the County. The County shall be compensated for the work and services actually performed under this Agreement by payments to be made monthly by the Area Agency. Total reimbursement to the community service providers under this Agreement may not exceed $1,250,876.00, the grand total of Block Grant funding, as specified on the Provider Services Summary format (DAAS-732) in Attachment A.

   a. Interim Payments to the County

   Upon receipt of a written request from the County, the Division of Aging and Adult Services, through the Area Agency, will provide the County Finance Officer with an interim payment equivalent to seventy percent (70%) of one-twelfth (1/12) of the County's Home and Community Care Block Grant allocation by the 22nd of each month.

   b. Reimbursement of Service Costs

   Reimbursement of service costs are carried out as provided in Section 3 of the N.C. Division of Aging and Adult Services Home and Community Care Block Grant Procedures Manual for Community Service Providers, revised February 17, 1997.

   c. Role of the County Finance Director/Lead Agency

   The County Finance Director and/or lead agency for aging services shall be responsible for disbursing Home and Community Care Block Grant Funding to Community Service Providers in accordance with procedures specified in the N.C. Division of Aging and Adult Services Home and Community Care Block Grant Manual for Community Service Providers, revised February 17, 1997.

d. Payment of Administration on Aging Nutrition Services Incentive Program (NSIP) Subsidy

NSIP subsidy for congregate and home delivered meals will be disbursed by the Division of Aging and Adult Services through the Area Agency to the County on a monthly basis, subject to the availability of funds as specified in Section 3 of the N.C. Division of Aging and Adult Services Home and Community Care Block Grant Procedures Manual for Community Services Providers.

If through the U.S. Department of Agriculture Area Agency on Aging Elections Project, the County elects to receive a portion of its USDA entitlement in the form of surplus commodity foods in lieu of cash, the Area Agency will notify the County in writing of its community valuation upon notification from the Division of Aging and Adult Services. The delivery of commodity and bonus foods is subject to availability. The County will not receive cash entitlement in lieu of commodities that are unavailable or undelivered during the Agreement period.

7. Reallocation of Funds and Budget Revisions. Any reallocation of Block Grant funding between counties shall be voluntary on the part of the County and shall be effective only for the period of the Agreement. The reallocation of Block Grant funds between counties will not affect the allocation of future funding to the County. If during the performance period of the Agreement, the Area Agency determines that a portion of the Block Grant will not be expended, the grant administrator for the County shall be notified in writing by the Area Agency and given the opportunity to make funds available for reallocation to other counties in the Planning and Service Area or elsewhere in the state.

The County may authorize community service providers to implement budget revisions which do not cause the County to fall below minimum budgeting requirements for access, in-home, congregate, and home delivered meals services, as specified in Division of Aging and Adult Services budget instructions issued to the County. If a budget revision will cause the County to fall below minimum budgeting requirements for any of the aforementioned services, as specified in Division of Aging and Adult Services budgeting instructions issued to the County, the grants administrator for the County shall obtain written approval for the revision from the Area Agency prior to implementation by the community service provider, so as to assure that regional minimum budgeting requirements for the aforementioned services will be met.

Unless community services providers have been given the capacity to enter data into the Aging Resources Management System (ARMS), Area Agencies on Aging are responsible for entering amended service data into the Division of Aging and Adult Services Management Information System, as specified in the N.C. Division of Aging and Adult Services Home and Community Care Block Grant Procedures Manual for Community Service Providers.

8. Monitoring. This Agreement will be monitored to assure that services are being provided as stated in the Division of Aging and Adult Service Monitoring Policies and Procedures at http://www.ncdhhs.gov/aging/monitor/mpolicy.htm.

The monitoring of services provided under this Agreement shall be carried out by the Area Agency on Aging in accordance with its Assessment Plan and as specified in Sec. 308 of the AAA Policies and Procedures Manual. Counties and community service providers will receive

a written report of monitoring findings in accordance with procedures established in Section 308.4. Any areas of non-compliance will be addressed in a written corrective action plan with the community service provider.

Consumer Contributions: Grantees must allow for "consumer contributions" (caregiver must be given opportunity to contribute to defray the cost of the service but may not be denied service should he/she fail to or choose not to contribute). The NC Division of Aging and Adult Services Home and Community Care Block Grant Service Standards for Consumer Contributions will be followed, and a signed/dated provider assurance form must be present in each client file. Please review the Consumer Contributions Policy and Procedures at: http://www.ncdhhs.gov/document/consumer-contributions-policy-and-procedures

9. Disputes and Appeals. Any dispute concerning a question of fact arising under this Agreement shall be identified to the designated grants administrator for the Area Agency. In accordance with Lead Regional Organization (LRO) policy, a written decision shall be promptly furnished to the designated grants administrator for the County.

The decision of the LRO is final unless within twenty (20) days of receipt of such decision the Chairman of the Board of Commissioners furnishes a written request for appeal to the Director of the North Carolina Division of Aging and Adult Services, with a copy sent to the Area Agency. The request for appeal shall state the exact nature of the complaint. The Division of Aging and Adult Services will inform the Chairman of the Board of Commissioners of its appeal procedures and will inform the Area Agency that an appeal has been filed. Procedures thereafter will be determined by the appeals process of the Division of Aging and Adult Services. The state agency address is as follows:

Director
North Carolina Division of Aging and Adult Services
693 Palmer Drive
2101 Mail Service Center
Raleigh, North Carolina 27699-2101

10. Termination for Cause. If through any cause, the County shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or the County has or shall violate any of the covenants, agreements, representations or stipulations of this Agreement, the Area Agency shall have the right to terminate this Agreement by giving the Chairman of the Board of Commissioners written notice of such termination no fewer than fifteen (15) days prior to the effective date of termination. In such event, all finished documents and other materials collected or produced under this Agreement shall at the option of the Area Agency, become its property. The County shall be entitled to receive just and equitable compensation for any work satisfactorily performed under this Agreement.

11. Audit. The County agrees to have an annual independent audit in accordance with North Carolina General Statutes, North Carolina Local Government Commission requirements, Division of Aging and Adult Services Program Audit Guide for Aging Services and Federal Office of Budget and Management (OMB) Uniform Guidance 2 CFR Part 200.

Community service providers, as specified in paragraph one (1), who are not units of local government or otherwise subject to the audit and other reporting requirements of the Local Government Commission are subject to audit and fiscal reporting requirements, as stated in NC General Statute 143C-6-22 and 23 and OMB Uniform Guidance CFR 2 Part 200, where applicable. Applicable community service providers must send a copy of their year-end financial statements, and any required audit, to the Area Agency on Aging. Home and Community Care Block Grant providers are not required to submit Activities and Accomplishments Reports. For-profit corporations are not subject to the requirements of OMB Uniform Guidance 2 CFR Part 200, but are subject to NC General Statute 143C-6-22 and 23 and Yellow Book audit requirements, where applicable.

Federal funds may not be used to pay for a **Single or Yellow Book audit** unless it is a federal requirement. **State funds** will not be used to pay for a **Single or Yellow Book** audit if the provider receives less than $500,000 in state funds. The Department of Health and Human Services will provide confirmation of federal and state expenditures at the close of the state fiscal year. Information on audit and fiscal reporting requirements in accordance with Administrative Code 09 NCAC 03M can be found at https://www.osbm.nc.gov/stewardship-services/grants/grant-recipients

The following chart provides a summary of reporting requirements under NCGS 143C-6-22 and 23 and OMB Uniform Guidance 2 CFR Part 200 based upon funding received and expended during the service provider's fiscal year.

Annual Expenditures	Report Required to AAA	Allowable cost for reporting
• Less than $25,000 in state or federal funds	Certification form and State Grants Compliance Reporting <$25,000 (Item #11, Activities and Accomplishments) does not have to be completed) OR Audited Financial Statements in compliance with GAO/GAS (i.e., Yellow Book).	N.A.
• Greater than $25,000 and less than $500,000 in state funds or $750,000 in federal funds.	Certification form and Schedule of Grantee Receipts >$25,000 and Schedule of Receipts and Expenditures OR Audited Financial Statements in compliance with GAO/GAS (i.e., Yellow Book)	N.A.
• $500,000+ in state funds but federal pass through in an amount less than $750,000.	Audited Financial Statement in compliance with GAO/GAS (i.e., Yellow Book)	May use state funds, but not federal funds.
• $500,000+ in state funds and $750,000+	Audited Financial Statement in compliance with OMB Uniform Guidance 2 CFR Part 200 (i.e., Single Audit)	May use state and federal funds.

Annual Expenditures	Report Required to AAA	Allowable cost for reporting
in federal pass through funds.		
• Less than $500,000 in state funds and $750,000+ in federal pass through funds	Audited Financial Statement in compliance with OMB Uniform Guidance 2 CFR Part 200 (i.e., Single Audit)	May use federal funds, but not state funds.

12. Audit/Assessment Resolutions and Disallowed Cost. It is further understood that the community service providers are responsible to the Area Agency for clarifying any audit exceptions that may arise from any Area Agency assessment, county or community service provider single or financial audit, or audits conducted by the State or Federal Governments. In the event that the Area Agency or the Department of Health and Human Services disallows any expenditure made by the community service provider for any reason, the County shall promptly repay such funds to the Area Agency once any final appeal is exhausted in accordance with paragraph nine (9).

    The only exceptions are if the Area Agency on Aging is designated as a community service provider through the County Funding Plan or, if as a part of a procurement process, the Area Agency on Aging enters into a contractual agreement for service provision with a provider which is in addition to the required County Funding Plan formats. In these exceptions, the Area Agency is responsible for any disallowed costs. The County or Area Agency on Aging can recoup any required payback from the community service provider in the event that payback is due to a community service provider's failure to meet OMB Uniform Guidance CFR 2 Part 200, 45 CFR Part 1321 or state eligibility requirements as specified in policy.

13. Indemnity. The County agrees to indemnify and save harmless the Area Agency, its agents, and employees from and against any and all loss, cost, damages, expenses, and liability arising out of performance under this Agreement to the extent of errors or omissions of the County.

14. Equal Employment Opportunity and Americans With Disabilities Act Compliance. Both the County and community service providers, as identified in paragraph one (1), shall comply with all federal and state laws relating to equal employment opportunity and accommodation for disability.

15. Data to be Furnished to the County. All information which is existing, readily available to the Area Agency without cost and reasonably necessary, as determined by the Area Agency's staff, for the performance of this Agreement by the County shall be furnished to the County and community service providers without charge by the Area Agency. The Area Agency, its agents and employees, shall fully cooperate with the County in the performance of the County's duties under this Agreement.

16. Rights in Documents, Materials and Data Produced. The County and community service providers agree that at the discretion of the Area Agency, all reports and other data prepared by or for it under the terms of this Agreement shall be delivered to, become and remain, the

property of the Area Agency upon termination or completion of the work. Both the Area Agency and the County shall have the right to use same without restriction or limitation and without compensation to the other. For the purposes of this Agreement, "data" includes writings, sound recordings, or other graphic representations, and works of similar nature. No reports or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the County.

17. Interest of the Board of Commissioners. The Board of Commissioners covenants that neither the Board of Commissioners nor its agents or employees presently has an interest, nor shall acquire an interest, direct or indirect, which conflicts in any manner or degree with the performance of its service hereunder, or which would prevent, or tend to prevent, the satisfactory performance of the service hereunder in an impartial and unbiased manner.

18. Interest of Members of the Area Agency, Lead Regional Organization, and Others. No officer, member or employee of the Area Agency or Lead Regional Organization, and no public official of any local government which is affected in any way by the Project, who exercises any function or responsibilities in the review or approval of the Project or any component part thereof, shall participate in any decisions relating to this Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such persons have any interest, direct or indirect, in this Agreement or the proceeds arising there from.

19. Officials not to Benefit. No member of or delegate to the Congress of the United States of America, resident Commissioner or employee of the United States Government, shall be entitled to any share or part of this Agreement or any benefits to arise here from.

20. Prohibition Against Use of Funds to Influence Legislation. No part of any funds under this Agreement shall be used to pay the salary or expenses of any employee or agent acting on behalf of the County to engage in any activity designed to influence legislation or appropriations pending before Congress.

21. Confidentiality and Security. Any client information received in connection with the performance of any function of a community service provider or its subcontractors under this Agreement shall be kept confidential. The community service provider acknowledges that in receiving, storing, processing, or otherwise handling any confidential information, the agency and any subcontractors will safeguard and not further disclose the information except as provided in this Agreement and accompanying documents.

22. Record Retention and Disposition. All state and local government agencies, nongovernmental entities, and their subrecipients, including applicable vendors, that administer programs funded by federal sources passed through the NC DHHS and its divisions and offices are expected to maintain compliance with the NC DHHS record retention and disposition schedule (https://www.ncdhhs.gov/about/administrative-offices/office-controller/records-retention). In addition, the NC Department of Natural and Cultural Resources has developed a General Records Schedule for Local Government Agencies as well as individual retention and disposition schedules for local government agencies like county social service agencies and

local health departments. Those schedules are posted at https://archives.ncdcr.gov/government/local.

Retention requirements apply to the community service providers funded under this Agreement to provide Home and Community Care Block Grant services. By funding source and state fiscal year, the NC DHHS record retention schedule lists the earliest date that grant records in any format may be destroyed. The State Archives provides information about destroying confidential data and authorized methods of record destruction (paper and electronic) at https://archives.ncdcr.gov/government/records-management-tools/faq#how-can-i-destroy-records.

The NC DHHS record retention schedule is based on federal and state regulations and pertains to the retention of all financial and programmatic records, supporting documents, statistical records, and all other records supporting the expenditure of a federal grant award. Records legally required for ongoing official proceedings, such as outstanding litigation, claims, audits, or other official actions, must be maintained for the duration of that action, notwithstanding the instructions of the NC DHHS record retention and disposition schedule.

In addition to record retention requirements for records in any format, the long-term and/or permanent preservation of electronic records require additional commitment and active management by agencies. The community service provider will comply with all policies, standards, and best practices published by the Division of Aging and Adult Services regarding the creation and management of electronic records.

23. Additional provisions.

a. County and any subrecipients are required to follow policies and procedures for procurement that are at least as stringent as those of the State. For federal funds this requirement pertains to verifying that federal funds are not used to award funds to any subrecipients who have been suspended or debarred by the federal government. In addition, federal funds may not be used to purchase goods or services costing over $100,000 for a vendor that has been suspended or disbarred from Federal grant programs. Contractors and subcontractors of Older Americans Act funds are prohibited from discharging, demoting, or otherwise discriminating against and employee for whistle blowing as codified in 48 CFR Ch. 13.908.

b. Any capital purchases of $5,000 or more must be pre-approved by the Area Agency and the Division of Aging and Adult Services.

c. If any copyrightable material is developed in the course of or under this agreement and any subaward, a copy will be furnished to the Department of Health and Human Services and the Department shall have a royalty fee, non-exclusive, and irrevocable right to reproduce, publish or otherwise use the work for Department purposes.

d. In accepting this award, the County agrees not to replace local program support with Total Federal/State Reimbursement and will contract for any aging services as

identified through the county funding plan in accordance with policies and procedures established in the Division of Aging and Adult Services Manual of Policies and Procedures. https://policies.ncdhhs.gov/divisional/aging-and-adult

e. County and any subrecipients shall comply with the Federal Funding Accountability and Transparency Act (FFATA) by enrolling as a subrecipient in System for Award Management (SAM) Registration on an annual basis and providing required award information in the FFATA Subaward Reporting System per 2 CFR part 170.

f. In accepting this award, County and any subrecipients agree to maintain compliance with Section 306(a), (13), (14), and (15), of the Older Americans Act, as amended in 2006 with regards to contractual and commercial relationships.

g. By signatures on Attachment B, Federal Certifications, the County certifies its compliance and compliance of any subrecipients with federal requirements regarding nondiscrimination; drug-free workplace; environmental tobacco smoke; debarment, suspension, ineligibility, and voluntary exclusion lower tier covered transactions; and lobbying.

h. E-Verify Compliance. Pursuant to Session Law 2013-418, Contractor shall fully comply with the U.S. Department of Homeland Security employee legal status E-Verify requirements for itself and all its subcontractors, if applicable. requires an affidavit attesting to Contractor's compliance. Violation of the provision, unless timely cured, shall constitute a breach of contract.

24. Applicable Law. This Agreement is executed and is to be performed in the State of North Carolina, and all questions of interpretation and construction shall be construed by the laws of such State.

Subrecipient name:	Brunswick County Senior Resources, Inc.		
Subrecipient's unique entity identifier:	SAM UEI: **GZDNVNHAHMK7**		
	TITLE III-B	**TITLES III-C1**	**TITLE III-C2**
Federal Award Identification Number (FAIN):	AANCT3SS	AANCT3CM	AANCT3HD
Federal Award Date:	07-01-2022		
Subaward and Budget Period of Performance Start Date:	07-01-2022		
Subaward and Budget Period of Performance End Date:	06-30-2022		
	TITLE III-B	**TITLES III-C1**	**TITLE III-C2**
Amount of Federal Funds Obligated to the subrecipient by this action:	$ 730,876	$ 220,000	$ 300,000
Total Amount of Federal Funds Obligated to the subrecipient by CFCOG:	$ 1,250,876		

Total Amount of the Federal Award Committed to the subrecipient by CFCOG:	$1,250,876		
	TITLE III-B	**TITLES III-C1**	**TITLE III-C2**
Federal award project description :	Supportive Services	Congregate Meals	Home-Delivered Meals
Federal awarding agency:	Administration for Community Living		
Federal recipient:	North Carolina Department of Health and Human Services Division of Aging and Adult Services		
Subawarding agency:	Cape Fear Council of Governments		
Subawarding agency contact information:	Holly Pilson, Area Agency on Aging Director 910-274-0339		
	TITLE III-B	**TITLES III-C1**	**TITLE III-C2**
Assistance listings number and title:	93.044	93.045	93.045
Research and development:	No		

In witness whereof, the Area Agency and the County have executed this Agreement as of the day first written above.

Brunswick County:

Attest:

_____ By: _____

Chairman, Board of Commissioners

Area Agency

Attest:

_____ By: _____

Area Agency on Aging Director Executive Director

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

By: _____

Finance Director, Cape Fear Council of Governments

County Designation of Lead Agency for Aging Services
for the Home and Community Care Block Grant

WHEREAS, the North Carolina Division of Aging and Adult Services requires the County Board of Commissioners to designate an agency or office within the county to serve as County Lead Agency for Aging Services with responsibility for (1) coordinating the development of the County Funding Plan, (2) assuring community input through a Block Grant Advisory Committee, and (3) assuring the plan meets state and federal requirements; and

WHEREAS, Brunswick Senior Resources, Inc (BSRI) currently serves in the role of Lead Agency for Aging Services and is willing to continue to carry out those responsibilities in the county.

NOW THEREFORE, the Board of Commissioners of Brunswick County hereby formally designates Brunswick Senior Resources, Inc (BSRI) as its Lead Agency for Aging Services for fiscal years 2023 and 2024 and directs BSRI to:

1. Complete the work and responsibilities of planning and coordinating the development of the County Funding Plan for provision of services for older adults and caregivers in the county.
2. Direct the work of the Home and Community Care Block Grant (HCCBG) Planning Committee in order to guarantee community input in the services proposed in the County Funding Plan.
3. Direct all Service Providers who are proposed to receive HCCBG funds to complete the HCCBG Provider Packet.
4. Collect and review all HCCBG Provider Packets from Service Providers for accuracy and completeness, including the required 10% match.
5. Prepare County Funding Plan(s) (DOA forms 731/732) in compliance with budgetary instructions provided by the NC Division of Aging and Adult Services and submit to the Area Agency on Aging for review and approval and to the County Manager (or designee) for approval by the Board of County Commissioners.
6. Enter a contract with the Area Agency on Aging as the County Lead Agency to provide HCCBG services on behalf of the County according to the approved County Funding Plan(s).

Adopted this _____ day of _____, 20____.

_____
Randy Thompson, Chair
Board of Commissioners

ATTEST:

_____
Daralyn Spivey, Clerk to the Board

DAAS-731 (Rev. 2/16)

Home and Community Care Block Grant for Older Adults

County Funding Plan

County Brunswick
July 1, 2022 through June 30, 2023

County Services Summary

	A				B	C	D	E	F	G	H	I
	Block Grant Funding				Required	Net	NSIP	Total	Projected HCCBG	Projected Reimbursement	Projected HCCBG	Projected Total
Services	Access	In-Home	Other	Total	Local Match	Service Cost	Subsidy	Funding	Units	Rate	Clients	Units
Congregate Nutrition			220,000	\\\\\\\\\\	24,444	244,444	46,800	291,244	26,574	9.1986	220	58,500
Home Delivered Meals		300,000		\\\\\\\\\\	33,333	333,333	61,200	394,533	35,635	9.354	150	76,500
Senior Center Operations			480,876	\\\\\\\\\\	53,431	534,307		534,307				
In-Home Aide-Level I - Home Management		2,000		\\\\\\\\\\	222	2,222		2,222	84	26.4524	2	84
In-Home Aide-Level II - Personal Care		146,000		\\\\\\\\\\	16,222	162,222		162,222	6,122	26.4982	15	6122
In-Home Aide-Level III- Personal Care		2,000		\\\\\\\\\\	222	2,222		2,222	84	26.4524	2	84
Adult Day Health		6,000		\\\\\\\\\\	667	6,667		6,667	72	92.61	5	2200
Adult Day Care		4,000		\\\\\\\\\\	444	4,444		4,444	56	80.0456	4	1842
Transportation (General)	80,000			\\\\\\\\\\	8,889	88,889		88,889	5,608	15.8504	38	5608
Consumer Directed-Personal Assistant		7299		\\\\\\\\\\	811	8110		8110				
Consumer Directed-Care Advisor			1000	\\\\\\\\\\	111	1111		1111				
Consumer Directed-Financial Management Services			1701	\\\\\\\\\\	189	1890		1890				
				\\\\\\\\\\	0	0		0				
				\\\\\\\\\\	0	0		0				
Total	80,000	467,299	703,577	1,250,876	138,986	1,389,861	108,000	1,497,861	74,235	\\\\\\\\\\\\	436	150,940

Signature, Chairman, Board of Commissioners Date

Home and Community Care Block Grant for Older Adults

Brunswick Senior Resources, Inc.

PO Box 2470

Shallotte, NC 28459

County Funding Plan

Provider Services Summary

DAAS-732

County: BRUNSWICK

Budget Period: July 2022 through June 2023

Revision #: **Date:**

Services	Serv. Delivery (Check One)		A				B	C	D	E	F	G	H	I
			Block Grant Funding				Required Local Match	Net Service Cost	NSIP Subsidy	Total Funding	Projected HCCBG Units	Projected Reimburse Rate	Projected HCCBG Clients	Projected Total Units
	Direct	Purchase	Access	In-Home	Other	Total								
Congregate Nutrition	X		$ -	$ -	$ 220,000	$ 220,000	$ 24,444	$ 244,444	$ 46,800	$ 291,244	25,265	$ 9.6752	220	58,500
Home Delivered Meals	X		$ -	$ 300,000	$ -	$ 300,000	$ 33,333	$ 333,333	$ 61,200	$ 394,533	33,658	$ 9.9036	150	76,500
Senior Center Operation	X		$ -	$ -	$ 480,876	$ 480,876	$ 53,431	$ 534,307	$ -	$ 534,307	-	$ -		-
Consumer Directed-Personal Assistant		X	$ -	$ 7,299	$ -	$ 7,299	$ 811	$ 8,110	$ -	$ 8,110	-	$ -	2	-
Consumer Directed-Care Advisor	X		$ -	$ -	$ 1,000	$ 1,000	$ 111	$ 1,111	$ -	$ 1,111	27	$ 41.1481	2	27
Consumer Directed-Financial Management Services		X	$ -	$ -	$ 1,701	$ 1,701	$ 189	$ 1,890	$ -	$ 1,890	-	$ -	2	-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
Total			$ -	$ 307,299	$ 703,577	#########	$ 112,319	$ 1,123,195	$ 108,000	$ 1,231,195	58,950		376	135,027

Certification of required minimum local match availability. Required local match will be expended simultaneously with Block Grant Funding.

President/CEO — 8/11/2022

Authorized Signature, Title — Date

Community Service Provider

Signature, County Finance Officer — Date

Signature, Chairman, Board of Commissioners — Date

North Carolina Division of Aging and Adult Services
Service Cost Computation Worksheet

DAAS-732A

Provider: Brunswick Senior Resources, Inc.
County: BRUNSWICK
Budget Period: July 2022 through June 2023

I. Projected Revenues	Grand Total	Service: Congregate Nutrition 180	Service: Home Delivered Meals 020	Service: Senior Center Operation 170	Service: Consumer Directed-Personal Assistant 501	Service: Consumer Directed-Care Advisor 500	Service: Consumer Directed-Financial Management Services 503
A. Fed/State Funding From the Div. of Aging & Adult Svcs.	$ 1,010,876	$ 220,000	$ 300,000	$ 480,876	$ 7,299	$ 1,000	$ 1,701
Required Minimum Match - Cash							
1)	$ 112,319	$ 24,444	$ 33,333	$ 53,431	$ 811	$ 111	$ 189
2)	$ -						
3)	$ -						
Total Required Minimum Match - Cash	$ 112,319	$ 24,444	$ 33,333	$ 53,431	$ 811	$ 111	$ 189
Required Minimum Match - In-Kind							
1)	$ -						
2)	$ -						
3)	$ -						
Total Required Minimum Match - In-Kind	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B. Total Required Minimum Match (cash + in-kind)	$ 112,319	$ 24,444	$ 33,333	$ 53,431	$ 811	$ 111	$ 189
C. **Subtotal, Fed/State/Required Match Revenues**	$ 1,123,195	$ 244,444	$ 333,333	$ 534,307	$ 8,110	$ 1,111	$ 1,890
D. NSIP Cash Subsidy/Commodity Valuation	$ 108,000	$ 46,800	$ 61,200	$ -	$ -	$ -	$ -
E. **OAA Title V Worker Wages, Fringe Benefits and Costs**	$ -						
Local Cash, Non-Match							
1) Brunswick County	$ 1,979,918	$ 321,555	$ 424,292	$ 1,234,071			
2)	$ -						
3)	$ -						
4)	$ -						
F. **Subtotal, Local Cash, Non-Match**	$ 1,979,918	$ 321,555	$ 424,292	$ 1,234,071	$ -	$ -	$ -
Other Revenues, Non-Match							
1)	$ -						
2)	$ -						
3)	$ -						
G. **Subtotal, Other Revenues, Non-Match**	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Local In-Kind Resources (Includes Volunteer Resources)							
1)	$ -						
2)	$ -						
3)	$ -						
H. **Subtotal, Local In-kind Resources, Non-Match**	$ -	$ -	$ -	$ -	$ -	$ -	$ -
I. **Client Cost Sharing**	$ -						
J. **Total Projected Revenues (Sum I.C,D,E,F,G,H, & I)**	$ 3,211,113	$ 612,799	$ 818,825	$ 1,768,378	$ 8,110	$ 1,111	$ 1,890

Division of Aging and Adult Services
Service Cost Computation Worksheet

II. Line Item Expenses	Grand Total	Admin. Cost	Service Congregate Nutrition 180	Service Home Delivered Meals 020	Service Senior Center Operation 170	Service Consumer Directed-Personal Assistant 501	Service Consumer Directed-Care Advisor 500	Service [illegible] 503
Staff Salary From Labor Distribution Schedule								
1) Full-time Staff (do not include Title V workers)	$ 1,030,810	$ 78,704	$ 195,289	$ 260,333	$ 496,484	$ -	$ -	$ -
2) Part-time staff (do not include Title V workers)	$ 77,516	$ -	$ 5,152	$ 7,048	$ 64,413	$ -	$ 903	$ -
A. **Subtotal, Staff Salary**	$ 1,108,326	**$ 78,704**	**$ 200,441**	**$ 267,381**	**$ 560,897**	$ -	**$ 903**	$ -
Fringe Benefits								
1) FICA @ 7.65 %	$ 84,787	$ 6,021	$ 15,334	$ 20,455	$ 42,909	$ -	$ 69	$ -
2) Health Insurance	$ 255,233	$ 18,968	$ 48,387	$ 65,019	$ 122,806		$ 53	
3) Retirement	$ 52,078	$ 3,866	$ 9,863	$ 13,253	$ 25,032		$ 64	
4) Unemployment Insurance	$ 5,061	$ 338	$ 897	$ 1,199	$ 2,617		$ 10	
5) Worker's Compensation	$ 13,056	$ 905	$ 2,368	$ 3,172	$ 6,599		$ 12	
6) Other	$ -							
B. **Subtotal, Fringe Benefits**	$ 410,215	$ 30,098	$ 76,849	$ 103,098	$ 199,963	$ -	$ 208	$ -
Local In-Kind Resources Non-Match								
1)	$ -							
2)	$ -							
3)	$ -							
C. **Subtotal, Local In-Kind Resources Non-Match**	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D. **OAA Title V Worker Wages, Fringe Benefits and Costs**	$ -							
Travel								
1) Per Diem	$ -							
2) Mileage Reimbursement	$ -							
3) Other Travel Cost	$ -							
E. **Subtotal, Travel**	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
General Operating Expenses								
1) Non-Staff Program Cost (Inc Food and related)	$ 710,163		$ 238,373	$ 351,704	$ 110,086	$ 8,110		$ 1,890
2) Meal Delivery Cost	$ 46,000			$ 46,000				
3) Repairs & Maintenace - Equipment	$ 126,069		$ 2,500	$ 3,205	$ 120,364			
4) Facility Rental, Repairs, & Maintenance	$ 416,781		$ 16,013	$ 2,753	$ 398,015			
5) Staff Training	$ 26,371		$ 665	$ 850	$ 24,856			
6) Outreach, Advertising, Supplies	$ 109,247		$ 7,070	$ 4,765	$ 97,412			
7) Utilities	$ 235,941		$ 40,888	$ 9,068	$ 185,985			
8) Property & General Liability Insurance	$ 22,000		$ 1,000	$ 1,000	$ 20,000			
F. **Subtotal, General Operating Expenses**	$ 1,692,572	$ -	$ 306,509	$ 419,345	$ 956,718	$ 8,110	$ -	$ 1,890
G. **Subtotal, Other Administrative Cost Not Allocated in Lines II.A through E**	$ -							
H. **Total Proj. Expenses Prior to Admin. Distribution**	**$ 3,211,113**	**$ 108,802**	**$ 583,799**	**$ 789,824**	**$ 1,717,578**	**$ 8,110**	**$ 1,111**	**$ 1,890**
I. **Distribution of Admininistrative Cost**	**$ (108,802)**		**$ (29,000)**	**$ (29,001)**	**$ (50,800)**	**$ -**	**$ (0)**	**$ -**
J. **Total Proj. Expenses After Admin. Distribution**	**$ 3,211,113**		**$ 612,799**	**$ 818,825**	**$ 1,768,378**	**$ 8,110**	**$ 1,111**	**$ 1,890**

III. Computation of Rates	Grand Total		Service Congregate Nutrition 180	Service Home Delivered Meals 020	Service Senior Center Operation 170	Service nsumer Directed-Personal Assis 501	Service nsumer Directed-Care Adv 500	Service Directed-Financial Managem 503
A. **Computation of Unit Cost Rate:**								
1. Total Expenses (equals line II.J)	$ 3,211,113		$ 612,799	$ 818,825	$ 1,768,378	$ 8,110	$ 1,111	$ 1,890
2. Total Projected Units			58,500	76,500			27	
3. Total Unit Cost Rate			$ 10.4752	$ 10.7036	$ -	$ -	$ 41.1481	$ -
B. **Computation of Reimbursement Rate:**								
1. Total Revenues (equals line I.J)	$ 3,211,113		$ 612,799	$ 818,825	$ 1,768,378	$ 8,110	$ 1,111	$ 1,890
2. Less: NSIP (equals line I.D)	$ 108,000		$ 46,800	$ 61,200	$ -	$ -	$ -	$ -
Title V (equals line I.E less II.D)	$ -		$ -	$ -	$ -	$ -	$ -	$ -
Non Match In-Kind (equals line I.H less II.C)	$ -		$ -	$ -	$ -	$ -	$ -	$ -
3. Revenues Subject to Unit Reimbursement	$ 3,103,113		$ 565,999	$ 757,625	$ 1,768,378	$ 8,110	$ 1,111	$ 1,890
4. Total Projected Units (equals line III.A.2)			58,500	76,500	-	-	27	-
5. Total Reimbursement Rate			$ 9.6752	$ 9.9036	$ -	$ -	$ 41.1481	$ -
C. **Units Reimbursed Through HCCBG**			**25,265**	**33,658**	-	-	**27**	-
D. **Units Reimbursed Through Program Income***			-	-	-	-	-	-
E. **Units Reimbursed Through Remaining Revenues**			**33,235**	**42,842**	-	-	-	-
F. **Total Units Reimbursed/Total Projected Units**			**58,500**	**76,500**	-	-	**27**	-

* The Division of Aging ARMS deducts reported program income from reimbursement paid to providers. Line III.D indicates the number of units that will have to be produced in addition to those stated on line III.C in order to earn the net revenues stated on line I.C.

Certification:

I certify to the best of my knowledge and belief that the information included in the cost computation above is accurate and complies with all laws and regulations. I also understand that material deviations in reported cost information could limit funding, and also result in return of funds if the error or omission results in a higher than actual reported cost.

Authorized Signature | President/CEO (Title) | 8/11/2022 (Date)

Information on this form (DAAS-732A) corresponds with information stated on the Provider Services Summary (DAAS-732) as follows:

	DAAS-732A	DAAS-732
Block Grant Funding	Line I.A	Col. A
Required Local Match-Cash & In-Kind	Line I.B	Col. B
Net Service Cost	Line I.C	Col. C
NSIP Subsidy	Line I.D	Col. D
Total Funding	L. I.C+I.D	Col. E
Projected HCCBG Reimbursed Units	Line III.C	Col. F
Total Reimbursement Rate	Line III.B.5	Col. G
Projected Total Service Units	Line III.F	Col. I

AGENCY NAME: Brunswick Senior Resources, Inc.

State Fiscal Year: SFY 2022-2023

Fiscal Period: July 2022 through June 2023

STAFF NAME	POSITION	TOTAL SALARY	FTE Equivalent	FULL TIME PART TIME	Assignable Salary	ADMIN. SALARY	SERVICE Congregate Nutrition	SERVICE Home Delivered Meals	SERVICE Senior Center Operation	SERVICE Consumer Directed-Personal Assistant	SERVICE Consumer Directed-Care Advisor	SERVICE Consumer Directed-Financial Management Services
Klouser, Sharon L.	Center Cook	$ 34,300	1	FULL TIME	$ 34,300		$ 15,092	$ 19,208				
Ramsey, Amber F.	Center Cook	$ 36,400	1	FULL TIME	$ 36,400		$ 16,016	$ 20,384				
Frye-Ellis, Rebecca	Center Cook	$ 29,120	1	FULL TIME	$ 29,120		$ 12,813	$ 16,307				
Mccallum, Quinton	Center Cook	$ 34,320	1	FULL TIME	$ 34,320		$ 15,101	$ 19,219				
Mcleod, Caroline L.	Nutrition Coordinator	$ 30,160	1	FULL TIME	$ 30,160		$ 13,874	$ 16,286				
Lower, Jodi	Volunteer Coordinator	$ 31,200	1	FULL TIME	$ 31,200			$ 31,200				
Pieczarka, Gloria J.	Nutrition Coordinator	$ 30,160	1	FULL TIME	$ 30,160		$ 13,874	$ 16,286				
Bridgers, Beverly S.	Nutrition Coordinator	$ 37,440	1	FULL TIME	$ 37,440		$ 17,222	$ 20,218				
Consoli, Grace A.	Nutrition Coordinator	$ 33,280	1	FULL TIME	$ 33,280		$ 15,309	$ 17,971				
Francisco, Dean A.	Nutrition Driver	$ 25,600	0.4375	PART TIME	$ 11,200		$ 5,152	$ 6,048				
Livers, Kathryn	Center Cook	$ 34,320	1	FULL TIME	$ 34,320		$ 15,101	$ 19,219				
Mullis, Tammie B.	Food Services Manager	$ 56,300	1	FULL TIME	$ 56,300	$ 5,500	$ 19,932	$ 25,368	$ 5,500			
Gore, Derissa M.	Aging Resource Compliance Officer	$ 50,450	1	FULL TIME	$ 50,450	$ 20,180	$ 15,135	$ 15,135				
Ambrose, Brenda J.	Reception Administrative Assistant	$ 22,250	0.475	PART TIME	$ 10,569				$ 10,569			
Britanik, Lora	Reception Administrative Assistant	$ 22,250	0.475	PART TIME	$ 10,569				$ 10,569			
Edwards, Emma-Lou H.	Reception Administrative Assistant	$ 22,250	0.475	PART TIME	$ 10,569				$ 10,569			
Green, Patricia A.	Reception Administrative Assistant	$ 22,250	0.2375	PART TIME	$ 5,284				$ 5,284			
Jones, Janyce L.	Reception Administrative Assistant	$ 22,250	0.2375	PART TIME	$ 5,284				$ 5,284			
Kleinerman, Ellen	Reception Administrative Assistant	$ 22,250	0.475	PART TIME	$ 10,569				$ 10,569			
Schotter, Carol A.	Reception Administrative Assistant	$ 22,250	0.475	PART TIME	$ 10,569				$ 10,569			
Lett-McGee, Veronica M.	Senior Center Director	$ 58,700	1	FULL TIME	$ 58,700	$ 5,870	$ 2,935	$ 2,935	$ 46,960			
Starr, Melissa L.	Senior Center Director	$ 56,600	1	FULL TIME	$ 56,600	$ 5,660	$ 2,830	$ 2,830	$ 45,280			
Hardin, Jillian L.	Senior Center Director	$ 55,300	1	FULL TIME	$ 55,300	$ 5,530	$ 2,765	$ 2,765	$ 44,240			
Catlett, Melissa	Senior Center Director	$ 60,700	1	FULL TIME	$ 60,700	$ 6,070	$ 3,035	$ 3,035	$ 48,560			
Norris, Holley M.	Senior Center Director	$ 53,500	1	FULL TIME	$ 53,500	$ 5,350	$ 2,675	$ 2,675	$ 42,800			
Knott, Jackie E.	Assistant Center Director	$ 39,000	1	FULL TIME	$ 39,000		$ 1,950	$ 1,950	$ 35,100			
Steinkamp, Brittany L.	Assistant Center Director	$ 37,440	1	FULL TIME	$ 37,440		$ 1,872	$ 1,872	$ 33,696			
Barnes, Tonya A.	Assistant Center Director	$ 36,600	1	FULL TIME	$ 36,600		$ 1,830	$ 1,830	$ 32,940			
Hunt, Robert D.	Assistant Center Director	$ 36,600	1	FULL TIME	$ 36,600		$ 1,830	$ 1,830	$ 32,940			
Puglisi, Heather	Assistant Center Director	$ 36,200	1	FULL TIME	$ 36,200		$ 1,810	$ 1,810	$ 32,580			
Benoy, Justin P.	Project Technician	$ 76,960	1	FULL TIME	$ 76,960	$ 15,392			$ 61,568			
Hatley, Vaughn E.	Program Services Technician	$ 20,000	0.1	PART TIME	$ 2,000			$ 1,000	$ 1,000			
Jackson, Chauvet S.	Operations Technician	$ 45,760	1	FULL TIME	$ 45,760	$ 9,152	$ 2,288		$ 34,320			
Collins, Laura	Aging Resource Specialist	$ 57,824	0.00905	PART TIME	$ 523						$ 523	
Sherman, Jennifer	Chief Compliance Officer	$ 95,000	0.004	PART TIME	$ 380						$ 380	
					$ -							
					$ -							
					$ -							
					$ -							
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					$ -							
					$ -							
					$ -							

SUBTOTAL FT:	$ 1,030,810	$ 78,704	$ 195,289	$ 260,333	$ 496,484	$ -	$ -	$ -				
SUBTOTAL PT:	$ 77,516	$ -	$ 5,152	$ 7,048	$ 64,413	$ -	$ 903	$ -				
TOTAL	$ 1,108,326	$ 78,704	$ 200,441	$ 267,381	$ 560,897	$ -	$ 903	$ -				
PERCENT FT:	93.01%	100.00%	97.43%	97.36%	88.52%	#DIV/0!	0.00%	#DIV/0!				
PERCENT PT:	6.99%	0.00%	2.57%	2.64%	11.48%	#DIV/0!	100.00%	#DIV/0!				

DAAS-733
(Rev. 2/19)

Home and Community Care Block Grant for Older Adults
Outreach Methodology

July 2022 through June 2023

Outreach Methodology to Address the Service Needs of Target Population

Community Service Provider: Brunswick Senior Resources, Inc.

County: BRUNSWICK

While all older adults age 60 and over are eligible for services, sec. 305(a)(2)(E) of the Older Americans Act requires programs to target services to older individuals with the greatest economic and social need, (with particular attention to low-income older adults, including low-income minority older adults, older adults with limited English proficiency, and older adults residing in rural areas). The community service provider shall specify how these service needs will be met through the services identified on the Provider Services Summary (DAAS-732). This narrative shall address outreach and service delivery methodologies that will ensure that this target population is adequately served and conform with specific objectives established by the Area Agency on Aging, for providing services to low income minority individuals. Additional pages may be used as necessary.

See attached.

Home and Community Care Block Grant for Older Adults
Outreach Methodology

Brunswick Senior Resources, Inc. operates five Senior Centers of Excellence and two satellite nutrition sites across Brunswick County. The five Centers, located in Southport, Leland, Shallotte, Supply and Calabash, operate five days per week offering weekday Congregate dining. The satellite nutrition sites in Boiling Spring Lakes and Oak Island offer Congregate dining on different days of the week.

Outreach to the senior population in Brunswick County is facilitated through several outlets which include: events and programs at the Senior Centers and Nutrition Sites, a BSRI monthly magazine, "The Coastal Buzz," which is distributed to local physicians, public buildings, and area businesses, the BSRI website and the utilization of social media platforms, i.e.: Facebook and TikTok. The website, as with all BSRI publications, contains information on center and site locations, activity calendars, county wide activities, and directives for accessing services. In addition to publications, BSRI participates in public venues promoting outreach programs to identify and encourage seniors with limited income and limited English proficiency to access services. Staff at all BSRI locations are trained to make seniors feel welcomed and respected, regardless of their racial, cultural or financial status.

The vast majority of new attendees to our centers and nutrition sites continues to be single, female, lower income seniors, with limited family support. For Brunswick County, with over 50,000 residents over the age of 60, it is clear this trend will increase at an expedited rate as more seniors find themselves in need of services and resources.

Meal counts within the Home Delivered Meals program have increased about 15% and Congregate and Nutrition Site meals served have increased by about 13% over the previous year.

July 2022 through June 2023

Home and Community Care Block Grant for Older Adults
Community Service Provider
Standard Assurances

Brunswick Senior Resources, Inc. agrees to provide services through the Home and Community Care Block Grant, as specified on the Provider Services Summary (DAAS-732) in accordance with the following:

1. Services shall be provided in accordance with requirements set forth in:
   a) The County Funding Plan;

   b) The Division of Aging and Adult Services Home and Community Care Block Grant Procedures Manual for Community Service Providers; and

   c) The Division of Aging and Adult Services Standards at

   https://www.ncdhhs.gov/divisions/daas/monitoring

   Community service providers shall monitor any subcontracts with providers of Block Grant services and take appropriate measures to ensure that services are provided in accordance with the aforementioned documents.

2. Priority shall be given to providing services to those older persons with the greatest economic or social needs. The service needs of low-income minority elderly will be addressed in the manner specified on the Outreach Methodology to Address Service Needs of Target Population (DAAS-733).

3. The following service authorization activities will be carried out in conjunction with all services provided through the Block Grant:
   a) Eligibility determination;
   b) Client intake/registration;
   c) Client assessment/reassessments and quarterly visits, as appropriate;
   d) Determining the amount of services to be received by the client; and
   e) Reviewing consumer contributions policies with eligible clients.

4. All licenses, permits, bonds, and insurance necessary for carrying out Block Grant Services will be maintained by the community service provider and any subcontracted providers.

5. As specified in 45 CFR 75, Subpart D-Post Federal Award Requirements, Procurement Standards, community service providers shall have procedures for settling all contractual and administrative issues arising out of procurement of services through the Block Grant. Community service providers shall have procedures governing the evaluation of bids for services and procedures through which bidders and contracted providers may appeal or dispute a decision made by the community service provider.

6. Applicant/Client appeals shall be addressed as specified in Section 7 of the Division of Aging and Adult Services Home and Community Care Block Grant Manual for Community Service Providers.

7. Community service providers are responsible for providing or arranging for the provision of required local match, as specified on the Provider Services Summary, (DAAS-732). Local match shall be expended simultaneously with Block Grant funding.

8. Community service providers agree to comply with audit and fiscal reporting requirements as specified in the Agreement for the Provision of County-Based Aging Services (DAAS-735).

9. Compliance with Equal Employment Opportunity and Americans with Disabilities Act requirements, as specified in paragraph fourteen (14) of the Agreement for the Provision of County-Based Aging Services (DAAS-735) shall be maintained.

10. Providers of In-Home Aide, Home Health, Housing and Home Improvement, and Adult Day Care or Adult Day Health Care shall sign and return the attached assurance to the area agency on aging indicating that recipients of these services have been informed of their client rights, as required in Section 314 of the 2006 Amendments to the Older Americans Act (DAAS-734 Standard Assurances Regarding In-Home Client Rights).

11. Subcontracting – All HCCBG community service providers must assure that subcontractors (for-profit and non-profit entities only) meet the following requirements:

a. The subcontractor has not been suspended or debarred. (N.C.G.S. §143C-6-23, 09 NCAC 03M)
b. The subcontractor has not been barred from doing business at the federal level.
c. The subcontractor is able to produce a notarized "State Grant Certification of No Overdue Tax Debts."

d. All licenses, permits, bonds and insurance necessary for carrying out Home and Community Care Block Grant services will be maintained by both the community service provider and any subcontractors.

e. The subcontractor is registered as a charitable, tax-exempt (501c3) organization with the Internal Revenue Service (non-profit subcontractors only).

12. Confidentiality and Security. Per the requirements in 10A NCAC 05J and Section 6 of the Home and Community Care Block Grant Procedures Manual, client information in any format and whether recorded or not shall be kept confidential and not disclosed in a form that identifies the person without the informed consent of the person or legal representative. Community service providers, including subcontractors and vendors, must adhere to all applicable federal, state and departmental requirements for protecting the security and confidentiality of client information including but not limited to appropriately restricting access, establishing procedures to reduce the risk of accidental disclosures from data processing systems, and developing a process by which the Division of Adult Aging Services is notified of suspected or confirmed security incidents and data breaches.

13. Record Retention and Disposition. All community service providers are responsible for maintaining custody of records and documentation to support the allowable expenditure of funds, service provision, and the reimbursement of services. Service providers must adhere to the approved record retention and disposition schedule posted at https://www.ncdhhs.gov/about/administrative-offices/office-controller/records-retention by the NC Department of Health and Human Services Controller's Office, as well as the local government schedules posted by the NC Department of Natural and Cultural Resources at https://archives.ncdcr.gov/government/local

Service providers are not authorized to destroy records related to the provision of services under this Agreement except in compliance with the approved DHHS retention and disposition schedule, which allows for the proper destruction of records based on a schedule by funding source and fiscal year. The agency agrees to comply with 07 NCAC 04M .0510 when deciding on a method of record destruction. Confidential records will be destroyed in such a manner that the records cannot be practically read or reconstructed.

8-5-2022

(Authorized Signature) (Date)

Standard Assurance To Comply with Older Americans Act
Requirements Regarding Clients Rights
For
Agencies Providing In-Home Services through the
Home and Community Care Block Grant for Older Adults

As a provider of one or more of the services listed below, our agency agrees to notify all Home and Community Care Block Grant clients receiving any of the below listed services provided by this agency of their rights as a service recipient. Services in this assurance include:

- In-Home Aide
- Home Care (home health)
- Housing and Home Improvement
- Adult Day Care or Adult Day Health Care

Notification will include, at a minimum, an oral review of the information outlined below as well as providing each service recipient with a copy of the information in written form. In addition, providers of in-home services will establish a procedure to document that client rights information has been discussed with in-home services clients (e.g. copy of signed Client Bill of Rights statement).

Clients Rights information to be communicated to service recipients will include, at a minimum, the right to:

- be fully informed, in advance, about each in-home service to be provided and any change in service(s) that may affect the wellbeing of the participant;
- participate in planning and changing any in-home service provided unless the client is adjudicated incompetent;
- voice a grievance with respect to service that is or fails to be provided, without discrimination or reprisal as a result of voicing a grievance;
- confidentiality of records relating to the individual;
- have property treated with respect; and
- be fully informed both orally and in writing, in advance of receiving an in-home service, of the individual's rights and obligations.

Client Rights will be distributed to, and discussed with, each new client receiving one or more of the above listed services prior to the onset of service. For all existing clients, the above information will be provided no later than the next regularly scheduled service reassessment.

Agency Name: Brunswick Senior Resources, Inc.

Name of Agency Administrator: James M. Fish

Signature: 

(Please return this form to your Area Agency on Aging and retain a copy for your files.)

CLIENT/PATIENT RIGHTS

1. You have the right to be fully informed of all your rights and responsibilities as a client/patient of the program.

2. You have the right to appropriate and professional care relating to your needs.

3. You have the right to be fully informed in advance about the care to be provided by the program.

4. You have the right to be fully informed in advance of any changes in the care that you may be receiving and to give informed consent to the provision of the amended care.

5. You have the right to participate in determining the care that you will receive and in altering the nature of the care as your needs change.

6. You have the right to voice your grievances with respect to care that is provided and to expect that there will be no reprisal for the grievance expressed.

7. You have the right to expect that the information you share with the agency will be respected and held in strict confidence, to be shared only with your written consent and as it relates to the obtaining of other needed community services.

8. You have the right to expect the preservation of your privacy and respect for your property.

9. You have the right to receive a timely response to your request for service.

10. You shall be admitted for service only if the agency has the ability to provide safe and professional care at the level of intensity needed.

11. You have the right to be informed of agency policies, changes, and costs for services.

12. If you are denied service solely on you inability to pay, you have the right to be referred elsewhere.

13. You have the right to honest, accurate information regarding the industry, agency and of the program in particular.

14. You have the right to be fully informed about other services provided by this agency.

Home and Community Care Block Grant for Older Adults

Brunswick Transit System, Inc.

5040 Main Street

Shallotte, NC 28470

County Funding Plan

Provider Services Summary

DAAS-732

County: BRUNSWICK

Budget Period: July 2022 through June 2023

Revision #: **Date:**

Services	Serv. Delivery (Check One) Direct	Purchase	A Block Grant Funding Access	In-Home	Other	Total	B Required Local Match	C Net Service Cost	D NSIP Subsidy	E Total Funding	F Projected HCCBG Units	G Projected Reimburse Rate	H Projected HCCBG Clients	I Projected Total Units
Transportation (General)	X		$ 80,000	$ -	$ -	$ 80,000	$ 8,889	$ 88,889	$ -	$ 88,889	5,608	$15.8504	38	5,608
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
Total			$ 80,000	$ -	$ -	$ 80,000	$ 8,889	$ 88,889	$ -	$ 88,889	5,608		38	5,608

Certification of required minimum local match availability. Required local match will be expended simultaneously with Block Grant Funding.

Yvonne Hatcher Executive Director 8/8/22

Authorized Signature, Title — Date

Community Service Provider

Signature, County Finance Officer — Date

Signature, Chairman, Board of Commissioners — Date

North Carolina Division of Aging and Adult Services' DAAS-732A
Service Cost Computation Worksheet

Provider: Brunswick Transit System, Inc.
County: BRUNSWICK
Budget Period: July 2022 through June 2023

I. Projected Revenues	Grand Total		Service: Transportation (General) 250	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A
A. Fed/State Funding From the Div. of Aging & Adult Svcs.	$ 80,000		$ 80,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
Required Minimum Match - Cash													
1) Operating Reserves - Contract Services	$ 8,889		$ 8,889										
2)	$ -												
3)	$ -												
Total Required Minimum Match - Cash	$ 8,889		$ 8,889	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
Required Minimum Match - In-Kind													
1)	$ -												
2)	$ -												
3)	$ -												
Total Required Minimum Match - In-Kind	$ -		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
B. Total Required Minimum Match (cash + in-kind)	$ 8,889		$ 8,889	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
C. Subtotal, Fed/State/Required Match Revenues	$ 88,889		$ 88,889	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
D. NSIP Cash Subsidy/Commodity Valuation	$ -		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
E. OAA Title V Worker Wages, Fringe Benefits and Costs	$ -												
Local Cash, Non-Match													
1)	$ -												
2)	$ -												
3)	$ -												
4)	$ -												
F. Subtotal, Local Cash, Non-Match	$ -		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
Other Revenues, Non-Match													
1)	$ -												
2)	$ -												
3)	$ -												
G. Subtotal, Other Revenues, Non-Match	$ -		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
Local In-Kind Resources (Includes Volunteer Resources)													
1)	$ -												
2)	$ -												
3)	$ -												
H. Subtotal, Local In-kind Resources, Non-Match	$ -		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
I. Client Cost Sharing	$ -												
J. Total Projected Revenues (Sum I.C,D,E,F,G,H, & I)	$ 88,889		$ 88,889	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$

Division of Aging and Adult Services
Service Cost Computation Worksheet

II. Line Item Expenses	Grand Total	Admin. Cost	Service: Transportation (General) 250	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A	Service: 0 #N/A
Staff Salary From Labor Distribution Schedule													
1) Full-time Staff (do not include Title V workers)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
2) Part-time staff (do not include Title V workers)	$ 14,248	$ -	$ 14,248	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
A. Subtotal, Staff Salary	$ 14,248	$ -	$ 14,248	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
Fringe Benefits													
1) FICA @ 7.65 %	$ 1,090	$ -	$ 1,090	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
2) Health Insurance	$ 4,037		$ 4,037										
3) Retirement	$ 855		$ 855										
4) Unemployment Insurance	$ 68		$ 68										
5) Worker's Compensation	$ 168		$ 168										
6) Other	$ -												
B. Subtotal, Fringe Benefits	$ 6,218	$ -	$ 6,218	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
Local In-Kind Resources Non-Match													
1)	$ -												
2)	$ -												
3)	$ -												
C. Subtotal, Local In-Kind Resources Non-Match	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
D. OAA Title V Worker Wages, Fringe Benefits and Costs	$ -												
Travel													
1) Per Diem	$ -												
2) Mileage Reimbursement	$ -												
3) Other Travel Cost	$ -												
E. Subtotal, Travel	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
General Operating Expenses													
1) Program Cost Transit System Service	$ 68,423		$ 68,423										
2)	$ -												
3)	$ -												
4)	$ -												
5)	$ -												
6)	$ -												
7)	$ -												
8)	$ -												

F. Subtotal, General Operating Expenses	$ 68,423	$ -	$ 68,423	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
G. Subtotal, Other Administrative Cost Not Allocated in Lines II.A through E	$ -														
H. Total Proj. Expenses Prior to Admin. Distribution	$ 88,889	$ -	$ 88,889	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
I. Distribution of Administrative Cost	$ (0)		$ (0)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
J. Total Proj. Expenses After Admin. Distribution	$ 88,889		$ 88,889	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$

III. Computation of Rates	Grand Total		Service Transportation (General) 250	Service 0 #N/A	Service 0 #N/A	Service 0 #N/A	Service 0 #N/A	Service 0 #N/A	Service 0 #N/A	Service 0 #N/A	Service 0 #N/A	Service 0 #N/A	Service 0 #N/A	Service 0 #N/A
A. Computation of Unit Cost Rate:														
1. Total Expenses (equals line II.J)	$ 88,889		$ 88,889	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
2. Total Projected Units			5,608											
3. Total Unit Cost Rate			$ 15.8504	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
B. Computation of Reimbursement Rate:														
1. Total Revenues (equals line I.J)	$ 88,889		$ 88,889	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
2. Less: NSIP (equals line I.D)	$ -		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
Title V (equals line I.E less II.D)	$ -		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
Non Match In-Kind (equals line I.H less II.C)	$ -		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
3. Revenues Subject to Unit Reimbursement	$ 88,889		$ 88,889	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
4. Total Projected Units (equals line III.A.2)			5,608		-		-		-		-		-	
5. Total Reimbursement Rate			$ 15.8504	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$
C. Units Reimbursed Through HCCBG			6,608		-		-		-		-		-	
D. Units Reimbursed Through Program Income*			-	-	-	-	-	-	-	-	-	-	-	
E. Units Reimbursed Through Remaining Revenues			-	-	-	-	-	-	-	-	-	-	-	
F. Total Units Reimbursed/Total Projected Units			6,608	-	-	-	-	-	-	-	-	-	-	

* The Division of Aging ARMS deducts reported program income from reimbursement paid to providers. Line III.D indicates the number of units that will have to be produced in addition to those stated on line III.C in order to earn the net revenues stated on line I.C.

Certification:

I certify to the best of my knowledge and belief that the information included in the cost computation above is accurate and complies with all laws and regulations. I also understand that material deviations in reported cost information could limit funding, and also result in return of funds if the error or omission results in a higher than actual reported cost.

Joanne Hartzler
Authorized Signature

Executive Director
Title

7/11/2022
Date

Information on this form (DAAS-732A) corresponds with information stated on the Provider Services Summary (DAAS-732) as follows:

	DAAS-732A	DAAS-732
Block Grant Funding	Line I.A	Col. A
Required Local Match-Cash & In-Kind	Line I.B	Col. B
Net Service Cost	Line I.C	Col. C
NSIP Subsidy	Line I.D	Col. D
Total Funding	L I.C+I.D	Col. E
Projected HCCBG Reimbursed Units	Line III.C	Col. F
Total Reimbursement Rate	Line III.B.5	Col. G
Projected Total Service Units	Line III.F	Col. I

NC DIVISION OF AGING AND ADULT SERVICES COST OF SERVICES - LABOR DISTRIBUTION SCHEDULE DAAS-732A1

AGENCY NAME: Brunswick Transit System, Inc. **Fiscal Period:** July 2022 through June 2023

State Fiscal Year: SFY 2022-2023

STAFF NAME	POSITION	TOTAL SALARY	FTE Equivalent	FULL TIME PART TIME	Assignable Salary	ADMIN. SALARY	SERVICE Transportation (General)	SERVICE 0	SERVICE 0	SERVICE 0	SERVICE 0	SERVICE 0	SERVICE 0	SERVICE 0
Antoinette Jenrette	Transportation Coordinator	$ 35,672	0.2	PART TIME	$ 7,134		$ 7,134							
Tonya Randolph	Program Coordinator	$ 35,568	0.2	PART TIME	$ 7,114		$ 7,114							
					$ -									
					$ -									
					$ -	

DAAS-733
(Rev. 2/19)

Home and Community Care Block Grant for Older Adults
Outreach Methodology

July 2022 through June 2023

Outreach Methodology to Address the Service Needs of Target Population

Community Service Provider: Brunswick Transit System, Inc.

County: BRUNSWICK

While all older adults age 60 and over are eligible for services, sec. 305(a)(2)(E) of the Older Americans Act requires programs to target services to older individuals with the greatest economic and social need, (with particular attention to low-income older adults, including low-income minority older adults, older adults with limited English proficiency, and older adults residing in rural areas). The community service provider shall specify how these service needs will be met through the services identified on the Provider Services Summary (DAAS-732). This narrative shall address outreach and service delivery methodologies that will ensure that this target population is adequately served and conform with specific objectives established by the Area Agency on Aging, for providing services to low income minority individuals. Additional pages may be used as necessary.

See Attached

Home and Community Care Block Grant for Older Adults
Outreach Methodology

Brunswick Senior Resources, Inc. operates five Senior Centers of Excellence and two satellite nutrition sites across Brunswick County. The five Centers, located in Southport, Leland, Shallotte, Supply and Calabash, operate five days per week offering weekday Congregate dining. The satellite nutrition sites in Boiling Spring Lakes and Oak Island offer Congregate dining on different days of the week.

Outreach to the senior population in Brunswick County is facilitated through several outlets which include: events and programs at the Senior Centers and Nutrition Sites, a BSRI monthly magazine, "The Coastal Buzz," which is distributed to local physicians, public buildings, and area businesses, the BSRI website and the utilization of social media platforms, i.e.: Facebook and TikTok. The website, as with all BSRI publications, contains information on center and site locations, activity calendars, county wide activities, and directives for accessing services. In addition to publications, BSRI participates in public venues promoting outreach programs to identify and encourage seniors with limited income and limited English proficiency to access services. Staff at all BSRI locations are trained to make seniors feel welcomed and respected, regardless of their racial, cultural or financial status.

The vast majority of new attendees to our centers and nutrition sites continues to be single, female, lower income seniors, with limited family support. For Brunswick County, with over 50,000 residents over the age of 60, it is clear this trend will increase at an expedited rate as more seniors find themselves in need of services and resources.

Meal counts within the Home Delivered Meals program have increased about 15% and Congregate and Nutrition Site meals served have increased by about 13% over the previous year.

July 2022 through June 2023

Home and Community Care Block Grant for Older Adults
Community Service Provider
Standard Assurances

Brunswick Transit System, Inc. agrees to provide services through the Home and Community Care Block Grant, as specified on the Provider Services Summary (DAAS-732) in accordance with the following:

1. Services shall be provided in accordance with requirements set forth in:
   a) The County Funding Plan;

   b) The Division of Aging and Adult Services Home and Community Care Block Grant Procedures Manual for Community Service Providers; and

   c) The Division of Aging and Adult Services Standards at

   https://www.ncdhhs.gov/divisions/daas/monitoring

   Community service providers shall monitor any subcontracts with providers of Block Grant services and take appropriate measures to ensure that services are provided in accordance with the aforementioned documents.

2. Priority shall be given to providing services to those older persons with the greatest economic or social needs. The service needs of low-income minority elderly will be addressed in the manner specified on the Outreach Methodology to Address Service Needs of Target Population (DAAS-733).

3. The following service authorization activities will be carried out in conjunction with all services provided through the Block Grant:
   a) Eligibility determination;
   b) Client intake/registration;
   c) Client assessment/reassessments and quarterly visits, as appropriate;
   d) Determining the amount of services to be received by the client; and
   e) Reviewing consumer contributions policies with eligible clients.

4. All licenses, permits, bonds, and insurance necessary for carrying out Block Grant Services will be maintained by the community service provider and any subcontracted providers.

5. As specified in 45 CFR 75, Subpart D-Post Federal Award Requirements, Procurement Standards, community service providers shall have procedures for settling all contractual and administrative issues arising out of procurement of services through the Block Grant. Community service providers shall have procedures governing the evaluation of bids for services and procedures through which bidders and contracted providers may appeal or dispute a decision made by the community service provider.

6. Applicant/Client appeals shall be addressed as specified in Section 7 of the Division of Aging and Adult Services Home and Community Care Block Grant Manual for Community Service Providers.

7. Community service providers are responsible for providing or arranging for the provision of required local match, as specified on the Provider Services Summary, (DAAS-732). Local match shall be expended simultaneously with Block Grant funding.

8. Community service providers agree to comply with audit and fiscal reporting requirements as specified in the Agreement for the Provision of County-Based Aging Services (DAAS-735).

9. Compliance with Equal Employment Opportunity and Americans with Disabilities Act requirements, as specified in paragraph fourteen (14) of the Agreement for the Provision of County-Based Aging Services (DAAS-735) shall be maintained.

10. Providers of In-Home Aide, Home Health, Housing and Home Improvement, and Adult Day Care or Adult Day Health Care shall sign and return the attached assurance to the area agency on aging indicating that recipients of these services have been informed of their client rights, as required in Section 314 of the 2006 Amendments to the Older Americans Act (DAAS-734 Standard Assurances Regarding In-Home Client Rights).

11. Subcontracting – All HCCBG community service providers must assure that subcontractors (for-profit and non-profit entities only) meet the following requirements:

a. The subcontractor has not been suspended or debarred. (N.C.G.S. §143C-6-23, 09 NCAC 03M)
b. The subcontractor has not been barred from doing business at the federal level.
c. The subcontractor is able to produce a notarized "State Grant Certification of No Overdue Tax Debts."

d. All licenses, permits, bonds and insurance necessary for carrying out Home and Community Care Block Grant services will be maintained by both the community service provider and any subcontractors.

e. The subcontractor is registered as a charitable, tax-exempt (501c3) organization with the Internal Revenue Service (non-profit subcontractors only).

12. Confidentiality and Security. Per the requirements in 10A NCAC 05J and Section 6 of the Home and Community Care Block Grant Procedures Manual, client information in any format and whether recorded or not shall be kept confidential and not disclosed in a form that identifies the person without the informed consent of the person or legal representative. Community service providers, including subcontractors and vendors, must adhere to all applicable federal, state and departmental requirements for protecting the security and confidentiality of client information including but not limited to appropriately restricting access, establishing procedures to reduce the risk of accidental disclosures from data processing systems, and developing a process by which the Division of Adult Aging Services is notified of suspected or confirmed security incidents and data breaches.

13. Record Retention and Disposition. All community service providers are responsible for maintaining custody of records and documentation to support the allowable expenditure of funds, service provision, and the reimbursement of services. Service providers must adhere to the approved record retention and disposition schedule posted at https://www.ncdhhs.gov/about/administrative-offices/office-controller/records-retention by the NC Department of Health and Human Services Controller's Office, as well as the local government schedules posted by the NC Department of Natural and Cultural Resources at https://archives.ncdcr.gov/government/local

Service providers are not authorized to destroy records related to the provision of services under this Agreement except in compliance with the approved DHHS retention and disposition schedule, which allows for the proper destruction of records based on a schedule by funding source and fiscal year. The agency agrees to comply with 07 NCAC 04M .0510 when deciding on a method of record destruction. Confidential records will be destroyed in such a manner that the records cannot be practically read or reconstructed.

Yvonne Hatcher 8/8/2022

(Authorized Signature) (Date)

Standard Assurance To Comply with Older Americans Act
Requirements Regarding Clients Rights
For
Agencies Providing In-Home Services through the
Home and Community Care Block Grant for Older Adults

As a provider of one or more of the services listed below, our agency agrees to notify all Home and Community Care Block Grant clients receiving any of the below listed services provided by this agency of their rights as a service recipient. Services in this assurance include:

- In-Home Aide
- Home Care (home health)
- Housing and Home Improvement
- Adult Day Care or Adult Day Health Care

Notification will include, at a minimum, an oral review of the information outlined below as well as providing each service recipient with a copy of the information in written form. In addition, providers of in-home services will establish a procedure to document that client rights information has been discussed with in-home services clients (e.g. copy of signed Client Bill of Rights statement).

Clients Rights information to be communicated to service recipients will include, at a minimum, the right to:

- be fully informed, in advance, about each in-home service to be provided and any change in service(s) that may affect the wellbeing of the participant;
- participate in planning and changing any in-home service provided unless the client is adjudicated incompetent;
- voice a grievance with respect to service that is or fails to be provided, without discrimination or reprisal as a result of voicing a grievance;
- confidentiality of records relating to the individual;
- have property treated with respect; and
- be fully informed both orally and in writing, in advance of receiving an in-home service, of the individual's rights and obligations.

Client Rights will be distributed to, and discussed with, each new client receiving one or more of the above listed services prior to the onset of service. For all existing clients, the above information will be provided no later than the next regularly scheduled service reassessment.

Agency Name: Brunswick Transit System, Inc.

Name of Agency Administrator: Yvonne Hatcher

Signature: Yvonne Hatcher

(Please return this form to your Area Agency on Aging and retain a copy for your files.)

CLIENT/PATIENT RIGHTS

1. You have the right to be fully informed of all your rights and responsibilities as a client/patient of the program.
2. You have the right to appropriate and professional care relating to your needs.
3. You have the right to be fully informed in advance about the care to be provided by the program.
4. You have the right to be fully informed in advance of any changes in the care that you may be receiving and to give informed consent to the provision of the amended care.
5. You have the right to participate in determining the care that you will receive and in altering the nature of the care as your needs change.
6. You have the right to voice your grievances with respect to care that is provided and to expect that there will be no reprisal for the grievance expressed.
7. You have the right to expect that the information you share with the agency will be respected and held in strict confidence, to be shared only with your written consent and as it relates to the obtaining of other needed community services.
8. You have the right to expect the preservation of your privacy and respect for your property.
9. You have the right to receive a timely response to your request for service.
10. You shall be admitted for service only if the agency has the ability to provide safe and professional care at the level of intensity needed.
11. You have the right to be informed of agency policies, changes, and costs for services.
12. If you are denied service solely on you inability to pay, you have the right to be referred elsewhere.
13. You have the right to honest, accurate information regarding the industry, agency and of the program in particular.
14. You have the right to be fully informed about other services provided by this agency.

Home and Community Care Block Grant for Older Adults

BAYADA Home Health Care, Inc.

3205 Randall Parkway, Suite 205

Wilmington, NC 28403

County Funding Plan

Provider Services Summary

DAAS-732

County: BRUNSWICK

Budget Period: July 2022 through June 2023

Revision #: **Date:**

Services	Serv. Delivery (Check One) Direct	Purchase	A Block Grant Funding: Access	In-Home	Other	Total	B Required Local Match	C Net Service Cost	D NSIP Subsidy	E Total Funding	F Projected HCCBG Units	G Projected Reimburse Rate*	H Projected HCCBG Clients	I Projected Total Units
In-Home Aide-Level I - Home Management		X	$ -	$ 2,000	$ -	$ 2,000	$ 222	$ 2,222	$ -	$ 2,222	84	$ 26.4524	2	84
In-Home Aide-Level II - Personal Care		X	$ -	$ 146,000	$ -	$ 146,000	$ 16,222	$ 162,222	$ -	$ 162,222	6,122	$ 26.4982	15	6,122
In-Home Aide-Level III - Personal Care		X	$ -	$ 2,000	$ -	$ 2,000	$ 222	$ 2,222	$ -	$ 2,222	84	$ 26.4524	2	84
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
Total			$ -	$ 150,000	$ -	$ 150,000	$ 16,666	$ 166,666	$ -	$ 166,666	6,290		19	6,290

***Adult Day Care & Adult Day Health Care Proj. Service Cost/Rate**

	ADC	ADHC
Daily Care	$33.07	$ 40.00
Administrative		
Proj. Reimbursement Rate	$33.07	$ 40.00
Administrative %	0.00%	0.00%

Certification of required minimum local match availability. Required local match will be expended simultaneously with Block Grant Funding.

Director 6/28/2022

Authorized Signature, Title — Date

Community Service Provider

Signature, County Finance Officer — Date

Signature, Chairman, Board of Commissioners — Date

North Carolina Division of Aging and Adult Services
Service Cost Computation Worksheet

DAAS-732A

Provider: BAYADA Home Health Care, Inc.
County: BRUNSWICK
Budget Period: July 2022 through June 2023

	Grand Total		Service: In-Home Aide-Level I - Home Management 041	Service: In-Home Aide-Level II - Personal Care 042	Service: In-Home Aide-Level III - Personal Care 045	Service: 0 #N/A	Service: 0 #N/A
I. Projected Revenues							
A. Fed/State Funding From the Div. of Aging & Adult Svcs.	$ 150,000		$ 2,000	$ 146,000	$ 2,000	$ -	$ -
Required Minimum Match - Cash							
1)	$ -						
2)	$ -						
3)	$ -						
Total Required Minimum Match - Cash	$ -		$ -	$ -	$ -	$ -	$ -
Required Minimum Match - In-Kind							
1) Administrative In-Kind Match	$ 16,666		$ 222	$ 16,222	$ 222		
2)	$ -						
3)	$ -						
Total Required Minimum Match - In-Kind	$ 16,666		$ 222	$ 16,222	$ 222	$ -	$ -
B. Total Required Minimum Match (cash + in-kind)	$ 16,666		$ 222	$ 16,222	$ 222	$ -	$ -
C. **Subtotal, Fed/State/Required Match Revenues**	$ 166,666		$ 2,222	$ 162,222	$ 2,222	$ -	$ -
D. NSIP Cash Subsidy/Commodity Valuation	$ -		$ -	$ -	$ -	$ -	$ -
E. **OAA Title V Worker Wages, Fringe Benefits and Costs**	$ -						
Local Cash, Non-Match							
1)	$ -						
2)	$ -						
3)	$ -						
4)	$ -						
F. **Subtotal, Local Cash, Non-Match**	$ -		$ -	$ -	$ -	$ -	$ -
Other Revenues, Non-Match							
1)	$ -						
2)	$ -						
3)	$ -						
G. **Subtotal, Other Revenues, Non-Match**	$ -		$ -	$ -	$ -	$ -	$ -
Local In-Kind Resources (Includes Volunteer Resources)							
1)	$ -						
2)	$ -						
3)	$ -						
H. **Subtotal, Local In-kind Resources, Non-Match**	$ -		$ -	$ -	$ -	$ -	$ -
I. **Client Cost Sharing**	$ -						
J. **Total Projected Revenues (Sum I.C,D,E,F,G,H, & I)**	$ 166,666		$ 2,222	$ 162,222	$ 2,222	$ -	$ -

Division of Aging and Adult Services
Service Cost Computation Worksheet

	Grand Total	Admin. Cost	Service: In-Home Aide-Level I - Home Management 041	Service: In-Home Aide-Level II - Personal Care 042	Service: In-Home Aide-Level III - Personal Care 045	Service: 0 #N/A	Service: 0 #N/A
II. Line Item Expenses							
Staff Salary From Labor Distribution Schedule							
1) Full-time Staff (do not include Title V workers)	$ 88,500	$ -	$ 1,180	$ 86,140	$ 1,180	$ -	$ -
2) Part-time staff (do not include Title V workers)	$ 8,600	$ 4,000	$ 300	$ 8,000	$ 300	$ -	$ -
A. **Subtotal, Staff Salary**	$ 101,100	**$ 4,000**	**$ 1,480**	**$ 94,140**	**$ 1,480**	**$ -**	**$ -**
Fringe Benefits							
1) FICA @ 7.65 %	$ 7,734	$ 306	$ 113	$ 7,202	$ 113	$ -	$ -
2) Health Insurance	$ 12,800		$ 100	$ 12,600	$ 100		
3) Retirement	$ -						
4) Unemployment Insurance	$ 782	$ 29	$ 50	$ 653	$ 50		
5) Worker's Compensation	$ 6,830	$ 280	$ 100	$ 6,350	$ 100		

6) Other	$ -							
B. Subtotal, Fringe Benefits	$ 28,146	$ 615	$ 363	$ 26,805	$ 363	$ -	$ -	
Local In-Kind Resources Non-Match								
1)	$ -							
2)	$ -							
3)	$ -							
C. Subtotal, Local In-Kind Resources Non-Match	$ -	$ -	$ -	$ -	$ -	$ -	$ -	
D. OAA Title V Worker Wages, Fringe Benefits and Costs	$ -							
Travel								
1) Per Diem	$ -							
2) Mileage Reimbursement	$ 1,398		$ 20	$ 1,278	$ 100			
3) Other Travel Cost	$ -							
E. Subtotal, Travel	$ 1,398	$ -	$ 20	$ 1,278	$ 100	$ -	$ -	
General Operating Expenses								
1) Rent	$ 9,100		$ 50	$ 9,000	$ 50			
2) Utilities	$ 6,094		$ 50	$ 6,000	$ 44			
3) Insurance	$ 4,150		$ 100	$ 4,000	$ 50			
4) Supplies	$ 9,050		$ 25	$ 9,000	$ 25			
5) MIS	$ 7,175		$ 100	$ 7,000	$ 75			
6) Training	$ 2,050		$ 25	$ 2,000	$ 25			
7) Postage	$ 3,018		$ 9	$ 2,999	$ 10			
8)	$ -							
F. Subtotal, General Operating Expenses	$ 40,637	$ -	$ 359	$ 39,999	$ 279	$ -	$ -	
G. Subtotal, Other Administrative Cost Not Allocated in Lines II.A through E	$ -							
H. Total Proj. Expenses Prior to Admin. Distribution	$ 171,281	$ 4,615	$ 2,222	$ 162,222	$ 2,222	$ -	$ -	
I. Distribution of Admininistrative Cost	$ 0		$ 0	$ (0)	$ 0	$ -	$ -	
J. Total Proj. Expenses After Admin. Distribution	$ 166,666		$ 2,222	$ 162,222	$ 2,222	$ -	$ -	

	Grand Total		Service In-Home Aide-Level I - Home Manageme 041	Service In-Home Aide-Level II - Personal Cai 042	Service Home Aide-Level III - Personal C 045	Service 0 #N/A	Service 0 #N/A
III. Computation of Rates							
A. Computation of Unit Cost Rate:							
1. Total Expenses (equals line II.J)	$ 166,666		$ 2,222	$ 162,222	$ 2,222	$ -	$ -
2. Total Projected Units			84	6,122	84		
3. Total Unit Cost Rate			$ 26.4524	$ 26.4982	$ 26.4524	$ -	$ -
B. Computation of Reimbursement Rate:							
1. Total Revenues (equals line I.J)	$ 166,666		$ 2,222	$ 162,222	$ 2,222	$ -	$ -
2. Less: NSIP (equals line I.D)	$ -		$ -	$ -	$ -	$ -	$ -
Title V (equals line I.E less II.D)	$ -		$ -	$ -	$ -	$ -	$ -
Non Match In-Kind (equals line I.H less II.C)	$ -		$ -	$ -	$ -	$ -	$ -
3. Revenues Subject to Unit Reimbursement	$ 166,666		$ 2,222	$ 162,222	$ 2,222	$ -	$ -
4. Total Projected Units (equals line III.A.2)			84	6,122	84	-	-
5. Total Reimbursement Rate			$ 26.4524	$ 26.4982	$ 26.4524	$ -	$ -
C. Units Reimbursed Through HCCBG			84	6,122	84	-	-
D. Units Reimbursed Through Program Income*			-	-	-	-	-
E. Units Reimbursed Through Remaining Revenues			-	-	-	-	-
F. Total Units Reimbursed/Total Projected Units			84	6,122	84	-	-

* The Division of Aging ARMS deducts reported program income from reimbursement paid to providers. Line III.D indicates the number of units that will have to be produced in addition to those stated on line III.C in order to earn the net revenues stated on line I.C.

Certification:

I certify to the best of my knowledge and belief that the information included in the cost computation above is accurate and complies with all laws and regulations. I also understand that material deviations in reported cost information could limit funding, and also result in return of funds if the error or omission results in a higher than actual reported cost.

Authorized Signature

Director of Strategic Growth
Title

6/28/2022
Date

Information on this form (DAAS-732A) corresponds with information stated on the Provider Services Summary (DAAS-732) as follows:

	DAAS-732A	DAAS-732
	Line I.A	Col. A
Block Grant Funding		

NC DIVISION OF AGING AND ADULT SERVICES COST OF SERVICES - LABOR DISTRIBUTION SCHEDULE DAAS-732A1

AGENCY NAME: BAYADA Home Health Care, Inc

State Fiscal Year: SFY 2022-2023

Fiscal Period: July 2022 through June 2023

STAFF NAME	POSITION	TOTAL SALARY	FTE Equivalent	FULL TIME PART TIME	Assignable Salary	ADMIN SALARY	SERVICE In-Home Aide-Level I - Home Management	SERVICE In-Home Aide-Level II - Personal Care	SERVICE In-Home Aide-Level III - Personal Care	SERVICE 0	SERVICE 0	SERVICE 0	SERVICE 0	SERVICE 0	SERVICE 0
Matthew Hannagan	Director	$ 80,000	0.05	PART TIME	$ 4,000	$ 4,000									
Tonya Jasmine, RN	Clinical Manager	$ 75,000	0.072	PART TIME	$ 5,400		$ 200	$ 5,000	$ 200						
Pam Herel	Recruiting Manager	$ 40,800	0.07844	PART TIME	$ 3,200		$ 100	$ 3,000	$ 100						
IHA Level I	In Home Aides	$ 1,180	1	FULL TIME	$ 1,180		$ 1,180								
IHA Level II	In Home Aides	$ 86,140	1	FULL TIME	$ 86,140			$ 86,140							
IHA Level III	In Home Aides	$ 1,180	1	FULL TIME	$ 1,180				$ 1,180						
					$ -										
					$ -										
					$ -			

DAAS-733
(Rev. 2/19)

Home and Community Care Block Grant for Older Adults
Outreach Methodology

July 2022 through June 2023

Methodology to Address Service Needs of Low Income (Including Low-Income Minority Elderly), Rural Elderly and Elderly with Limited English Proficiency (Older Americans Act, Section 305(a)(2)(E))

Community Service Provider: BAYADA Home Health Care, Inc.

County: BRUNSWICK

The Older Americans Act requires that the service provider attempt to provide services to low-income minority individuals in accordance to their need for aging services. The community service provider shall specify how the service needs of low income, low-income (including low income minority elderly), rural elderly and elderly with limited English proficiency will be met through the services identified on the Provider Services Summary (DAAS-732). This narrative shall address outreach and service delivery methodologies that will ensure that this target population is adequately served and conform with specific objectives established by the Area Agency on Aging, for providing services to low income minority individuals. Additional pages may be used as necessary.

BAYADA Home Health Care, Inc. shall provide In-Home Aide Level I, Level II, and Level III services to qualified consumers in Brunswick County as outlined in the Home and Community Care Block Grant for Older Adults. Those determined to be in need of In-Home Aide services will be eligible for services regardless of their income, although some recipients will be asked to voluntarily participate in the consumer contributions program. BAYADA will share information about the In-Home Aide program with local doctors, hospital discharge planners, hospice agencies, skilled agencies, senior advocacy groups, Adult Protective Services (APS) and Community Alternative Program (CAP). Information regarding the In-Home Aide program will be disseminated via written and oral education as well as through weekly marketing visits and phone calls made by BAYADA. BAYADA will admit low-income, including low-income minority elderly consumers, rural elderly, and rural elderly with limited English proficiency, and well older adults (age 60 and over) using the following priorities: Older adults for whom the need for Adult Protective Services has been substantiated by the Department of Social Services and the service is needed as part of the Adult Protective Services Plan. Older adults who are at risk of abuse, neglect, and/or exploitation. Older adults with extensive impairments in activities of daily living (ADL's), or instrumental activities of daily living (IADL's), who are at risk of placement or substitute care. Older adults with extensive ADL or IADL impairments. Older adults with less extensive (1-2) ADL or IADL impairments. Well older adults. BAYADA Home Health Care complies with Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973 adn the Americans with Disabilities Act of 1990.

July 2022 through June 2023

Home and Community Care Block Grant for Older Adults
Community Service Provider
Standard Assurances

BAYADA Home Health Care, Inc. agrees to provide services through the Home and Community Care Block Grant, as specified on the Provider Services Summary (DAAS-732) in accordance with the following:

1. Services shall be provided in accordance with requirements set forth in:
   a) The County Funding Plan;
   b) The Division of Aging and Adult Services Home and Community Care Block Grant Procedures Manual for Community Service Providers; and
   c) The Division of Aging and Adult Services Standards Manual, Volumes I through IV or at http://www.ncdhhs.gov/aging/monitor/mpolicy.htm .

   Community service providers shall monitor any subcontracts with providers of Block Grant services and take appropriate measures to ensure that services are provided in accordance with the aforementioned documents.

2. Priority shall be given to providing services to those older persons with the greatest economic or social needs. The service needs of low-income minority elderly will be addressed in the manner specified on the Methodology to Address Service Needs of Low-Income (Including Low Income Minority Elderly), Rural Elderly and Elderly with Limited English Proficiency format, (DAAS-733).

3. The following service authorization activities will be carried out in conjunction with all services provided through the Block Grant:
   a) Eligibility determination;
   b) Client intake/registration;
   c) Client assessment/reassessments and quarterly visits, as appropriate;
   d) Determining the amount of services to be received by the client; and
   e) Reviewing consumer contributions policies with eligible clients.

4. All licenses, permits, bonds, and insurance necessary for carrying out Block Grant Services will be maintained by the community service provider and any contracted providers.

5. As specified in 45 CFR 75, Subpart D-Post Federal Award Requirements, Procurement Standards, community service providers shall have procedures for settling all contractual and administrative issues arising out of procurement of services through the Block Grant. Community service providers shall have procedures governing the evaluation of bids for services and procedures through which bidders and contracted providers may appeal or dispute a decision made by the community service provider.

6. Applicant/Client appeals shall be addressed as specified in Section 7 of the Division of Aging and Adult Services Home and Community Care Block Grant Manual for Community Service Providers, dated February 17, 1997.

7. Community service providers are responsible for providing or arranging for the provision of required local match, as specified on the Provider Services Summary, (DAAS-732). Local match shall be expended simultaneously with Block Grant funding.

8. Community service providers agree to comply with audit and fiscal reporting requirements as specified in the Agreement for the Provision of County-Based Aging Services (DAAS-735).

9. Compliance with Equal Employment Opportunity and Americans with Disabilities Act requirements, as specified in paragraph fourteen (14) of the Agreement for the Provision of County-Based Aging Services (DAAS-735) shall be maintained.

10. Providers of In-Home Aide, Home Health, Housing and Home Improvement, and Adult Day Care or Adult Day Health Care shall sign and return the attached assurance to the area agency on aging indicating that recipients of these services have been informed of their client rights, as required in Section 314 of the 2006 Amendments to the Older Americans Act.

11. Subcontracting – All HCCBG community service providers must assure that subcontractors (for-profit and non-profit entities only) meet the following requirements:

a. The subcontractor has not been suspended or debarred. (N.C.G.S. §143C-6-23, 09 NCAC 03M)

b. The subcontractor has not been barred from doing business at the federal level.

c. The subcontractor is able to produce a notarized "State Grant Certification of No Overdue Tax Debts."

d. All licenses, permits, bonds and insurance necessary for carrying out Home and Community Care Block Grant services will be maintained by both the community service provider and any subcontractors.

e. The subcontractor is registered as a charitable, tax-exempt (501c3) organization with the Internal Revenue Service (non-profit subcontractors only).

12. Confidentiality and Security. Per the requirements in 10A NCAC 05J and Section 6 of the Home and Community Care Block Grant Procedures Manual, client information in any format and whether recorded or not shall be kept confidential and not disclosed in a form that identifies the person without the informed consent of the person or legal representative. Community service providers, including subcontractors and vendors, must adhere to all applicable federal, state and departmental requirements for protecting the security and confidentiality of client information including but not limited to appropriately restricting access, establishing procedures to reduce the risk of accidental disclosures from data processing systems, and developing a process by which the Division of Adult Aging Services is notified of suspected or confirmed security incidents and data breaches.

13. Record Retention and Disposition. All community service providers are responsible for maintaining custody of records and documentation to support the allowable expenditure of funds, service provision, and the reimbursement of services. Service providers must adhere to the approved record retention and disposition schedule posted semiannually on the website of the NC Department of Health and Human Services Controller at http://www.ncdhhs.gov/control/retention/retention.htm

Service providers are not authorized to destroy records related to the provision of services under this Agreement except in compliance with the approved DHHS retention and disposition schedule, which allows for the proper destruction of records based on a schedule by funding source and fiscal year. The agency agrees to comply with 07 NCAC 04M .0510 when deciding on a method of record destruction. Confidential records will be destroyed in such a manner that the records cannot be practically read or reconstructed.

6-28-22

(Authorized Signature) (Date)

Standard Assurance To Comply with Older Americans Act Requirements Regarding Clients Rights For Agencies Providing In-Home Services through the Home and Community Care Block Grant for Older Adults

As a provider of one or more of the services listed below, our agency agrees to notify all Home and Community Care Block Grant clients receiving any of the below listed services provided by this agency of their rights as a service recipient. Services in this assurance include:

- In-Home Aide
- Home Care (home health)
- Housing and Home Improvement
- Adult Day Care or Adult Day Health Care

Notification will include, at a minimum, an oral review of the information outlined below as well as providing each service recipient with a copy of the information in written form. In addition, providers of in-home services will establish a procedure to document that client rights information has been discussed with in-home services clients (e.g. copy of signed Client Bill of Rights statement).

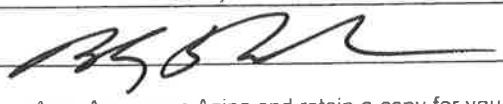
Clients Rights information to be communicated to service recipients will include, at a minimum, the right to:

- be fully informed, in advance, about each in-home service to be provided and any change and any change in service(s) that may affect the wellbeing of the participant;
- participate in planning and changing any in-home service provided unless the client is adjudicated incompetent;
- voice a grievance with respect to service that is or fails to be provided, without discrimination or reprisal as a result of voicing a grievance;
- confidentiality of records relating to the individual;
- have property treated with respect; and
- be fully informed both orally and in writing, in advance of receiving an in-home service, of the individual's rights and obligations.

Client Rights will be distributed to, and discussed with, each new client receiving one or more of the above listed services prior to the onset of service. For all existing clients, the above information will be provided no later than the next regularly scheduled service reassessment.

Agency Name: BAYADA Home Health Care, Inc.

Name of Agency Administrator: Bobby Shoemake

Signature: 

(Please return this form to your Area Agency on Aging and retain a copy for your files.)

CLIENT/PATIENT RIGHTS

1. You have the right to be fully informed of all your rights and responsibilities as a client/patient of the program.
2. You have the right to appropriate and professional care relating to your needs.
3. You have the right to be fully informed in advance about the care to be provided by the program.
4. You have the right to be fully informed in advance of any changes in the care that you may be receiving and to give informed consent to the provision of the amended care.
5. You have the right to participate in determining the care that you will receive and in altering the nature of the care as your needs change.
6. You have the right to voice your grievances with respect to care that is provided and to expect that there will be no reprisal for the grievance expressed.
7. You have the right to expect that the information you share with the agency will be respected and held in strict confidence, to be shared only with your written consent and as it relates to the obtaining of other needed community services.
8. You have the right to expect the preservation of your privacy and respect for your property.
9. You have the right to receive a timely response to your request for service.
10. You shall be admitted for service only if the agency has the ability to provide safe and professional care at the level of intensity needed.
11. You have the right to be informed of agency policies, changes, and costs for services.
12. If you are denied service solely on you inability to pay, you have the right to be referred elsewhere.
13. You have the right to honest, accurate information regarding the industry, agency and of the program in particular.
14. You have the right to be fully informed about other services provided by this agency.

Home and Community Care Block Grant for Older Adults

Woodard's Adult Day Health Center

115 Holden Beach Road

Shallotte, NC 28470

County Funding Plan

Provider Services Summary

DAAS-732

County: BRUNSWICK

Budget Period: July 2022 through June 2023

Revision #: **Date:**

	Serv. Delivery (Check One)		A				B	C	D	E	F	G	H	I
			Block Grant Funding											
Services	Direct	Purchase	Access	In-Home	Other	Total	Required Local Match	Net Service Cost	NSIP Subsidy	Total Funding	Projected HCCBG Units	Projected Reimburse Rate*	Projected HCCBG Clients	Projected Total Units
Adult Day Health	X		$ -	$ 6,000	$ -	$ 6,000	$ 667	$ 6,667	$ -	$ 6,667	72	$ 92.6100	5	2,200
Adult Day Care	X		$ -	$ 4,000	$ -	$ 4,000	$ 444	$ 4,444	$ -	$ 4,444	56	$ 80.0456	4	1,842
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
0			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-	$ -		-
Total			$ -	$ 10,000	$ -	$ 10,000	$ 1,111	$ 11,111	$ -	$ 11,111	128		9	4,042

***Adult Day Care & Adult Day Health Care Proj. Service Cost/Rate**

	ADC	ADHC
Daily Care	$33.07	$ 40.00
Administrative	$ 46.97	$ 52.61
Proj. Reimbursement Rate	$80.04	$ 92.61
Administrative %	142.03%	131.53%

Certification of required minimum local match availability. Required local match will be expended simultaneously with Block Grant Funding.

Sharon Crawford 7/26/22

Authorized Signature, Title — Date

Community Service Provider

Signature, County Finance Officer — Date

Signature, Chairman, Board of Commissioners — Date

North Carolina Division of Aging and Adult Services` DAAS-732A

Service Cost Computation Worksheet

Provider: Woodard's Adult Day Health Center
County: BRUNSWICK
Budget Period: July 2022 through June 2023

I. Projected Revenues	Grand Total		Service Adult Day Health 155	Service Adult Day Care 030
A. Fed/State Funding From the Div. of Aging & Adult Svcs.	$ 10,000		$ 6,000	$ 4,000
Required Minimum Match - Cash				
1) Cash/In-Kind	$ 1,111		$ 667	$ 444
2)	$ -			
3)	$ -			
Total Required Minimum Match - Cash	$ 1,111		$ 667	$ 444
Required Minimum Match - In-Kind				
1)	$ -			
2)	$ -			
3)	$ -			
Total Required Minimum Match - In-Kind	$ -		$ -	$ -
B. Total Required Minimum Match (cash + in-kind)	$ 1,111		$ 667	$ 444
C. **Subtotal, Fed/State/Required Match Revenues**	$ 11,111		$ 6,667	$ 4,444
D. NSIP Cash Subsidy/Commodity Valuation	$ -		$ -	$ -
E. **OAA Title V Worker Wages, Fringe Benefits and Costs**	$ -			
Local Cash, Non-Match				
1) SADCF, MEDICAID	$ 76,200		$ 46,200	$ 30,000
2) VETERAN AFFRAIRS, CACFP	$ 156,515		$ 86,515	$ 70,000
3) PRIVATE PAY	$ 107,360		$ 64,360	$ 43,000
4)	$ -			

F. **Subtotal, Local Cash, Non-Match**	$ 340,075		$ 197,075	$ 143,000
Other Revenues, Non-Match				
1)	$ -			
2)	$ -			
3)	$ -			
G. **Subtotal, Other Revenues, Non-Match**	$ -		$ -	$ -
Local In-Kind Resources (Includes Volunteer Resources)				
1)	$ -			
2)	$ -			
3)	$ -			
H. **Subtotal, Local In-kind Resources, Non-Match**	$ -		$ -	$ -
I. **Client Cost Sharing**	$ -			
J. **Total Projected Revenues (Sum I.C,D,E,F,G,H, & I)**	$ 351,186		$ 203,742	$ 147,444

Division of Aging and Adult Services
Service Cost Computation Worksheet

II. Line Item Expenses	**Grand Total**	**Admin. Cost**	**Service** Adult Day Health 155	**Service** Adult Day Care 030
Staff Salary From Labor Distribution Schedule				
1) Full-time Staff (do not include Title V workers)	$ 273,594	$ 118,113	$ 86,992	$ 68,489
2) Part-time staff (do not include Title V workers)	$ -	$ -	$ -	$ -
A. **Subtotal, Staff Salary**	$ 273,594	**$ 118,113**	**$ 86,992**	**$ 68,489**
Fringe Benefits				
1) FICA @ 7.65 %	$ 20,930	$ 9,036	$ 6,655	$ 5,239
2) Health Insurance	$ -			
3) Retirement	$ -			
4) Unemployment Insurance	$ -			
5) Worker's Compensation	$ -			
6) Other	$ -			

B. **Subtotal, Fringe Benefits**	$ 20,930	$ 9,036	$ 6,655	$ 5,239
Local In-Kind Resources Non-Match				
1)	$ -			
2)	$ -			
3)	$ -			
C. **Subtotal, Local In-Kind Resources Non-Match**	$ -	$ -	$ -	$ -
D. **OAA Title V Worker Wages, Fringe Benefits and Costs**	$ -			
Travel				
1) Per Diem	$ -			
2) Mileage Reimbursement	$ -			
3) Other Travel Cost	$ -			
E. **Subtotal, Travel**	$ -	$ -	$ -	$ -
General Operating Expenses				
1) TELEPHONE, INTERNET, WIFI, CABLE	$ 5,500	$ 5,500		
2) POSTAGE AND SHIPPING	$ 3,000	$ 1,000	$ 1,000	$ 1,000
3) PRINTING, COPING, PUBLICATION & ADVERTISEMENT	$ 4,410	$ 2,410	$ 1,000	$ 1,000
4) EQUIPEMTN & EQUIPMENT DEPRICIATION	$ 4,400	$ 2,000	$ 1,200	$ 1,200
5) PROGRAM SUPPLIES AND OFFICE SUPPLIES	$ 4,869	$ 1,784	$ 1,543	$ 1,542
6) INSURANCE	$ 12,533	$ 3,581	$ 4,526	$ 4,426
7) MEALS	$ 5,000	$ -	$ 2,500	$ 2,500
8) LEASE	$ 16,951	$ 16,951		
F. **Subtotal, General Operating Expenses**	$ 56,663	$ 33,226	$ 11,769	$ 11,668
G. **Subtotal, Other Administrative Cost Not Allocated in Lines II.A through E**	$ -			
H. **Total Proj. Expenses Prior to Admin. Distribution**	**$ 351,187**	**$ 160,375**	**$ 105,416**	**$ 85,396**
I. **Distribution of Admininistrative Cost**	**$ (160,374)**		**$ (98,326)**	**$ (62,048)**
J. **Total Proj. Expenses After Admin. Distribution**	**$ 351,186**		**$ 203,742**	**$ 147,444**

III. Computation of Rates	Grand Total		Service Adult Day Health 155	Service Adult Day Care 030	Service 0 #N/A	Service 0 #N/A	Service 0 #N/A
A. **Computation of Unit Cost Rate:**							
1. Total Expenses (equals line II.J)	$ 351,186		$ 203,742	$ 147,444	$ -	$ -	$ -
2. Total Projected Units			2,200	1,842			
3. Total Unit Cost Rate			$ 92.6100	$ 80.0456	$ -	$ -	$ -
B. **Computation of Reimbursement Rate:**							
1. Total Revenues (equals line I.J)	$ 351,186		$ 203,742	$ 147,444	$ -	$ -	$ -
2. Less: NSIP (equals line I.D)	$ -		$ -	$ -	$ -	$ -	$ -
Title V (equals line I.E less II.D)	$ -		$ -	$ -	$ -	$ -	$ -
Non Match In-Kind (equals line I.H less II.C)	$ -		$ -	$ -	$ -	$ -	$ -
3. Revenues Subject to Unit Reimbursement	$ 351,186		$ 203,742	$ 147,444	$ -	$ -	$ -
4. Total Projected Units (equals line III.A.2)			2,200	1,842	-	-	-
5. Total Reimbursement Rate			$ 92.6100	$ 80.0456	$ -	$ -	$ -
C. **Units Reimbursed Through HCCBG**			**72**	**56**	-	-	-
D. **Units Reimbursed Through Program Income***			-	-	-	-	-
E. **Units Reimbursed Through Remaining Revenues**			**2,128**	**1,786**	-	-	-
F. **Total Units Reimbursed/Total Projected Units**			**2,200**	**1,842**	-	-	-

* The Division of Aging ARMS deducts reported program income from reimbursement paid to providers. Line III.D indicates the number of units that will have to be produced in addition to those stated on line III.C in order to earn the net revenues stated on line I.C.

Certification:

I certify to the best of my knowledge and belief that the information included in the cost computation above is accurate and complies with all laws and regulations. I also understand that material deviations in reported cost information could limit funding, and also result in return of funds if the error or omission results in a higher than actual reported cost.

Sharon Cranford — Authorized Signature

Program Director — Title

7/26/22 — Date

Information on this form (DAAS-732A) corresponds with information stated on the Provider Services Summary (DAAS-732) as follows:

AGENCY NAME: Woodard's Adult Day Health Center

State Fiscal Year: SFY 2022-2023

STAFF NAME	POSITION	TOTAL SALARY	FTE Equivalent	FULL TIME PART TIME	Assignable Salary	ADMIN. SALARY	SERVICE Adult Day Health	SERVICE Adult Day Care
Sharon Crawford	Program Director	$ 52,000	1	FULL TIME	$ 52,000	$ 39,000	$ 6,000	$ 7,000
Sally Winters	C N A	$ 18,332	1	FULL TIME	$ 18,332		$ 10,000	$ 8,332
Tracy Graham	Dietary Manager	$ 26,520	1	FULL TIME	$ 26,520	$ 5,304	$ 15,758	$ 5,458
Mary Groseclose	L P N	$ 31,825	1	FULL TIME	$ 31,825	$ 9,547	$ 16,169	$ 6,109
Nancy Shotwell	R N	$ 47,736	1	FULL TIME	$ 47,736	$ 23,600	$ 12,202	$ 11,934
Florence Stubbelfield	C N A	$ 19,449	1	FULL TIME	$ 19,449		$ 8,321	$ 11,128
Stacey Woodard	Office Manager	$ 23,838	1	FULL TIME	$ 23,838	$ 16,324	$ 3,764	$ 3,750
Wiliam Woodard	Trans Director	$ 30,056	1	FULL TIME	$ 30,056	$ 8,000	$ 11,028	$ 11,028
Shenina Williams	Assistant Director	$ 23,838	1	FULL TIME	$ 23,838	$ 16,338	$ 3,750	$ 3,750
					$ -			
					$ -			
					$ -			
					$ -			
					$ -			
					$ -			

					$ -				
					$ -				
					$ -				
				SUBTOTAL FT:	$ 273,594	$ 118,113	$ 86,992	$ 68,489	
				SUBTOTAL PT:	$ -	$ -	$ -	$ -	
				TOTAL	$ 273,594	$ 118,113	$ 86,992	$ 68,489	
				PERCENT FT:	100.00%	100.00%	100.00%	100.00%	
				PERCENT PT:	0.00%	0.00%	0.00%	0.00%	

DAAS-733
(Rev. 2/19)

Home and Community Care Block Grant for Older Adults
Outreach Methodology

July 2022 through June 2023

Outreach Methodology to Address the Service Needs of Target Population

Community Service Provider: Woodard's Adult Day Health Center

County: BRUNSWICK

While all older adults age 60 and over are eligible for services, sec. 305(a)(2)(E) of the Older Americans Act requires programs to target services to older individuals with the greatest economic and social need, (with particular attention to low-income older adults, including low-income minority older adults, older adults with limited English proficiency, and older adults residing in rural areas). The community service provider shall specify how these service needs will be met through the services identified on the Provider Services Summary (DAAS-732). This narrative shall address outreach and service delivery methodologies that will ensure that this target population is adequately served and conform with specific objectives established by the Area Agency on Aging, for providing services to low income minority individuals. Additional pages may be used as necessary.

Woodard's Adutl Day Health will be making efforts in the future to attending different events throughout the county, such as health care festival and other events through the county to help market our organization. We will also being attending other Art Fairs to help promote our art work that has been created by our clients and staff members. Our desire is to reach and support caregivers in the community to give them another avenue the help them in the future. Our desire is also help educate caregivers and support staff on different ways to communicate with their loves diagnosed with Dementia and Alzheimer's. We have learned that communication and being able to relate to clients has really made our organization successful even when dealing with what individuals whom may have deemed as having a difficult reputation.

July 2022 through June 2023

Home and Community Care Block Grant for Older Adults
Community Service Provider
Standard Assurances

Woodard's Adult Day Health Center agrees to provide services through the Home and Community Care Block Grant, as specified on the Provider Services Summary (DAAS-732) in accordance with the following:

1. Services shall be provided in accordance with requirements set forth in:
   a) The County Funding Plan;

   b) The Division of Aging and Adult Services Home and Community Care Block Grant Procedures Manual for Community Service Providers; and

   c) The Division of Aging and Adult Services Standards at

   https://www.ncdhhs.gov/divisions/daas/monitoring

   Community service providers shall monitor any subcontracts with providers of Block Grant services and take appropriate measures to ensure that services are provided in accordance with the aforementioned documents.

2. Priority shall be given to providing services to those older persons with the greatest economic or social needs. The service needs of low-income minority elderly will be addressed in the manner specified on the Outreach Methodology to Address Service Needs of Target Population (DAAS-733).

3. The following service authorization activities will be carried out in conjunction with all services provided through the Block Grant:
   a) Eligibility determination;
   b) Client intake/registration;
   c) Client assessment/reassessments and quarterly visits, as appropriate;
   d) Determining the amount of services to be received by the client; and
   e) Reviewing consumer contributions policies with eligible clients.

4. All licenses, permits, bonds, and insurance necessary for carrying out Block Grant Services will be maintained by the community service provider and any subcontracted providers.

5. As specified in 45 CFR 75, Subpart D-Post Federal Award Requirements, Procurement Standards, community service providers shall have procedures for settling all contractual and administrative issues arising out of procurement of services through the Block Grant. Community service providers shall have procedures governing the evaluation of bids for services and procedures through which bidders and contracted providers may appeal or dispute a decision made by the community service provider.

6. Applicant/Client appeals shall be addressed as specified in Section 7 of the Division of Aging and Adult Services Home and Community Care Block Grant Manual for Community Service Providers.

7. Community service providers are responsible for providing or arranging for the provision of required local match, as specified on the Provider Services Summary, (DAAS-732). Local match shall be expended simultaneously with Block Grant funding.

8. Community service providers agree to comply with audit and fiscal reporting requirements as specified in the Agreement for the Provision of County-Based Aging Services (DAAS-735).

9. Compliance with Equal Employment Opportunity and Americans with Disabilities Act requirements, as specified in paragraph fourteen (14) of the Agreement for the Provision of County-Based Aging Services (DAAS-735) shall be maintained.

10. Providers of In-Home Aide, Home Health, Housing and Home Improvement, and Adult Day Care or Adult Day Health Care shall sign and return the attached assurance to the area agency on aging indicating that recipients of these services have been informed of their client rights, as required in Section 314 of the 2006 Amendments to the Older Americans Act (DAAS-734 Standard Assurances Regarding In-Home Client Rights).

11. Subcontracting – All HCCBG community service providers must assure that subcontractors (for-profit and non-profit entities only) meet the following requirements:

a. The subcontractor has not been suspended or debarred. (N.C.G.S. §143C-6-23, 09 NCAC 03M)

b. The subcontractor has not been barred from doing business at the federal level.

c. The subcontractor is able to produce a notarized "State Grant Certification of No Overdue Tax Debts."

d. All licenses, permits, bonds and insurance necessary for carrying out Home and Community Care Block Grant services will be maintained by both the community service provider and any subcontractors.

e. The subcontractor is registered as a charitable, tax-exempt (501c3) organization with the Internal Revenue Service (non-profit subcontractors only).

12. Confidentiality and Security. Per the requirements in 10A NCAC 05J and Section 6 of the Home and Community Care Block Grant Procedures Manual, client information in any format and whether recorded or not shall be kept confidential and not disclosed in a form that identifies the person without the informed consent of the person or legal representative. Community service providers, including subcontractors and vendors, must adhere to all applicable federal, state and departmental requirements for protecting the security and confidentiality of client information including but not limited to appropriately restricting access, establishing procedures to reduce the risk of accidental disclosures from data processing systems, and developing a process by which the Division of Adult Aging Services is notified of suspected or confirmed security incidents and data breaches.

13. Record Retention and Disposition. All community service providers are responsible for maintaining custody of records and documentation to support the allowable expenditure of funds, service provision, and the reimbursement of services. Service providers must adhere to the approved record retention and disposition schedule posted at https://www.ncdhhs.gov/about/administrative-offices/office-controller/records-retention by the NC Department of Health and Human Services Controller's Office, as well as the local government schedules posted by the NC Department of Natural and Culltural Resources at https://archives.ncdcr.gov/government/local

Service providers are not authorized to destroy records related to the provision of services under this Agreement except in compliance with the approved DHHS retention and disposition schedule, which allows for the proper destruction of records based on a schedule by funding source and fiscal year. The agency agrees to comply with 07 NCAC 04M .0510 when deciding on a method of record destruction. Confidential records will be destroyed in such a manner that the records cannot be practically read or reconstructed.

Sharon Crawford 7/25/22

(Authorized Signature) (Date)

Standard Assurance To Comply with Older Americans Act Requirements Regarding Clients Rights For Agencies Providing In-Home Services through the Home and Community Care Block Grant for Older Adults

As a provider of one or more of the services listed below, our agency agrees to notify all Home and Community Care Block Grant clients receiving any of the below listed services provided by this agency of their rights as a service recipient. Services in this assurance include:

- In-Home Aide
- Home Care (home health)
- Housing and Home Improvement
- Adult Day Care or Adult Day Health Care

Notification will include, at a minimum, an oral review of the information outlined below as well as providing each service recipient with a copy of the information in written form. In addition, providers of in-home services will establish a procedure to document that client rights information has been discussed with in-home services clients (e.g. copy of signed Client Bill of Rights statement).

Clients Rights information to be communicated to service recipients will include, at a minimum, the right to:

- be fully informed, in advance, about each in-home service to be provided and any change in service(s) that may affect the wellbeing of the participant;
- participate in planning and changing any in-home service provided unless the client is adjudicated incompetent;
- voice a grievance with respect to service that is or fails to be provided, without discrimination or reprisal as a result of voicing a grievance;
- confidentiality of records relating to the individual;
- have property treated with respect; and
- be fully informed both orally and in writing, in advance of receiving an in-home service, of the individual's rights and obligations.

Client Rights will be distributed to, and discussed with, each new client receiving one or more of the above listed services prior to the onset of service. For all existing clients, the above information will be provided no later than the next regularly scheduled service reassessment.

Agency Name: Woodard's Adult Day Health Center

Name of Agency Administrator: Sharon Woodard Crawford

Signature: Sharon Woodard Crawford

(Please return this form to your Area Agency on Aging and retain a copy for your files.)

CLIENT/PATIENT RIGHTS

1. You have the right to be fully informed of all your rights and responsibilities as a clien the program.

2. You have the right to appropriate and professional care relating to your needs.

3. You have the right to be fully informed in advance about the care to be provided by th

4. You have the right to be fully informed in advance of any changes in the care that yo receiving and to give informed consent to the provision of the amended care.

5. You have the right to participate in determining the care that you will receive and in a nature of the care as your needs change.

6. You have the right to voice your grievances with respect to care that is provided and there will be no reprisal for the grievance expressed.

7. You have the right to expect that the information you share with the agency will be re held in strict confidence, to be shared only with your written consent and as it relates obtaining of other needed community services.

8. You have the right to expect the preservation of your privacy and respect for your prc

9. You have the right to receive a timely response to your request for service.

10. You shall be admitted for service only if the agency has the ability to provide safe ar professional care at the level of intensity needed.

11. You have the right to be informed of agency policies, changes, and costs for service

12. If you are denied service solely on you inability to pay, you have the right to be refer elsewhere.

13. You have the right to honest, accurate information regarding the industry, agency ar program in particular.

14. You have the right to be fully informed about other services provided by this agency

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ATTACHMENT B – FEDERAL CERTIFICATIONS

The undersigned states that:

1. He or she is the duly authorized representative of the Provider named below;

2. He or she is authorized to make, and does hereby make, the following certifications on behalf of the Provider, as set out herein:
   a. The Certification Regarding Nondiscrimination;
   b. The Certification Regarding Drug-Free Workplace Requirements;
   c. The Certification Regarding Environmental Tobacco Smoke;
   d. The Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions; and
   e. The Certification Regarding Lobbying;

3. He or she has completed the Certification Regarding Drug-Free Workplace Requirements by providing the addresses at which the contract work will be performed;

4. [Check the applicable statement]

[ ] He or she has completed the attached Disclosure of Lobbying Activities because the Provider has made, or has an agreement to make, a payment to a lobbying entity for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action;
OR
[X] He or she has not completed the attached Disclosure Of Lobbying Activities because the Provider has not made, and has no agreement to make, any payment to any lobbying entity for influencing or attempting to influence any officer or employee of any agency, any Member of Congress, any officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action.

5. The Provider shall require its subcontractors, if any, to make the same certifications and disclosure.



President/CEO

Signature — Title

BRUNSWICK SENIOR RESOURCES, INC. — 8/22/22

Provider — Date

I. Certification Regarding Nondiscrimination

The Provider certifies that it will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (h) the Food Stamp Act and USDA policy, which prohibit discrimination on the basis of religion and political beliefs; and (i) the requirements of any other nondiscrimination statutes which may apply to this Agreement.

II. Certification Regarding Drug-Free Workplace Requirement

1. The Provider certifies that it will provide a drug-free workplace by:

   a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Provider's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

   b. Establishing a drug-free awareness program to inform employees about:

      i. The dangers of drug abuse in the workplace;
      ii. The Provider's policy of maintaining a drug-free workplace;
      iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
      iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

   c. Making it a requirement that each employee be engaged in the performance of the agreement be given a copy of the statement required by paragraph (a);

   d. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the agreement, the employee will:
      i. Abide by the terms of the statement; and
      ii. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

e. Notifying the Department within ten days after receiving notice under subparagraph (d)(ii) from an employee or otherwise receiving actual notice of such conviction;

f. Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(ii), with respect to any employee who is so convicted:

i. Taking appropriate personnel action against such an employee, up to and including termination; or
ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

2. The sites for the performance of work done in connection with the specific agreement are listed below (list all sites; add additional pages if necessary):

Street Address, City, State, Zip Code	
10050 Beach Drive SW, Calabash, NC 28467	121 Town Hall Drive NE, Leland, NC 28451
3620 Express Drive, Shallotte, NC 28470	1513 North Howe Street Suite 1, Southport, NC 28461
101 Stone Chimney Road, Supply, NC 28462	

3. Provider will inform the Department of any additional sites for performance of work under this agreement.

4. False certification or violation of the certification may be grounds for suspension of payment, suspension or termination of grants, or government-wide Federal suspension or debarment. 45 C.F.R. 82.510.

III. Certification Regarding Environmental Tobacco Smoke

Public Law 103-227, Part C-Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000.00 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Provider certifies that it will comply with the requirements of the Act. The Provider further agrees that it will require the language of this certification be included in any subawards that contain provisions for children's services and that all
subgrantees shall certify accordingly.

IV. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions Instructions

[The phrase "prospective lower tier participant" means the Provider.]

1. By signing and submitting this document, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of the fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originate may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant will provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 45 CFR Part 76. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter any lower tier covered transaction with a person who is debarred, suspended, determined ineligible or voluntarily excluded from participation in this covered transaction unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this document that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The

knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized in paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension, and/or debarment.

Certification

1. **The prospective lower tier participant certifies,** by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

V. Certification Regarding Lobbying

The Provider certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federally funded contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form SF-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award document for subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) who receive federal funds of $100,000.00 or more and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000.00 and not more than $100,000.00 for each such failure.

VI. Disclosure of Lobbying Activities Instructions

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawardsinclude but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal Identifying number available for the Federal action identified in Item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered Federal action.
    (b) Enter the full names of the individual(s) performing services and include full address if different from 10(a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made

(actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate boxes. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate boxes. Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D. C. 20503

FORM **CD-511**
(REV 05/17)

U.S. DEPARTMENT OF COMMERCE

CERTIFICATION REGARDING LOBBYING

Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 28, 'New Restrictions on Lobbying.' The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Commerce determines to award the covered transaction, grant, or cooperative agreement.

LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over $100,000 or a loan or loan guarantee over $150,000 as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, 'Disclosure Form to Report Lobbying,' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure occurring on or before October 23, 1996, and of not less than $11,000 and not more than $110,000 for each such failure occurring after October 23, 1996.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

In any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, 'Disclosure Form to Report Lobbying,' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure occurring on or before October 23, 1996, and of not less than $11,000 and not more than $110,000 for each such failure occurring after October 23, 1996.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.

* NAME OF APPLICANT

* AWARD NUMBER

* PROJECT NAME

Prefix: * First Name: Middle Name:

* Last Name: Suffix:

* Title:

* SIGNATURE: Completed by Grants.gov upon submission.

* DATE: Completed by Grants.gov upon submission.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier , *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 8.
Health and Human Services - Health Services – Annual Board of Health Policies

From:
Cris Harrelson, Health Services Director

Issue/Action Requested:
Request that the Board of Commissioners review and approve annual Board of Health policies.

Background/Purpose of Request:
As part of Local Health Department Accreditation requirements, certain Board of Health policies must be reviewed and approved by the Board of Health/Board of Commissioners annually. These policies are as follows:

- Orientation and Education for Board of Health Members: The purpose of this policy is to address the orientation of new Board members so they can be effective in their roles and to ensure that all Board members remain current on health issues and best practices that affect Brunswick County.

- Procedures for Adjudications: The Board of Health may be asked to review action taken by health department staff in regard to investigational findings and/or rule enforcement action. The public or involved party may bring the matter to the board and a hearing may result. The purpose of this policy is to ensure certain procedures specified in G.S. 130A-24 are followed.

- Procedures for Rule-Making: Local Boards of Health have the authority to pass rules to protect and promote public health. The purpose of this policy is to make the Board of Health aware of their authority and the proper procedures needed when considering or adopting rules.

Staff recommends approval of the policies.

Fiscal Impact:
Reviewed By Director of Fiscal Operations

Approved By County Attorney:
Yes

County Manager's Recommendation:
Recommend that the Board of Commissioners review and approve annual Board of Health policies.

ATTACHMENTS:

Description

- Orientation of BOH Members
- Procedures for Adjudications
- Procedures for Rule-Making

Effective Date: _____
Revision Date: _____
Approved By: _____
Date Approved:_____

Brunswick County Health Services
Policies and Procedures
Program Name: Board of Health

Policy Title: Orientation and Education for Board of Health Members

Policy:

Because Board members come from a variety of community groups and backgrounds they may have little knowledge of public health. By properly orienting new BOH members to their role and the functions of public health, they can better serve Health Services and Brunswick County. Ongoing training will aid Board members in broadening their knowledge in current health issues.

Purpose:

To orient new Board members so they can be effective and to ensure that all Board members remain current on health issues and best practices that affect Brunswick County.

Procedures:

1. Board members will receive orientation within the first year of their appointment.
    a. Each Board member will meet with the Health & Human Services Director and/or Health Director to review the Board of Health handbook and the most recent Community Health Assessment or State of the County Health Report.
    b. The Health Director is responsible for reviewing and updating the Board of Health handbook. The material included should be regularly updated and information replaced as appropriate.

2. Board members will participate in ongoing continuing education.
    a. Board members will receive ongoing training related to the responsibilities and authority of the local board of health. It could also cover any relevant or emerging public health topic (such as isolation or quarantine authorities as related to an emerging infectious disease or updates to state environmental health rules). The training must include/highlight the BOH rule-making or other authority as it relates to that topic. On-going training can be done in groups, one on one, or through self-guided training and must occur at least once every 4-year accreditation cycle.

Approved and adopted by the Brunswick County Commissioners on _____.

_____
Chair, Board of County Commissioners

_____
Health Services Director

Effective Date: _____
Revision Date: _____
Approved By: _____
Date Approved:_____

Brunswick County Health Services
Policies and Procedures
Program Name: Board of Health

Policy Title: Procedures for Adjudications

Policy:

The Board of Health may be asked to review action taken by health department staff in regard to investigational findings and/or rule enforcement action. The public or involved party may bring the matter to the board a hearing may result.

Purpose:

Because of possible legal action, certain procedures specified in G.S. 130A-24 must be followed.

Procedures:

The Board of Health must follow NC General Statute 130A-24 during an adjudication process and appeals procedure.

If, during the 4-year accreditation process, there have not been any adjudications, evidence of a signed Board of Health Statement to that effect is required.

Approved and adopted by the Brunswick County Commissioners on _____.

_____
Chair, Board of County Commissioners

_____
Health Services Director

Effective Date: _____
Revision Date: _____
Approved By: _____
Date Approved:_____

Brunswick County Health Services
Policies and Procedures
Program Name: Board of Health

Policy Title: Procedures for Rule-Making

Policy:

Local Boards of Health have the authority to pass rules to protect and promote public health.

Purpose:

When considering or adopting rules, it is important for the Board of Health to be aware of their authority and the proper procedures needed.

Procedures:

The Board of Health must follow NC General Statute 130A-39 to adopt rules to protect and promote public health.

If, during the 4-year accreditation process, a rule has not been adopted, a signed Board of Health Statement to that effect is required.

Approved and adopted by the Brunswick County Commissioners on _____.

_____
Chair, Board of County Commissioners

_____
Health Services Director

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 9.
Health and Human Services - Health Services – Contract for School Nursing FY 22-23

From:
Cris Harrelson, Health Director

Issue/Action Requested:
Request that the Board of Commissioners approve the FY 22-23 contract agreement with Brunswick County Schools for funding school nurses utilizing state-restricted funds.

Background/Purpose of Request:
Brunswick County Health and Human Services has been designated by the state as a fiduciary agency to distribute funding in the amount of $150,000.00 to fund school nursing staff in Brunswick County Schools. The funding is intended to employ three school nurses and improve the nurse-to-student ratio in Brunswick County Schools. As fiduciary, the state requires a contract agreement between the agencies that describes the funding and how it may be utilized. The contract agreement has been in place for several years. Funding has been approved in the FY 22-23 budget.

Staff recommend approval of the contract agreement.

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 that the Board of Commissioners approve the FY 22-23 contract agreement with Brunswick County Schools for funding school nurses utilizing state-restricted funds.

ATTACHMENTS:

Description

- School Nurse Contract FY22-23

DocuSign Envelope ID: D1776EBC-5377-4D6F-AA2F-A55E7F162E14

Contract for School Nursing Services
Between the
County of Brunswick and Brunswick County Schools (Subcontracting Agency)
June 1, 2022 – May 31, 2023

This agreement between the Brunswick County Health Department, hereinafter referred to as the "Department" and Brunswick County Schools , hereinafter referred to as the "Subcontractor" is entered into for the purpose of providing school nursing services to the students of the Brunswick County School System.

Whereas both the Department and the Subcontractor mutually agree that the purpose of providing school nursing services is to promote the optimal health and well-being of all students in Brunswick County Schools, and

Whereas both the Department and the Subcontractor mutually agree that the long-term purpose of these funds is to provide full-time nursing services to each school in the system, and

Whereas both the Department and the Subcontractor mutually agree that the School Nurse Funding Initiative (SNFI) enacted by the General Assembly is a useful step toward the goal of having a nurse to student ratio that meets a national and state recommendation of 1:750, and

Whereas both the Department and the Subcontractor mutually agree to continue providing school nursing services as specified in the annually developed "Memorandum of Agreement between Brunswick County Health Department and Brunswick County Schools;"

NOW, THEREFORE, in consideration of the premises and the following mutual covenants and conditions and any sums to be paid, the Department and the Subcontractor agree as follows:

The Department agrees:

1. To provide funds not to exceed $150,000.00 to the Subcontractor for the purpose of supporting (one or more) (10, 11 or 12-month) nationally certified school nurse(s), or registered nurse(s) working toward certification, to provide school nursing services for the 2022-2023 school year.
2. That the funds will be paid monthly upon submission of an invoice that specifies an amount not to exceed actual personnel and other allowable costs incurred, and that the Department shall pay the Subcontractor-contractor within thirty (30) days of receipt of the invoice. Any adjustments to the invoice shall be taken into account in the next succeeding invoice or as soon thereafter as reasonably practical.
3. That the funds may be used only for personnel costs (salary and fringe) and continuing education costs up to $750 per SNFI position.

The Subcontractor agrees:

1. To provide a detailed budget (Attachment III) to the Department by August 31, 2022 that specifies the planned monthly invoice amount for each position funded.
2. To utilize funds not to exceed $150,000.00 for the purpose of supporting (one or more) (10,11 or 12-month) nationally certified school nurse(s), or registered

DocuSign Envelope ID: D1776EBC-5377-4D6F-AA2F-A55E7F162E14

nurse(s) working toward certification, to provide school nursing services for the 2022-2023 school year.

3. To comply with assurances in Attachment I.
4. The nurse(s) will provide direct nursing services to students within one or more schools following the scope of service in Attachment II.
5 To submit an invoice to the Department monthly that specifies an amount not to exceed personnel and other allowable costs incurred for the period and is consistent with the monthly invoice plan.
4. To provide adequate space, computer equipment and supplies for the designated position through other funds at a level comparable to the support provided to all school nurses supported by the Department and/or the Subcontractor.
5. To inform the Department of the employment of the nurses, and in the event of termination, whether voluntary or involuntary, and the date of termination within 4 working days of such action.
6. To maintain documentation that each nurse employed under this contract is and remains current in his/her licensure as a Registered Nurse in good standing with the North Carolina Board of Nursing.
7. To provide supervision within the Subcontract consistent with the annual Memorandum of Agreement.
8. To assume the full responsibility for negligence of its employees that provide nursing services under the terms of this Subcontract for the contracted positions and for all nurses employed directly by the Subcontractor but functioning under the direction of the annual Memorandum of Agreement or Understanding (MOA/MOU).

This contract shall be in effect for the period June 1, 2022 through May 31, 2023 and is renewable annually thereafter. Either party may terminate this contract with or without cause upon 60 days written notice.

FOR AND ON BEHALF OF

_____
(HEALTH DIRECTOR)

Date: _____

FOR AND ON BEHALF OF

DocuSigned by:
_____
7273BF13A4D349F...
(SUPERINTENDENT OR SUB-CONTRACTOR CEO)

Date: 8/15/2022

(This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act)

_____
(COUNTY FINANCE DIRECTOR)

Date: _____

DocuSigned by:
Freya Cahill
_____
31E0B657429D47D...
(SUBCONTRACTOR FINANCE OFFICER)

Date: 8/16/2022

FOR AND ON BEHALF OF THE COUNTY OF _____
_____ (CHAIR COUNTY COMMISSIONERS, optional)
Date: _____

DocuSign Envelope ID: D1776EBC-5377-4D6F-AA2F-A55E7F162E14

Attachment I

ASSURANCES

(To be initialed by Superintendent of Local Education Agency or other Subcontractor Agency CEO)

Initials: DS SPB

Assure that these contracted funds will not be used to supplant existing federal, State, or local funds supporting school nurse positions. Communities will maintain current level of effort and funding for school nurses.

DS SPB

Assure that school nurses will be allowed to participate in required trainings.

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Attachment II

Scope of Work

I. **Background:**

School nurses play a critical role in promoting the health and safety of young people and helping them to establish lifelong healthy behaviors which can result in minimizing the effects of chronic health problems including obesity, diabetes and other chronic conditions that impact readiness to learn. School nurses are often the initial care providers for many student health issues. Access to school nursing services can be limited by the number of local school nurses serving the student population (school nurse to student ratio).

II. Purpose:

This Subcontract improves the school nurse to student ratio in the school district to increase access to school nursing services and to have a positive impact on improving children's health and their readiness to learn. Funds will be used to employ nationally certified school nurse(s), or registered nurse(s) working toward national certification, to work full time in local schools and enhance the local capacity to provide basic health services to students.

III. Scope of Work and Deliverables:

1. The Subcontracting Agency shall employ nationally certified school nurse(s) or registered nurse(s) working toward national certification, to work full time in the local schools.
2. Assure implementation of an annual work plan for each SNFI nurse, consistent with scope of work requirements.
    A. The work plan shall address the delivery of basic health services, including activities, strategies, and goals within, but not limited to, the following areas:
        a) Preventing and responding to communicable disease outbreaks.
        b) Developing and implementing plans for emergency medical assistance for students and staff.
        c) Supervising specialized clinical services and associated health teaching for students with chronic conditions and other special health needs.
        d) Administering, delegating where appropriate, and providing oversight and evaluation of medication administration and associated health teaching for other school staff who provide this service.
        e) Providing or arranging for routine health assessments, such as vision, hearing, or dental screening, and follow-up of referrals.
        f) Assuring that federal and state mandated health related activities are completed, which includes but is not limited to: Health Assessments for students new to NC public schools, immunization compliance reports, blood-borne pathogen control plan (OSHA) requirements, services under Section 504, Individuals with Disabilities Education

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Act, Healthy Active Children (GCS-S-000) requirements for school health advisory councils, and other mandated laws, rules and regulations pertaining to school health.

AND, as required by HB 200 SL 2011-145 Section 10.22 (b), school nurses funded by School Nurse Funding Initiative (SNFI) do not assist in any instructional or administrative duties associated with a school's curriculum and do perform all of the following with respect to school health programs:

g) Serve as coordinator of the health services program in their assigned schools and provide nursing care.
h) Provide health education to students, staff, and parents.
i) Identify health and safety concerns in the school environment and promote a nurturing school environment.
j) Support healthy food services programs.
k) Promote healthy physical education, sports policies, and practices.
l) Provide health counseling, assess mental health needs, provide interventions, and refer students to appropriate school staff or community agencies.
m) Promote community involvement in assuring a healthy school and serve as school liaison to a health advisory committee.
n) Provide health education and counseling and promote healthy activities and a healthy environment for school staff.
o) Be available to assist the county health department during a public health emergency.

B. The work plan shall also outline the certification plan the nurse(s) will use toward completing degree and certification requirements, if not already certified. The nurse(s) must be certified no later than three years from the date of employment as a school nurse in North Carolina.

C. Work plan progress will be monitored via annual site visits conducted by the RSHNC.

IV. <u>Performance Measures/Reporting Requirements</u>:

The Subcontractor shall:

1. Employ, or assure employment of, nationally certified school nurse(s) or registered nurse(s), who will be certified within program requirement period, to work full time in the assigned LEA.
2. Assure completion of an annual work plan consistent with program requirements.
3. Notify the RSHNC in the Division of Public Health (DPH) within four working days after initial hire or replacement hire for any SNFI nurse position, on a form that is supplied by the DPH Program Contact during the service period of the subcontract. This notification must include all items

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listed on the form, including information about nursing education and certification.

4. Notify the RSHNC within four working days if the SNFI nurse position becomes vacant, by means of the School Nurse Staff Change Notification Form supplied by DPH. The form must include the plan to recruit for this position.
5. Upon hiring, assure that those nurses hired into this position are duly registered by the North Carolina Board of Nursing and fully permitted to practice in the State of North Carolina.
6. Provide data to the Local Education Agency (LEA) for inclusion in the North Carolina Annual Survey of School Health Services. The data must be provided to the LEA in time for its submission of the report to the RSHNC prior to the conclusion of the academic year.
7. Assure that every newly hired School Nurse Funding Initiative nurse will be provided with paid time and reimbursement of costs associated with attendance or participation in continuing education, at the same level of cost reimbursement provided to other professional school employees. Up to $750 of SNFI funding may be budgeted for participation in professional development workshops or conferences. The school nurse(s) must participate in the School Nursing: Roles and Responsibilities Workshop series. This includes both the on-line orientation course at the start of employment and the didactic completion course at the next available offering, unless previously attended within five years. If the nurse(s) has (have) previously attended that workshop, assure that the school nurse(s) will be allowed to participate in a School Nurse Certification review course, a Pediatric Physical Assessment for School Nurses Workshop, or the Annual School Nurse Conference.
8. Collaborate with the School Health Nurse Consultants on DPH initiatives to help implementation at the local level (e.g., school nurse care management, immunization initiatives).
9. Assure that SNFI nurse(s) employed through this subcontract will be supported at the same level as other school nurse(s) in the LEA, including such things as providing adequate space, computer equipment, supplies, and in-district travel expenses.
10. For any SNFI nurse who is not certified at the time of hire, submit a education/certification plan that describes the plan to the RSHNC that achieves certification within the required timeframe, including timelines for achieving education and certification goals. This certification plan must be updated at least twice annually and show progress towards the goals, as indicated in paragraph 2B of Section III of this document, until the nurse is certified.
11. Assure that the Memorandum of Agreement that exists between all health departments and LEAs clearly addresses emergency and disaster preparedness and response, states that emergency and disaster service by SNFI nurses is an allowable use of their time and states the way SNFI nurses are to be made available to assist the Local Health Department during a public health

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emergency. The following should be addressed for emergency and disaster preparedness and response:

A. Areas of responsibility and oversight
B. Liability issues
C. Responsible party for cost of non-health department staff providing shelter duty.
D. Training for specific roles in emergencies
E. Periodic assessment and evaluation of emergency plans
F. School nurses' roles and responsibilities during emergency and disaster response

12. Assure that the priority of the allocation during a full year supports salary and fringe benefits for the SNFI nurse(s). Where the allocation exceeds the amount needed to fully fund the SNFI nurse(s) salary and fringe benefits, lapsed salary and fringe benefits may be used to support training as described in Paragraph 8 above. **No other expenditures are allowable using this allocation.**

13. Assure that if salaries and fringe benefits exceed the state allocation, local funds will be used. If more than one position is allocated, state funds provided for the positions can be combined. This will allow use of more than $50,000 (annual allocation per position) for a position if education and experience qualify one nurse for more than $50,000 and another for less than $50,000.

14. Provide accurate contact information and timely notification of changes in contact information of key contacts, including school nurse supervisor, SNFI nurse, contract program administrator, and contract fiscal officer.

15. Provide notification to the RSHNC, within four working days, regarding any change in local school nurse full time equivalencies or assignment that might be expected to reduce access by students to basic health services provided by the SNFI nurse through changing the local school nurse to student ratio.

V. <u>Performance Monitoring and Quality Assurance</u>:

1. **The Subcontracting Agency shall adhere to the following service quality measures for this subcontract:**
   A. Service is provided by a nationally certified school nurse(s). If the nurse(s) hired with these funds is (are) not nationally certified, service is provided by a registered nurse(s) working towards certification. This requirement shall be completed no later than the date of completion of three years of employment as a school nurse in North Carolina.

   B. Services are provided in accordance with standards established by the North Carolina Nurse Practice Act and the North Carolina Board of Nursing. The North Carolina School Health Program Manual, latest edition, shall be consulted as a resource, as well as the Scope and Standards of School Nursing, latest edition, developed by American Nurses Association and National Association of School Nurses.

   C. Services are provided in a culturally sensitive manner.

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D. Services are provided with adherence to federal law in relation to privacy of student records, following both HIPAA (Health Insurance Portability and Accountability Act) and FERPA (Family Educational Rights and Privacy Act), as applicable. Where HIPAA and FERPA may appear to be in conflict, FERPA shall be followed regarding records that become part of the student's educational record; US Department of Education and North Carolina Department of Public Instruction guidelines are resources.

2. **This subcontract will be monitored according to the following plan:**
   A. The DPH Regional School Health Nurse Consultants (RSHNC) will review budgets and expenditures to assure that funds are spent according to the approved plan on a monthly basis.

   B. The RSHNC will monitor vacancies, recruitment, hiring, and certification status or progress towards certification.

   C. The RSHNC will maintain regular contact (email, phone, and on-site) with the Local Health Department to review progress on contract deliverables no less than twice a year.

   D. Deliverables, as outlined in this subcontract, will be monitored via reported workplan progress, including certification for non-certified school nurses during annual site visits by the RSHNC. A sub-recipient monitoring report will be completed by the DPH program staff and a copy made available to the Local Health Director. The report will demonstrate assurance that program goals are being addressed and that all deliverables are on target to be met. If the report indicates failure to adhere to deliverables in this subcontract, the Local Health Director or designee will work with the RSHNC to develop a corrective action plan. If the corrective action does not meet contract requirements, the DPH may take action resulting in cessation of funding.

VI. <u>Funding Guidelines or Restrictions</u>:

1. The Subcontracting Agency shall use funds only for salary, fringe benefits and to support continuing education and required school nurse training.

2. The Subcontracting Agency shall assure that these funds will not supplant existing funds supporting school nurse positions. Communities will maintain current level of effort and funding for school nurses.

3. Vacancies that exist longer than six months may cause a Corrective Action Plan to be issued and may result in loss of funding.

4. When subcontracting with other employers (such as an LEA, hospital or Alliance), the draw down may be no more than is billed monthly to the Local Health Department without prior approval of the DPH Program Contact.

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Attachment III

BUDGET

SNFI Subcontract Budget

I. SALARIES

Position Title	Name *	Annual Salary	Type Position	Amount Paid by Local Agency	Amount Paid by SNFI Funds
1. Nurse 1	Name Clarie Thomas	$40,748	10-month	10,859	29,888
2. Nurse 2	Name Cynthia Blue	$52,232	10-month	13,920	38,312
3. Nurse 3	Name Carol Letts	$45,002	10-month	12,043	32,984
TOTAL SALARY PAID BY CONTRACT					101,184

* List VACANT if position not filled at the time of this report.

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II. FRINGE

Position Title	Name *	Type and Rate	Amount Paid by Local Agency	Amount Paid by SNFI Funds
1. Nurse 1	Clarie Thomas	☐ Retirement Rate: %.245	2,660	7,323
		☐ FICA Rate: %.765	831	2286
		☐Medical Rate/Amount: $ 7,397	1971	5426
		☐ Other: Rate:		
2. Nurse 2	Cynthia Blue	☐ Retirement Rate: %.245	3,410	9,386
		☐ FICA Rate: %.765	1,065	2,931
		☐Medical Rate/Amount: $ 7,397	1971	5426
		☐ Other: Rate:		
3. Nurse 3	Carol Letts	☐ Retirement Rate: %.245	2,938	8,087
		☐ FICA Rate: %.765	917	2525
		☐Medical Rate/Amount: $ 7,397	1971	5426
		☐ Other: Rate:		
TOTAL FRINGE PAID BY CONTRACT				$48,816

*Fringe benefit amounts may change due to longevity, etc. that the employee may be eligible for during the school year.

Justification: Funds will be used to employ nationally certified school nurse(s) or registered nurse(s) working toward national certification to work full time in schools and enhance the local school district's capacity to provide basic health services to students.

III. Other, Training Related

STAFF TRAVEL				
In-State		**Total miles**	**Cost per mile**	**Total Cost**
In-state Mileage				$ 0.00 -
		Number of nights	**Cost per night**	**Total Cost**
In-state Lodging				$ 0.00 -
	# of breakfasts	**# of lunches**	**# of dinners**	**Total Cost (State rate)**
State funded Meals, Instate				$ 0.00 -
Conference Registration				0.00

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TRAINING PAID BY CONTRACT (If no funds available after covering salary and fringe for these positions, leave at 0.00. If funds available, amount is limited to a total of $750 per position. See Scope of Work for Allowable Costs)	**0.00**

CONTRACT TOTAL AMOUNT	**$150,000.00**

IV. Invoice Schedule

Use the Table below to indicate the planned monthly invoice amounts that reflect salary and fringe if all positions are filled. It is understood that adjustments will be needed if vacancies occur. Total monthly salary and fringe amount per position should be invoiced until Program 803 funds have been expended using local funds later in the year, if needed to supplement."

Invoice Month	803 Amount
July	0
August	15,000.00
September	15,000.00
October	15,000.00
November	15,000.00
December	15,000.00
January	15,000.00
February	15,000.00
March	15,000.00
April	15,000.00
May	15,000.00
June	0
803 Fund Total	150,000.00

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 10.

From:
Cris Harrelson, Health Services Director

Health and Human Services - Health Services – Tobacco-Free Policy

Issue/Action Requested:
Request that the Board of Commissioners review and approve the Tobacco-Free Policy for Local Health Department Buildings and Grounds.

Background/Purpose of Request:
Starting Dec. 1, 2022, NC Medicaid Managed Care Standard Plans and Tailored Plans will require contracted providers to implement a tobacco-free policy covering any portion of the property on which the participating provider operates that is under its control as owner or lessee, to include buildings, grounds, and vehicles.

For purposes of this policy, "tobacco product" includes any product containing tobacco or nicotine that is intended for human consumption, irrespective of whether the nicotine is tobacco-derived or synthetic, including but not limited to: cigarettes, cigars, pipe tobacco, electronic cigarettes, hookah, smoked or vaped tobacco substitutes, chewing tobacco, snuff, snus, dissolvable tobacco products, and heated tobacco products. Tobacco products do not include nicotine replacement products approved by the FDA for treatment of tobacco use and dependence.

Brunswick County Health Services' existing tobacco policy was implemented by the Board of Health in 2007 and 2008 and currently bans combustible and smokeless tobacco products within 50' of the building, at outlying sites, and in county vehicles. To comply with the new policy requirements, the new definition of "tobacco product" will be implemented and the front parking lot will now be included in the definition of "building and grounds" (i.e. all property owned, leased, or controlled by Brunswick County Health Services which includes outlying WIC sites. The "grounds" include property 50 feet from building, as well as the parking lot in front of Building A.) Signage on the grounds will be updated to include all forms of tobacco products, including e-cigarettes.

To summarize, this revised Tobacco-Free policy for Brunswick County Health Services will 1) expand the definition of tobacco products to include electronic nicotine delivery devices, and 2) expand the ban on tobacco products to include the front parking lot as well as the 50' perimeter around building A (also including all outlying sites, vehicles, and outreach events).

This policy also supports Local Health Department Accreditation Activity 30.10.

Staff recommends approval of the policy.

Fiscal Impact:
Reviewed By Director of Fiscal Operations

Approved By County Attorney:
Yes

Advisory Board Recommendation:
8/22/22: HHS Advisory Board recommends that the Board of County Commissioners review and approve the Tobacco-Free policy for Local Health Department Buildings and Grounds.

County Manager's Recommendation:
Recommend that the Board of Commissioners review and approve the Tobacco-Free Policy for Local Health Department Buildings and Grounds.

ATTACHMENTS:

	Description
🗋	Tobacco-Free Policy

Effective Date:	_____
Revision Date:	_____
Approved By:	_____
Date Approved:	_____

Brunswick County Health Services
Policies and Procedures
Program Name: Board of Health

Policy Title: Tobacco-Free Policy for Local Health Department Buildings and Grounds

Policy: The use of tobacco products is prohibited in the buildings and grounds of Brunswick County Health Services.

This policy applies to all persons while in or on the grounds of Brunswick County Health Services, including staff, contractors, vendors, clients, and visitors.

Staff, contractors, vendors, clients, and visitors are prohibited from using tobacco products while at off-site activities (health fairs and community outreach events) conducted by Brunswick County Health Services including during services provided virtually.

Staff members are prohibited from accepting tobacco products as donations for client or staff use.

Staff members are prohibited from purchasing tobacco products for or distributing tobacco products to clients.

Definitions:

For purposes of this policy, "tobacco product" includes any product containing tobacco or nicotine that is intended for human consumption, irrespective of whether the nicotine is tobacco-derived or synthetic, including but not limited to: cigarettes, cigars, pipe tobacco, electronic cigarettes, hookah, smoked or vaped tobacco substitutes, chewing tobacco, snuff, snus, dissolvable tobacco products, and heated tobacco products. Tobacco products do not include nicotine replacement products approved by the FDA for treatment of tobacco use and dependence.

For purposes of this policy, "buildings and grounds" includes all property owned, leased, or controlled by Brunswick County Health Services which includes outlying WIC sites. The "grounds" include property 50 feet from building, as well as the parking lot in front of Building A. (Reference map)

Purpose:

The purpose of this policy is to eliminate the use of tobacco on the premises of the Brunswick County Health Services. Tobacco use is a major cause of preventable disease and death. Brunswick County Health Services is committed to providing a safe, clean, and healthy environment for their staff, contractors, clients, and visitors within the community. Brunswick County Health Services serves as a model for our community in promoting the good health of its staff and influencing public attitudes about tobacco use. Brunswick County Health Services is dedicated to the promotion of tobacco-free living for employees, clients and the community and minimizing exposure to environmental tobacco smoke.

Procedures:

Signs giving notice of the tobacco free policy shall be posted in, on or about all Brunswick County Health Services buildings, grounds and mobile units.

The signs shall state "No Tobacco Use" policy with letters of not less than one (1) inch in height with the applicable universal symbol (e.g., the "No Smoking and Use of Tobacco Products Prohibited" symbol) consisting of a pictorial representation of a burning cigarette, vape, and smokeless tobacco product enclosed in a red circle with a red bar across it. The sign shall be clearly, sufficiently, and conspicuously posted in every public building or other place where tobacco use is prohibited. Any signage in English must also be in other languages if client/populations dictate such.

Outside groups using Brunswick County Health Services property will be informed of the tobacco-free policy.

Staff will be informed of the tobacco-free policy when it is first enacted and through new employee orientation materials.

Signs on giving notice of the policy on the interior of the building will inform staff and clients of the availability of quitting support services provided by the North Carolina Tobacco Use Quitline at 1-800-QUIT-NOW (1-800-784-8669).

A staff member who encounters other staff members, clients, contractors, vendors, or visitors not adhering to the tobacco-free policy should politely explain the policy. If the person does not comply, a supervisor should be notified.

Staff members who do not adhere to this policy are subject to disciplinary action as determined by his/her supervisor.

Non-adherent contractors, vendors, visitors, and other individuals may be excluded from the property.

Approved and adopted by the Brunswick County Commissioners on _____.

_____
Chair, Board of County Commissioners

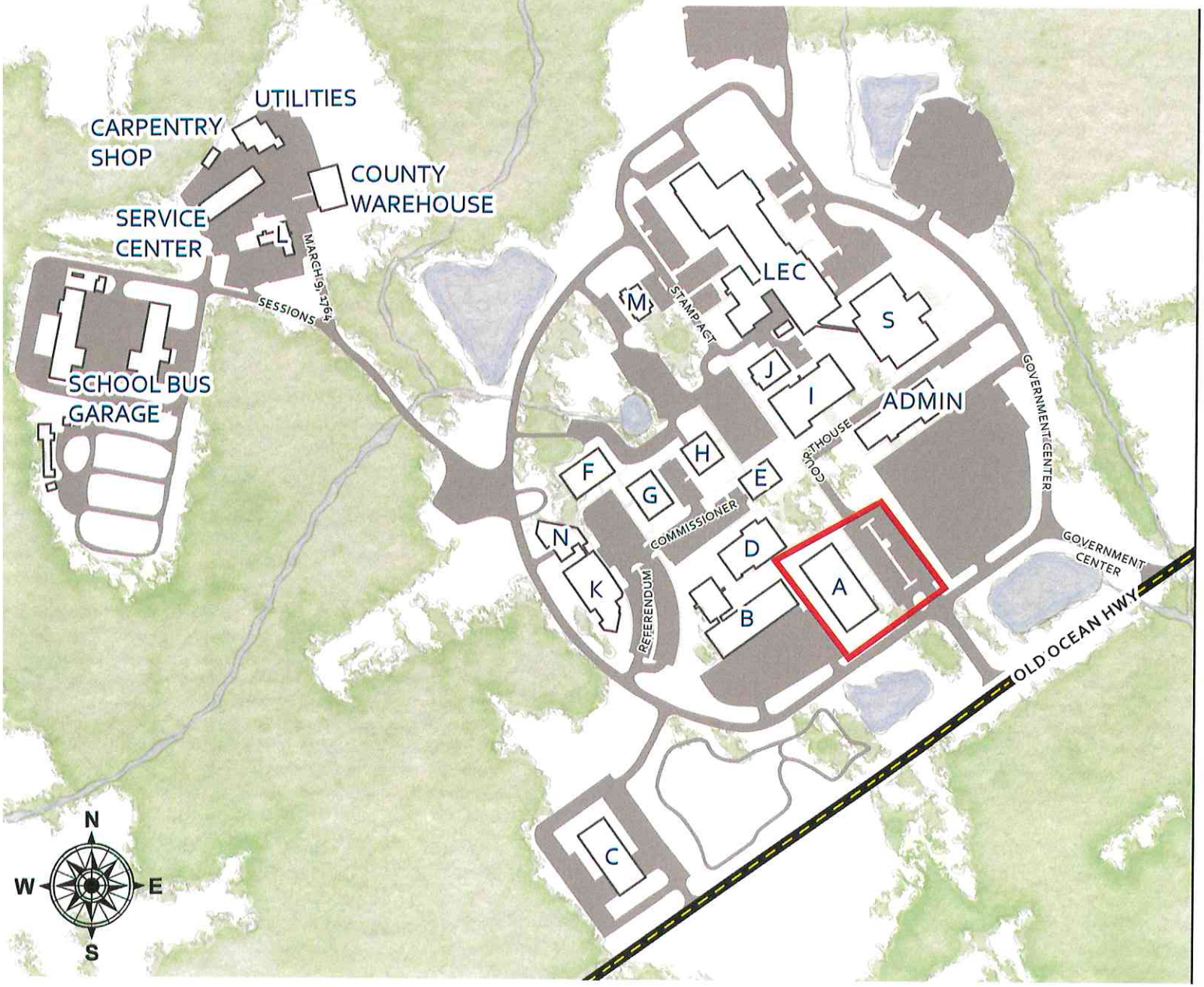
_____
Health Services Director

Reference:
BCHS No Tobacco Use Map
BOH Minutes November 13, 2007 and March 10, 2008
Brunswick County Ordinance Article V

BRUNSWICK COUNTY GOVERNMENTAL CENTER

Brunswick County Health Services
Board of Health Policy

No tobacco use within 50 feet from the building, as well as the parking lot in front of Building A



A	Health / Environmental Health	
ADMIN	Clerk to the Board	1
ADMIN	Commissioners' Chambers	1
ADMIN	Tax Admin / Revenue / G.I.S.	1
ADMIN	Mailroom	1
ADMIN	Finance	2
ADMIN	County Manager / Deputy County Manager	3
ADMIN	Communications	3
ADMIN	Human Resources	3
ADMIN	Risk Manager	3
ADMIN	County Attorney / Asst. County Attorney	3
B	Social Services	
B	Public Housing	
C	Emergency Management	
C	Emergency Medical Service	
D	Housekeeping	
D	Center Cafe	
E	I.T. (Computer Services)	
F	Veteran Services	
F	Farm Service Agency	
F	Soil & Water Conservation	
F	USDA Rural Development	
F	Coastal Southeastern United Care Clinic	
G	Parks & Recreation	
G	Brunswick Arts Council	
G	Computers for Kids	
H	Board of Elections	
I	Planning	
I	Central Permitting	
I	Code Admin (Building Inspections)	
I	Zoning & Community Enforcement	
I	Engineering	
I	Utilities Billing & Custormer Service	
I	Register of Deeds / Passports	
J	911 Communications Center	
K	Board of Education	
L	Operation Services	
L	Recycling / Solid Waste	
L	Vector Control	
LEC	Sheriff's Office	
LEC	Detention Center	
M	Sheriff's Office Annex	
N	Cooperative Extension	
S	Clerk of Court	
S	Criminal Division (Incl. traffic tickets)	1
S	Community Service Work Program	1
S	Guardian Ad litem Program	1
S	Juvenile Services	1
S	Magistrate's Office	1
S	Probation & Parole	1
S	NC Highway Patrol	1
S	Civil Division / Child Support / Juvenile	2
S	Estates / Spec. Proceedings / Bookkeeping	3
S	District Attorney	3

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 11.

From:
Catherine Lytch, DSS Director

Health and Human Services - Sheltering Agreement with Brunswick County Schools FY 22-23

Issue/Action Requested:
Request that the Board of Commissioners approve the sheltering agreement between Brunswick County and Brunswick County Schools (BCS).

Background/Purpose of Request:
Each year, any number/type of event can force the County to open shelters to provide a safe harbor to its citizens, it is the school system that provides the most adequate space and support staff for doing so. While BCS has always been a great partner in these endeavors, the absence of the American Red Cross in our primary sheltering operations has led to a necessary increase in the amount of cooperation to which our agencies must commit.
As such, Brunswick County staff have worked with BCS staff to create a sheltering agreement between the two entities. This agreement outlines the responsibilities of each party, in addition to making provisions for reimbursements, if applicable. Because any money that changes hands cannot be determined until any specific event forces these two agencies into action, there is no specific annual value or capitation to this agreement. This agreement was approved by the Board of Education and signed by BCS staff on August 3, 2022. Brunswick County staff recommends approval of this agreement.

Fiscal Impact:
Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations
FEMA may reimburse amounts paid per agreement if the State of Emergency event is declared a Federal Disaster.

Approved By County Attorney:
Yes

County Manager's Recommendation:
Recommend that the Board of Commissioners approve the sheltering agreement between Brunswick County and Brunswick County Schools (BCS).

ATTACHMENTS:

Description

- Sheltering Agreement with BCS

NORTH CAROLINA

BRUNSWICK COUNTY

INTERAGENCY AGREEMENT
[For Services and Facilities]

THIS INTERAGENCY AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as "County"), party of the first part and Brunswick County Schools, an entity organized and existing pursuant to the laws of the State of North Carolina and located in Brunswick County, (hereinafter referred to as "BCS"), party of the second part.

WITNESSETH:

WHEREAS, County and BCS desire to establish an inter-governmental approach for the provision of services or resources, as more fully described herein;

WHEREAS, County and BCS each agree that the cooperative endeavor contemplated hereby will be beneficial to the citizens of Brunswick County; and

WHEREAS, County and BCS, in order to set out the provisions and conditions under which said services or resources will be provided, have entered into this Agreement as authorized by Article 20, Part 1 of Chapter 160A of the North Carolina General Statutes:

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained herein, County and BCS do hereby agree as follows:

1. SERVICES

The services to be performed and/or the resources to be provided under this Agreement (hereinafter referred to collectively as "Services") are set forth on Exhibit "A" 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.

In no event shall Services provided by County under this Agreement include legal services, which shall be provided by BCS at its own expense.

2. TERM OF AGREEMENT

The initial term of this Agreement begins on July 1, 2022, and continues in effect until June 30, 2023, unless earlier terminated pursuant to any of the terms and conditions contained herein. It is expressly agreed that this Agreement shall automatically and without further action on the part of either party be extended from year to year unless one of the parties gives written notice to the other party pursuant to the termination requirements herein.

3. TERMINATION

a. **FOR CAUSE.** Notwithstanding the foregoing, either party may terminate this Agreement upon six (6) months' written notice to the other party if the other party is in material breach of any provision herein and fails to cure the breach during the notice period.

b. **WITHOUT CAUSE.** County or BCS may terminate this Agreement at any time without cause by giving twelve (12) months' written notice to the other.

4. NONAPPROPRIATION

If the Board of County Commissioners does not appropriate the funding needed by the County to fulfill its financial obligations, if any, under this Agreement for a given fiscal year, County will not be obligated beyond the end of the last fiscal year for which funds were appropriated. In such event, County will promptly notify BCS 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 County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

5. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

The parties acknowledge that FEMA financial assistance may be used to fund all or a portion of this Agreement. The parties will comply with all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.

6. COMPENSATION

Compensation for any services herein are detailed in Exhibit "A."

7. RELATIONSHIP OF PARTIES

Both County and BCS agree that the parties are acting as independent contractors under this Agreement. Control of County personnel, standards of performance, discipline and all other aspects of performance shall be governed entirely by County. No joint agency is established by this Agreement. This Agreement does not create a partnership, joint venture, other joint endeavor, joint ownership, joint operations, or personnel sharing of any kind. No joint personnel are needed by the parties in order to carry out the obligations under this Agreement.

8. REPRESENTATIONS

Each party to this Agreement represents to the other party each of the following as of the Effective Date of this Agreement and covenants with the other party that each such representation will remain true and correct:

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 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 it to enter into and perform its obligations under this Agreement;

d. It shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses;

e. It shall not violate any agreement with any third party by entering into or performing the obligations under this Agreement;

f. In fulfilling its obligations under this Agreement, it 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); and

g. No elected or appointed official or employee has any interest (financial, employment or other) in the transactions contemplated by this Agreement.

9. INDEMNITY

a. To the extent permitted by law, County shall indemnify and hold harmless BCS and its officers, agents and employees from and against any and all claims, actions, suits, liabilities, losses, costs, expenses and damages of any nature whatsoever, by reason of or arising out of any negligent action or omission of County, its officers, agents and employees or any of them, in fulfilling its obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against BCS, County shall defend the same at its sole cost and expense; provided that, BCS retains the right to participate in said suit if any principal of government or public law is involved. If final judgment is to be rendered against BCS and its respective officers, agents, employees or any of them, or jointly against BCS and County and its respective officers, agents and employees, or any of them, County shall satisfy same.

b. To the extent permitted by law, BCS shall indemnify and hold harmless County and its officers, agents and employees from and against any and all claims, actions, suits, liabilities, losses, costs, expenses and damages of any nature whatsoever, by reason of or arising out of any negligent action or omission of BCS, its officers, agents and employees or any of them, in fulfilling its obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against County, BCS shall defend the same at its sole cost and expense; provided that, County retains the right to participate in said suit if any principal of government or public law

is involved. If final judgment is to be rendered against County and its respective officers, agents, employees or any of them, or jointly against County and BCS and its respective officers, agents and employees, or any of them, BCS shall satisfy same.

c. By executing this Agreement, County does not assume liability or responsibility for or in any way release BCS from any liability or responsibility which arises in whole or in part from the existence or effect of BCS ordinances, rules, or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such BCS ordinance, rule or regulation is at issue, BCS shall defend the same at its sole cost and expense and if judgment is entered or damages are awarded against BCS, County or both, BCS shall satisfy the same, including all chargeable costs and attorneys' fees.

10. COMPLIANCE WITH E-VERIFY PROGRAM

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

11. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

BCS 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. JESSICA LUNSFORD ACT

BCS acknowledges that N.C.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 place intended primarily for the use, care, or supervision of minors, including but not limited to schools and playgrounds. This prohibition applies to persons required to register under 27A who have committed any offense in Article 7A of Chapter 14 or any offense where the victim of the offense was under the age of 16 years at the time of the offense.

13. 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 to that agreement. 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 expense.

14. 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.

15. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

Contractors or Providers who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-

federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

16. PROCUREMENT OF RECOVERED MATERIALS

(1) In the performance of this Agreement, and to the extent applicable, BCS shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –

(i) Competitively within a timeframe providing for compliance with the Agreement performance schedule;

(ii) Meeting Agreement performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

(3) BCS also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

17. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

(1) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause –

(2) *Prohibitions.*

i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

ii. Unless an exception in paragraph (c) of this clause applies, BCS and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

d. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(3) *Exceptions.*

i. This clause does not prohibit contractors from providing –

a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

ii. By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

1. Are *not used* as a substantial or essential component of any system; *and*

2. Are *not used* as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(4) *Reporting requirement.*

i. In the event a party identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or a party is notified of such by a subcontractor at any tier or by any other source, the party shall report the information in paragraph (d)(2) of this clause to the recipient or

subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

ii. A party shall report the following information pursuant to paragraph (d)(1) of this clause:

a. Within one (1) business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

b. Within ten (10) business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, BCS shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(5) *Subcontracts.* BCS shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

18. DOMESTIC PREFERENCE FOR PROCUREMENTS

As appropriate, and to the extent consistent with law, BCS should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

19. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

(1) BCS agrees to provide County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of BCS which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) BCS agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) BCS agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

(4) In compliance with the Disaster Recovery Act of 2018, BCS acknowledges and agrees that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

20. DHS SEAL, LOGO, AND FLAGS

BCS shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

21. SUSPENSION AND DEBARMENT

(1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such BCS is required to verify that none of BCS's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) BCS must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by County. If it is later determined that BCS did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to FEMA and County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further

agrees to include a provision requiring such compliance in its lower tier covered transactions.

22. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

BCS acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to each of their actions pertaining to this Agreement.

23. NO OBLIGATION BY FEDERAL GOVERNMENT

The federal government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-federal entity, BCS, or any other party pertaining to any matter resulting from the Agreement.

24. MINORITY BUSINESS ENTERPRISES

If subcontracts are to be let, BCS is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

25. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, BCS agrees as follows:

(1) BCS will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. BCS will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. BCS agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) BCS will, in all solicitations or advertisements for employees placed by or on behalf of BCS, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) BCS will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another

employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with BCS's legal duty to furnish information.

(4) BCS will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of BCS's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) BCS will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) BCS will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of BCS's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and BCS may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) BCS will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. BCS will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event BCS becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, BCS may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

26. COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT

(1) BCS. If applicable, BCS shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.

(2) Subcontracts. If applicable, BCS or its subcontractors shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

27. COMPLIANCE WITH THE DAVIS-BACON ACT (AS AMENDED)

(1) If applicable, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) and the requirements of 29 C.F.R. Part 5, as may be applicable. BCS shall comply with 40 U.S.C. §§ 3141-3144 and 3146-3148 and the requirements of 29 C.F.R. Part 5, as applicable.

(2)BCS is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

(3) Additionally, BCS is required to pay wages not less than once a week.

28. CLEAN AIR ACT

(1) BCS agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) BCS agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) BCS agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by FEMA.

29. FEDERAL WATER POLLUTION CONTROL ACT

(1) BCS agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) BCS agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) BCS agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by FEMA.

30. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with the Contract Work Hours and Safety Standards Act:

(1) *Overtime requirements*. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek

unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section BCS and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, BCS and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by BCS or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* BCS or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Further Compliance with the Contract Work Hours and Safety Standards Act, as applicable:

(1) BCS or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by BCS or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and BCS or subcontractor will permit such representatives to interview employees during working hours on the job.

31. 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.

32. 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.

33. GOVERNMENTAL IMMUNITY

To the extent applicable, neither party waives 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.

34. NON-WAIVER

Failure by County at any time to require the performance by BCS 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.

35. 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 to the subject matter herein.

36. 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.

37. 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.

38. 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 BCS and County.

39. 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 BCS:
Brunswick County Schools
35 Referendum Dr
Bolivia, NC 28422

[SIGNATURES APPEAR ON FOLLOWING PAGE]

40. 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 § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

_____
Clerk to the Board

BRUNSWICK COUNTY

By: _____
Randell Thompson
Chairman

[SEAL]

BRUNSWICK COUNTY SCHOOLS

By: S. Barger, Chair

Printed Name: Dr. Jerry Oates

Title: Superintendent

Date: 8/3/22

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

_____
Aaron C. Smith, Director of Fiscal Operations
Brunswick County, North Carolina

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

_____
Freyja Cahill, Chief Finance Officer
Brunswick County Schools

APPROVED AS TO FORM

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

APPROVED AS TO FORM

June 3, 2022
Richard Green
Brunswick County Schools

EXHIBIT "A"
SCOPE OF SERVICES OR RESOURCES/FEES

1. BRUNSWICK COUNTY SCHOOLS:

a. Open the building within twenty-four (24) hours' notice from Brunswick County EMS and staff the building with a minimum of: one (1) Principal or Assistant Principal; one (1) Maintenance Technician; one (1) Head Custodian; two (2) Custodians; one (1) Cafeteria Manager and two (2) Cafeteria staff. This initial staffing level will be based on the expectation of an event requiring a shelter capacity of no more than 200 occupants. An additional custodian and one cafeteria staff will be added to any shelter location at each benchmark of 100 additional occupants after exceeding 200 occupants. The table below provides a snapshot for reference.

Position Title	**POP 0-200**	**POP 201-300**	**POP 301-400**	**POP 401-500**	**POP 501-600**	**POP 601-700**	**POP 701-800**
Principal or Assistant Principal	**1**	**1**	**1**	**1**	**1**	**1**	**1**
Maintenance Technician	**1**	**1**	**1**	**1**	**1**	**1**	**1**
Head Custodian	**1**	**1**	**1**	**1**	**1**	**1**	**1**
Custodian	**2**	**3***	**4***	**5***	**6***	**7***	**8***
Cafeteria Manager	**1**	**1**	**1**	**1**	**1**	**1**	**1**
Cafeteria staff	**2**	**3***	**4***	**5***	**6***	**7***	**8***

* Final approval for increased BCS staffing levels resides with the Incident Commander, typically the Brunswick County Emergency Management Director. Requests for increased staff should be sent to the attention of the IC or their designee as specified in the Emergency Operations Center for any one event.

b. Make available a Transportation Team to assist in evacuation efforts. The Transportation Team will consist of three (3) Bus Drivers and one (1) Mechanic per shelter, plus one (1) Mechanic, one (1) Coordinator/Dispatcher, the Transportation Director and Assistant Transportation Director based in the Transportation Department.

c. Make available the Technology Data Systems Manager for IT support, the Director of Facilities to manage Custodial and Maintenance personnel and events and the Chief Operations Officer and Director of Safety and Administration for coordination in the Emergency Operations Center.

d. Supply cleaning materials required for general building cleaning and to maintain cleanliness of restrooms, hallways, and general areas, such as gyms and cafeterias, clean and free of waste materials.

e. Supply food required to serve three (3) meals per day (one (1) hot meal if possible) to sheltered individuals and staff serving the shelter as available, unless meals ready to eat (MRE's) are necessary and available to be provided to mitigate issues with preparing meals (including, but not limited, to loss of power, unavoidable staffing shortages, lack of inventory). School staff shall assist to the extent allowable with distribution of MRE's in the absence of meals.

f. Contract for industrial hospital grade cleaning after shelter closes.

g. At the direction of the Principal or Assistant Principal in charge – assist shelter management with all requests that at this time go unnamed, to the best of BCS abilities.

h. Make routine repairs on facility related equipment as requested by shelter management, to the best of BCS abilities.

i. Coordinate enhancements to school facilities with Brunswick County Emergency Management (BCEM). Consider any and all effects building additions or alterations may have on shelter operations and coordinate a discussion with BCEM about said alterations or additions. Enhancements shall be made to the extent the respective fiscal year allows.

j. Use joint funding initiatives when available, pursuant to mutual agreement of the parties and in compliance with State Law and Board policies.

k. Transfer funding currently allotted to generator maintenance at specified shelter sites to Brunswick County and supply the County with any keys, passes, etc. that may be required to access equipment for maintenance. These sites may be amended annually in January.

2. BRUNSWICK COUNTY AGREES TO:

a. Fund and oversee the maintenance of emergency generators and their associated fueling systems at the following schools: West Brunswick HS, Cedar Grove Middle School, Town Creek Middle School, and North Brunswick HS (refer to section 1.k.). This includes assuming maintenance of equipment currently in place and the capital cost of any upgrades of generators at these schools. These sites may be amended annually in January.

b. Evaluate said school's potable water and wastewater systems and fund and manage any projects that are needed to improve reliability of these systems during power outages.

c. Under a County declared SOE, the County will reimburse BCS for non-exempt employees working the event at a rate of 1.5 times the base hourly rate and 1.0 times the base hourly rate for exempt employees for every hour worked during the event.

d. Reimburse BCS for expenses associated with cleaning and repairs necessary due to sheltering activities.

e. Reimburse BCS for cost of food and supplies not reimbursed by USDA Disaster Funding.

f. Reimburse cost during emergencies for two (2) BCS staff members that act as liaisons for all communications necessary to implement this Agreement.

g. Reimburse BCS for bus mileage at current mileage rates as assigned by the State and associated efficiency penalties that BCS incurs due to additional mileage.

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 12.

From:
Catherine Lytch, DSS Director

Health and Human Services - Social Services - DSS and Trillium MOA

Issue/Action Requested:
Request that the Board of Commissioners approve the FY 22-23 Memorandum of Agreement with Trillium Health Resources for Work First and Child Protective Services Substance Use Initiative.

Background/Purpose of Request:
The Work First (WF) and Child Protective Services (CPS) Substance Use Initiative provides early identification of a substance use disorder(s) or a mental illness that will affect the WF recipients' ability to secure and maintain employment through screening, assessment, referral, and case coordination services.

The WF/CPS Substance Use Initiative also facilitates substance use and mental health services to parents and caretakers of children, where there has been substantiated child abuse, neglect, and/or dependency with an indication of substance use disorders, to better assure the safety, permanence, and wellbeing of children.

The services for WF/CPS Substance Use Initiative-involved families provided under the MOA are assessment, referral, and case coordination. Responsibilities also include collaboration to ensure that barriers to receiving treatment are addressed.

Populations to be served by this agreement are Work First applicants and recipients, Class H or I Controlled Substance Felons applying for Work First or Food and Nutrition Services, Non-custodial parents and/or families with income at or below 200% of federal poverty guidelines, and parents/caretakers who have a substantiated or in need of services finding that involves family substance use.

Staff recommends approval of the Memorandum of Agreement with Trillium Health Resources for the Work First and Child Protective Services Substance Use Initiative.

Fiscal Impact:
Reviewed By Director of Fiscal Operations

Approved By County Attorney:
Yes

County Manager's Recommendation:
Recommend that the Board of Commissioners approve the FY 22-23 Memorandum of Agreement with Trillium Health Resources for Work First and Child Protective Services Substance Use Initiative.

ATTACHMENTS:

Description

- Trillium - DSS Work First MOA FY22-23

Trillium HEALTH RESOURCES

Transforming Lives. Building Community Well-Being.

MEMORANDUM OF AGREEMENT

BRUNSWICK COUNTY
FOR AND ON BEHALF OF ITS
DEPARTMENT OF SOCIAL SERVICES

AND

TRILLIUM HEALTH RESOURCES
LOCAL MANAGEMENT ENTITY- MANAGED CARE ORGANIZATION

This Memorandum of Agreement is entered into and by **BRUNSWICK COUNTY** for and on behalf of its Department of Social Services, hereinafter called the Department, and the **TRILLIUM HEALTH RESOURCES** Local Management Entity-Managed Care Organization, hereinafter called the LME-MCO.

MISSION:

The Work First/Child Protective Services (WF, CPS, or WF/CPS) Substance Use Initiative provides early identification of a substance use disorder(s) or a mental illness that will affect the WF applicant/ recipients' ability to secure and maintain employment through screening (AUDIT, DAST-10 and Behavior Observation Checklist), assessment including the Substance Use Disorders Diagnoses Schedule (SUDDS) 5, referral and case coordination services to the eligible populations to be served. The WF/CPS Substance Use Initiative also facilitates substance use disorder services and mental health services to parents and caretakers of children, where there has been substantiated child abuse, neglect and/or dependency with an indication of substance use disorders, in order to better assure the safety, permanence and wellbeing of children. The services for WF/CPS Substance Use Initiative-involved families provided under this Agreement are assessment, referral and case coordination. Responsibilities also include collaboration to ensure that barriers to receiving treatment are addressed and that the requirements of G.S. 108A-25.2 and G.S. 108A-29.1 (Appendix A) are adhered to, case consultation, follow-up, training with local Department staff and other activities approved by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (MH/DD/SAS).

ELIGIBLE POPULATIONS TO BE SERVED:

The eligible populations to be served are as follows:

a. Work First applicants and recipients
b. Class H or I Controlled Substance Felons applying for Work First assistance and/or Food and Nutrition Services.
c. Non-custodial parents and/or families with income at or below 200% of federal poverty guidelines (The eligibility status of this population is based on inclusion of this population in the county Work First Plan)
d. Parent(s)/caretakers who have a substantiated or in need of services finding that involves substance use.

Child Protective Services encompasses the provision of specialized services for maltreated children or those who are at risk of harm. Services are aimed at strengthening family life by supporting and improving parental/caretaker responsibility that, in turn, assures for each child a safe, nurturing home. Services focus on prevention and rehabilitation and are directed toward identifying and changing the cause of the maltreating behavior. This is accomplished through parent/caretaker cooperation and consent or, in the event that conditions pose serious issues for the child's safety, through the agency petitioning for court intervention.

This Memorandum of Agreement with the Department of Social Services establishes procedures surrounding the services of a Work First/Child Protective Services Qualified Professional in Substance Abuse (WF/CPS QP in Substance Abuse). Its purposes is to facilitate appropriate substance use disorder services and mental health services to parents and caretakers of children in order to better assure the safety, permanence and well-being of children when the need for CPS services has been identified and substance abuse or mental illness has been a factor in the maltreatment.

Substance use and mental health issues are significant barriers to employment for a number of Work First applicants/recipients. To assist these families in becoming employed and maintaining employment, all Work First adult applicants/recipients will be screened for possible substance use, and they may be voluntarily screened for mental health. Non-custodial parents and families with incomes at or below 200% of poverty may also volunteer to be screened for mental health, or substance use, if your county has chosen to serve these populations.

If the verbal screening indicates the applicant/recipient is at risk for substance use, he/she will be referred to a Qualified Substance Abuse Professional (QP in Substance Abuse or QPSA) or other qualified staff. The QP in Substance Abuse will either provide information or conduct a substance use disorder assessment per G.S. 108A-29.1 (see Appendix A). If treatment is appropriate, the QP in Substance Abuse will facilitate the referral for the appropriate level treatment.

Applicants for Food and Nutrition Services with a history of a Class H or I Controlled Substance Felony, meeting criteria in G.S. 108A-25.2 (see Appendix A), will be referred to the QP in Substance Abuse for a substance use disorder assessment. If treatment is indicated as a result of the assessment, the QP in Substance Abuse will facilitate a referral to the appropriate treatment level for the applicant.

The responsibilities of the above two agencies in meeting the objectives are as follows:

THE DEPARTMENT OF SOCIAL SERVICES AGREES TO:

1. Refer Work First and Food and Nutrition Services applicants and recipients who have been convicted of a Class H or I felony in North Carolina to the designated QPSA for services.
2. Refer Work First applicants and recipients who have received a confirmatory positive substance use test to the QPSA for education regarding substance use disorder treatment, services and resources.
3. Refer applicants and recipients that meet or exceed the minimum acceptable score on the AUDIT or DAST-10 for further assessment and/or substance use testing.
4. Refer Work First applicants and recipients that request mental health services to the appropriate LME-MCO personnel and contracted QPSA Provider.
5. Secure a valid consent for release of confidential information to share the applicant's and recipients' specific information with appropriate LME-MCO personnel and contracted QPSA provider.
6. Consider including QPSA's in any Child and Family Teams or in multidisciplinary meetings that involve planning with mutual applicants and recipients.
7. Make referrals from Child Protective Services to QPSA to assess individuals with a substantiated CPS case or found in need of services where the case includes substance abuse if QPSA resources are available.
8. Involve DMH/DD/SAS in planning and policy discussions on issues that impact the population that the Department serves.
9. Share research of federal and state law and policy that will affect DMH/DD/SAS and Department collaboration in serving mutual populations.

THE LME-MCO AGREES TO MAKE ARRANGEMENTS FOR:

1. Complete substance use disorder assessments.
2. Educate applicants/recipients about substance use disorder treatments and resources.
3. Refer to substance use disorder or mental health treatment.
4. Provide in-service training on substance use disorders.
5. Provide consultation to Department staff.
6. Participate in Department case staffing and meetings.
7. Provide feedback of the applicants/recipients compliance and cooperation.
8. Share statistical reports with the Department regarding the substance use and mental health services, as deemed necessary to maintain open communication and good administrative practices, and that are mutually agreed upon by both parties as being necessary.

THE LME-MCO FURTHER AGREES:

1. The LME-MCO 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. The LME-MCO shall take affirmative action to ensure that applicants are employed by it and that employees are treated fairly during employment in accordance with applicable law. In the event the LME-MCO is determined by the final order of an appropriate agency or court 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 the Department, and the LME-MCO may be declared ineligible for further agreements with the Department.

2. Pursuant to N.C.G.S. § 143-133.3, the LME-MCO shall comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, the LME-MCO agrees that 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 shall require its subcontractors to do the same.

3. The LME-MCO 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.

4. The LME-MCO 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. The LME-MCO must notify the Department within thirty (30) days if debarred by any governmental entity during this Agreement.

THE DEPARTMENT OF SOCIAL SERVICES AND LME-MCO JOINTLY AGREE TO:

1. Develop a plan for current Work First recipients/applicants, and Food and Nutrition Services recipients/applicants convicted of Class H or I Controlled Substance felony offenses to access substance use disorder, mental health and developmental disabilities services.
2. Utilize the screening tools identified, AUDIT/DAST-10, the SUDDS 5 (or other approved tool), The ASAM Criteria and DSM5 as part of the clinical assessment. (QP in Substance Abuse may use additional tools when necessary to ensure accurate referrals to appropriate level of care.)
3. Confer about treatment recommendations when the assessment results in an indication of substance use disorder or a mental health disorder.

4. Provide ongoing collaboration and consultation regarding decision affecting substance use disorder treatment outcomes or mental health outcomes and/or child safety.
5. Arrange for appointments for the consumer and coordinate planning for child care and transportation.
6. Inform the recipient about the method of payment for substance abuse treatment or mental health treatment in the event the recipient must bear any of the cost.
7. Maintain regular contact on the recipient's engagement in treatment.
8. Utilize the standardized consent form to facilitate confidentiality as provided by the North Carolina Department of Health and Human Services Division of Social Services.
9. Arrange ongoing cross training for staff of both agencies.
10. Develop a reporting system of non-compliance by recipients.
11. QP in Substance Abuse will attend all appropriate collaborative meetings.
12. Support collection and provide data for outcomes and program evaluation.
13. Abide by confidentiality regulations as set forth by the North Carolina Department of Health and Human Services Division of Social Services or NC Division of MH/DD/SAS as well as Federal regulations, including, without limitation and as applicable, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder. If in the performance of their respective duties hereunder the parties are deemed to be either a "Business Associate" or "Covered Entity" as defined by HIPAA, they agree to enter into and be bound by the terms of a Business Associate Agreement in a form acceptable to Department.
14. In addition to the foregoing, comply with all applicable federal, state and local laws and regulations.
15. 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.
16. 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.
17. The Department, 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.

TERMS OF THIS AGREEMENT:

The term of this Agreement shall commence on the **1ST day of July 2022**, and shall run through the **30th day of June 2023**, and shall continue thereafter until such time as a new written agreement is negotiated between the parties.

This Memorandum of Agreement may be amended only upon mutual written agreement of both parties, or terminated by either party upon thirty (30) days prior notice in writing to the other party.

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 § 66-58.1 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.

For Trillium Health Resources

Joy B Futrell
Signed: 8/29/2022

Joy B Futrell, CEO

Date

Brunswick County

Randell Thompson, Chairman
Board of Commissioners

Date

ATTEST:

Clerk to the Board
APPROVED AS TO FORM

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

APPENDIX A

§ 108A-29.1. **Drug screening and testing for Work First Program applicants and recipients.**

(a) The Department shall require a drug test to screen each applicant for or recipient of Work First Program assistance whom the Department reasonably suspects is engaged in the illegal use of controlled substances. The Department shall provide notice of drug testing to each applicant or recipient. The notice shall advise the applicant or recipient that drug screening, and testing if there is reasonable suspicion that an individual is engaged in the illegal use of controlled substances, will be conducted as a condition of receiving Work First Program assistance, and that the results of the drug tests will remain confidential and will not be released to law enforcement. Dependent children under the age of 18 are exempt from the requirements of this section. The Department shall require the following:

(1) That for two-parent households, both parents comply with the requirements of this section.

(2) That any teen parent who is emancipated pursuant to Article 35 of Chapter 7B of the General Statutes complies with the requirements of this section.

(3) That each applicant or recipient be advised before drug testing that he or she may inform the agent administering the test of any prescription or over-the-counter medication he or she is taking.

(4) That each applicant or recipient being tested signs a written acknowledgement that he or she has received and understood the notice and advice provided under this subsection.

(5) That each applicant or recipient who fails a drug test understands that he or she has the right to take one or more additional tests at his or her own expense.

(6) That each applicant or recipient who fails a drug test be provided with information regarding substance abuse, substance abuse counseling, and substance abuse treatment options, including a list of substance abuse treatment programs that may be available to the individual.

(b) An applicant or recipient who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive Work First Program assistance for one year from the date of the positive drug test except as provided in subsections (b1) and (b2) of this section. The individual may reapply after one year. However, if the individual has any subsequent positive drug tests, the individual shall be ineligible for benefits for three years from the date of the subsequent positive drug test unless the individual reapplies pursuant to subsection (b1) or (b2) of this section.

(b1) An applicant or recipient deemed ineligible under subsection (b) of this section may reapply for Work First Program assistance after the expiration of 30 days from the date of the positive drug test if the individual can document either the successful completion of or the current satisfactory participation in a substance abuse treatment program offered by a provider under subsection (e) of this section and licensed by the Department. The applicant or recipient who reapplies for Work First Program assistance after successful completion of a substance abuse program shall pass a drug test. The cost of any drug testing and substance abuse program provided under this subsection shall be the responsibility of the individual being tested and receiving treatment. An applicant or recipient who reapplies for Work First Program assistance pursuant to this subsection may reapply one time only.

(b2) An applicant or recipient deemed ineligible under subsection (b) of this section may reapply for Work First Program assistance after the expiration of 30 days from the date of the positive drug test if a qualified professional in substance abuse or a physician certified by the American Society of Addiction Medicine determines a substance abuse program is not

appropriate for the individual and that individual has passed a subsequent drug test. The cost of any drug testing provided under this subsection shall be the responsibility of the individual being tested. An applicant or recipient who reapplies for Work First Program assistance pursuant to this subsection may reapply one time only.

(c) The children of any applicant or current recipient shall remain eligible for benefits, and these benefits shall be paid to a protective payee pursuant to G.S. 108A-38.

(d) The Social Services Commission shall adopt rules pertaining to the testing of applicants and recipients under this section. The Social Services Commission shall adopt rules pertaining to the successful completion of, or the satisfactory participation in, a substance abuse treatment program under subsection (b1) of this section, including rules regarding timely reporting of completion of or participation in the substance abuse treatment programs.

(e) Area mental health authorities organized pursuant to Article 4 of Chapter 122C of the General Statutes shall be responsible for administering the provisions of this section.

(f) Repealed by Session Laws 2013-417, s. 4, as amended by Session Laws 2014-115, s. 66 (c), effective March 1, 2015.

(g) For the purposes of this section, reasonable suspicion that an applicant for, or recipient of, Work First Program assistance is engaged in the illegal use of controlled substances may be established only by utilizing the following methods:

(1) A criminal record check conducted under G.S. 114-19.34 that discloses a conviction, arrest, or outstanding warrant relating to illegal controlled G.S. 108A-29.1 Page 3 substances within the three years prior to the date the criminal record check is conducted.

(2) A determination by a qualified professional in substance abuse or a physician certified by the American Society of Addiction Medicine that an individual is addicted to illegal controlled substances.

(3) A screening tool relating to the abuse of illegal controlled substances that yields a result indicating that the applicant or recipient may be engaged in the illegal use of controlled substances.

(4) Other screening methods, as determined by the Social Services Commission under subsection (d) of this section. (h) Child only cases shall be exempt from the requirements of this section. (1997-443, s. 12.8; 2009-489, s. 13; 2013-417, s. 4; 2014-115, s. 66(c).)

G.S. 108A-25.2 **Exemption from limitations for individuals convicted of certain drug-related felonies.**

Individuals convicted of Class H or I controlled substance felony offenses in this State shall be eligible to participate in the Work First Program and food stamp program:

(1) Six months after release from custody if no additional controlled substance felony offense is committed during that period and successful completion of or continuous active participation in a required substance abuse treatment program determined appropriate by the area mental health authority; or

(2) If not committed to custody, six months after the date of conviction if no additional controlled substance felony offense is committed during that period and successful completion of or continuous active participation in a required substance abuse treatment program determined appropriate by the area mental health authority.

A county department of social services shall require individuals who are eligible for Work First Program assistance and food stamp benefits pursuant to this section to undergo substance abuse treatment as a condition for receiving Work First Program or food stamp benefits, if funds and programs are available and to the extent by federal law.

For Trillium Health Resources

Joy B Futrell

Signed: 8/29/2022

Joy B Futrell, CEO

Date

Brunswick County

Randell Thompson, Chairman
Board of Commissioners

Date

ATTEST:

Clerk to the Board
APPROVED AS TO FORM

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

Record of Signing

For

Name

Title



Signed on 2022-08-29 15:12:45 GMT

Secured by Concord™
DocumentID: OTY5YjQ1NDgtYj
SigningID: ODlmNmU0YTEtZD
Signing date: 8/29/2022
IP Address: 206.74.95.82
Email: lisa.fuller@trilliumnc.org

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Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 13.

From:
Catherine Lytch, DSS Director

Health and Human Services: Social Services - Wortman Law Firm Contract FY 22-23

Issue/Action Requested:
Request that the Board of Commissioners approve the FY 22-23 contract for Wortman Law Firm, PLLC.

Background/Purpose of Request:
This contract is created to provide legal representation and support to Social Services in the areas of Child Protective Services, Foster Care, Adult Protective Services, Child Support Enforcement, and Guardianship. The maximum annual value of this renewal contract is $130,000.

Staff recommends approval of the contract.

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:
Request that the Board of Commissioners approve the FY 22-23 contract for Wortman Law Firm, PLLC.

ATTACHMENTS:

Description

- Wortman Law

Fiscal Year Begins 7/1/22 Ends 6/30/23

This contract is hereby entered into by and between the Brunswick County Department of Social Services (the "County") and The Wortman Law Firm, PLLC (the "Contractor") (referred to collectively as the "Parties"). The Contractor's federal tax identification number 38-3772315

1. **Contract Documents:** This Contract consists of the following documents:
   (1) This contract
   (2) The General Terms and Conditions (Attachment A)
   (3) The Scope of Work, description of services, and rate (Attachment B)
   (4) Federal Certification Regarding Drug-Free Workplace & Certification Regarding Nondiscrimination (Attachment C)
   (5) Conflict of Interest (Attachment D)
   (6) No Overdue Taxes (Attachment E)
   (7) HIPAA Business Associate Addendum (checklist and forms)
   (8) State Certification (Attachment M)
   (9) Certification regarding nondiscrimination, clean air act & clean water act (Attachment N)
   (10) Contract Determination Questionnaire (required)

   These documents constitute the entire agreement between the Parties and supersede all prior oral or written statements or agreements.

2. **Precedence among Contract Documents:** In the event of a conflict between or among the terms of the Contract Documents, the terms in the Contract Document with the highest relative precedence shall prevail. The order of precedence shall be the order of documents as listed in Paragraph 1, above, with the first-listed document having the highest precedence and the last-listed document having the lowest precedence. If there are multiple Contract Amendments, the most recent amendment shall have the highest precedence and the oldest amendment shall have the lowest precedence.

3. **Effective Period:** This contract shall be effective on 7/1/22 and shall terminate on 6/30/23,
   This contract must be twelve months or less.

4. **Contractor's Duties:** The Contractor shall provide the services and in accordance with the approved rate as described in Attachment B, Scope of Work.

5. **County's Duties:** The County shall pay the Contractor in the manner and in the amounts specified in the Contract Documents. The total amount paid by the County to the Contractor under this contract shall not exceed $129,600.00.

   X a. There are no matching requirements from the Contractor.

   ☐ b. The Contractor's matching requirement is $, which shall consist of:
   ☐ In-kind ☐ Cash
   ☐ Cash and In-kind ☐ Cash and/or In-kind

   The contributions from the Contractor shall be sourced from non-federal funds.
   The total contract amount including any Contractor match shall not exceed $129,600.00.

6. **Reversion of Funds**:
   Any unexpended grant funds shall revert to the County Department of Social Services/Human Services upon termination of this contract.

7. **Reporting Requirements:**
   Contractor shall comply with audit requirements as described in N.C.G.S. § 143C-6-22 & 23 and OMB Circular- CFR Title 2 Grants and Agreements, Part 200, and shall disclose all information required by 42 USC 455.104, or 42 USC 455.105, or 42 USC 455.106.

8. **Payment Provisions:**

   Payment shall be made in accordance with the Contract Documents as described in the Scope of Work,

Attachment B.

9. **Contract Administrators:** All notices permitted or required to be given by one Party to the other and all questions about the contract from one Party to the other shall be addressed and delivered to the other Party's Contract Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties' respective initial Contract Administrators are set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party.

For the County:

IF DELIVERED BY US POSTAL SERVICE		IF DELIVERED BY ANY OTHER MEANS	
Name & Title	Laurie Britt, Business Officer	Name & Title	Laurie Britt, Business Officer
County	Brunswick County	County	Brunswick County
Address	PO Box 219	Address	60 Government Center Drive
City, State, Zip	Bolivia, NC 28422	City, State, Zip	Bolivia, NC 28422
Telephone	910-253-2092		
Fax	910-253-2249		
Email	laurie.britt@brunswickcountync.gov		

For the Contractor:

IF DELIVERED BY US POSTAL SERVICE		IF DELIVERED BY ANY OTHER MEANS	
Name & Title	Rachel Purvis Stanley, Attorney	Name & Title	SAME
Company Name	The Wortman Law Firm, PLLC	Company Name	
Mailing Address	632 Village Road, Suite 3	Street Address	
City State Zip	Shallotte, NC 28470	City State Zip	
Telephone	910-755-7252		
Fax	910-755-7291		
Email	rachelpurvis@wortmanlaw.com		

9. **Supplementation of Expenditure of Public Funds:**
The Contractor assures that funds received pursuant to this contract shall be used only to supplement, not to supplant, the total amount of federal, state and local public funds that the Contractor otherwise expends for contract services and related programs. Funds received under this contract shall be used to provide additional public funding for such services; the funds shall not be used to reduce the Contractor's total expenditure of other public funds for such services.

10. **Disbursements:**
As a condition of this contract, the Contractor acknowledges and agrees to make disbursements in accordance with the following requirements:

(a) Implement adequate internal controls over disbursements;
(b) Pre-audit all vouchers presented for payment to determine:
- Validity and accuracy of payment
- Payment due date
- Adequacy of documentation supporting payment
- Legality of disbursement

(c) Assure adequate control of signature stamps/plates;
(d) Assure adequate control of negotiable instruments; and
(e) Implement procedures to insure that account balance is solvent and reconcile the account monthly.

11. **Outsourcing to Other Countries:**
The Contractor certifies that it has identified to the County all jobs related to the contract that have been outsourced to other countries, if any. The Contractor further agrees that it will not outsource any such jobs during the term of this contract without providing notice to the County.

12. **Federal Certifications:**
Individuals and Organizations receiving federal funds must ensure compliance with certain certifications required by federal laws and regulations. The contractor is hereby complying with Certifications regarding Nondiscrimination, Drug-Free Workplace Requirements, Environmental Tobacco Smoke, Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions, and Lobbying. These assurances and certifications are to be signed by the contractor's authorized representative.

13. **Specific Language Not Previously Addressed:**
(can be delted if not needed)

14. **Signature Warranty:** The undersigned represent and warrant that they are authorized to bind their principals to the terms of this agreement.

The Contractor and the County have executed this contract in duplicate originals, with one original being retained by each party.

APPROVED AS TO FORM

County Attorney/Assist. County Attorney — Date

FINANCE

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.
Line #: 145310-419200

Signature of County Finance Officer — Date

COUNTY

Signature — Date

Printed Name: — Title

CONTRACTOR

Rachel Stanley — 8/1/22
Signature — Date

Rachel Stanley — Attorney
Printed Name** — Title

****Please note contractor signature MUST be notarized.**

Sworn to and subscribed before me on the day of the date of said certification.

(Notary Signature and Seal)

My Commission Expires: 10/23/2026

JASMINE A. MARLOWE NOTARY PUBLIC BRUNSWICK COUNTY, NC

Attachment A
General Terms and Conditions

Relationships of the Parties

Independent Contractor: The Contractor is and shall be deemed to be an independent contractor in the performance of this contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the County.

Subcontracting: The Contractor shall not subcontract any of the work contemplated under this contract without prior written approval from the County. Any approved subcontract shall be subject to all conditions of this contract. Only the subcontractors specified in the contract documents are to be considered approved upon award of the contract. The County shall not be obligated to pay for any work performed by any unapproved subcontractor. The Contractor shall be responsible for the performance of all of its subcontractors.

Assignment: No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the County may:

(a) Forward the Contractor's payment check(s) directly to any person or entity designated by the Contractor, or
(b) Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check(s).

In no event shall such approval and action obligate the County to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.

Beneficiaries: Except as herein specifically provided otherwise, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this contract, and all rights of action relating to such enforcement, shall be strictly reserved to the County and the named Contractor. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the County and Contractor that any such person or entity, other than the County or the Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Indemnity and Insurance

Indemnification: The Contractor agrees to indemnify and hold harmless the County and any of their officers, agents and employees, from any claims of third parties arising out or any act or omission of the Contractor in connection with the performance of this contract.

Insurance: During the term of the contract, the Contractor at its sole cost and expense shall provide and maintain commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. The County may choose to elect higher or lower coverages according to the work performed. Contractors must be insured by a licensed agent in North Carolina and rated A-VII or better by A.M. Best. As a minimum, the Contractor shall provide and maintain the following coverage and limits:

(a) **Worker's Compensation** - The contractor shall provide and maintain Worker's Compensation Insurance as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of $500,000 Each Accident, $500,000 Disease – Each Employee, $500,000 Disease – Policy Limit.
(b) **Commercial General Liability** - General Liability Covering all operations involved in this agreement. $2,000,000 General Aggregate, $2,000,000 Products/Completed Operations Aggregate, $1,000,000 Each Occurrence, $1,000,000 Personal and Advertising Injury Limit, $5,000 Medical Expense Limit. (Defense cost shall be in excess of the limit of liability.)
(c) Automobile Liability Insurance: The Contractor shall provide automobile liability insurance with a combined single limit of $1,500,000.00 liability for a 15 passenger or less vehicle and $5,000,000 for vehicles holding greater than 15 passengers (including driver); and a limit of $2,000.00 for medical payment coverage. The Contractor shall provide this insurance for all automobiles that are:
    (a) owned by the Contractor and used in the performance of this contract;
    (b) hired by the Contractor and used in the performance of this contract; and
    (c) Owned by Contractor's employees and used in performance of this contract ("non-owned vehicle insurance"). Non-owned vehicle insurance protects employers when employees use their personal vehicles for work purposes. Non-owned vehicle insurance supplements, but does not replace, the car-owner's liability insurance.

    The Contractor is not required to provide and maintain automobile liability insurance on any vehicle – owned, hired, or non-

owned -- unless the vehicle is used in the performance of this contract.

(d) The insurance coverage minimums specified in subparagraph (a) are exclusive of defense costs.

(e) The Contractor understands and agrees that the insurance coverage minimums specified in subparagraph (a) are not limits, or caps, on the Contractor's liability or obligations under this contract.

(f) The Contractor may obtain a waiver of any one or more of the requirements in subparagraph (a) by demonstrating that it has insurance that provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The County shall be the sole judge of whether such a waiver should be granted.

(g) The Contractor may obtain a waiver of any one or more of the requirements in paragraph (a) by demonstrating that it is self-insured and that its self-insurance provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The County shall be the sole judge of whether such a waiver should be granted.

(h) Providing and maintaining the types and amounts of insurance or self-insurance specified in this paragraph is a material obligation of the Contractor and is of the essence of this contract.

(i) The Contractor shall only obtain insurance from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in the State of North Carolina. All such insurance shall meet all laws of the State of North Carolina.

(j) The Contractor shall comply at all times with all lawful terms and conditions of its insurance policies and all lawful requirements of its insurer.

(k) The Contractor shall require its subcontractors to comply with the requirements of this paragraph.

(l) The Contractor shall demonstrate its compliance with the requirements of this paragraph by submitting certificates of insurance to the County before the Contractor begins work under this contract.

(m) Contractor agrees to defend, indemnify, and hold harmless Brunswick County, its officers, employees, and agents from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this agreement and/or the performance hereof that are due in part or in the entirety of contractor, its employees or agents. Contractor further agrees to investigate, handle, respond to, defend and dispose of same at its sole expense and agrees to bear all other costs and expenses related thereto. The Contractor's General Liability policy shall be endorsed, specifically or generally, to include the following as additional insured: BRUNSWICK COUNTY, ITS OFFICERS, AGENTS, AND EMPLOYEES ARE INCLUDED AS ADITIONAL INSURED UNDER CONTRACTOR'S GENERAL LIABILITY INSURANCE.

(n) Contractor shall have no right of recovery or subrogation against Brunswick 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 above described insurance.

(o) Brunswick County shall have no liability with respect to Contractor's personal property whether insured or not insured. Any deductible or self-insured retention is the sole responsibility of Contractor.

(p) All certificates of insurance must provide that the policy or policies shall not be changed or cancelled without at least thirty (30) days prior written notice.

(q) The Certificate of Insurance should note in the Description of Operations the following:
Department:_____
Contract #:_____

(r) Insurance procured by Contractor shall not reduce nor limit Contractor's contractual obligation to indemnify, hold harmless and defend Brunswick county for claims made or suits brought which result from or are in connection with the performance of this Agreement.

(s) In the event Contractor receives Notice of Cancellation of Insurance required pursuant to this Agreement, Contractor shall immediately cease performance of all services and shall provide Notice to Brunswick County's Legal/Risk Management Personnel within twenty-four (24) hours.

(t) Certificate Holder shall be listed as follows:
ATTENTION: Brunswick County Risk Manager
30 Government Center Dr NE
PO Box 249
Bolivia, NC 28422

Transportation of Clients by Contractor:
The contractor will maintain Insurance requirements if required as noted under Article 7 Rule R2-36 of the North Carolina Utilities Commission.

Default and Termination

Termination Without Cause: The County or the contractor may terminate this contract without cause by giving 30 days written notice to the Contractor.

Termination for Cause: If, through any cause, the Contractor shall fail to fulfill its obligations under this contract in a timely and proper manner, the County shall have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision,

the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of the Contractor's breach of this agreement, and the County may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the County from such breach can be determined. In case of default by the Contractor, without limiting any other remedies for breach available to it, the County may procure the contract services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The filing of a petition for bankruptcy by the Contractor shall be an act of default under this contract.

Waiver of Default: Waiver by the County of any default or breach in compliance with the terms of this contract by the Provider shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this contract unless stated to be such in writing, signed by an authorized representative of the County and the Contractor and attached to the contract.

Availability of Funds: The parties to this contract agree and understand that the payment of the sums specified in this contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the County.

Force Majeure: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

Survival of Promises: All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

Intellectual Property Rights

Copyrights and Ownership of Deliverables: All deliverable items produced pursuant to this contract are the exclusive property of the County. The Contractor shall not assert a claim of copyright or other property interest in such deliverables.

Federal Intellectual Property Bankruptcy Protection Act: The Parties agree that the County shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365 (n) and any amendments thereto.

Compliance with Applicable Laws

Compliance with Laws: The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

Title VI, Civil Rights Compliance: In accordance with Federal law and U.S. Department of Agriculture (USDA) and U.S. Department of Health and Human Services (HHS) policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age or disability. Under the Food Stamp Act and USDA policy, discrimination is prohibited also on the basis of religion or political beliefs.

Equal Employment Opportunity: The Contractor shall comply with all federal and State laws relating to equal employment opportunity.

Health Insurance Portability and Accountability Act (HIPAA): The Contractor agrees that, if the County determines that some or all of the activities within the scope of this contract are subject to the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, as amended ("HIPAA"), or its implementing regulations, it will comply with the HIPAA requirements and will execute such agreements and practices as the County may require to ensure compliance.

(a) **Data Security:** The Contractor shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations, and rules.

(b) **Duty to Report:** The Contractor shall report a suspected or confirmed security breach to the local Department of Social Services/Human Services Contract Administrator within twenty-four (24) hours after the breach is first discovered, provided that the Contractor shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered.

(c) **Cost Borne by Contractor:** If any applicable federal, state, or local law, regulation, or rule requires the Contractor to give written notice of a security breach to affected persons, the Contractor shall bear the cost of the notice.

Trafficking Victims Protection Act of 2000:
The Contractor will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104)

Executive Order # 24: It is unlawful for any vendor, contractor, subcontractor or supplier of the state to make gifts or to give favors to any state employee. For

additional information regarding the specific requirements and exemptions, contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Confidentiality

Confidentiality: Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the County. The Contractor acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this contract.

Oversight

Access to Persons and Records: The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. Additionally, as the State funding authority, the Department of Health and Human Services shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions.

Record Retention: Records shall not be destroyed, purged or disposed of without the express written consent of the Division. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. If the contract is subject to federal policy and regulations, record retention may be longer than five years since records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has been started before expiration of the five-year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five-year period described above, whichever is later. The record retention period for Temporary Assistance for Needy Families (TANF) and MEDICAID and Medical Assistance grants and programs must be retained for a minimum of ten years.

Warranties and Certifications

Date and Time Warranty: The Contractor warrants that the product(s) and service(s) furnished pursuant to this contract ("product" includes, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) that perform any date and/or time data recognition function, calculation, or sequencing will support a four digit year format and will provide accurate date/time data and leap year calculations. This warranty shall survive the termination or expiration of this contract.

Certification Regarding Collection of Taxes: G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors that meet one of the conditions of G.S. 105-164.8(b) and yet refuse to collect use taxes on sales of tangible personal property to purchasers in North Carolina. The conditions include: (a) maintenance of a retail establishment or office; (b) presence of representatives in the State that solicit sales or transact business on behalf of the vendor; and (c) systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. The Contractor certifies that it and all of its affiliates (if any) collect all required taxes.

E-Verify

Pursuant to G.S. 143-48.5 and G.S. 147-33.95(g), the undersigned hereby certifies that the Contractor named below, and the Contractor's subcontractors, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system." E-Verify System Link: www.uscis.gov

Miscellaneous

Choice of Law: The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, are governed by the laws of North Carolina. The Contractor, by signing this contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be the county is which the contract originated. The place of this contract and all transactions and agreements relating to it, and their situs and forum, shall be the county where the contract originated, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

Amendment: This contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the County and the Contractor.

Severability: In the event that a court of competent jurisdiction holds that a provision or requirement of this contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this contract shall remain in full force and effect.

Headings: The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

Time of the Essence: Time is of the essence in the performance of this contract.

Key Personnel: The Contractor shall not replace any of the key personnel assigned to the performance of this contract without the prior written approval of the County. The term "key personnel" includes any and all persons identified as such in the contract documents and any other persons subsequently identified as key personnel by the written agreement of the parties.

Care of Property: The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished to it for use in connection with the performance of this contract and will reimburse the County for loss of, or damage to, such property. At the termination of this contract, the Contractor shall contact the County for instructions as to the disposition of such property and shall comply with these instructions.

Travel Expenses: Reimbursement to the Contractor for travel mileage, meals, lodging and other travel expenses incurred in the performance of this contract shall not exceed the rates established in County policy.

Sales/Use Tax Refunds: If eligible, the Contractor and all subcontractors shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

Advertising: The Contractor shall not use the award of this contract as a part of any news release or commercial advertising.

ATTACHMENT B – Scope of Work **Federal Tax Id. or SSN 383772315**
Contract #

A. CONTRACTOR INFORMATION

1. Contractor Agency Name: The Wortman Law Firm, PLLC
2. *If different* from Contract Administrator Information in General Contract:

Address:

Telephone Number: 910-755-7252 Fax Number: 910-755-7291 Email: rachelpurvis@wortmanlaw.com

3. Name of Program (s):
4. Status: ☐ Public ☐ Private, Not for Profit ☒ Private, For Profit
5. Contractor's Financial Reporting Year 1/1 through 12/31

B. Explanation of Services to be provided and to whom (include SIS Service Code):

1) Legal representation and document preparation related to Adult Protective Services.
   a. Review of / modification to incompetency petitions.
   b. Preparation and filing of petitions.
   c. Preparation for witness testimony at hearings.
   d. Consultation with other attorneys.
   e. Attendance at hearings.

2) Legal representation and document preparation related to Child Protection Services/ Foster Care.
   a. Review of / modification to juvenile petitions.
   b. Preparation of termination petitions.
   c. Preparation for hearings, including consultation with staff.
   d. Representation of the County at all court hearings.
   e. Coordination of County responsibilities for issuance of subpoenas, hearing notices, response to discovery requests, and order preparation.
   f. Appellate Services

3) Legal representation and document preparation related to the Child Support Unit.
   a. Review of / modification to orders.
   b. Preparation and filing of orders.
   c. Consultation with child support staff.
   d. Consultation with other attorneys.
   e. Attendance at hearings.

4) Contractor agrees to maintain professional liability insurance.

5) Contractor agrees to arrange for an attorney to cover times when Contractor is unable to perform duties because of vacation, sickness, or other temporary absence. Contractor will promptly notify County and work with County to arrange counsel for cases in which Contractor has a conflict of interest.

C. Rate per unit of Service (define the unit):

1. Negotiated county rate shall apply.
2. Brunswick County has negotiated a fixed rate of $90.00 per hour. The rate is inclusive of attorney's time as well as any adjunctive expenses routinely incurred by an attorney in the public practice of law. Adjunctive expenses may include photocopying, postage, telephone bills, etc.

3. Reimbursement for Meeting / Training Travel:

   a. Hourly Rate for Training – Per the DSS Fiscal Manual, an hourly "admin rate" of $55.00 per hour may be paid to reimburse time spent in training sessions. All such training requires prior approval of DSS Director.

   b. Registrations – Registrations shall be reimbursed for any program-related travel with prior-approval from DSS Director.

   c. Subsistence – Hotel accommodations and meals shall be reimbursed for any program-related travel with prior-approval from DSS Director.

   d. Mileage – Travel miles shall be reimbursed at the standard IRS rate of $0.545/mile for any program-related travel with prior approval from DSS Director. The hourly rate of pay will not be paid for travel time.

D. Number of units to be provided:

Shall increase to 1440 units per fiscal year for an amount not to exceed $129,600 for Child Support, Adult Protective Services and Child Protective Services/Foster Care.

E. Details of Billing process and Time Frames:

1) The contractor shall submit to the agency billing for the prior month by the 10th business day of each month.

2) Contractor shall provide invoices for the above referenced services - Adult Protective Services and Child Protection Services/Foster Care - separately from the invoices for Child Support referenced in the original scope of work. Invoices for filing fees and service fees shall be identified by program/service area. (e.g. Service Fee – Child Support vs. Service Fee – Adult Protective Services).

3) Contractor agrees to pay filing and sheriff fees and will bill the County for the fees when invoices are submitted.

F. Area to be served/Delivery site(s): Brunswick County, unless as required in support of travel to and from meetings / trainings necessary to carry out the duties of this contract. All travel registrations, subsistence, and mileage must receive prior approval from DSS Director.

ATTACHMENT C

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS AND CERTIFICATION REGARDING NONDISCRIMINATION

Brunswick County Department of Social Services/Human Services

I. By execution of this Agreement the Contractor certifies that it will provide a drug-free workplace by:

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The Contractor's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Making it a requirement that each employee be engaged in the performance of the agreement be given a copy of the statement required by paragraph (A);

D. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the agreement, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

E. Notifying the County within ten days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction;

F. Taking one of the following actions, within 30 days of receiving notice under subparagraph (D)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E), and (F).

II. The site(s) for the performance of work done in connection with the specific agreement are listed below:

1. 632 Village Road, SW Suite 3
(Street address)

Shallotte, NC 28470
(City, county, state, zip code)

2.
(Street address)

(City, county, state, zip code)

Contractor will inform the County of any additional sites for performance of work under this agreement.

False certification or violation of the certification shall be grounds for suspension of payment, suspension or termination of grants, or government-wide Federal suspension or debarment **45 C.F.R. Section 82.510. Section 4 CFR Part 85, Section 85.615 and 86.620.**

Certification Regarding Nondiscrimination

The Vendor certifies that it will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (h) the Food Stamp Act and USDA policy, which prohibit discrimination on the basis of religion and political beliefs; and (i) the requirements of any other nondiscrimination statutes which may apply to this Agreement.

ATTACHMENT D

Conflict of Interest Policy

The Board of Directors/Trustees or other governing persons, officers, employees or agents are to avoid any conflict of interest, even the appearance of a conflict of interest. The Organization's Board of Directors/Trustees or other governing body, officers, staff and agents are obligated to always act in the best interest of the organization. This obligation requires that any Board member or other governing person, officer, employee or agent, in the performance of Organization duties, seek only the furtherance of the Organization mission. At all times, Board members or other governing persons, officers, employees or agents, are prohibited from using their job title, the Organization's name or property, for private profit or benefit.

A. The Board members or other governing persons, officers, employees, or agents of the Organization should neither solicit nor accept gratuities, favors, or anything of monetary value from current or potential contractors/vendors, persons receiving benefits from the Organization or persons who may benefit from the actions of any Board member or other governing person, officer, employee or agent. This is not intended to preclude bona-fide Organization fund raising-activities.

B. A Board or other governing body member may, with the approval of Board or other governing body, receive honoraria for lectures and other such activities while not acting in any official capacity for the Organization. Officers may, with the approval of the Board or other governing body, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave, or leave without pay. Employees may, with the prior written approval of their supervisor, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave, or leave without pay. If a Board or other governing body member, officer, employee or agent is acting in any official capacity, honoraria received in connection with activities relating to the Organization are to be paid to the Organization.

C. No Board member or other governing person, officer, employee, or agent of the Organization shall participate in the selection, award, or administration of a purchase or contract with a vendor where, to his knowledge, any of the following has a financial interest in that purchase or contract:

1. The Board member or other governing person, officer, employee, or agent;
2. Any member of their family by whole or half blood, step or personal relationship or relative-in-law;
3. An organization in which any of the above is an officer, director, or employee;
4. A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment or contracts.

D. **Duty to Disclosure** -- Any conflict of interest, potential conflict of interest, or the appearance of a conflict of interest is to be reported to the Board or other governing body or one's supervisor immediately.

E. **Board Action** -- When a conflict of interest is relevant to a matter requiring action by the Board of Directors/Trustees or other governing body, the Board member or other governing person, officer, employee, or agent (person(s)) must disclose the existence of the conflict of interest and be given the opportunity to disclose all material facts to the Board and members of committees with governing board delegated powers considering the possible conflict of interest. After disclosure of all material facts, and after any discussion with the person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists. In addition, the person(s) shall not participate in the final deliberation or decision regarding the matter under consideration and shall leave the meeting during the discussion of and vote of the Board of Directors/Trustees or other governing body.

F. Violations of the Conflicts of Interest Policy -- If the Board of Directors/Trustees or other governing body has reasonable cause to believe a member, officer, employee or agent has failed to disclose actual or possible conflicts of interest, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose. If, after hearing the person's response and after

making further investigation as warranted by the circumstances, the Board of Directors/Trustees or other governing body determines the member, officer, employee or agent has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

G. **Record of Conflict** -- The minutes of the governing board and all committees with board delegated powers shall contain:

1. The names of the persons who disclosed or otherwise were found to have an actual or possible conflict of interest, the nature of the conflict of interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement that presents a possible conflict of interest, the content of the discussion, including any alternatives to the transaction or arrangement, and a record of any votes taken in connection with the proceedings.

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07/01/2022

To: County Department of Social Services/Human Services

Certification:

We certify that the The Wortman Law Firm, PLLC does not have any overdue tax debts, as defined by N.C.G.S. 105-243.1, at the federal, State, or local level. We further understand that any person who makes a false statement in violation of N.C.G.S. 143C-6-23(c) is guilty of a criminal offense punishable as provided by N.C.G.S.) 143C-10-1b.

Sworn Statement:

David Wortman, Richard Parrotte and Rachel Purvis Stanley being duly sworn, say that we are the attorneys, of Wortman Law Firm of Shallotte in the State of North Carolina; and that the foregoing certification is true, accurate and complete to the best of our knowledge and was made and subscribed by us. We also acknowledge and understand that any misuse of State funds will be reported to the appropriate authorities for further action.

Rachel Stanley
Attorney

RP
Attorney

Attorney

Sworn to and subscribed before me on the day of the date of said certification.

(Notary Signature and Seal) My Commission Expires: 10/23/2026

JASMINE A. MARLOWE NOTARY PUBLIC BRUNSWICK COUNTY NC

[1] G.S. 105-243.1 defines: Overdue tax debt. – Any part of a tax debt that remains unpaid 90 days or more after the notice of final assessment was mailed to the taxpayer. The term does not include a tax debt, however, if the taxpayer entered into an installment agreement for the tax debt under G.S. 105-237 within 90 days after the notice of final assessment was mailed and has not failed to make any payments due under the installment agreement."

Rev. 6-7-2015

Brunswick County Department of Social Services/Human Services

DEPARTMENT OF HEALTH AND HUMAN SERVICES
BUSINESS ASSOCIATE ADDENDUM

This Agreement is made effective the 1st day of July 2022, by and between Brunswick County Department of Social services ("Covered Entity") and The Wortman Law Firm, PLLC ("Business Associate") (collectively the "Parties").

1. BACKGROUND

a. Covered Entity and Business Associate are parties to a contract entitled (identify contract) Wortman Law Firm (the "Contract"), whereby Business Associate agrees to perform certain services for or on behalf of Covered Entity.

b. Covered Entity is an organizational unit of Brunswick County as the Brunswick County Department of Social Services (DSS) as a health care component for purposes of the HIPAA Privacy Rule.

c. The relationship between Covered Entity and Business Associate is such that the Parties believe Business Associate is or may be a "business associate" within the meaning of the HIPAA Privacy Rule.

d. The Parties enter into this Business Associate Addendum to the Contract with the intention of complying with the HIPAA Privacy Rule provision that a covered entity may disclose protected health information to a business associate, and may allow a business associate to create or receive protected heath information on its behalf, if the covered entity obtains satisfactory assurances that the business associate will appropriately safeguard the information.

2. DEFINITIONS

Unless some other meaning is clearly indicated by the context, the following terms shall have the following meaning in this Agreement:

a. "HIPAA" means the Administrative Simplification Provisions, Sections 261 through 264, of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

b. "Individual" shall have the same meaning as the term "individual" in 45 CFR160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

c. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

d. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

e. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.

f. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his designee.

g. Unless otherwise defined in this Agreement, terms used herein shall have the same meaning as those terms have in the Privacy Rule.

3. OBLIGATIONS OF BUSINESS ASSOCIATE

a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.

b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

f. Business Associate agrees to provide access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.

g. Business Associate agrees, at the request of the Covered Entity, to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526.

h. Unless otherwise prohibited by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Brunswick County Department of Social Services, in a time and manner designated by the Secretary, for purposes of the Brunswick County Department of Social Services determining Covered Entity's compliance with the Privacy Rule.

i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, and to provide this information to Covered Entity or an Individual to permit such a response.

4. PERMITTED USES AND DISCLOSURES

a. Except as otherwise limited in this Agreement or by other applicable law or agreement, if the Contract permits, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Contract, provided that such use or disclosure:

1) would not violate the Privacy Rule if done by Covered Entity; or

2) would not violate the minimum necessary policies and procedures of the Covered Entity.

b. Except as otherwise limited in this Agreement or by other applicable law or agreements, if the Contract permits, Business Associate may use Protected Health Information as necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

c. Except as otherwise limited in this Agreement or by other applicable law or agreements, if the Contract permits, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that:

1) disclosures are Required by Law; or

2) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

d. Except as otherwise limited in this Agreement or by other applicable law or agreements, if the Contract permits, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).

e. Notwithstanding the foregoing provisions, Business Associate may not use or disclose Protected Health Information if the use or disclosure would violate any term of the Contract or other applicable law or agreements.

5. TERM AND TERMINATION

a. **Term**. This Agreement shall be effective as of the effective date stated above and shall terminate when the Contract terminates.

b. **Termination for Cause**. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may, at its option:

1) Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement and services provided by Business Associate, to the extent permissible by law, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

2) Immediately terminate this Agreement and services provided by Business Associate, to the extent permissible by law; or

3) If neither termination nor cure is feasible, report the violation to the Secretary as provided in the Privacy Rule.

c. **Effect of Termination**.

1) Except as provided in paragraph (2) of this section or in the Contract or by other applicable law or agreements, upon termination of this Agreement and services provided by Business Associate, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

2) In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6. GENERAL TERMS AND CONDITIONS

a. This Agreement amends and is part of the Contract.

b. Except as provided in this Agreement, all terms and conditions of the Contract shall remain in force and shall apply to this Agreement as if set forth fully herein.

c. In the event of a conflict in terms between this Agreement and the Contract, the interpretation that is in accordance with the Privacy Rule shall prevail. In the event that a conflict then remains, the Contract terms shall prevail so long as they are in accordance with the Privacy Rule.

d. A breach of this Agreement by Business Associate shall be considered sufficient basis for Covered Entity to terminate the Contract for cause.

This document will be used to determine if you have a business associate relationship with a contractor. This form should be completed on all contracts that have a HIPAA covered health care component. This would include all health related information.

Contractor: Wortman Law Firm, PLLC Contract Number: _____
Date: 7/1/22 - 6/30/23

HIPAA ASSESSMENT FORM

Questions	Notes	Steps

1. Has a relationship been initiated Yes allows the contractor to perform a function or activity for, or on behalf of, County Department of Social Services HIPAA covered health care component?		YES—Go to Question 2. NO—Stop. There is no business associate relationship.
2. Is the function or service to be Yes rendered by the contractor on an activity other than treatment of clients?	NOTE: The sharing of Individually identifiable health information with another treatment contractor for treatment purposes only does not require a business associate agreement. See 45 CFR §164.502(e)(1)(ii)(A)	YES—Go to Question 3. NO—Stop. There is no business associate relationship.
3. Does the function or service to Yes be rendered by the contractor involve the use or disclosure of the County Department of Social Services individually identifiable health information?	NOTE: Data that does not contain A County Department of Social Services individually identifiable health information is not covered by HIPAA and thus does not have to be protected through a business associate agreement.	YES--Go to Question 4. NO—Stop. There is no business associate relationship.
4. Are the services rendered by No staff from the contractor performed on the premises of the covered health care component, using the component's resources and following the component's policies and procedures?	NOTES: Whenever a service is rendered on the premises of a covered component, utilizing the component's resources and following the component's policies and procedures, the person rendering such services is considered a member of the component's workforce, and is required to comply with the component's privacy policies and procedures. No business associate agreement is required.	NO—Got Question 5. YES—Stop. There is not business associate relationship.
5. Is the contractor performing a Yes type(s) of function/activity for or on the behalf of the County Department of Social Services HIPAA covered health component that is directly related to the	Check appropriate service(s): ☒ Attorney Representing Agency ☐ Benefits Management ☐ Patient Accounts Billing ☐ Claims Processing	**YES—You have identified a business associate relationship.** The specified function/activity, which involves the sharing of individually identifiable health information, is provided by the contractor. This constitutes a business

covered health component's continued operation?	☐ Claims Administration ☐ Bill Collections ☐ Professional Services ☐ Special Population Assessments ☐ Data Analysis ☐ Data Processing ☐ Data Administration ☐ JCAHO ☐ Council on Accreditation ☐ Re-pricing ☐ Rate Setting ☐ Practice Management ☐ Software Support ☐ Utilization Review ☐ Quality Assurance Contract Analysis ☐ Central Office Supervision ☐ Security ☐ Dietary ☐ Machine Maintenance ☐ Facility Maintenance ☐ Landscaping ☐ Housekeeping ☐ Hardware Support ☐ Audits/Surveys ☐ Purchasing	associate relationship as such information must be protected the same as required of the HIPAA covered health care component. There are two types of business associate relationships: External Business Associate relationships: You have indentified an External business associate relationship if you are contracting with any entity outside city, county or state government. A Business Associate Addendum must be signed and included with the contract. If you are completing a Memorandum of Agreement (MOA) with a governmental entity the Government Associate Addendum must be utilized. NO—STOP. There is no business associate relationship.
ADDITIONAL REQUIRMENTS		
NOTE: Make sure all county requirements are met for internally notifying the correct parties for External and Internal Business Associates		

Rev: 7-1-2013

State Certifications

Contractor Certifications Required by North Carolina Law

Instructions: The person who signs this document should read the text of the statutes and Executive Order listed below and consult with counsel and other knowledgeable persons before signing. The text of each North Carolina General Statutes and of the Executive Order can be found online at:

- Article 2 of Chapter 64: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_64/Article_2.pdf
- G.S. 133-32: http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=133-32
- Executive Order No. 24 (Perdue, Gov., Oct. 1, 2009): http://www.ethicscommission.nc.gov/library/pdfs/Laws/EO24.pdf
- G.S. 105-164.8(b): http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-164.8.pdf
- G.S. 143-48.5: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-48.5.html
- G.S. 143-59.1: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.1.pdf
- G.S. 143-59.2: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.2.pdf
- G.S. 143-133.3: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-133.3.html
- G.S. 143B-139.6C: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143B/GS_143B-139.6C.pdf

Certifications

(1) **Pursuant to G.S. 133-32 and Executive Order No. 24 (Perdue, Gov., Oct. 1, 2009)**, the undersigned hereby certifies that the Contractor named below is in compliance with, and has not violated, the provisions of either said statute or Executive Order.

(2) **Pursuant to G.S. 143-48.5 and G.S. 143-133.3**, the undersigned hereby certifies that the Contractor named below, and the Contractor's subcontractors, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system." E-Verify System Link: www.uscis.gov

(3) **Pursuant to G.S. 143-59.1(b)**, the undersigned hereby certifies that the Contractor named below is not an "ineligible Contractor" as set forth in G.S. 143-59.1(a) because:

(a) Neither the Contractor nor any of its affiliates has refused to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina when the sales met one or more of the conditions of G.S. 105-164.8(b); **and**

(b) [check **one** of the following boxes]

☐ Neither the Contractor nor any of its affiliates has incorporated or reincorporated in a "tax haven country" as set forth in G.S. 143-59.1(c)(2) after December 31, 2001; **or**

☐ The Contractor or one of its affiliates **has** incorporated or reincorporated in a "tax haven country" as set forth in G.S. 143-59.1(c)(2) after December 31, 2001 **but** the United States is not the principal market for the public trading of the stock of the corporation incorporated in the tax haven country.

(4) **Pursuant to G.S. 143-59.2(b)**, the undersigned hereby certifies that none of the Contractor's officers, directors, or owners (if the Contractor is an unincorporated business entity) has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934 within 10 years immediately prior to the date of the bid solicitation.

(5) **Pursuant to G.S. 143B-139.6C**, the undersigned hereby certifies that the Contractor will not use a former employee, as defined by G.S. 143B-139.6C(d)(2), of the North Carolina Department of Health and Human Services in the administration of a contract with the Department in violation of G.S. 143B-139.6C and that a violation of that statute shall void the Agreement.

(6) The undersigned hereby certifies further that:

(a) He or she is a duly authorized representative of the Contractor named below;

(b) He or she is authorized to make, and does hereby make, the foregoing certifications on behalf of the Contractor; and

(c) He or she understands that any person who knowingly submits a false certification in response to the requirements of G.S. 143-59.1and -59.2 shall be guilty of a Class I felony.

ATTACHMENT N

Brunswick County Department of Social Services/Human Services

CERTIFICATION REGARDING NONDISCRIMINATION, CLEAN AIR ACT, CLEAN WATER ACT

Certification Regarding Nondiscrimination

The Contractor certifies that it will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (h) the Food Stamp Act and USDA policy, which prohibit discrimination on the basis of religion and political beliefs; and (i) the requirements of any other nondiscrimination statutes which may apply to this Agreement.

The Contractor must comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by the Department of Labor Regulations (41 CFR Part 60): The Executive Order prohibits federal contractors and federally-assisted construction contractors and subcontractors who do over $10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. The Executive Order also requires Government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.

Meaningful Access for LEP Individuals: **The Contractor** that participate in the SNAP must take reasonable steps to ensure that LEP persons have meaningful access to programs, services, and benefits. This includes the requirement to provide bilingual program information and certification materials and interpretation services to single language minorities in certain project areas. SNAP Contractors that do not provide meaningful access for LEP individuals risk violating prohibitions against discrimination based on National Origin in the Food and Nutrition Act of 2008, as amended, Title VI of the Civil Rights Act of 1964 (Title VI) and SNAP program regulations at 7 CFR 272A(b). They also risk noncompliance with the USDA policy guidance titled, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons", published in 79 FR 70771 - 70784 (November 28, 2014).
The Contractor should develop an implementing plan to address the language assistance needs of the LEP population served. This may include contracting for oral interpretation services, hiring bilingual staff, arranging telephone interpreters and/or language lines, coordinating community volunteers, translating vital documents, and providing written notice that language services are available in appropriate languages. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient. LEP needs should be considered in developing budgets and front line staff should understand how to obtain language assistance services. For additional assistance and information regarding LEP matters, please also visit http://www.lep.gov.

Ensuring Equal Opportunity Access for Persons with Disabilities: **The Contractor** must also ensure equal opportunity access for persons with disabilities. This includes ensuring that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with people without disabilities. Contractors that do not provide persons with disabilities equal opportunity access to programs may risk violating prohibitions against disability discrimination in the Rehabilitation Act of 1978, the American with Disabilities Act (ADA) of 1990, as amended, and SNAP program regulations.
DOJ published revised final regulations implementing Title II and Title III of the ADA on September 15, 2010. These regulations are codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and at 28 CFR Part 36 "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities". In accordance with the implementing regulations, Contractors must provide auxiliary aids and services where necessary to ensure effective communication and equal opportunity access to program benefits for individuals with disabilities. The type of auxiliary aids and services required will vary, but a Contractor may not require an individual with a disability to bring another individual to interpret, and may rely on a person accompanying a disabled individual only in limited circumstances. When a Contractor communicates with applicants and beneficiaries by telephone, it must provide text telephone services (ITY) or have access to an equally effective electronic telecommunications system to communicate with individuals who are deaf, hard of hearing, or hearing impaired. Contractors must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. For more information, please visit the ADA website: http://www.ada.gov.

IV. The Clean Air Act, Section 306; 42 U.S.C. §7401 et seq. (1970)

a. No Federal agency may enter into any contract with any person who is convicted of any offense under section 113(c) for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 113(c)(2), the condition giving rise to the conviction also shall be considered to include any substantive violation of this Act associated with the violation of 113(c)(2). The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.

b. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).

c. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after enactment of the Clean Air Amendments of 1970 cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

d. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

e. The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section. [42 U.S.C. 7606]

V. The Clean Water Act; 33 U.S.C. §1251 et seq. (1972)

a. No Federal agency may enter into any contract with any person who has been convicted of any offense under Section 309(c) of this Act for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.

b. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

c. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's water, the President shall, not more than 180 days after the enactment of this Act, cause to be issued an order:

(i) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and

(ii) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

d. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

e. The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance.

f. No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.

g. In paragraph (1), the term "commercial item" has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

CONTRACT PROVIDER NAME: ___ Worman Law Firm, PLLC

CONTRACT NUMBER: _____

CONTRACT PERIOD: ____ 7/1/22 - 6/30/23

PROVIDER'S FISCAL YEAR: _____ 1/1 - 12/31

CONTRACT DETERMINATION QUESTIONNAIRE
(PURCHASE OF SERVICE VS. FINANCIAL ASSISTANCE)

Instructions: Enter 5 points for each factor in either the yes or no column. Once the entire list has been completed tally the points in each column. The column with the most points should be a good indicator of the designation of the organization--either Financial Assistance (Grant) or Vendor (Purchase of Service).

	Determination Factors	5 points Financial Assistance YES	5 points Purchase of Service NO
1	Does the provider determine eligibility?		5
2	Does the provider provide administrative functions such as Develop program standards procedures and rules?		5
3	Does the provider provide administrative functions such as Program Planning?		5
4	Does the provider provide administrative functions such as Monitoring?		5
5	Does the provider provide administrative functions such as Program Evaluation?		5
6	Does the provider provide administrative functions such as Program Compliance?		5
7	Is provider performance measured against whether specific objectives are met?	5	
8	Does the provided have responsibility for programmatic decision making?		5
9	Is the provider objective to carry out a public purpose to support an overall program objective?	5	
10	Does the provider have to submit a cost report to satisfy a cost reimbursement arrangement?	5	
11	Does the provider have any obligation to the funding authority other than the delivery of the specified goods/services?		5
12	Does the provider operate in a noncompetitive environment?		5
13	Does the provider provide these or similar goods and/or services only to the funding agency?		5
14	Does the provide these or similar goods and/or services outside normal business operations?		5
	TOTAL	**15**	**55**

Note: The authorized individual(s) must place an X in one of the boxes below to indicate the type of contractual arrangement for this contract , then sign and date where indicated.

[ ] FINANCIAL ASSISTANCE

[X] PURCHASE SERVICE

Catherine Sz
Signature of Authorized Programmatic Individual

8/8/22
DATE

Laurie A. Britt
Signature of Authorized Administrative Individual

8/8/22
DATE

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 14.

From:
Cindy Hewett, Information Technology Director

IT - Contract Amendment to Agreement with CivicPlus (CivicClerk) and addition of Statements of Work for CivicEngage (website) and CivicGov (Planning, Code Enforcement and Zoning)

Issue/Action Requested:
Request Brunswick County Board of Commissioners approve the (attached) Amendment to the Agreement adopted on 06/29/22 with CivicPlus allowing for multiple modules of the CivicPlus platform to be covered under the same Agreement. Also requesting approval of the (attached) Statements of Work for CivicEngage (Outsourcing of County Website) and CivicGov (for use by Planning Department for planning, zoning and code enforcement).

Background/Purpose of Request:
On 06/29/22, Brunswick County Board of Commissioners approved the Agreement with CivicPlus to implement the CivicClerk platform to replace Novus Agenda. That effort is currently underway. Two additional modules are being requested (1) CivicEngage which will replace the current County website and (2) CivicGov which will be the platform used by the Planning Department to digitize their planning, zoning, and code enforcement processes.

Funding for the CivicEngage effort was approved with a current FY23 budget appropriation in the IT Budget (104210-439900) $ 46,945.92.

Funding for the CivicGov effort was approved with a current budget appropriation in the Planning Budget (104910-426010) $ 59,000.00

Annual recurring services are subject to 5% annual increase. These will be included in FY24 IT Budget request under 104210-444000 (Maintenance and Support). CivicClerk: $11,130.00 will be included in this budget request, as well as, CivicEngage: $ 11,413.76 and CivicGov: $39,900.00

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

Approved By County Attorney:
Yes

County Manager's Recommendation:
Recommend that Brunswick County Board of Commissioners approve the (attached) Amendment to the Agreement adopted on 06/29/22 with CivicPlus allowing for multiple modules of the CivicPlus platform to be covered under the same Agreement. Also requesting approval of the (attached) Statements of Work for CivicEngage (Outsourcing of County Website) and CivicGov (for use by Planning Department for planning, zoning and code enforcement).

ATTACHMENTS:

Description

- First Amendment with Exhibits C and D as new SOWs

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Agreement Amendment

Brunswick County, NC

THIS FIRST AMENDMENT TO SERVICES AGREEMENT (this "First Amendment") is agreed to by and between CivicPlus, LLC, a Kansas limited liability company d/b/a CivicPlus ("CivicPlus") and Brunswick County, NC ("Client") (jointly, "Parties") and shall be effective as of the last date of signing indicated at the end of this Amendment.

RECITALS

WHEREAS, CivicPlus is engaged in the business of developing, marketing and selling proprietary community engagement platforms in addition to project development, design, implementation, support and hosting services;

WHEREAS, Client is currently engaged in a relationship with CivicPlus for various services as set forth in the original Services Agreement between the Parties, signed on June 29, 2022 (the "Agreement");

WHEREAS, Client and CivicPlus have agreed to alter certain terms as set forth in the Agreement by this written instrument duly executed by the Parties, the modification of terms as specified in this Amendment.

NOW, THEREFORE, Client and CivicPlus agree as follows:

Scope of Services

1. The Agreement is hereby amended by adding the CivicGov Statement of Work as a new Exhibit C to the Agreement; and the CivicEngage Statement of Work as a new Exhibit D to the Agreement.
2. Section 1 of the Agreement shall be struck in its entirety and replaced as follows:

   This Agreement shall commence on the Effective Date and shall remain in full force and effect for as long as any attached Statement of Work ("SOW") is in effect between CivicPlus and Client, unless sooner terminated as provided for herein. Either Party may terminate this Agreement at its discretion, effective immediately upon written notice to the other Party, if the other Party materially breaches any provision of this Agreement and does not substantially cure the breach within thirty (30) days after receiving notice of such breach. A delinquent Client account remaining past due for longer than ninety (90)days is a material breach by Client and is grounds for CivicPlus termination.
3. Section 2 of the Agreement shall be struck in its entirety and replaced as follows:

   In addition to the foregoing, if the Board of County Commissioners of Client does not appropriate the funding needed by Client to make payments under this Agreement or any SOW for a given fiscal year, Client will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, Client will promptly notify CivicPlus of the nonappropriation, and this Agreement and the affected SOW(s) will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by Client which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement or any SOW. Notwithstanding the foregoing, in the event of termination due to non-funding, Client is still responsible for any invoices covering the initial Project Development and Deployment fees and all such amounts owed shall become due immediately.
4. All other terms and conditions of the Agreement shall remain in full force and effect.

Acceptance

We, the undersigned, agreeing to the conditions specified in this First Amendment as it modifies and amends the Agreement, understand and authorize the terms outlined in this Amendment.

This First Amendment 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 First 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 § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this First Amendment by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

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Client

By: _____

Name: Randell Thompson

Title: Chairman, Board of Commissioners

Date: _____

CivicPlus

By: Amy Vikander

Name: Amy Vikander

Title: Sr. VP of Customer Success

Date: 8/22/2022

ATTEST:

_____
Clerk to the Board

[SEAL]

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

_____
Aaron C. Smith, 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

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EXHIBIT "C"

CivicPlus
302 South 4th St. Suite 500
Manhattan, KS 66502
US

Quote #: Q-26044-2
Date: 6/3/2022 1:42 PM
Expires On: 9/15/2022
Product: CivicGov

Client:
Brunswick County NC - CivicGov

Bill To:
Brunswick County NC - CivicGov

SALESPERSON	Phone	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Dean Sefrin	x	dean.sefrin@civicplus.com		Net 30

CivicGov - Statement of Work

QTY	PRODUCT NAME	DESCRIPTION	PRODUCT TYPE
1.00	CivicGov Code Enforcement Annual	CivicGov Code Enforcement Annual	Renewable
1.00	CivicGov Code Enforcement	CivicGov Code Enforcement	One-time
1.00	CivicGov Planning & Zoning Annual	CivicGov Planning & Zoning Annual	Renewable
1.00	CivicGov Planning & Zoning	CivicGov Planning & Zoning	One-time
1.00	GIS ESRI RESTful Integration: initial endpoint (land + building layer) Annual	GIS ESRI RESTful Integration: initial endpoint (land + building layer) Annual	Renewable
1.00	GIS ESRI RESTful Integration: initial endpoint (land + building layer)	GIS ESRI RESTful Integration: initial endpoint (land + building layer)	One-time
1.00	CivicGov Digital Plan Review Integration Annual	CivicGov Digital Plan Review Integration Annual	Renewable
1.00	CivicGov Digital Plan Review integration	CivicGov Digital Plan Review Integration	One-time
1.00	CivicGov Mobile App (Offline Inspections) Annual	CivicGov Mobile App (Offline Inspections) Annual	Renewable
1.00	CivicGov Mobile App (Offline Inspections)	CivicGov Mobile App (Offline Inspections)	One-time
1.00	CivicGov Additional Data imports (historical records, building/suite data, contractor data, 3rd party codes, etc.)	CivicGov Additional Data imports (historical records, building/suite data, contractor data, 3rd party codes, etc.)	One-time

QTY	PRODUCT NAME	DESCRIPTION	PRODUCT TYPE
1.00	CivicGov 3rd party API integrations	CivicGov 3rd party API integrations	One-time
1.00	CivicGov 3rd party API integrations Annual	CivicGov 3rd party API integrations Annual	Renewable
1.00	CivicGov 3rd party API integrations	CivicGov 3rd party API integrations	One-time
1.00	CivicGov 3rd party API integrations Annual	CivicGov 3rd party API integrations Annual	Renewable

Total Investment - Year 1	USD 59,000.00
Annual Recurring Services - Year 2	USD 39,900.00

Total Days of Quote:365

1. This Statement of Work ("SOW") shall be subject to the terms and conditions of the Services Agreement signed between the Parties on June 29, 2022 (“Agreement”), to which this SOW is hereby attached as Exhibit C. By signing this SOW, the parties expressly agree to the terms and conditions of the Agreement throughout the Term of this SOW.

2. This SOW shall remain in effect for an initial term equal to 365 days from the last date of signing ("Initial Term"). In the event that neither party gives 60 days’ notice to terminate prior to the end of the Initial Term, or any subsequent Renewal Term, this SOW will automatically renew for an additional 1-year renewal term (“Renewal Term”). The Initial Term and all Renewal Terms are collectively referred to as the “Term”.

3. The Total Investment - Year 1 Fees shall be invoiced as follows:

a. Upon signing of this SOW – one half (50%) of the Total Investment - Year 1 Fees;
b. The earlier of 6 months from signing or upon completed implementation – the remaining half of the Total Investment - Year 1 Fees.

4. Annual Recurring Services shall be invoiced on the start date of each Renewal Term. Annual Recurring Services, including but not limited to hosting, support and maintenance services, shall be subject to a 5% annual increase beginning year 2. Client will pay all invoices within 30 days of the date of such invoice.

5. CivicPlus shall not be liable for the accuracy, content, interpretation of use of any forms or other materials, not created by CivicPlus, nor for the use of the Services provided in association with this SOW for CivicGov.

6. Client understands and agrees that CivicGov is not intended to collect or store any credit card information, financial information, or protected health information and that Client shall not collect or store any such information in CivicGov. For the sake of clarity, CivicGov is not PCI DSS or HIPAA compliant, and Client shall not use it for PCI DSS or HIPAA purposes.

7. **If** Client uses the CivicGov integration with CivicPlus Pay, then Client may take online credit card payments for certain services or products they provide via CivicGov. As such, through CivicPlus Pay, CivicPlus facilitates an automated process for redirecting credit card payments to Client’s chosen payment gateways / merchant account processors. For card payments, CivicPlus will redirect any payments processing to the Client’s merchant account processor gateway, and the merchant account processor gateway presents the payment form page and processes the card payment. CivicPlus

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does not transmit, process or store cardholder data and does not present the payment form. CivicPlus implements and maintains PCI compliant controls for the system components and applications that provide the redirection services only.

8. For the purposes of obtaining merchant account services through CivicPlus Pay, Client may choose to utilize the designated merchant account for CivicGov through an integrated partnership with a merchant provider that is within CivicPlus's network ("Partner Network"). In the event Client chooses a merchant account from the Partner Network ("Integrated Partner"), Client will enter into a merchant account with such Integrated Partner. Such agreement's terms and conditions will solely enure to the benefit and obligation of Client; CivicPlus shall not be a party to such agreement. In the event Client chooses an Integrated Partner merchant account provider, CivicPlus will provide Client and Integrated Partner contact information to the other party for contracting purposes, and shall integrate the Integrated Partner merchant account system at no additional charge to Client. If Client desires to use an integrated merchant account processor gateway besides one of the Integrated Partners designated as members of the Partner Network, CivicPlus will provide Client with a list of approved processors and an integration fee will be charged to Client. Client agrees to assume responsibility for ensuring execution of a merchant account contract with Client's select merchant account provider, to comply with all terms and conditions of such contract and pay all fees required to maintain the services. Client acknowledges that the fees set forth in this SOW do not include any transaction, processing or other fees imposed by Client's merchant account processor. Client is fully responsible for their relationship with their selected processor. In no event will CivicPlus: (i) take part in negotiations, (ii) pay any fees incumbent on the Client or merchant account, or (iii) acquire any liability for the performance of services of any chosen merchant account processor, including those in the Partner Network. Client acknowledges switching to a different merchant account processor after signing this SOW may incur additional fees and require a written and signed modification to this SOW. Client shall continue to be responsible for negotiating and executing any merchant account agreement as described herein for any additional merchant account processor changes.

9. Client understands and agrees that CivicPlus is not liable for any failure of service or breach of security by any merchant account processor gateway provider selected by Client, whether such provider is an Integrated Partner or not.

Signature Page to Follow.

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Acceptance

By signing below, the parties are agreeing to be bound by the covenants and obligations specified in this SOW and the Agreement terms and conditions.

This SOW 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 SOW 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 § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this SOW by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their duly authorized representatives as of the dates below.

Client	CivicPlus
By: _____	By: Amy Vikander
Name: Randell Thompson	Name: Amy Vikander
Title: Chairman, Board of Commissioners	Title: Sr. VP of Customer Success
Date: _____	Date: 8/22/2022

ATTEST:

_____
Clerk to the Board

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

_____
Aaron C. Smith, 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

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Contact Information

*all documents must be returned: Master Service Agreement, Statement of Work, and Contact Information Sheet.

Organization Brunswick County URL www.brunswickcountync.gov

Street Address 30 Government Center Drive, NE

Address 2

City Bolivia State NC Postal Code 28422

CivicPlus provides telephone support for all trained clients from 7am –7pm Central Time, Monday-Friday (excluding holidays). Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for ensuring CivicPlus has current updates. Kirstie Dixon, Planning Director, (704) 798-8547

Emergency Contact & Mobile Phone Marc Pages, Land Planner, (910) 538-2056

Emergency Contact & Mobile Phone Cindy Hewett, IT Director, (910) 209-1847

Emergency Contact & Mobile Phone Michael Read, IT Deputy Director, (910) 617-7885

Billing Contact Cindy Hewett E-Mail cindy.hewett@brunswickcountync.gov

Phone (910) 253-2638 Ext. Fax (910) 253-2650

Billing Address PO Box 249

Address 2

City Bolivia State NC Postal Code 28422

Tax ID # 56-6000278 Sales Tax Exempt #

Billing Terms Account Rep

Info Required on Invoice (PO or Job #)

Are you utilizing any external funding for your project (ex. FEMA, CARES): Y [ ] or N [X]

Please list all external sources: _____

Contract Contact Brunswick County Information Technology Dept. Email cindy.hewett@brunswickcountync.gov

Phone (910) 253-2640 Ext. Fax (910) 253-2650

Project Contact Travis Amstuz, IT Tech. Implementation Spec. Email travis.amstuz@brunswickcountync.gov

Phone (910) 294-1546 Ext. Fax 910-253-2560

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EXHIBIT "D"

CivicPlus
302 South 4th St. Suite 500
Manhattan, KS 66502
US

Quote #: Q-20968-1
Date: 11/23/2021 8:25 AM
Expires On: 9/15/2022
Product: CivicEngage

Client:
Brunswick County NC - CivicEngage

Bill To:
Brunswick County NC - CivicEngage

SALESPERSON	Phone	EMAIL	DELIVERY METHOD	PAYMENT METHOD
David May	x(580) 716-7016	may@civicplus.com		Net 30

CivicEngage - Statement of Work

QTY	PRODUCT NAME	DESCRIPTION	PRODUCT TYPE
1.00	Premium Department Header Package - CivicEngage	Page specific Site ID, Navigation, Banner, Graphic Links, Colors; follows main site layout.	
1.00	Premium Department Header Annual Fee - CivicEngage	Premium Department Header Annual Fee	Renewable
1.00	CivicEngage Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable
1.00	Premium Department Header Implementation - CivicEngage	Premium Department Header Implementation	One-time
1.00	CivicSend Annual - CivicEngage Central	CivicSend Annual	Renewable
1.00	CivicEngage Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable
1.00	CivicSend Implementation - CivicEngage Central	CivicSend Implementation	One-time
4.00	Virtual Content Consulting - CivicEngage	Virtual Content Consulting 1/2 day block - CivicEngage	One-time
1.00	Annual - CivicEngage Central	Annual - CivicEngage Central	Renewable
1.00	CivicEngage Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable
1.00	Hosting & Security Annual Fee - CivicEngage Central	Hosting & Security Annual Fee - CivicEngage Central	Renewable
1.00	CivicEngage Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable

QTY	PRODUCT NAME	DESCRIPTION	PRODUCT TYPE
1.00	SSL Management – CP Provided Only	SSL Management – CP Provided Only 1 per domain (Annually Renews) - https://www.brunswickcountync.gov	Renewable
1.00	CivicEngage Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable
1.00	DNS Hosting for .GOV – Annual Fee	DNS Hosting for .GOV – Annual Fee - https:// www.brunswickcountync.gov	Renewable
1.00	CivicEngage Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable
1.00	Premium Implementation - CivicEngage	Premium Implementation	One-time
400.00	Content Development - 1 Page - CivicEngage	Content Development - 1 Page - CivicEngage	One-time
6.00	System Training (4h, virtual) - CivicEngage	CivicEngage System Training - Virtual, Half Day Block	One-time
1.00	Agendas & Minutes Migration - PDF - 100 Meetings - CivicEngage	Content Migration : Agendas & Minutes - Per 100 Meetings (Approx. 1 year)	One-time
1.00	CivicEngage Custom IdP Integration Package	Custom IdP Integration Package Custom IdP Integration Annual Fee Custom IdP Integration Implementation Fee	Renewable
1.00	CivicEngage Custom IdP Integration Annual Fee	Custom IdP Integration Annual Fee	Renewable
1.00	CivicEngage Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable
1.00	CivicEngage Custom IdP Integration Implementation Fee	Custom IdP Integration Implementation Fee	One-time

~~List Price - Year 1 Total~~	~~USD 63,818.00~~
Total Investment - Year 1	USD 46,945.92
Annual Recurring Services - Year 2	USD 11,413.76

Total Days of Quote:365

1. This Statement of Work ("SOW") shall be subject to the terms and conditions of the Services Agreement signed between the Parties on June 29, 2022 (“Agreement”), to which this SOW is hereby attached as Exhibit D. By signing this SOW, the parties expressly agree to the terms and conditions of the Agreement throughout the Term of this SOW.

2. This SOW shall remain in effect for an initial term equal to 365 days from the last date of signing (“Initial Term”). In the event that neither party gives 60 days’ notice to terminate prior to the end of the Initial Term, or any subsequent Renewal Term, this SOW will automatically renew for an additional 1-year renewal term (“Renewal Term”). The Initial Term and all Renewal Terms are collectively referred to as the “Term”.

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3. The Total Investment - Year 1 will be invoiced as follows:
   a. Upon signing this SOW, thirty percent (30%) of the Total Investment Year 1 Fees;
   b. The earlier of 6 months from signing or upon completion of CivicEngage Implementation (completion of training), the remaining seventy percent (70%) of the Total Investment Year 1.

4. Annual Recurring Services shall be invoiced on the start date of each Renewal Term. Annual Recurring Services, including but not limited to hosting, support and maintenance services, shall be subject to a 5% annual increase beginning in year 2 of service. Client will pay all invoices within 30 days of the date of such invoice.

5. Client agrees that CivicPlus shall not migrate, convert, or port content or information that could reasonably be construed as time sensitive, such as calendar or blog content, during the Project Development.

6. If a Recurring Redesign line item is included with the Client's quote in this SOW, starting after 48 months of continuous service under this SOW, Client shall be entitled to receive a redesign at no additional cost. Client may initiate such redesign any time after 48 months of continuous service. Upon the initiation of an eligible redesign project, Client may begin accumulating eligibility towards a subsequent redesign after another 48 months of continuous service. Redesigns that include additional features not available on the original website may be subject to additional charges. Additional features include, but are not limited to, additional modules and integration of third-party software. Recurring Redesigns are eligible for the website, subsite, and department headers included in this SOW only. Any subsequently purchased website, subsite, and department header shall not be included in a redesign hereunder.

7. Client allows CivicPlus to display a “Government Websites by CivicPlus” insignia, and web link at the bottom of their web pages. Client understands that the pricing and any related discount structure provided under this SOW assumes such perpetual permission.

Signature Page to Follow.

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Acceptance

By signing below, the parties are agreeing to be bound by the covenants and obligations specified in this SOW and the Agreement terms and conditions.

This SOW 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 SOW 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 § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this SOW by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their duly authorized representatives as of the dates below.

Client	CivicPlus
By: _____	By: Amy Vikander
Name: Randell Thompson	Name: Amy Vikander
Title: Chairman, Board of Commissioners	Title: Sr. VP of Customer Success
Date: _____	Date: 8/22/2022

ATTEST:

_____
Clerk to the Board

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

_____
Aaron C. Smith, 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

DocuSign Envelope ID: EDA9EEDB-56DD-4986-8D83-55C36F760B45

Contact Information

*all documents must be returned: Master Service Agreement, Statement of Work, and Contact Information Sheet.

Organization Brunswick County URL www.brunswickcountync.gov

Street Address 30 Government Center Drive NE

Address 2

City Bolivia State NC Postal Code 28422

CivicPlus provides telephone support for all trained clients from 7am –7pm Central Time, Monday-Friday (excluding holidays). Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for ensuring CivicPlus has current updates. Meagan Kascak, Communications Director, (254)716-9597

Emergency Contact & Mobile Phone Amber Merklinger, Communications Specialist, (910) 253-2723

Emergency Contact & Mobile Phone Cindy Hewett, IT Director, (910) 209-1847

Emergency Contact & Mobile Phone Mike Read, IT Deputy Director, (910) 617-7885

Billing Contact Cindy Hewett E-Mail cindy.hewett@brunswickcountync.gov

Phone 910-253-2638 Ext. Fax 910-253-2650

Billing Address PO Box 249

Address 2

City Bolivia State NC Postal Code 28422

Tax ID # 56-6000278 Sales Tax Exempt # N/A

Billing Terms Account Rep

Info Required on Invoice (PO or Job #)

Are you utilizing any external funding for your project (ex. FEMA, CARES): Y [ ] or N [X]

Please list all external sources: _____

Contract Contact Brunswick County Information Technology Dept Email cindy.hewett@brunswickcountync.gov

Phone 910-253-2640 Ext. Fax 910-253-2650

Project Contact Travis Amstuz Email travis.amstuz@brunswickcountync.gov

Phone 910-294-1546 Ext. Fax 910-253-2650

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 15.

From:
Patricia Dew

Library - Nonrecurring State Aid to Libraries

Issue/Action Requested:
Request the Board of Commissioners approve the acceptance of Nonrecurring State Aid to Libraries for Brunswick County Library.

Background/Purpose of Request:
The State Library of North Carolina received ARPA funding to distribute and each library system in NC is a beneficiary of those funds.

Funds from the American Recovery Act have gone through the NC Pandemic Recovery Office to the State Library of NC to assist local libraries throughout the state. Brunswick County is currently eligible for $89,046. As a beneficiary of these funds, Brunswick County Library can spend the funds on carpet replacement, landscaping improvements, staff salaries, and e-books among other pre-approved projects.

Fiscal Impact:
Budget Amendment Required, Reviewed By Director of Fiscal Operations
Budget amendment appropriates $89,046 of ARP federal revenues awarded to the NC Dept. of Natural and Cultural Resources State Library of NC to aid libraries. Libraries are considered beneficiaries of the ARP funding. Funds will be used to cover materials, salaries, equipment, and operating costs

Approved By County Attorney:
Yes

County Manager's Recommendation:
Recommend that the Board of Commissioners approve the acceptance of Nonrecurring State Aid to Libraries for Brunswick County Library.

ATTACHMENTS:

Description

- SFRF Fund Non Recurring State Aid to Libraries
- ARP Non-Recurring State Aid
- Award Agreement
- Budget Amendment

SFRF Fund: Non-recurring State Aid to Libraries

State Library of North Carolina

The list below is not a comprehensive but is intended to provide guidelines subject to further clarification concerning what are interpreted to be allowable and non-allowable uses for funds to libraries provided through the Coronavirus State Fiscal Recovery Funds' Non-Recurring State Aid to Libraries grant based on the readings of federal guidelines and regulations.

Also note: Funds will not revert at the end of the fiscal year, but need to be obligated by December 31, 2024 and expended by December 31, 2026.

Allowable: Non-recurring State Aid	Non-allowable: Non-recurring State Aid
Collections: books, periodicals, newspapers, maps, films, AV, online databases	Repayment of loans
Carpet/ceiling/floor repair or replacement	Directly or indirectly offset a reduction in taxes
Bookmobiles, book bikes	Pay for debt service
Materials – book carts, shelving, end caps, decorations, programming fees and support materials for programming	Replenish financial reserves
Furniture, especially if necessary for social distancing	Pension Plans or pension plan fees
Modernization of cybersecurity, including hardware, software, and protection of critical infrastructure	Satisfy an obligation arising from a judicial settlement or judgement
Security staff salaries and security systems	Undermine practices included in the CDC's guidelines and recommendations for stopping the spread of COVID-19
Self-check outs or other methods of check out	
Physically Handicapped materials and equipment (including automatic doors, accessibility ramps, etc.)	
Landscape design projects, especially if for outdoor programming	
Painting (interior or exterior)	
Parking lot re-pavement, as long as it is pay-go (cash in hand not loan or repayment of debt/loan)	
Salaries and bonuses for any staff, including security staff (not to exceed $25,000 per individual in SFRF funds)	
Roof replacement, sidewalk improvements	
Technology: equipment, wifi expansion, technology to lend out, maker spaces, etc.	
Environmental remediation (mold or asbestos remediation, installation of dehumidifiers, upgrades to HVAC for environmental controls)	

Health services: Including staff or contracts for mental health and telehealth services/programming, fitness/wellness programming, or cooking programming, community garden	
Costs paid by the library as a sponsor or host of a conference/event/program such as rental of facilities, speakers' fees, interpreter fees, and other items incidental to such conferences/events/programs.	

July 2022

BRUNSWICK COUNTY
Grant Application Evaluation Form

Lead Department: Library		Date: 19 AUG 2022
Department Head: Patricia Dew		Department Contact for Grant: Patricia Dew
Co-Applicants / Other Participating Departments/Agencies/Community Organizations: n/a		
Grant Title: Nonrecurring Aid to Libraries		
Funding Organization: State Library of North Carolina		
Grant Period/Term: March 2021 - December 2024	Grant Amount: $ 89,046.00	☑ New Grant ☐ Recurring Grant Multi-Year Grant? ☑ Yes ☐ No
Matching Funds? ☐ Yes ☑ No	If Yes, Amount: $	☐ In Kind_____ ☐ Cash_____ ☐ Other_____
Describe how match will be met.		
Are matching funds in the current budget or does the match require additional funding? Please explain. ☐ Available ☐ Additional Needed ☑ N/A- No matching funds required/requested		
Briefly describe the purpose of the grant. American Rescue Plan funds awarded to the NC Dept. of Natural and Cultural Resources State Library of NC to aid libraries. Libraries are considered beneficiaries of ARP funding. Funds will be used to cover materials, salaries, equipment, and operating costs.		

Program Duplication / Cost Recovery	
Will this project **in any way** duplicate or compete with another service or program provided by Brunswick County, another local agency or community organization?	☐ Yes ☑ No ☐ Possibly
Will this grant provide support for a mandated service?	☐ Yes ☑ No
Can we capitalize on this funding to meet current and/or future equipment or facility needs?	☑ Yes ☐ No
Will this grant result in supplanting? *Supplanting occurs when a state, local, or Tribal Government reduces state, local, or tribal funds for an activity specifically because federal funds are available (or expected to be available) to fund that same activity.*	☑ Yes ☐ No

Additional Grant Considerations	
Can the scope of work be completed within grant time frame allotted?	☑ Yes ☐ No ☐ Possibly
Can the requirements of this grant be met with current staffing levels?	☑ Yes ☐ No ☐ Possibly
Will new positions be requested (or expiring grant funded positions extended)?	☐ Yes ☑ No
If Yes, how many new positions will be funded by the grant?	0 new positions
How many existing positions will be funded by the grant?	1 partially existing positions
Will the grant create a program or require any County commitment for funding after grant funding ends?	☐ Yes ☑ No
Will the grant contain subcontracts/sub awards or contractual services? If Yes, please explain: Subcontracts may be utilized for some items if cannot be completed in- house.	☑ Yes ☐ No
Description of items or services to be purchased with funds: Rourk Library new service desk = $17,000 Rourk Library replacement carpet = $18,000 Southwest Branch Library landscaping & signage improvements = $10,000 Staff salaries = $25,000 OverDrive e-book additions = $19,000	
Will any items purchased with grant funds revert back to the granting agency?	☐ Yes ☑ No If yes, explain
Is funding received in advance or on a reimbursement basis?	☑ In Advance ☐ Reimbursement

I have read, and am familiar with Brunswick County's Grant Policy. I acknowledge that as the Department Head, I am agreeing to be responsible for the administration of this grant and will ensure all requirements are fully met in a timely manner.

Patricia C. Dew — Digitally signed by Patricia C. Dew Date: 2022.08.19 14:03:27 -04'00'

Department Head Signature — Date: 19 AUG 22

Digitally signed by Aaron C. Smith Date: 2022.08.24 14:25:21 -04'00'

Director of Fiscal Operations — Date: August 24, 2022

County Manager — Date: 8/24/22

☐ Approved by County Manager
☐ Requires BOCC (Agenda Item Needed)



NC DEPARTMENT OF
NATURAL AND CULTURAL RESOURCES

NON-STATE ENTITY AWARD AGREEMENT

For Award 247 State Aid to Public Libraries

2000057929

US Treasury Expenditure Category: 6.1 Revenue Replacement

This AWARD AGREEMENT, entered into on the undersigned date by and between the Department of Natural and Cultural Resources (the Agency), State Library of North Carolina and **Brunswick County Library** (Grantee) (federal tax identification number **56-6000278-G**), is for the use of certain federal financial assistance as appropriated by the State Budget Act of 2021 (SL 2021-180, as amended by SL 2021-189). These federal funds are to be spent on government services, and the State Budget Act has appropriated the funds as state financial assistance to the Grantee as described in legislation. The Agency and the Grantee are referred to collectively as "the Parties" in this Award Agreement. This Award Agreement identifies and acknowledges the Parties' respective major federal and state powers, obligations, and duties in managing and reporting on the funds described. The Parties hereto agree as follows:

SECTION 1. General Information **1.1 Award Agreement Table of Contents.**

SECTION 1. General Information	1.1 Award Agreement Table of Contents. 1.2 Federal Award Identification Table of References. 1.3 Definitions. 1.4 General Terms and Conditions. 1.5 Authorization. 1.6 Administering Offices. 1.7 Conflict between State and Federal Appropriation. 1.8 Disbursement Schedule. 1.9 Amount and Purpose of State Award. 1.10 Period of Performance. 1.11 Nonreverting Appropriation. 1.12 Recipient, Subrecipient, or Beneficiary.
SECTION 2. Federal Requirements	2.1 Federal Award Terms and Conditions. 2.2 FFATA Required Executive Compensation Information. 2.3 FFATA Reporting on Grants and Contracts over $50,000.
SECTION 3. State Requirements	3.1 State Administrative Code Requirements. 3.2 Disbursement Requests. 3.3 Financial Reporting. 3.4 Performance Reporting.
SECTION 4. Monitoring Plan	4.1 Monitoring Plan.
SECTION 5. Closeout	5.1 Closeout.

SECTION 6. Signatures	6 Signatures.
ADDENDA	Attachment A. Project Plan/Scope of Work/Description of Services. Attachment B. Line-Item Budget. Attachment C. Notice of Certain Reporting and Audit Requirements Attachment D. No Overdue Tax Debts Form

1.2. Federal Award Identification Table of References.

State Award Name: State Fiscal Recovery Funds

PANGRAM Agreement Number	2000057929	Assistance Listing Number 21.027
FEDERAL AWARD IDENTIFICATION (2 CFR 200.332(a)(1))		
Recipient Name	**Brunswick County Library**	
Award Period of Performance Start and End Dates	To cover eligible costs incurred beginning March 3, 2021, and ending with costs incurred or obligated by December 31, 2024, expended by December 31, 2026.	
Federal Award Terms and Conditions	https://home.treasury.gov/system/files/136/Financial-Assistance-Agreement-States-and-Territories.pdf	
Amount of Federal Funds Obligated to This Project from this Award	**$89,046**	
DNCR Contact Information	Josh Davis, Chief Financial Officer 109 East Jones Street 4605 Mail Service Center Raleigh NC 27699-4605 (919)814-6725 joshua.davis@ncdcr.gov	
Project Contact Information and Representative for Notices	Susan Forbes Assistant State Librarian State Library of North Carolina 4640 Mail Service Center Raleigh, NC 27699 (919) 814-6786 *susan.forbes@ncdcr.gov*	

1.3 Definitions. Except as otherwise provided in the Award Agreement documents, the terms below shall have the following meanings in this Award Agreement:

"Agency" means the North Carolina Department of Natural and Cultural Resources.

"Audit" means an examination of records or financial accounts to verify their accuracy.

"Award Agreement" means a legal instrument that is used to document a relationship between the Agency and the Grantee.

"Certification of Compliance" means a report provided by the Grantee to the Agency that states that the Grantee has met the reporting requirements established by this Award Agreement and included as a statement of certification by the Agency as part of the Grantee reporting package.

"Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Agency within the North Carolina Department of State Treasurer that has been developed in cooperation with agencies to assist the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.

"Fiscal Year" means the annual operating year of the non-state entity.

"Financial Statement" means a report providing financial statistics relative to a given part of an organization's operations or status.

"Grant" means financial assistance provided by a state agency to an eligible grantee to carry out activities identified in the Award Agreement.

"Grantee" means an entity that receives State financial assistance.

"Non-State Entity" has the meaning in G.S. 143C-1-1(d)(18).

"Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of federal or state awards.

"State financial assistance" means state funds disbursed as a grant, cooperative agreement, non-cash contribution, food commodities, or direct appropriation to a grantee or subrecipient as defined in this Award Agreement.

"Special Appropriation" means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose.

"State Funds" means any funds appropriated by the North Carolina General Assembly or collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-state entities. Both federal and state funds maintain their identity as they are disbursed as financial assistance to other organizations.

"Subrecipient" means a non-state entity that receives state financial assistance from a Grantee to carry out part of a state program; but does not include an individual that is a beneficiary of such program.

1.4 General Terms and Conditions

1.4.1 Choice of Law: The validity of this Award Agreement and any of its terms or provisions, as well as the rights and duties of the Parties to this Award Agreement, are governed by the laws of North Carolina. The Grantee, by signing this Award Agreement, agrees and submits, solely for matters concerning this Award Agreement, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this Award Agreement and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

1.4.2 Grantee's Duties: The Grantee shall submit to the Agency the "REQUEST FOR PAYMENT OF APPROPRIATION(S) FROM NORTH CAROLINA GENERAL FUND" form, including the required enclosures.

The Grantee shall provide the services as described in Attachment A, Project Plan/Scope of Work/Description of Services and in accordance with the approved budget in Attachment B. The Grantee may make line-item adjustments of less than ten percent (10%) for budgeted expenditures without prior approval from the Agency, except if the adjustment would exceed the total award amount. For line-item adjustments of ten percent (10%) or more for budgeted expenditures, the Grantee shall submit a written request for approval to the Agency and include a justification for the adjustment. Line-item adjustments requiring approval shall be effective only upon a dually executed amendment between the parties, in accordance with Section 1.4.21 of this Agreement. Amendments executed under this Paragraph shall include the new line-item adjustment(s) (Attachment B) and any changes in the Project Plan/Scope of Work/Description of Services (Attachment A) related to the duties and services affected by the line-item adjustment. An amendment that fails to comply with the requirements of this Paragraph shall not be binding upon the parties. A violation of this Paragraph shall constitute a material breach and shall entitle the non-breaching party to all rights and actions available to it under the law.

1.4.3 Agency Duties: Grants shall be paid at the direction of the Director of State Budget. The total amount paid by the Agency to the Grantee under this Award Agreement is **$89,046**. Grants of $100,000 or more to or for the use of the Grantee shall be made in quarterly or monthly payments, in the discretion of the Director of State Budget. Grants of less than $100,000 may

be made in one single payment. The Agency may provide monitoring and oversight through a combination of periodic e-mails, calls, visits, and review of reports, invoices, and deliverables.

1.4.4 Independent Contractor: The Grantee is and shall be deemed to be an independent contractor in the performance of this Award Agreement and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Grantee represents that it has, or shall secure at its own expense, all personnel required in performing the services under this Award Agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Agency.

1.4.5 Key Personnel: The Grantee shall not substitute key personnel assigned to the performance of this Award Agreement without prior written approval by the Agency's Contract Administrator. The individuals designated as key personnel are those specified in Section 1.2 of this Award Agreement.

1.4.6 Assignment: No assignment of the Grantee's obligations or the Grantee's right to receive payment hereunder shall be permitted. However, upon written request approved by the Agency, the Agency may:

a. Forward the Grantee's payment check(s) directly to any person or entity designated by the Grantee, or

b. Include any person or entity designated by Grantee as a joint payee on the Grantee's payment check(s). In no event shall such approval and action obligate the Agency to anyone other than the Grantee and the Grantee shall remain responsible for fulfillment of all contract obligations.

1.4.7 Beneficiaries: Except as otherwise provided herein, this Award Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Award Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Agency and the named Grantee. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Agency and Grantee that any such person or entity, other than the Agency or the Grantee, receiving services or benefits under this Award Agreement shall be deemed an incidental beneficiary only.

1.4.8 Indemnification: The Grantee shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Award Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Grantee in the performance of this Award Agreement and that are attributable to the negligence or intentionally tortious acts of the Grantee.

1.4.9 Termination by Mutual Consent: The Parties may terminate this Award Agreement t by mutual consent with 60 days' written notice to the other Party, or as otherwise provided by law. In that event, all finished or unfinished deliverable items prepared by the Grantee under this Award Agreement shall, at the option of the Agency, become its property. If the Award Agreement is terminated by the Agency as provided herein, the Grantee shall be paid for services satisfactorily completed, less payment or compensation previously made. Unexpended funds held by the Grantee shall revert to the Agency upon termination of this Award Agreement.

1.4.10 Termination for Cause: If, through any cause, the Grantee shall fail to fulfill its obligations under this Award Agreement in a timely and proper manner, the Agency shall have the right to terminate this Award Agreement by giving written notice to the Grantee and specifying the effective date thereof. Unexpended funds held by the Grantee shall revert to the Agency upon termination of this Award Agreement. In that event, all finished or unfinished deliverable items prepared by the Grantee under this Award Agreement shall, at the option of the Agency, become its property and the Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision, the Grantee shall not be relieved of liability to the Agency for damages sustained by the Agency by virtue of the Grantee's breach of this Award Agreement, and the Agency may withhold any payment due the Grantee for the purpose of setoff until such time as the exact amount of damages due the Agency from such breach can be determined.

In case of default by the Grantee, the State may procure the services from other sources and hold the Grantee responsible for any excess cost occasioned thereby. The State reserves the right to require a performance bond or other acceptable alternative performance guarantees from successful offeror without expense to the State.

In addition, in the event of default by the Grantee under this Award Agreement, the State may immediately cease doing business with the Grantee, immediately terminate for cause all existing contracts the State has with the Grantee, and de-bar the Grantee from doing future business with the State.

Upon the Grantee filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Grantee, the State may immediately terminate, for cause, this Award Agreement and all other existing contracts the Grantee has with the State, and de-bar the Grantee from doing future business.

1.4.11 Waiver of Default: Waiver by the Agency of any default or breach in compliance with the terms of this Award Agreement by the Grantee shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this Award Agreement unless stated to be such in writing, signed by an authorized representative of the Agency and the Grantee and attached to the Award Agreement.

1.4.12 Availability of Funds: The Parties to this Award Agreement agree and understand that the payment of the sums specified in this Award Agreement is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Agency.

1.4.13 Force Majeure: Neither Party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

1.4.14 Survival of Promises: Except as otherwise provided herein or unless superseded by applicable federal or state statute of limitations, all promises, indemnifications, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Award Agreement expiration or termination date.

1.4.15 Copyrights and Ownership of Deliverables: All deliverable items produced pursuant to this Award Agreement are the exclusive property of the Agency. The Grantee shall not assert a claim of copyright or other property interest in such deliverables.

1.4.16 Federal Intellectual Property Bankruptcy Protection Act: The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365 (n) and any amendments thereto.

1.4.17 Compliance with Laws: The Grantee shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

1.4.18 Equal Employment Opportunity: The Grantee shall comply with all federal and state laws relating to equal employment opportunity. The Grantee shall take affirmative action in complying with all federal and state requirements concerning fair employment and employment of people with disabilities and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin, or disability. By signing this Agreement, the Grantee certifies its compliance with Title VI Civil Rights laws, and that it will cooperate in demonstrating compliance as may be required by the US Treasury. Further information on North Carolina's duties may be found in Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406).

1.4.19 Access to Persons and Records: The State Auditor and the Agency Internal Auditors shall have access to persons and records as a result of all contracts or grants entered into by state agencies or political subdivisions in accordance with N.C.G.S §. 147-64.7. Additionally, as the state funding authority, the Agency shall have access to persons and records as a result of all contracts or grants entered into by state agencies or political subdivisions.

1.4.20 Record Retention: The Grantee may be required to maintain records for at least five years after the completion of the last project across the entire set of SFRF projects funded by North Carolina's SFRF Award. There are differences in the record retention periods required by federal and state regulations. Under the federal Award Terms and Conditions for SFRF, records must be retained for a period of the longer of five years after all funds have been expended or returned to Treasury. Generally, records of state assistance to grantees (grantees of the funds in this Agreement) covered by 09 NCAC 03M .0703 must be retained for the longer of five years or until all audit exceptions have been resolved as measured on an individual grant basis. Because SFRF is a single federal award, it may be necessary to keep records of all project expenditures, including record-keeping by grantees, until the longest of the timelines finishes.

Therefore, the Grantee should seek specific written authorization from the Agency for destruction of any records prior to five years after all funds have been expended or returned to Treasury.

1.4.21 Amendment: This Award Agreement may not be amended orally or by performance. Any significant amendments to the plan or budget as described in Section 3.1 shall be made in writing on a form prepared by the Agency and duly executed by an authorized representative of the Agency and the Grantee.

1.4.22 Severability: In the event that a court of competent jurisdiction holds that a provision or requirement of this Award Agreement violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Award Agreement shall remain in full force and effect.

1.4.23 Headings: The Section and Paragraph headings in these General Terms and Conditions are not material parts of the Award Agreement and should not be used to construe the meaning of any text or content thereof.

1.4.24 Certification Regarding Collection of Taxes: N.C.G.S. § 143-59.1 bars the Secretary of Administration from entering into contracts with vendors that meet one of the conditions of N.C.G.S. § 105-164.8(b) and yet refuse to collect use taxes on sales of tangible personal property to purchasers in North Carolina. The conditions include: (a) maintenance of a retail establishment or office; (b) presence of representatives in the State that solicit sales or transact business on behalf of the vendor; and (c) systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. The Grantee certifies that it and all its affiliates (if any) collect all required federal, state, and local taxes.

1.4.25 Sales/Use Tax Refunds: If eligible, the Grantee and all subrecipients shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Award Agreement, pursuant to N.C.G.S. § 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

1.4.26 Travel Expenses: Travel expenses shall not be reimbursed in the performance of this Award Agreement. If travel is necessary in the performance of this Award Agreement, it shall be included in the approved project budget and narrative.

1.4.27 Entire Agreement: This Award Agreement and any documents incorporated specifically by reference represent the entire agreement between the Parties and supersede all prior oral or written statements or agreements. This Award Agreement and any addenda thereto, are incorporated herein by reference as though set forth verbatim. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Award Agreement expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or state statutes of limitation.

1.4.28 Gifts or Favors: By N.C.G.S. §133-32, it is unlawful for any vendor or contractor (i.e., architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor) to make gifts or to give favors to any state employee of the Governor's cabinet agencies. This prohibition covers those vendors and contractors who:

(1) have a contract with a government agency; or
(2) have performed under such a contract within the past year; or
(3) anticipate bidding on such a contract in the future.

The requirements of N.C.G.S. § 133-32 are hereby incorporated by reference, including any subsequent amendments thereto, and shall apply to all vendors and subcontractors under this Award Agreement.

1.4.29 Effective Period: This Award Agreement shall be effective upon signature by all Parties to this Award Agreement and shall terminate upon final expenditure of all funds and submission of all reports as required by law.

1.4.30 Conflict of Interest Policy: Grantees shall have on file with the Agency a copy of the Grantee's policy addressing conflicts of interest that may arise involving the Grantee's management, employees, and the members of its governing body as set forth in N.C.G.S. § 143C-6-23(b). The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the Grantee's employees or members of its board or other governing body, from the Grantee's disbursing of state funds and shall include actions to be

taken by the Grantee or the individual, or both to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before Agency may disburse the grant funds.

1.4.31 Statement of No Overdue Tax Debts: The Grantee's sworn written statement pursuant to N.C.G.S. § 143C-6-23(c), stating that the Grantee does not have any overdue tax debts, as defined by N.C.G.S. § 105-243.1, at the federal, state, or local level, is attached as Attachment D. Grantee acknowledges that the written statement must be filed before the Agency may disburse the grant funds.

1.4.32 Requirements: This Award Agreement is subject to the reporting requirements described in the Notice of Certain Reporting and Audit Requirements (Attachment C).

The Grantee must ensure that grant funds disbursed under this Award Agreement are audited in compliance with state and federal audit requirements for local governments and public authorities, institutions of higher education, and nonprofit organizations, and, as applicable, according to the standards of the federal Single Audit Act and Circular A-133 "Audits of States, Local Governments, and Nonprofit Organizations" as supplied by the Executive Office of the President, Office of Management and Budget, Washington, DC.

1.4.33 Disbursements: As a condition of this Award Agreement, Grantee acknowledges and agrees to make disbursements in accordance with the following requirements:

(a) Implement adequate internal controls over disbursements.
(b) Ensure sufficient account coding information to provide for tracking of grant funds through the Grantee's accounting system.
(c) Assure adequate control of signature stamps/plates.
(d) Assure adequate control of negotiable instruments; and
(e) Implement procedures to ensure that all account balances are solvent and reconcile the account monthly.

1.4.34 Outsourcing/Assignability/Subcontracting: The Grantee shall not subgrant any of the work contemplated under this Award Agreement without prior written approval from the Agency. The Agency shall not be obligated to pay for any work performed by any unapproved subgrantee or subrecipient. The Grantee or subrecipient is not relieved of any of the duties and responsibilities of this Award Agreement. Furthermore, any subrecipient must agree to abide by the standards contained in this Award Agreement and to provide all information to allow the Grantee to comply with these standards.

1.4.35 Cap State-Funded Portion of Nonprofit Salaries: Pursuant to Session Law 2017-57, Section 6.4, no more than one hundred twenty thousand dollars ($120,000) in state funds, including any interest earnings accruing from those funds, may be used for the annual salary of any individual employee of the Grantee.

1.4.36 Contract Administrators: All notices permitted or required to be given by one Party to the other and all questions about the Agreement from one Party to the other shall be addressed and delivered to the other Party's Contract Administrator. The name, post office address, street address, telephone number, and email address of the Parties' respective initial Contract Administrators are set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Administrator by giving written notice to the other Party within 30 calendar days of such change.

1.5. Authorization. This Award Agreement applies to federal Coronavirus State Fiscal Recovery Funds authorized in section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2, awarded to North Carolina, and appropriated in North Carolina by the 2021 Appropriations Act, S.L. 2021-180. Later legislation may modify these appropriations such as by technical corrections in S.L. 2021-189.

1.6 Administering Offices. The 2021 Appropriations Act directed the Office of State Budget and Management, Pandemic Recovery Office, to transfer these funds to the Agency to allocate to the Grantee. Session Law 2020-4 Section 4.3 directed the Office of State Budget and Management to establish the North Carolina Pandemic Recovery Office to perform the following:

> OSBM shall establish a temporary North Carolina Pandemic Recovery Office to oversee and coordinate funds made available under COVID-19 Recovery Legislation. This Office shall also provide technical assistance and ensure coordination of federal funds received by state agencies and local governments and ensure proper reporting and accounting of all funds.

Similarly, the Agency will be responsible for providing technical assistance and ensuring coordination among Grantees for the proper reporting and accounting of funds received from the Agency through this program.

1.7 Conflict between State and Federal Appropriation. Session Law 2021-180 Section 4.9(c) directs that if there is a conflict between federal law and an appropriation in the state budget, the following obligations apply:

> Conflict. – If an allocation made under this act of State Fiscal Recovery Fund funds is found to be disallowed by federal law, the disallowed allocation is repealed, and the Office of State

> Budget and Management shall transfer the amount of the disallowed allocation to the State Fiscal Recovery Reserve. If the funds have been allocated to a nonprofit corporation, and the use of funds by the nonprofit corporation is disallowed by federal law, the nonprofit corporation shall return the amount of funds allocated to the nonprofit corporation to the Agency to transfer the disallowed, repealed allocation, as provided in this section.

The Grantee should promptly notify the Agency if, on the basis of official guidance or other analysis, that the allocation itself, or its use in a project design or implementation, may not be allowed by federal law.

1.8. Disbursement Schedule. Session Law 2021-180 Section 4.9(e) directs the Agency to disburse funds to nonprofits as follows:

> State Fiscal Recovery Fund funds shall be allocated to nonprofit organizations on a quarterly basis unless OSBM determines that cash flow or the nature of the program being funded requires otherwise.

The Agency will follow the same quarterly disbursement schedule for all non-state entities unless it determines that cash flow or the nature of the program being funded requires otherwise. Determination of beneficiary status in Section 1.12 below may indicate the "nature of the program" requires a different disbursement schedule.

1.9 Amount and Purpose of Award. The federal award to North Carolina provides financial assistance for the State to do the following (emphasis added):

> a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers; c) <u>For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency</u>; and d) To make necessary investments in water, sewer, or broadband infrastructure.

Utilizing revenue replacement for government services, the Grantee has been selected in the 2021 Appropriations Act to receive and administer the following with a total allocation of up to **$89,046.**

1.10 Period of Performance. The recipient must provide the Agency approval project plans and budgets as detailed under State Requirements in Section 3. The federal period of performance requires that eligible expenditures must be incurred or obligated by December 31, 2024, and expended by December 31, 2026, as allowed by federal law and regulation. For information on eligible

costs incurred prior to the signing of this Award Agreement, see applicable federal law and regulations and guidance issued by the US Department of the Treasury for use of these funds and consult with the Agency.

1.11 Nonreverting Appropriation. Session Law 2021-180 Section 4.9(k) establishes this as a non-reverting state appropriation over multiple fiscal years:

> Reversion. – The funds appropriated in this act from the State Fiscal Recovery Fund shall not revert at the end of each fiscal year of the 2021-2023 fiscal biennium but shall remain available to expend until the date set by applicable federal law or guidance.

1.12 Recipient, Subrecipient or Beneficiary. For the purpose of determining the applicability of 2 CFR 200 Uniform Guidance and of 09 NCAC 03M, NCPRO looks first to the designation of federal financial assistance allocated by the state budget process for the provision of government services within the total calculated revenue loss. NCPRO does not view the provision of government services to make it a federal "Pass-through entity (PTE) [as] a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program" as defined in 2 CFR 200.1, beyond fulfilling the federal program purpose of replacing revenue to be used to provide government services as determined at the state level. To determine applicability of 09 NCAC 03M .0102 requires review of whether the appropriation describes a state program purpose or is solely financial assistance. For state Administrative Code definitions of a covered "recipient" or "subrecipient" receiving financial assistance "to carry out part of a state program," or is a non-covered "beneficiary," NCPRO adopts the rationale described in the federal SLFRF discussion of "Distinguishing Subrecipients and Beneficiaries" including the following excerpt, because the state Administrative Code adopted the same definition in 09 NCAC 03M .0102 (10) and (14) as in 2 CFR 200.1 that a federal subrecipient "does not include an individual that is a beneficiary of such program:"

> The distinction between a subrecipient and a beneficiary, therefore, is contingent upon the rationale for why a recipient is providing funds to the individual or entity. If the recipient is providing funds to the individual or entity for the purpose of carrying out a SLFRF program or project on behalf of the recipient, the individual or entity is acting as a subrecipient. Acting as a subrecipient, the individual or entity is subject to subrecipient monitoring and reporting requirements. Conversely, if the recipient is providing funds to the individual or entity for the purpose of directly benefitting the individual or entity as a result of experiencing a public health impact or negative economic impact of the pandemic, the individual or entity is acting as a beneficiary. Acting as a beneficiary, the individual or entity is not subject to subrecipient monitoring and reporting requirements.

Whether the recipient of this non-state entity award is a beneficiary is a determination by OSBM/NCPRO, as are determinations of further subawards by the Grantee.

SECTION 2. Federal Requirements

2.1 Federal Award Terms and Conditions. The parties acknowledge that these funds constitute federal financial assistance to the State of North Carolina and its recipients, and, therefore, use of these funds must be in accordance with federal uniform guidance found in 2 CFR 200, where applicable, and that none of these requirements is waived by recitations or terms of this Agreement or representations of the parties later during the term of performance, closeout, or post-closeout period except as allowed by law. The State of North Carolina is named by as the Prime Recipient of these federal funds and the Federal Award Terms and Conditions bind the recipient and its vendors, contractors and subrecipients, if any. The recipient specifically acknowledges responsibility for its duties under 2 CFR 200, Subpart E, "Cost Principles," as required of recipients/subrecipients by operation of 09 NCAC 03M .0201.

2.2 FFATA Required Executive Compensation Information. Before disbursing funds to recipients, the State must document compliance with the Federal Funds Accountability and Transparency Act. The FFATA requires public disclosure of executive compensation in certain federally-funded organizations. By signing this Agreement, the Grantee certifies that its answers to one or both questions is "No:" 1) *The recipient received 80% or more of its annual gross revenues from federal awards (contracts or subcontracts, loans, grants or subgrants, cooperative agreements)? Y/N* and/or whether 2) *The total of the recipients' annual federal awards equaled or exceeded $25,000,000? Y/N.* If the answer to either question is "No," no further disclosure is required. If the answer to both questions is "yes," then upon disclosure in writing, the Grantee may sign this Award Agreement, and consult with the Agency and NCPRO regarding how to publicly report the compensation information of its five most highly compensated executives.

2.3 FFATA Reporting on Grants and Contracts over $50,000. For each Contract, Grant, Loan, Transfer, or Direct Payment greater than $50,000, information must be obtained and reported through NCPRO to US Treasury, which may include:

- Subrecipient/beneficiary/vendor/contractor identifying and demographic information (e.g., legal name, whether registered in SAM.gov, DUNS/UEI/TIN and location)
- Award number (e.g., Award number, Contract number, Loan number)
- Award date, type, amount, and description
- Award payment method (reimbursable or lump sum payment(s))
- For loans, expiration date (date when loan expected to be paid in full)
- Primary place of performance

- Related project identification number(s) (created by the recipient)
- Related project name(s)
- Period of performance start and end date
- Quarterly obligation amount
- Quarterly expenditure amount

See latest guidance from US Treasury: (https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities)

SECTION 3. State Requirements

3.1 State Administrative Code Requirements. The parties acknowledge that these funds constitute federal financial assistance to the State of North Carolina to provide government services, and the State Budget Act appropriates the funds as state financial assistance to the named Grantee. Therefore, use of these funds must be in accordance with state regulations found in Title 09, Subchapter 03M of the North Carolina Administrative Code, and that none of these requirements is waived by recitations or terms of this Award Agreement or representations of the parties later during the term of performance, closeout, or post-closeout period except as allowed by law.

3.1.1 Reporting. Grantee agrees to comply with all annual reporting requirements on the financial assistance awarded by this Award Agreement as found in 09 NCAC 03M .0205, specifically certifying that the financial assistance received or held was used for the purposes for which it was awarded, providing an accounting of all financial assistance received, held, used, or expended, activities and accomplishments undertaken by the Grantee including performance measures established hereby, and required single or program-specific audit as may be required.

3.1.2 Project Plan/Scope of Work/Description of Services. Grantee agrees to provide a project plan/scope of work/description of services to be attached as Appendix A that specifies the purpose of the award, services to be provided, objectives to be achieved, and expected results as required by 09 NCAC 03M .0703 (1).

3.1.3 Budget. Grantee agrees to provide a budget for the project to be attached as Appendix B as required by 09 NCAC 03M .0703 (8) including an anticipated schedule of payments for the project duration.

3.2 Disbursement Requests. Implementation of programs and services under ARPA/SFRF is not intended as a reimbursement process. Unless otherwise agreed, the Grantee will submit disbursement requests on a forward-looking quarterly basis and will provide as justification its estimated cash flow needs for the upcoming quarter. The Agency and NCPRO will evaluate the

quarterly justification based on program descriptions, operating plans, and past use of funds to avoid accumulation of excessive cash reserves beyond operating needs for successful implementation and delivery of services.

3.3 Financial Reporting. The Grantee will provide monthly program and expenditure reports to the Agency as requested to fulfill its oversight, coordination, accounting, and reporting responsibilities internal to state government. The Grantee will provide quarterly financial and performance reporting for the purpose of legislative reporting mandated under SL 2021-180 and US Treasury reporting as detailed in its Compliance and Reporting Guide and User Guide, and the Parties agree to develop sufficient internal controls and procedures for timely and accurate reporting.

3.4 Performance Reporting. Grantee will provide, at a minimum, quarterly performance reports to the Agency as requested to fulfill its responsibilities internal to state government and for the purpose of US Treasury reporting as detailed in its Compliance and Reporting Guide and User Guide, and the Parties agree to develop sufficient internal controls and reporting procedures to ensure timely and accurate reporting.

SECTION 4. Monitoring Plan

4.1 Monitoring Plan. For recipients/subrecipients (not beneficiaries), the Agency will conduct an annual risk assessment and develop a suitable monitoring plan to ensure compliance with these terms and identify any failures in the administration and performance of the Award. Monitoring activities will be selected based on an assigned risk of low, moderate, or high and may be based on factors including recent history of grant management, audit findings and corrective actions, and knowledge and experience of key personnel assigned. Monitoring activities may include review of monthly performance and financial reports, telephone and email interviews, desk audits of underlying documentation, and site visits (actual or virtual) to interview key personnel, to see performance sites, and to review files. The assessment and monitoring plan will also serve to identify whether the Grantee needs additional technical assistance to ensure success in timely meeting these requirements. Ongoing monitoring will be used to document allowable and unallowable costs, time and effort reporting and travel, achievement of performance objectives, and timely and accurate data reporting as appropriate. Monitoring also will be used to follow up on findings identified in earlier monitoring activities or after an audit to ensure that the Grantee took corrective action. If necessary, the Agency may amend the terms of the Award Agreement, plan, or budget to require implementation of additional terms to address deficiencies as a condition of continued funding disbursements. Special terms may be removed once a subsequent Grantee risk assessment shows a substantial reduction of risk.

SECTION 5. Closeout

5.1 Closeout. The State of North Carolina as a prime recipient of a federal award will develop suitable closeout procedures in accordance with federal and state regulation and guidance from the US Treasury current at the time of signing and as may be promulgated and published during and after the period of performance. This includes determining timelines for completion of program and closeout tasks; determining whether all applicable administrative actions and all required work have been completed by the State and Grantee at the end of the period of performance; and requirements for liquidation of property or encumbered expenses if necessary; all in compliance with applicable law and guidance.

SECTION 6. Signatures

IN WITNESS WHEREOF, the Parties have executed this Award Agreement by their duly authorized officers. For unincorporated associations, an affidavit similar to that required for transfer of real property under N.C.G.S. § 59B-6 must be provided prior to disbursement, attesting to the capacity of the Authorized Representative to receive and direct the funds and bind the unincorporated association to the terms of this Agreement:

FOR Grantee

Patricia Dew 27 JUL 22

By Library Director: Date

Patricia Dew, Library Director

The type of library and its governance determine the signature required on this document:
In addition to the library director:
County Library: Chair of County Commissioners
Regional Library: Chair of Regional Board of Trustees
Municipal Library: Chair of Town/City Council
Independent County Library: Chair of Board of Trustees

_____ _____

By Authorized Official: Date

_____

(Name), (Title)

FOR DNCR

By Authorized Representative: Josh Davis, Chief Financial Officer	Date
By Authorized Representative: Michelle Underhill, State Librarian	Date
By Authorized Representative: Staci Meyer, Chief Deputy Secretary	Date

ADDENDA

Attachment A. Project Plan/Scope of Work/Description of Services.
Attachment B. Line-Item Budget.
Attachment C. Notice of Certain Reporting and Audit Requirements
Attachment D. No Overdue Tax Debts Form.

Attachment A

Project Plan/Scope of Work/Description of Services

Session Law 2021-180 appropriated funds to the Grantee. Public Libraries in North Carolina suffered adverse economic impacts due to the COVID-19 Pandemic. The Grantee will use the **$89,046** for materials, salaries, equipment, and operating costs, which are consistent with allowable uses outlined in 07 NCAC 02I .0202 State Aid Grants from the Aid to Public Library Fund.

Attachment B
Line-Item Budget

Revenue	
State Fiscal Recovery Funds Directed Grant	**$89,046**

Expenses	Project Cost
Aid to Libraries project costs such as materials, salaries, equipment, and operating costs	**$89,046**

Attachment C
Notice of Certain Reporting and Audit Requirements

The Grantee shall comply with all rules and reporting requirements established by state statute or administrative rules. [as detailed in SUBCHAPTER 03M – UNIFORM ADMINISTRATION OF STATE AWARDS OF FINANCIAL ASSISTANCE subchapter 3m rules.pdf (state.nc.us)] For convenience, the requirements are set forth in this Attachment.

State Reporting Thresholds.
There are three reporting levels established for grantees and subrecipients receiving state financial assistance. Reporting levels are based on the level of state financial assistance from all funding sources. The reporting levels are:

(1) Level I – A grantee or subrecipient that receives, holds, uses, or expends state financial assistance in an amount less than twenty-five thousand dollars ($25,000) within its fiscal year.
(2) Level II - A grantee or subrecipient that receives, holds, uses, or expends state financial assistance in an amount of at least twenty-five thousand ($25,000) or greater, but less than five hundred thousand dollars ($500,000) within its fiscal year.
(3) Level III – A grantee or subrecipient that receives, holds, uses, or expends state financial assistance in an amount equal to or greater than five hundred thousand dollars ($500,000) within its fiscal year.

Reporting requirements for grantees that meet the following reporting standards on an annual basis:

(1) All grantees and subrecipients shall provide a certification that state financial assistance received or held was used for the purposes for which it was awarded.
(2) All grantees and subrecipients shall provide an accounting of all state financial assistance received, held, used, or expended.
(3) Level II and III grantees and subrecipients shall report on activities and accomplishments undertaken by the Grantee, including reporting on any performance measures established in this Award Agreement.
(4) Level III grantees and subrecipients shall have a single or program-specific audit prepared and completed in accordance with Generally Accepted Government Auditing Standards (also known as the Yellow Book).

All reports shall be filed with the Agency in the format and method specified by the Agency no later than three months following the end of the Grantee's fiscal year. Audits must be provided to the funding Agency no later than nine months following the end of the Grantee's fiscal year. The Grantee shall use the reporting package forms provided by the Agency in making and submitting reports to the Agency.

Unless prohibited by law, the costs of audits made in accordance with the provisions of this Award Agreement shall be allowable charges to state and federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in the Code of Federal Regulations, 2 CFR Part 200. The cost of any audit not conducted in accordance with this Award Agreement shall not be charged to state awards.

Notwithstanding the provisions of this Award Agreement, a grantee may satisfy the reporting requirements of this Award Agreement by submitting a copy of the report required under federal law with respect to the same funds.

Additional DNCR Financial and Performance Reporting Requirements

Financial Reporting. The Grantee will provide monthly program and expenditure reports to the Agency as requested to fulfill its oversight, coordination, accounting, and reporting responsibilities internal to state government. The Grantee will provide quarterly financial and performance reporting for the purpose of legislative reporting mandated under SL 2021-180 and US Treasury reporting as detailed in its Compliance and Reporting Guide and User Guide, and the Parties agree to develop sufficient internal controls and procedures for timely and accurate reporting.

Performance Reporting. Grantee will provide, at a minimum, quarterly performance reports to the Agency as requested to fulfill its responsibilities internal to state government and for the purpose of US Treasury reporting as detailed in its Compliance and Reporting Guide and User Guide, and the Parties agree to develop sufficient internal controls and reporting procedures to ensure timely and accurate reporting.

Attachment D

No Overdue Tax Debts Form

Request Info	
Type	Budget Amendment
Description	ARP Non Recurring Library Aid
Justification	Board Meeting 09/06/2022 - Appropriate federal revenues in the amount of $89,046 of American Rescue Plan funds awarded to the NC Dept. of Natural and Cultural Resources State Library of NC to aid libraries. Funds will be used to cover materials, salaries, equipment, and operating costs. Non-State Entity Award Agreement issued from NC Dept. of Natural and Cultural Resources to the County Library. Libraries are considered beneficiaries of ARP funding. Deadline to obligate funds is December 31, 2024. Funds must be expended by December 31, 2026.
Originator	CHRISTINA KENNEDY

Items

Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr		
106110	331000	Library	Federal Revenues	89046	Increase	Credit		
106110	465512	Library	Grant Subsidy-Federal	89046	Increase	Debit		

Total

Grand Total:	178092

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 16.
Library - Schedule of Fees

From:
Patricia Dew

Issue/Action Requested:
Request the Board of Commissioners approve the attached updated Schedule of Fees, specifically the change in the fees associated with color and black and white printing/copies.

Background/Purpose of Request:
The Library has previously not had the ability to provide the public with color printing options. With new printers and software, color printing is now available for Library patrons, but the County has not established a fee for color printing. Staff is requesting the establishment of a new color copy fee of $0.30 per page.

The Library would also like to lower the fee of black and white copies to $0.10 per page. Both of these fees should cover the cost to provide the service to residents.

The attached Brunswick County Library Fee scheduled will be updated to show the actual date the fee changes were made (9/6/2022), if approved.

Fiscal Impact:
Reviewed By Director of Fiscal Operations

Approved By County Attorney:
Yes

County Manager's Recommendation:
Recommend that the Board of Commissioners approve the attached updated Schedule of Fees, specifically the change in the fees associated with color and black and white printing/copies.

ATTACHMENTS:

Description

- Library Schedule of Fees July 2022

BRUNSWICK COUNTY LIBRARY SCHEDULE OF FEES

Library materials are considered overdue if they are not in the book return prior to opening on the next business day. Items returned overnight in the exterior book return are considered returned the previous business day.

Books

- $0.20 per day for each book; maximum of $5.00 per item

DVDs, Books on CD, Music CDs, and Equipment

- $1.00 per day for each item; maximum of $5.00 per item

Photocopies and Printouts

- $0.10 per page B&W
- $0.30 per page Color

Faxing

- $2.00 first page, $1.00 each additional page

Lost Library Card Replacement

- $5.00 per instance

Non-Resident/Seasonal Resident Card

- $25.00 for one calendar year

Interlibrary Loans

- $2.00 per request

Lost or Damaged Items

- Price of item plus $5.00 processing fee
- $8.00 for replacement of a single CD from a multi-CD book-on-CD
- $5.00 for replacement of an item's barcode sticker, other library labels, or mylar cover

Returned Check Service Charge

- $25.00 service fee

All fees are payable by cash or check made out to "Brunswick County Library". Brunswick County Library is unable to accept debit or credit cards.

Reviewed and adopted by the Library Board, July 25, 2022

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 17.

From:
Soil and Water

Soil and Water - Conservation Easement Grant Award Acceptance

Issue/Action Requested:
Request for the Board of Commissioners approve and accept a grant from the North Carolina Department of Agriculture and Consumer Services Division of Farmland Preservation to place a conservation easement on agricultural property located at 1330 Hickman Rd NW Calabash, NC with the Brunswick Soil and Water Conservation District as the easement holder. The grant amount consists of $379,331.80 in State Funds. Required match to be covered by landowner donated easement value.

Background/Purpose of Request:
Budget amendment and project ordinance appropriate state revenue in the amount of $379,332 awarded by the NC Department of Agriculture and Consumer Services Division of Farmland Preservation (ADFP) to encourage the preservation of qualifying farmland and to foster the growth, development, and sustainability of family farms.

Fiscal Impact:
Budget Amendment Required, Capital Project/Grant Ordinance Required, Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations

Approved By County Attorney:
Yes

County Manager's Recommendation:
Recommend that the Board of Commissioners approve and accept a grant from the North Carolina Department of Agriculture and Consumer Services Division of Farmland Preservation to place a conservation easement on agricultural property located at 1330 Hickman Rd NW Calabash, NC with the Brunswick Soil and Water Conservation District as the easement holder. The grant amount consists of $379,331.80 in State Funds. Required match to be covered by landowner donated easement value.

ATTACHMENTS:

Description

- ADFP Notificaiton of Funder Offer and Contract
- Budget Amendment
- Grant Project Ordinance

Steve Troxler
Commissioner

North Carolina Department of Agriculture and Consumer Services

N. David Smith
Chief Deputy Commissioner

August 5, 2022

Elliot Swain, Director
Brunswick Soild and Water Conservation District
10 Referendum Dr NE
Bolivia, NC 28422

NOTIFICATION OF FUNDING OFFER

Dear Mr. Swain:

On behalf of Commissioner Steve Troxler and the North Carolina Department of Agriculture and Consumer Services - Farmland Preservation Division, I am pleased to inform you that **$379,331.80** for your project, Bellamy Family Farms Conservation Easement +/- 67 Acres, was approved under the Agricultural Development and Farmland Preservation Trust Fund.

The original contract packet must be completed and returned to the NCDA&CS, making sure that the contracts and certain forms have been signed, dated, and witnessed. Since this is a witness contract, there are two (2) options to complete the contract. It is acceptable to have everyone sign the contract electronically or submit two (2) original signed contracts. Depending on the method you choose, please return as shown below:

Electronic Signed Contract:
Sarah Weavil
Document Specialist
sarah.weavil@ncagr.gov

Original signatures via FedEx or UPS (not USPS):
Veronica Jamison
NCDA&CS, Farmland Preservation Name
2 W Edenton Street
Raleigh, NC 27601

By completing these documents, you are agreeing to the specific stipulations, the general terms and conditions and specific reporting requirements. All authorized representative signatures must be in **blue or black** ink. Please use the Contract Check Off List to ensure all attachments are included and are in the correct order for each contract packet.

One fully-executed, an original contract will be returned to you for your records. If you have any questions about your contract or any of the forms contained in your offer packet, please call Sarah Weavil at 919-707-3072 or email at sarah.weavil@ncagr.gov.

I would like to take this opportunity to thank you for participating in the ADFP Trust Fund to conserve North Carolina's farmland and family farm operations.

Sincerely,

N. David Smith
Chief Deputy Commissioner

Enclosures

Email: David.Smith@ncagr.gov
1001 Mail Service Center, Raleigh, North Carolina, 27699-1001
(919) 707-3033 ● Fax (919) 715-0026
An Equal Opportunity Affirmative Action Employer

NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Steven W. Troxler, Commissioner

Contract Check Off List for Grantee (Government State Funded)

INSTRUCTIONS: Check the "Yes" boxes in the left column for the document titles that are being returned with the two signed, dated and witnessed copies of the contract, with signatures in blue ink. Be sure to include all the other documents specified in your contract package. If "No" has been checked off for you, that document is not required for this grant program or project.

GRANTEE ORGANIZATION NAME: _____

PROJECT TITLE/NAME: _____

CONTRACT #: _____

GO Entities Only Check One Box				*Document Title*	*Department Use – Documents Attached or On File*				*Grants and Contracts- Documents Attached or On File*			
	Yes		No	Contractual "Check Off List for Grantee		Yes		No		Yes		No
	Yes		No	Contract Cover (To be signed, dated & witnessed)		Yes		No		Yes		No
	Yes		No	Attachment A – General Terms and Conditions – Government/University		Yes		No		Yes		No
	Yes		No	Attachment B – Scope of Work (includes Timeline and Line Item Budget)		Yes		No		Yes		No
	Yes		No	Attachment C – Certifications and Assurances Section		Yes		No		Yes		No
	Yes		No	Attachment D – NC OpenBook Supplemental Information		Yes		No		Yes		No
	Yes		No	Attachment E – Signature Card		Yes		No		Yes		No
	Yes		No	Attachment F – W-9 Tax Information		Yes		No		Yes		No
	Yes		No	Attachment G – Vendor Electronic Payment Form		Yes		No		Yes		No
	Yes		No	~~Attachment H – FFATA Data Reporting Requirements (if applicable)~~		Yes		No		Yes		No
	Yes		No	~~Attachment I – Federal Regulations (if applicable)~~		Yes		No		Yes		No

Rev. 6/17, 4/22

Attachments A, C-G have all been signed prior to contract signing and are saved in ADFP's files.

Departmental Use Only

CENTER:6208 1012 2022
ACCOUNT: 536406
AMOUNT: $379,331.80
TIME PERIOD: October 1, 2022 – September 30, 2024
PO: 10ADFPPN22 Line 0070

STATE OF NORTH CAROLINA
COUNTY OF WAKE

North Carolina Department of Agriculture and Consumer Services
Farmland Preservation Division

Agricultural Development and Farmland Preservation Trust Fund – Government

CONTRACT # 22-086-4035
ADFP Tracking # ADM-ADFP-22-004

This Contract is hereby entered into by and between the **North Carolina Department of Agriculture and Consumer Services, Farmland Preservation Division,** (the "Agency") and **Brunswick Soil and Water Conservation District**, ("Grantee"), and referred to collectively as the "Parties." The Grantee's federal tax identification number is 56-6000278 and is physically located in Brunswick County and is further located at 10 Referendum Dr. NE Building F Bolivia, NC 28422.

The purpose of this Contract is to encourage the preservation of qualifying farmland and to foster the growth, development, and sustainability of family farms. The Grantee's project title is **Bellamy Family Farms Conservation Easement +/- 64 Acres**. This Contract is funded by State appropriations. Funds awarded under this Contract must be used for the purposes for which they are intended.

The Grantee's fiscal year ends June 30.

Contract Documents:

This Contract consists of the Grant Contract and its attachments, all of which are identified by name as follows:

1. This Contract
2. Scope of Work, including Timeline, Line-Item Budget and Budget Narrative (Attachment B)

These documents constitute the entire agreement between the Parties and supersede all prior oral or written statements or agreements.

I. Precedence Among Contract Documents:

In the event of a conflict between or among the terms of the Contract Documents, the terms in the Contract Document with the highest relative precedence shall prevail. The order of precedence shall be the order of documents as listed in Paragraph 1, above, with the first-listed document having the highest precedence and the last-listed document having the lowest precedence. If there are multiple Contract Amendments, the most recent amendment shall have the highest precedence and the oldest amendment shall have the lowest precedence.

II. Effective Period:

This Contract shall be effective on **October 1, 2022** and shall terminate on **September 30, 2024** with the option to extend, if mutually agreed upon, through a written amendment as provided for in the General Terms and Conditions as described in Attachment A. Per the *Conservation Easement Contract Grantee Duties and Reporting Requirements* in Attachment B, a request for an amendment must be submitted to the Farmland Preservation Director 60 days before the end of the contract.

III. Grantee's Duties:

The Grantee shall provide the services as described in Attachment B, Scope of Work.

IV. Agency's Duties:

The Agency shall pay the Grantee in the manner and in the amounts specified in the Contract Documents. The total amount paid by the Agency to the Grantee under this Contract shall not exceed $379,331.80.

This amount consists of $379,331.80 in State funds.

[ ] a. There are no matching requirements from the Grantee.

[ ] b. There are no matching requirements from the Grantee; however, the Grantee has committed the following match to this project:

	In Kind	$
	Cash	$
	Other/Specify:	$

[x] c. The Grantee's matching requirement is $56,899.77, which consists of:

	In Kind	$56,899.77
	Cash	$
	Other/Specify:	$

[ ] d. The Grantee has committed to an additional $ _____ to complete the project as described in Attachment B.

The contributions from the Grantee shall be sourced from non-federal funds.

The total Contract amount with matching funds is $436,231.57.

V. Conflict of Interest Policy:

The Agency has determined that the Grantee is a government agency and is not subject to N.C.G.S. § 143C-6-23(b). Therefore, the Grantee is not required to file a Conflict-of-Interest Policy with the Agency prior to disbursement of funds.

VI. Statement of No Overdue Tax Debts:

The Agency has determined that Grantee is a government agency and is not subject to N.C.G.S. § 143C-6-23(c). Therefore, the Grantee is not required to file a Statement of No Overdue Tax Debts with the Agency prior to disbursement of funds.

VII. Reversion of Unexpended Funds:

Any unexpended grant funds shall revert to the Agency upon termination of this Contract.

VIII. Reporting Requirements:

(1) Agency:
The grantee shall provide the Agency with progress reports, both financial and programmatic. The following is based upon the Agency contract with the grantee being two years in time.

For grant awards of less than $250,000, reports are due semi-annually. Refer to the table below for the reporting period and due dates for progress and budget reports:

Contract Year	Reporting Period	Report Due Dates
Year 1	October 1 – March 31	April 10
Year 1	April 1 – September 30	October 10
Year 2	October 1 – March 31	April 10
Year 2	April 1 – September 30	October 10

For grant awards of $250,000 or more, reports are due quarterly. Refer to the table below for the reporting period and due dates for progress and budget reports:

Contract Year	Reporting Period	Report Due Dates
Year 1	October 1 – December 31	January 10
Year 1	January 1 – March 31	April 10
Year 1	April 1 – June 30	July 10
Year 1	July 1 – September 30	October 10
Year 2	October 1 – December 31	January 10
Year 2	January 1 – March 31	April 10
Year 2	April 1 – June 30	July 10
Year 2	July 1 – September 30	October 10

IX. Payment Provisions:

The grantee shall provide the Agency with the appropriate reimbursement request (downloadable at www.ncadfp.org) and required documentation of performance and expenditures for associated grant reimbursement. Upon approval by the Agency, payment shall be made within 30 days. Ten percent (10%) of the total funds awarded under this Contract shall be retained by the Agency until both the final performance and financial reports are submitted by the Grantee and approved by the Agency. All payments are subject to the availability of funds.

The Grantee shall expend funds in accordance with G.S. 143C-6-23 (f1)(f2)(j). The Grantee shall account for any income earned, which may result from any funds awarded under this Contract, on the Agency "Request for Reimbursement" form. Eligible uses of income earned are:

a) Expanding the project or program.
b) Continuing the project or program after grant ends; or
c) Supporting other projects or programs that further the broad objectives of the grant program.

If this Contract is terminated prior to the original end date, the Grantee may submit a final Request for Payment form. All unexpended funds shall be returned by the Grantee to the Agency within 60 days of the Contract termination date with a complete final financial report, accompanied by either a final invoice or a refund of any funds received but not expended. The Agency shall have no obligation to honor requests for payment based on expenditure reports submitted later than 60 days after termination or expiration of the Contract period.

Reimbursement requests shall be completed on a "Request for Reimbursement" form furnished to the Grantee by the Agency. All reimbursement forms must include support documentation, including but not limited to copies of invoices, individual time sheets and travel logs that have been signed by the employee and supervisor, salary registers or payrolls that include fringe benefits, hourly rates of pay, and signature of the Grantee's responsible financial person, cancelled checks and lease agreements. See the *Conservation Easement Contract Grantee Duties and Reporting Requirements* document under Attachment B for more details on payment provisions.

Eligible expenditures for payment must be within the effective period noted in the Contract. Reimbursement may not be considered prior to the submission and final execution of the Contract.

All travel reimbursement shall be made in accordance with the current State rates, at the time of the expenditure, and shall be made in accordance with the "State Budget Manual" https://www.osbm.nc.gov/budget/budget-manual

All matching funds, including in-kind and cash, must be spent concurrently with funds provided by the Contract. Both types of matching funds expended shall be accounted for on the monthly certified invoices.

Indirect costs are not allowable expenditures under this Contract.

X. Fraud, Waste and Abuse

Grantee, including its employees, contractors, agents, interns, or any subrecipients, shall report suspected fraud, waste and abuse activities related to any state employee, vendor or sub recipient of state funds or state resources.

There are three methods for reporting suspected fraud, waste or abuse (FWA). Grantee can report suspected FWA directly to the Agency's Audit Services Division, to any member of the Agency's management team or through the FWA reporting website below.

N.C.G.S. 143-748 permits Audit Services to treat all information as confidential. However, if an individual wishes to remain anonymous, reports can be submitted through the FWA reporting website: https://www.ncagr.gov/internalaudit/ReportForm.htm

Under no circumstances should an individual attempt to personally conduct investigations or interviews /interrogations related to any suspected FWA act.

Investigation results will not be disclosed or discussed with anyone other than those who have a legitimate need to know. This is important to avoid damaging the reputations of persons suspected but subsequently found innocent of wrongful conduct.

It is the Agency's policy that employees/contractors/sub recipients/interns will not suffer retaliation or harassment for reporting in good faith any FWA concerns. The Agency encourages openness and will support anyone who raises genuine concerns in good faith under this policy, even if they turn out to be unsubstantiated.

XI. Contract Administrators:

All notices permitted or required to be given by one Party to the other and all questions about the Contract from one Party to the other shall be addressed and delivered to the other Party's Contract Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties' respective initial Contract Administrator are set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party.

For the Agency:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Veronica Jamison, Office Manager 1001 Mail Service Center, Raleigh, NC 27699-1001 Telephone: 919-707-3071 Email: veronica.jamison@ncagr.gov Grants & Contracts General Email: agr.grants@ncagr.gov	Veronica Jamison, Office Manager 2 W Edenton Street, Raleigh, NC 27601

For the Grantee:

Grantee Contract Administrator- Mailing Address	Grantee Principal Investigator or Key Personnel
Elliot Swain, Director Brunswick Soil and Water Conservation District 10 Referendum Dr NE Bolivia, NC 28422 Telephone: 910-253-2830 Email: elliot.swain@brunswickcountync.gov	Name: Title: Company Name: Street Address: City: State: Zip: Telephone: Email:

XII. Supplementation of Expenditure of Public Funds:

The Grantee assures that funds received pursuant to this Contract shall be used only to supplement, not to supplant, the total amount of federal, State, and local public funds that the Grantee otherwise expends for activities involved with specialty services and related programs. Funds received under this Contract shall be used to provide additional public funding for such services. The funds shall not be used to reduce the Grantee's total expenditure of other public funds for such services.

XIII. Disbursements:

As a condition of this Contract, the Grantee acknowledges and agrees to make disbursements in accordance with the following requirements:

a. Will implement or already have implemented adequate internal controls over disbursements.
b. Pre-audit all invoices presented for payment to determine:
    i. Validity and accuracy of payment
    ii. Payment due date
    iii. Adequacy of documentation supporting payment
    iv. Legality of disbursement
b. Assure adequate control of signature stamps/plates.
c. Assure adequate control of negotiable instruments; and
d. Have procedures in place to ensure that account balance is solvent and to reconcile the account monthly.

XI. Outsourcing:

The Grantee certifies that it has identified to the Agency all jobs related to the Contract that have been outsourced to other countries, if any. Grantee further agrees that it will not outsource any such jobs during the term of this Contract without providing prior notice to the Agency.

XIV. N.C.G.S. § 133-32 and Executive Order 24:

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State employee of any gift from anyone with a Contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement or Contract, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employee of your organization.

XV. Signature Warranty:

The undersigned represent and warrant that they are authorized to bind their principals to the terms of this Contract.

IN WITNESS WHEREOF, the Grantee and the Agency execute this Contract as an electronic original, each party will be provided a fully executed copy via electronic mail. It is required that each party retain a fully executed copy of this contract.

Grantee: Brunswick Soil and Water Conservation District

Signature of Authorized Representative Date

Printed Name Title

Witness:

Signature Date

Printed Name Title

North Carolina Department of Agriculture and Consumer Services

Signature of Authorized Representative Date

N. David Smith, Chief Deputy Commissioner

Attachment B Contents for the Standard Conservation Easement Appraisal Program:

a. Scope of Work and Map
b. ADFP Trust Fund Conservation Easement Contract Grantee Duties and Reporting Requirements
c. Line Item Budget with Narrative and Project Timeline
d. Conservation Easement Transfer of Entity
e. Survey Requirements and Checklist
f. Baseline Documentation Report Requirements and Checklist
g. Environmental Audit Requirements and Checklist
h. Appraisal Checklist
i. The Conservation Easement Content
j. Closing Agent Requirements for Easement Programs
k. ADFP Trust Fund Monitoring Policies
l. Option to Purchase an ADFP Trust Fund Agricultural Easement

Scope of Work

The purpose of this contract is to place a perpetual agricultural conservation easement on +/- 64 acres of the Bellamy Family Farm in Brunswick County.

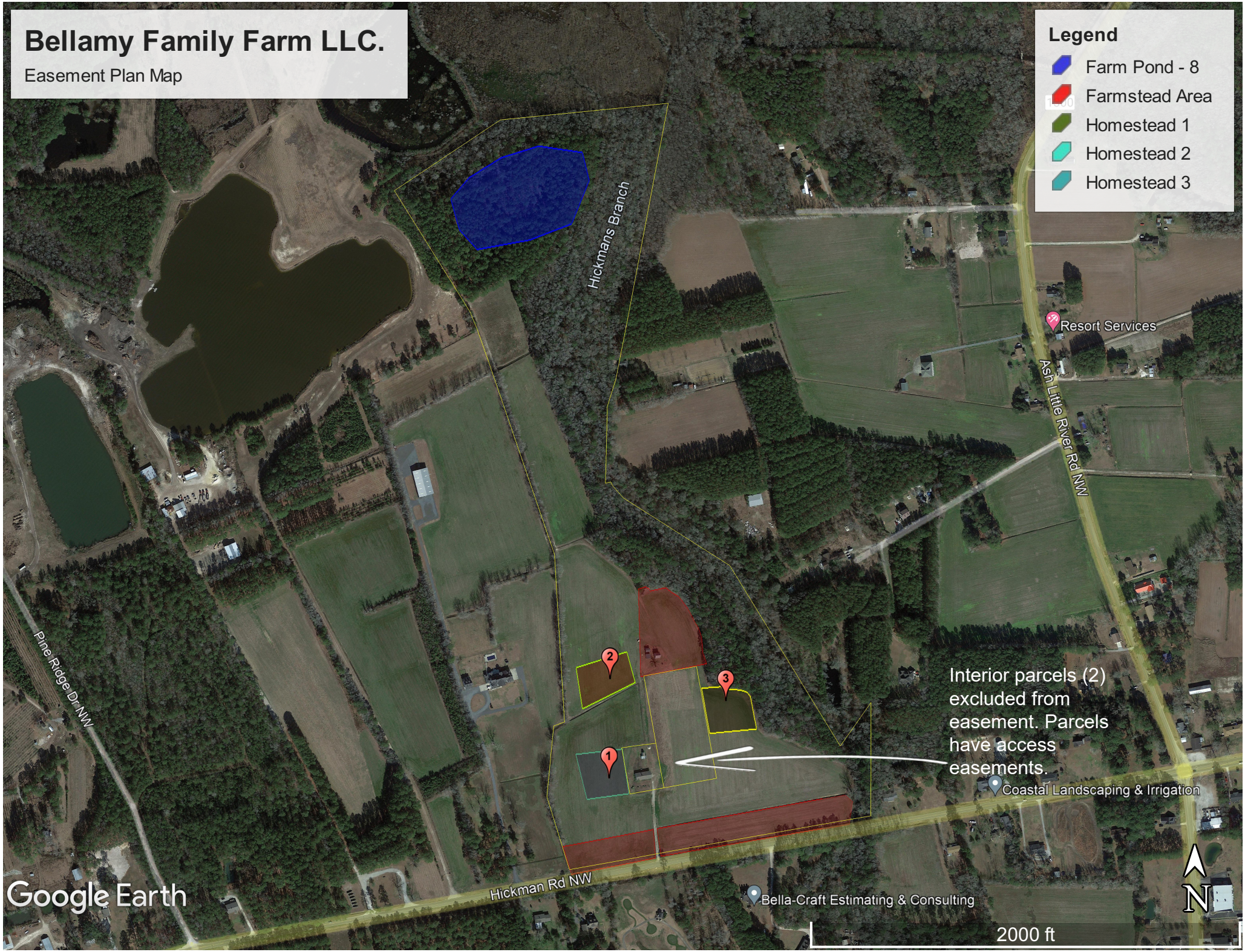
Landowner name(s): Milton Wade Bellamy, Arthur Martin Bellamy, Marsha Jane B. Benton

Physical address: 1330 Hickman Road NW Calabash, NC 28467

Latitude and Longitude: 33.93123213513438, -78.61850221638485

Parcel Identification Number (PIN): 101602581108

Attached is a map of the proposed conservation easement:


Bellamy Family Farm LLC.
Easement Plan Map
Legend
Farm Pond - 8
Farmstead Area
Homestead 1
Homestead 2
Homestead 3
Hickmans Branch
Resort Services
Ash Little River Rd NW
Pine Ridge Dr NW
Interior parcels (2) excluded from easement. Parcels have access easements.
Coastal Landscaping & Irrigation
Hickman Rd NW
Bella-Craft Estimating & Consulting
Google Earth
N
2000 ft

1. The NCDA&CS ADFPTF conservation easement contract is a two-year contract. The first contract year is to complete the conservation easement project, including recording the conservation easement. The second contract year is reserved for the completion of the conservation easement project due to documented hardships. The Grantee agrees to record the conservation easement within the first year of the two-year contract following the timeline below. Failure to follow the deliverable timeline is a breach of the contract, and the Grantee must repay any grant funding received from the NCDA&CS ADFPTF. If the Grantee fails to record an approved conservation easement according to the terms and conditions of this contract within the contract period, the Grantee is responsible for repaying all funds expended.

2. If the conservation easement is not recorded within the first 365 days of the two-year contract, the Grantee must request a continuation of the project in writing to the Farmland Preservation Director 60 days before the end of the first year of the contract (Day 305). This request must provide proper documentation for the hardships that delayed completing the grant project and a revised timeline to complete the conservation easement project. All other required documents, including budget and progress reports, must be current. Eligible hardships include:
    a. Death of a landowner;
    b. Severe illness or incapacitation of a landowner;
    c. The Grantee has applied for federal funding and has not yet received funding notification;
    d. The Grantee has federal funds under contract and has not yet received approval to release federal funds.

    All other requests for continuing the conservation easement project shall be determined on a case-by-case basis. If approved, the project may continue into the second year of the contract. If denied, the Grantee must repay any grant funding from the NCDA&CS ADFPTF. Note: Failure by the Grantee to initiate deliverables on the conservation easement project, Grantee staff shortages or changes, and Grantee time management issues are not acceptable hardships and will result in a breach of the contract, and the Grantee must repay any grant funding received from the NCDA&CS ADFPTF.

Required Grantee Deliverable Within the First Contractual Year

Deliverables (Documents) *Must be provided in the following order and submitted as a complete suite in Word or PDF electronic format for ADFPTF review and approval.*	**Completion Date for Documents Provided to the Agency by the Grantee**
Easement Parcel Identification Suite • Preliminary Conservation Easement Survey, including GIS, per the ADFPTF Survey Requirements and Checklist • Preliminary Title Policy • Preliminary Attorney's signed Title Opinion certifying title for a period of at least sixty years	Within 180 days of the beginning date of the grant contract
Land Management Documents Suite • Environmental Audit, including Hazardous Materials Checklist and Landowner Interview, per the ADFPTF Environmental Audit Requirements and Checklist • Certified Development Rights Appraisal, per the ADFPTF Conservation Easement Appraisal Requirements and Checklist, dated within the contract period and dated less than 365 days prior to closing. Supplemental appraisals, updated opinion letters, or reaffirmation letters by the appraiser for the original appraisal are acceptable if a closing occurs 365 days after issuance of the Certified Development Rights Appraisal, provided the appraiser certifies the land value with an updated effective date of valuation. • Conservation Plan, if applicable • Forestry Plan, if applicable • Preliminary Baseline that includes applicable Conservation Plan and Forestry Plan, Environmental Audit, and Conservation Easement Survey, per the ADFPTF Baseline Documentation Report Requirements and Checklist	Within 210 days of the beginning date of the grant contract and no less than 60 days before the scheduled conservation easement recording date
Legal Conservation Document Suite • Conservation Easement Survey in recordable format and approved by County Review Officers • Final Conservation Easement with applicable exhibits • Preliminary HUD Statement • Title Commitment • Signed Subordination Agreement, if applicable • Final Baseline that includes applicable Conservation Plan and Forestry Plan, Environmental Audit, and Conservation Easement Survey, per the ADFPTF Baseline Documentation Report Requirements and Checklist	Within 240 days of the beginning date of the grant contract and no less than 30 days before the scheduled conservation easement recording date
Set Target Date for Easement Closing • NCDA&CS Legal Affairs must approve all Legal Conservation Document Suite documents • Approved Conservation Easement Closing Check Request form	Within 270 days of the beginning date of the grant contract, and shall be no less than 30 days before the contract end date.
Final Legal Conservation Document Suite • Recorded Conservation Easement • Recorded Survey • Final Title Opinion signed by the closing attorney • Final Title Policy • Recorded Subordination Agreement, if applicable • Signed HUD Statement • Signed Baseline Documentation Report	Due within 20 working days (28 calendar days) following the recording date of the conservation easement

3. The Grantee shall provide the Agency with progress reports, both financial and programmatic. The following is based upon the Agency contract with the Grantee being two years in time.

   For grant awards of less than $250,000, reports are due semi-annually. Refer to the table below for the reporting period and due dates for progress and budget reports:

Contract Year	Reporting Period	Report Due Dates
Year 1	October 1 – March 31	April 10
Year 1	April 1 – September 30	October 10
Year 2	October 1 – March 31	April 10
Year 2	April 1 – September 30	October 10

   For grant awards of $250,000 or more, reports are due quarterly. Refer to the table below for the reporting period and due dates for progress and budget reports:

Contract Year	Reporting Period	Report Due Dates
Year 1	October 1 – December 31	January 10
Year 1	January 1 – March 31	April 10
Year 1	April 1 – June 30	July 10
Year 1	July 1 – September 30	October 10
Year 2	October 1 – December 31	January 10
Year 2	January 1 – March 31	April 10
Year 2	April 1 – June 30	July 10
Year 2	July 1 – September 30	October 10

   In-kind and cash match shall be a part of the required financial reports, and documentation of the reported match shall be included with the reports. Documents shall be in the form of individual timesheets that each employee has signed and approved by the appropriate supervisor, travel logs and invoices for in-kind match, copies of checks, bank deposits, and fund transfers for cash match. Other types of documents may be acceptable with the approval of the Agency Manager.

   This grant contract is for the below-marked amount:

   ☐ Less than $250,000

   ☒ $250,000 or more

4. The Grantee will use the selected easement template unless the exception category has been designated and approved by the Agency. The selection of the appropriate template is based on partnership funding used to secure the conservation easement. Unless clearly delineated in the proposed conservation easement map, the landowner waives the rights of creation of no more than three lots pursuant to N.C.G.S. 106-744(b)(1); therefore, no lots shall be created in the easement area. The easement templates are downloadable at www.ncadfp.org:

☐ADFPTF Perpetual Template Easement
☐ADFPTF Term Template Easement
☒ADFPTF-USDA Template Easement
☐ADFPTF-USDA-USAF Template Easement
☐ADFPTF-USDA-Navy Template Easement
☐ADFPTF-USDA-Army Template Easement
☐ADFPTF-USDA-County Template Easement
☐ADFPTF-USAF Template Easement
☐ADFPTF-Navy Template Easement
☐ADFPTF-Army Template Easement
☐ADFPTF-County Template Easement
☐ Exception, including the creation of no more than three lots pursuant to N.C.G.S. 106-744(b)(1). (Copy of the revised conservation easement language must be attached hereto as an amendment to the NCDA&CS ADFPTF contract at the time of approval)

The Agency legal counsel and Farmland Preservation Director must approve additions, omissions, or modifications of said template. The final "Conservation Easement" must meet with Agency approval to remain eligible for funding.

5. The Grantee shall provide the Agency with the appropriate reimbursement request (downloadable at www.ncadfp.org) and required documentation of performance and expenditures for associated grant reimbursement. The Agency shall make payments to the Grantee on the following guidance:
    a. No more than $25,000 if the grant award is $27,778 or greater and up to 90% of the grant if the award is less than $27,778 before the recording of the "Conservation Easement."
    b. All payment requests must document the purpose of using grant funds and be within the approved amounts designated in the contract grant budget.
    c. At the time of a properly recorded "Conservation Easement," the Agency shall pay the Grantee no more than 90% of the awarded grant amount.
    d. The Agency shall decrease the contract award amount based on the current conservation easement appraisal, if applicable.
    e. The Grantee shall ensure that **64** acres are placed under an agricultural easement with no more than a 5% variance in recorded easement acreage without the prior written approval of the Agency.
        i. If the variance is greater than 5% of the contracted acres and is greater than the acres listed above, the additional acreage will be approved under one of the following scenarios:
            1. The additional acres are included in the original parcels, and the variance is due to the Conservation Easement Survey updates.

2. The additional acres are parcels or areas within the original parcels under the same ownership as the original parcels, are in working lands use, and are within, adjacent, or contiguous to the original parcels.

ii. If the variance is greater than 5% of the contracted acres and is less than the acres listed above, the grant funds for conservation easement purchase will be reduced proportionally based on the new acreage.

f. The division of the funds used to purchase the agricultural easement from matching resources and Agency resources must be maintained, as noted in the grant contract budget. The Grantee may request the Agency for an exception to the division of funds if the Agency is the only entity providing easement funding.

g. For the Standard Conservation Easement Appraisal Program, the Agency easement purchase shall not exceed 50% of the appraised easement value. If the Agency is the only grantor of funds used to secure the conservation easement recording, the Grantee may request in writing with sound reasoning for the Agency payment to exceed 50% of the appraised easement purchase value.

h. For the Present-Use Value (PUV) Conservation Easement Program, the Agency easement purchase shall not exceed 75% of the easement value as determined by the Conservation Easement Value Payout formula.

i. At no time shall the total payment of grant funding exceed the grant contract value.

j. All Grantee payments must have receipts of expenditures to verify the use of funding per contracted purposes.

k. The Agency shall make the payment within 60 days of any grant reimbursement request by the Grantee with approved documentation.

6. The Grantee will use the selected conservation easement purchase funding program:

☒ Standard Conservation Easement Appraisal Program:

The Certified Development Rights Appraisal must be completed per the ADFPTF Conservation Easement Appraisal Requirements and Checklist based on the funding sources for the easement purchase. Final conservation easement values must be determined by a Certified Development Rights Appraisal dated within the contract period and dated less than 365 days prior to closing. Supplemental appraisals, updated opinion letters, or reaffirmation letters by the appraiser for the original appraisal are acceptable if a closing occurs 365 days after issuance of the Certified Development Rights Appraisal, provided the appraiser certifies the land value with an updated effective date of valuation.

☐ Present-Use Value (PUV) Conservation Easement Program

Select one of the following:

☐ Perpetual Conservation Easement:

- 75% of the conservation easement value as determined by the Final Conservation Easement Value Payout formula in the PUV Conservation Easement Program Worksheet attached in this contract.

☐ 50-Year Term Conservation Easement:

- 60% of the conservation easement value as determined by the Final Conservation Easement Value Payout formula in the PUV Conservation Easement Program Worksheet attached in this contract.

7. The conservation easement closing payment request may be submitted in writing using the Easement Closing Check Request form by the Grantee 30 days before the set closing date, provided the following items have been achieved:
    a. All closing documents (conservation easement, HUD statement, title commitment, and subordination agreement if required) have been reviewed and approved by ADFPTF and NCDA&CS legal staff.
    b. The Grantee is in "Green" status based on the ADFP Trust Fund Grantee Eligibility Classification system. This status requires all progress/budget reports, monitoring reports, audit reports, and other reporting documents to be current with the Agency.
    c. The Grantee has followed the contractually-obligated work schedule as detailed in the grant contract. If Grantee fails to maintain the contractual agreement between NCDA&CS and the Grantee, NCDA&CS ADFPTF shall consider additional measures to ensure Grantee follows department policies and contract procedures.
    d. The proposed conservation easement closing date shall be no less than 30 days before the contract end date. This timeline eliminates the risk of losing grant funds due to the contract's expiration.
    e. All involved parties, including ADFPTF, Grantee, landowners, and all funding partners with a financial interest in the conservation easement, will confirm the closing date.
    f. The closing check will be submitted to the closing attorney named in the grant contract, provided all required information provided by the Grantee is complete approved by ADFPTF and NCDA&CS legal staff.
    g. If a contract is at risk of not being completed, NCDA&CS may provide alternatives to reduce that risk, including revisions of the holdback provisions or the payment delivery options for services rendered by contractual arrangement.

8. The Grantee shall also submit a final grant report. In the final report, the Grantee shall provide all budget/progress reports, the final request for payment, and an accounting of the final match claimed by the Grantee to fulfill the match requirement mandated under

N.C.G.S. 106-744(c1)(1). Grant contract budgeting and payments shall hold-back 10% on all line items until ADFPTF receives all required reports and documentation. The full ADFPTF easement funding allocated for easement purchase may be submitted at closing, provided the closing attorney holds the 10% in escrow until all recorded documents and reports, including the recorded conservation easement, recorded survey, final title opinion signed by the closing attorney, final title policy, recorded subordination agreement (if applicable), signed HUD statement, and signed baseline documentation report, have been received and approved by NCDA&CS. The final report and all invoices are due within 20 working days (28 calendar days) following the closing and recording date of the conservation easement. If the Grantee fails to provide the final report and required supporting documentation within the required period, the Grantee may not receive reimbursement and shall be considered ineligible for reimbursement.

9. Grantees may request a lowering of the hold-back percentage provided the following criteria have been provided:
    a. An official request to the Commissioner of Agriculture with reasoning why the 10% hold-back is an undue burden and a proposed revised hold-back percentage.
    b. The Grantee has no record of infractions or late reports for ADFPTF within the last two years from the revised hold-back percentage request date.
    c. If an infraction or late report occurs during the grant contract period, the hold-back percentage shall be reinstated at 10% or higher as a corrective measure.

10. If the Grantee has not provided all closing documents and progress/budget reports 60 days before the contract's end date, the Grantee may request a contract extension of the grant to the Farmland Preservation Director. This request must include reasons for not completing the grant and following the timetable of scheduled activities to complete the grant project. This request must provide proper documentation for the hardships that delayed completing the grant project and a revised timeline to complete the conservation easement project. All other required documents, including budget and progress reports, must be current. Eligible hardships include:
    a. Death of a landowner;
    b. Severe illness or incapacitation of a landowner;
    c. The Grantee has applied for federal funding and has not yet received funding notification;
    d. The Grantee has federal funds under contract and has not yet received approval to release federal funds.

    All other requests for continuing the conservation easement project shall be determined on a case-by-case basis. If approved, the project may continue beyond the original contract end date. If denied, the Grantee must repay any grant funding from the NCDA&CS ADFPTF. Note: Failure by the Grantee to initiate deliverables on the conservation easement project, Grantee staff shortages or changes, and Grantee time management issues are not acceptable hardships and will result in a breach of the contract, and the Grantee must repay any grant funding received from the NCDA&CS

ADFPTF. All other grant contract extension requests shall follow the protocols outlined in the NCDA&CS ADFPTF grant contract.

11. If the Grantee has not provided all closing documents and progress/budget reports 30 days before the contract's end date, the Grantee may request an emergency contract extension of the grant to the Commissioner of Agriculture. This request must include reasons for not completing the grant and following the timetable of scheduled activities to complete the grant project. All other grant contract extension requests shall follow the protocols outlined in the NCDA&CS ADFPTF grant contract.

12. After recording the "Conservation Easement" in the Register of Deeds Office, the Grantee shall annually notify the landowner and conduct a monitoring visit to the property to ensure that the easement agreement is being upheld. If structures are permitted under the easement, the Grantee shall review plans and monitor construction for compliance with the plans. Grantee monitoring shall be completed in accordance with the Agency "Conservation Easement Monitoring Policy and Guidelines" and amendments thereto. The Grantee shall electronically complete and submit to the Agency the "Grantee Monitoring Report – Perpetual or Term Easement" to report its annual monitoring findings. The "Grantee Monitoring Report – Perpetual or Term Easement" is accessed through a portal at www.ncadfp.org. The first "Grantee Monitoring Report – Perpetual or Term Easement" is due by December 31 of the following calendar year after the "Conservation Easement" recording and annually thereafter.

13. The Grantee shall complete all reports in a prescribed format, which the Agency shall provide. Reports and required documentation must be up-to-date for the Grantee to receive payments.

14. All publicity and printed material regarding projects or activities supported in whole or in part by this shall contain the following language: "The project received support from the NCDA&CS ADFP Trust Fund." The NCDA&CS ADFP Trust Fund logo (digital versions of which can be downloaded from the Agency website at www.ncadfp.org) shall be displayed in all the Grantee's publicity and printed materials relating to this grant.

15. The Grantee will submit all reports and requested documents electronically unless instructed differently by Agency staff. Reports and documents may be submitted by email to ncadfp@ncagr.gov.

16. Noncompliance with Grantee duties will result in an immediate suspension of existing Agency grant funding. The Grantee shall be ineligible for further Agency grants until the noncompliance is corrected and the Agency has acknowledged the correction and is in good standing. The Agency shall use the following guidance in placing a Grantee in noncompliance:

Classification	Grant Contract / Monitoring Status	Eligibility Status
Green	All budget, progress, and monitoring reports are on file and up to date. No incidents noted in the Suspension of Funding List or other department or state grant tracking reports.	No restrictions.
Yellow	There is a late budget, progress, or monitoring report in the previous reporting period. No incidents noted in the Suspension of Funding List or other department or state grant tracking reports.	All grant payments and proposed grant contracts frozen until reports are filed and approved. Review of proposed grant applications and requests may continue, but no grant contract may be offered.
Red	There are late budget, progress, or monitoring reports for two reporting periods. No incidents noted in the Suspension of Funding List or other department or state grant tracking reports.	All grant payments and proposed grant contracts frozen until reports are filed and approved. Review of proposed grant applications and requests are discontinued, and no grant contract may be offered.
Black	There are late budget, progress, or monitoring reports for three or more reporting periods or the Grantee is found as noncompliant in the Suspension of Funding List or other department or state grant tracking reports.	All grant payments frozen. Grantee is not eligible for an ADFP Trust Fund grant application or contract.

17. The grant contract budget and project timeline are as attached:

Conservation Easement Budget Worksheet - Bellamy Family Farm

FINAL 5/11/22

Line Item	ADFP Trust Fund	90 Percent Maximum	Projected USDA NRCS ALE/RCPP Match	Projected Military Match	Projected Nonprofit Match	Projected Landowner Donation	Projected County Match	Projected Other Match	Totals
Appraisal									$ -
Attorney Fees	$ 4,300.00	$ 3,870.00							$ 4,300.00
Baseline Documentation Report	$ 2,900.00	$ 2,610.00							$ 2,900.00
Closing Costs (Recording Fee, Title Insurance)	$ 1,300.00	$ 1,170.00							$ 1,300.00
Easement Purchase	$ 358,531.80	$ 322,678.62	$ 717,063.60			$ 358,531.80			$ 1,434,127.20
Environmental Assessment / Audit	$ 2,200.00	$ 1,980.00							$ 2,200.00
Personnel / Administrative							$ 32,436.56		$ 32,436.56
Stewardship Endowment		$ -					$ 22,563.44		$ 22,563.44
Survey	$ 10,100.00	$ 9,090.00							$ 10,100.00
Travel							$ 20,000.00		$ 20,000.00
Totals	**$ 379,331.80**	**$ 341,398.62**	**$ 717,063.60**	**$ -**	**$ -**	**$ 358,531.80**	**$ 75,000.00**	**$ -**	**$ 1,529,927.20**

Easement Size (Acres)	64.000	**Easement Size (Acres) 5 Percent Variance +/-**	67.200	60.800

Line Item	ADFP Trust Fund Grant Expenditures	ADFP Trust Fund Grant Balance	Confirmed USDA NRCS ALE/RCPP Match	Confirmed Military Match	Confirmed Nonprofit Match	Confirmed Landowner Donation	Confirmed County Match	Confirmed Other Match	Totals
Appraisal									$ -
Attorney Fees		$ 4,300.00							$ -
Baseline Documentation Report		$ 2,900.00							$ -
Closing Costs (Recording Fee, Title Insurance)		$ 1,300.00							$ -
Easement Purchase		$ 358,531.80							$ 358,531.80
Environmental Assessment / Audit		$ 2,200.00							$ -
Personnel / Administrative									$ -
Stewardship Endowment		$ -							$ -
Survey		$ 10,100.00							$ -
Travel									$ -
Totals	**$ -**	**$ 379,331.80**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 358,531.80**

Project Timeline

Quarter (Grant Year 1)	Tasks/Goals	Grant Funding to be Used	Matching Funds (cash or in-kind) to be Used	Total Funding to be Used
October 1, 2022 - December 31, 2022	Personnel and Administrative Duties, Travel		$ 52,436.56	$ 52,436.56
January 1, 2023- March 31, 2023	Survey, Draft Easement Language, Baseline, Applicable Conservation and Forestry Plans, Environmental Audit, Preliminary Title Opinion and Policy	$ 15,200.00		$ 15,200.00
April 1, 2023 - June 30, 2023	Certified Appraisal, Set target date for easement closing			$ -
July 1, 2023 - September 30, 2023	Request Funds for closing, Preliminary HUD, Record Easement, Record Survey, Final Title Opinion and Policy, Final Payment Request, Legal Fees, Closing Costs	$ 364,131.80	$ 1,098,158.84	$ 1,462,290.64
Grant Year 1 Subtotals		$ 379,331.80	$ 1,150,595.40	$ 1,529,927.20

Quarter (Grant Year 2)	Tasks/Goals	Grant Funding to be Used	Matching Funds (cash or in-kind) to be Used	Total Funding to be Used
October 1, 2023 - December 31, 2023				$ -
January 1, 2024- March 31, 2024				$ -
April 1, 2024 - June 30, 2024				$ -
July 1, 2024 - September 30, 2024				$ -
Grant Year 2 Subtotals		$ -	$ -	$ -
Entire Grant Period Totals		$ 379,331.80	$ 1,150,595.40	$ 1,529,927.20

N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Conservation Easement Transfer of Entity

The Grantee will be the Easement Holder. In the event the Grantee desires to transfer the easement to a qualified entity herein below described, the ADFP Trust Fund must be notified in writing immediately. This transfer request must be approved by the Farmland Preservation Division Director no later than 60 days before the scheduled closing date.

Qualified entities include county governments, county soil and water conservation districts, or nonprofit conservation organizations as defined by 02 NCAC 58 .0103 (8).

The Grantee will continue to fulfill the Grantee's duties and responsibilities subject to the terms and conditions of the contract. This includes, but is not limited to, submitting budget and progress reports, final closing documents, and requests for payment. Upon recording, the Grantee will give all investments and interests in the easement project to the Easement Holder. Upon transfer and recording the easement, the Easement Holder will assume all responsibilities for monitoring the easement and submitting annual monitoring reports as outlined in the monitoring policy in this contract.

If the Grantee intends to transfer the easement to another entity, please include the name of the entity and contact information:

Entity Name:

Entity Type: County government
County soil and water conservation district
Nonprofit conservation organization

Contact Name:

Contact Email:

Contact Phone:

1. The total surveyed acres referenced in the survey title block must be the same in the conservation easement and all documents on the easement deliverables list, including, but not limited to, the title policy, title opinion, environmental audit, certified development rights appraisal, conservation plan, forestry plan, baseline documentation report, conservation easement language, HUD statement, title commitment, and subordination agreement.

2. The total survey acres contained in the survey title block must be at least to the hundredth decimal point.

3. The minimum standards of specification to be observed in the practice of Land Surveying for Rural and Farmland surveys (Class C) in the State of North Carolina are: The linear error of closure shall not exceed one (1) foot per 5,000 feet of the perimeter of the tract of land (1:5,000).

   For special circumstances when a survey is needed that is not a Class C survey, the following minimum standards of specification are to be observed:

   a. Urban Land Surveys (Class A) – The linear error of closure shall not exceed one (1) foot per 10,000 feet of the perimeter of the tract of land (1:10,000).

   b. Suburban Land Surveys (Class B) – The linear error of closure shall not exceed one (1) foot per 7,500 feet of the perimeter of the tract of land (1:7,500).

4. All surveys shall be tied to the North Carolina State Plane Coordinate System NAD83(2011) Feet per the Standards of Practice for Land Surveying in North Carolina, Title 21 NCAC 56.1602(g) and Title 21 NCAC 56.1607, regardless if the property is not within 2,000 feet of a geodetic monument.

5. The survey must meet all current N.C. recording standards, pursuant to G.S. 47-30, and, if applicable, any recording standards for the county where the property is located.

6. The stated linear error of closure shall be computed by latitudes and departures, and the closure shall be stated before balancing.

7. A map shall be prepared of the tracts surveyed and shall be properly and accurately drawn, revealing all the information developed by and during the survey. The size of the map shall be such that all details can be shown clearly.

8. The certification to be shown on the map shall be in accordance with the example as set forth in the "Manual of Practice for Land Surveying in North Carolina."

9. The title block of each map shall contain the type of easement (ADFPTF, ALE, military, etc.), name of the landowner(s), location, date surveyed, a scale of the drawing, name, address, registration number and seal of the surveyor.

10. The North arrow shall be accurately positioned and designated as N.C. Grid north.

11. The total acres of land owned by the landowner(s) shall be indicated on the survey. The survey shall indicate where the easement area sits in relation to the entire tract owned by the landowner.

12. The total acres under the Conservation Easement shall be broken down as occurs for:

    a. Full easement acres under restrictions.

    b. Farmstead (area included in the easement for farm buildings, storage, shops, etc.)

    c. Residential Lots (ADFP Only Easement) Landowner may elect up to three lots located in the easement area that include but are not limited to homesites and existing residences and are subject to limited restrictions regarding residential living.

13. Property corners shall be adequately identified, marked, and labeled.

14. Two corners of the survey shall have N.C. Grid coordinates (using the current N.C. Grid datum at the time of survey) and be shown on the survey plat.

15. Clear markings of easement boundaries shall be indicated with dark or thicker lines, shading, etc., and clear points of a boundary line change.

16. Courses and distances of boundary lines and other lines shall be lettered neatly thereupon in feet and hundredths of a foot and in degrees, minutes, and seconds, if available.

17. The names of all adjoining owners or utilities bordering on or crossing the premises or tract, the names of the principal and adjoining streams, the names and numbers of roads and highways, easements, ingress and egress, ponds, lake boundaries, and other pertinent details shall be indicated, defined and located on the map if they are visible and cross or form a boundary of the property being surveyed. All control corners, coordinated markers, and permanent markers or monuments on adjoining properties shall be identified and located on the map.

18. Where a boundary of a tract is formed by a curved line, the actual survey data from the point of curvature of the curve to the point of tangency shall be shown on the face of the map. Where a boundary of a tract is formed by a creek or river, offset traverse shall be run and offset points shown on map with reference to boundary points in center of stream as called for in the deed.

19. All easements and encroachments on the property being surveyed shall be accurately located and clearly indicated on the map.

20. The surveyor shall furnish to the ADFPTF a written description for each tract surveyed.

21. The surveyor agrees to fully complete all the surveys herein set out and to furnish the ADFPTF an original copy of each survey together with a written description. Additionally, the surveyor agrees to provide, by e-mail, a DWG file or shapefile before payment is made. The digital file must be tied to the N.C. State Plane Coordinate System (NAD 83) Grid (georeferenced).

22. The AutoCAD or GIS shapefile should contain a polygon clearly identifying the Boundaries of the Conservation Easement. This requirement is an addition to any line work.

23. Legal access from the easement area to the state-maintained road must be shown on the survey.

24. The survey must show all access easements over and across the landowner's property to adjoining tracts. If the easement area is less than the landowner's entire tract of land, the survey must show access to the landowner's remaining parcel of land.

25. Legal access is required for areas of the parcel excluded from the conservation easement. Access easements for ingress, egress, and regress across the conservation easement must be clearly identified on the survey and included in the legal description. Access easements must be a minimum of 20 feet in width unless a larger width is required by the county zoning and planning office, local ordinances, or applicable regulations.

N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Baseline Documentation Report Requirements and Checklist

Baseline documentation reports (BDRs) are important in establishing the condition and characteristics of the land parcel at the time of easement closing and serve as the basis for easement management and monitoring. BDRs also help document how the characteristics of the land support the purposes of the conservation easement and help to justify the expenditure of public funds.

BDRs include narrations, pictures, and maps to provide a complete understanding of a given parcel. It is recognized no two land parcels are the same, and there is an expected level of variation in the contents of BDRs. However, the following requirements, where applicable, are considered a minimum that should be found in all BDRs.

***Note:** *Maps required for each section are emphasized with italics.*

I. **Title Page:** Include the title of the easement as stated in the ADFP Trust Fund contract, (e.g., Rocky Ridge Farm Easement), ADFP Trust Fund tracking number, NCDA&CS contract number, date of the BDR and date of certification, and name, title, and affiliation of the BDR author(s).

II. **Table of Contents:** Include all section headers, maps, and photographic documentation, with page numbers.

III. **Purpose of the Conservation Easement:** Briefly summarize the purposes as found in the easement document.

IV. **Landowner Contact Information:** Names, addresses, email, and phone numbers, etc. of landowners. May also include names, email, and phone numbers of any land managers, gatekeepers, etc. as appropriate.

V. **Property Background:**

a. Include a paragraph summarizing the property, including the following information:

i. Total parcel acreage and easement acreage (if different).

ii. General location in the county.

iii. Inclusion in a Voluntary Agricultural District (VAD) or Enhanced Voluntary District (EVAD) (if applicable).

iv. History of the parcel, if available, including farming operation and land uses.

v. Current land uses.

vi. Environmental Audit (EA) or Environmental Site Assessment (ESA) in accordance with the N.C. ADFP Trust Fund Environmental Audit (EA)

Requirements and Checklist.

vii. Any other significant features identified by the grantee or landowner.

b. Aerial or satellite imagery of the property with the easement boundary map overlay. Include callouts of significant features, including farmsteads and building envelopes, and legal access (ingress/egress) from a publicly maintained road. The features in the map must be tied to the N.C. State Plane Coordinate System (NAD 83) Grid (georeferenced).

c. Location and Physical Setting – General description of the landscape and farming operations in the general area, including adjacent land.

i. Include imagery of area within 5 miles of the easement property, showing the specific location of the parcel. Include all other easements and protected lands in proximity (if applicable).

VI. Impervious Surfaces and Existing Human Modifications: List each permanent structure and other impervious surfaces, showing length/width measurement. Include a calculation of the total extent of impervious structures, the maximum allowable impervious surface area within the easement (2% of total acreage) converted to square feet and acres, and remaining allowable surface area within the easement converted to square feet and acres.

a. Map with labels for all human modifications to the property with the following labeled:

i. structures, roads, trails, dikes and impoundments, wells, fences, utility lines and corridors, cemeteries, trash piles/dumps, etc. within the easement area.

The following is an example of adequate documentation for impervious structures:

The farmstead envelope consists of several farm-related structures and the primary residence. The residence is a 1,970 square feet brick ranch. The creamery building has been restored from the original store building. Two open-sided barns are located within this area.

Photo points 1-7, 15-18, 33, 34. Modifications in this area include the following:

- Barns (2)
- Well (1)
- Creamery Building
- Residence
- Silage storage areas (2)
- Concrete Pad

The dimensions and approximate impervious surface for each of these areas are listed in the table below:

Impervious surface item	Photo point	Dimensions	Impervious surface (sq. ft.)	Impervious surface (acres)
Barn 1, storage shed	17	40’ x 35’	1,400	0.032
Barn 2	18	12’ x 24’	288	0.007
Well	1	10’ x 6'	60	0.001
Creamer building	2	50’ X 40’	2,000	0.046
Residence	34A		2,240	0.051
Silo storage areas	5	80’ x 200'	16,000	0.367
Concrete pad	16	27’ x 24’	648	0.015
Total			**22,636**	**0.519**

The easement allows for a maximum impervious surface area of 2% or 85,987.20 sq. ft. (1.97 acres). Based on the above approximations, a remaining 63,351.44 sq. ft. (1.45 acres) of impervious surface is allowed under the easement.

VII. Existing Land Use and Management:

a. Include the landowner’s objectives for the management of the parcel and current agricultural practices.

b. Statements on the general condition and management of the following key areas:

   i. Pasture and cropland – acreage and percent of land use in the easement (if applicable). Include a summary of the existing conservation plan and practices and the adequacy in achieving management goals.

      1. Include a copy of the current USDA-NRCS or local Soil and Water Conservation District conservation plan (required for crop or pasture land).

   ii. Forest and woodlands – acreage and percent of land use in the easement (if applicable). Include current forestry management plan and practices (e.g., managed for maximum timber production or let stand as a natural area for wildlife habitat).

1. Include a copy of the current forestry management plan developed by the NC Forest Service or a registered private forester (required for 20 or more acres of forestry).

iii. Other significant land uses – acreage and percent of land use in the easement of each (if applicable). Provide general descriptions of uses (e.g., irrigation pond, canals, etc.).

VIII. Land Parcel Topography and Soil Types:

a. **Topography:** Short paragraph summarizing the general topography of the easement area, highlighting any extremes.

i. Contour map (overlay of an aerial/satellite view, if possible) of the property, or the best available map showing the property's elevation profile.

b. **Soils:** The protection of the soil resource base and the sustainable production of food and fiber are essential purposes of conservation easements. Therefore, explaining the soil resources on the easement property is very important. The BDR should include a discussion of all soil types within the land parcel, including a description of each. All soil types and descriptions are available through USDA-NRCS. The following is provided as an example:

There are six soil units mapped on the parcel, as shown on the General Soils Map. Four of the six soils are classified as prime farmland or farmland of statewide importance.

The soil types are as follows: (Note: Only one soil type is shown as an example. All soils shown on the soils map should be listed.)

Georgeville silty clay loam, 2-6% slopes.

GeB2 — Georgeville silty clay loam, 2-6% slopes. Georgeville soils are very deep, well-drained, and moderately permeable. Parent material for the soil is weathered fine-grained metavolcanic rocks. It is a moderately eroded soil found on uplands with elevations ranging from 300-750 feet. It is a well-drained soil with moderate available water capacity. Georgeville is considered a prime farmland soil.

c. Utilize the following table format to list all soils found within the easement area:

Soil Type	Name	Acreage	% of Total	Prime or Statewide Importance? Y/N

i. *Accompanying USDA-NRCS soils map (available through USDA Web Soil Survey) with appropriate labels.*

IX. Descriptions of the Property's Natural Features:

a. **Forest/Woodland**: General description of forest types within the easement area (e.g., hardwood, pine, ornamental, etc.).

   i. *Accompanying stand map or reference map with labeled stands (if applicable).*

b. **Aquatic Features:** List and description of all significant aquatic features (streams water bodies, wetlands, major waterways, etc.). Provide a brief narrative regarding how the easement positively impacts those features.

   i. *Accompanying labeled aquatic map (overlay of an aerial/satellite view, if possible).*

c. **Wildlife and Natural Communities (*Optional*):** List and describe all wildlife habitat and natural communities of significance found within the easement area (e.g., common wildlife, rare and endangered species, etc.).

   i. *Accompanying map of wildlife and natural communities.*

X. Archeological and Historical Features: List and description of all historical features of significance, including cemeteries (if applicable).

a. Labeled map of archeological and historical features on the property (if applicable).

XI. Photographic Documentation: Provide a photographic record of the protected property. This section must include photos that are easily replicable from roads, permanent features, or using GPS waypoints. Photographs are recommended to include timestamps and latitude and longitude.

a. Photographs must be taken at regular intervals along the property line that capture the property in its entirety, including photos from each property corner.

b. Photographs of each permanent structure within each building envelope or farmstead area.

c. If not included above, all other impervious surfaces in the easement.

d. Photographs of any other human modifications to the property (including roads, ditches, dams, etc.).

e. General landscape pictures that are representative of the easement area.

f. Photographic index with descriptions of each photo (photos must have descriptions next to them).

g. *Photographic documentation map with photos numbered. Include a compass direction to note the direction the photo was taken.*

XII. Additional Maps: Accompanying descriptions are optional:

a. *U.S. Geological Survey (USGS) U.S. Topo or 7.5-minute quadrangle topo map.*

b. *General hydrology map.*

XIII. Signature Page (Acknowledgement of Property Condition Form): Signatures of acknowledgment that the landowner(s) agree with the BDR and the condition of the property at the time the easement is placed on the property. A final review, with any applicable updates, of the BDR must be approved 30 business days before closing. **No edits are permitted within five (5) business days before closing.** The BDR must be signed at closing by an authorized signatory of the grantee organization and all landowners listed in the easement.

Baseline Documentation Report Checklist

Introduction and Contacts

	Title Page: Include the title of the easement as stated in the ADFP Trust Fund contract, (e.g., Rocky Ridge Farm Easement), ADFP Trust Fund tracking number, NCDA&CS contract number, date of the BDR and date of certification, and name, title, and affiliation of the BDR author(s).
	Table of Contents: Include all section headers, maps, and photographic documentation, with page numbers.
	Purpose of the Conservation Easement: Briefly summarize the purposes as found in the easement document.
	Landowner Contact Information: Names, addresses, email, and phone numbers, etc. of landowners. May also include names, email, and phone numbers of any land managers, gatekeepers, etc. as appropriate.

Property Background

	Total parcel acreage and easement acreage (if different).
	General location in the county.
	Inclusion in a Voluntary Agricultural District (VAD) or Enhanced Voluntary District (EVAD) (if applicable).
	History of the parcel, if available, including farming operation and land uses.
	Current land uses.
	Environmental Audit (EA) or Environmental Site Assessment (ESA) in accordance with the N.C. ADFP Trust Fund Environmental Audit (EA) Requirements and Checklist.
	Any other significant features identified by the grantee or landowner.
	Map: Aerial or satellite imagery of the property with the easement boundary map overlay. Include callouts of significant features, including farmsteads and building envelopes, and legal access (ingress/egress) from a publicly maintained road. The features in the map must be tied to the N.C. State Plane Coordinate System (NAD 83) Grid (georeferenced).
	Location and Physical Setting – General description of the landscape and farming operations in the general area, including adjacent land.
	Map: Imagery of area within 5 miles of the easement property, showing the specific location of the parcel. Include all other easements and protected lands in proximity (if applicable).

Impervious Surfaces and Existing Human Modifications

	List of each permanent structure and other impervious surfaces, showing length/width measurement.
	Map: All human modifications to the property with the following labeled: structures, roads, trails, dikes and impoundments, wells, fences, utility lines and corridors, cemeteries, trash piles/dumps, etc. within the easement area.

	Calculation of the total extent of impervious structures.
	Calculation of the maximum allowable impervious surface area within the easement (2% of total acreage) converted to square feet and acres.
	Calculation of the remaining allowable surface area within the easement converted to square feet and acres.

Existing Land Use and Management

	Landowner's objectives for the management of the parcel and current agricultural practices.
	Statement on the general condition and management of pasture and cropland. Include acreage and percent of land use in the easement (if applicable). Include a summary of the existing conservation plan and practices and the adequacy in achieving management goals.
	Include a copy of the current USDA-NRCS or local Soil and Water Conservation District conservation plan (required for crop or pasture land).
	Statement on the general condition and management of forest and woodlands. Include acreage and percent of land use in the easement (if applicable). Include current forestry management plan and practices (e.g., managed for maximum timber production or let stand as a natural area for wildlife habitat).
	Include a copy of the current forestry management plan developed by the NC Forest Service or a registered private forester (required for 20 or more acres of forestry).
	Statement on the general condition and management of other significant land uses. Include acreage and percent of land use in the easement of each (if applicable). Provide general descriptions of uses (e.g., irrigation pond, canals, etc.).

Land Parcel Topography and Soil Types

	A short paragraph summarizing the general topography of the easement area, highlighting any extremes.
	Map: Contour map (overlay of an aerial/satellite view, if possible) of the property, or the best available map showing the property's elevation profile.
	Discussion of all soil types within the land parcel, including a description of each.
	Table of all soils found within the easement area. Include soil type, name, acreage, percent of total soils in the easement, and designation as prime or statewide importance.
	Map: USDA-NRCS soils map (available through USDA Web Soil Survey) with appropriate labels that match figures in the table.

Description of the Property's Natural Features

	Optional: List and describe all wildlife habitat and natural communities of significance found within the easement area (e.g., common wildlife, rare and endangered species, etc.).
	Optional: Map: Wildlife and natural communities.

	General description of forest types within the easement area (e.g., hardwood, pine, ornamental, etc.).
	Map: Stand or reference map with labeled stands.
	List and description of all significant aquatic features (streams water bodies, wetlands, major waterways, etc.). Provide a brief narrative regarding how the easement positively impacts those features.
	Map: Aquatic map (overlay of an aerial/satellite view, if possible).

Archeological and Historical Features

	List and description of all historical features of significance, including cemeteries (if applicable).
	Map: Archeological and historical features on the property (if applicable).

Photographic Documentation

	All photos are easily replicable from roads, permanent features, or GPS waypoints. Photographs are recommended to include timestamps and latitude and longitude.
	Photographs at regular intervals along the property line that capture the property in its entirety, including photos from each property corner.
	Photographs of each permanent structure within each building envelope or farmstead area.
	All other impervious surfaces in the easement if not included above.
	Photographs of any other human modifications to the property (including roads, ditches, dams, etc.).
	General landscape pictures that are representative of the easement area.
	Photographic index with descriptions of each photo (photos must have descriptions next to them).
	Map: Documentation map with photos numbered. Include a compass direction to note the direction the photo was taken.

Additional Maps

	Map: USGS US Topo or 7.5-minute quadrangle topo map.
	Map: General hydrology map.

Signature Page

	A final review, with any applicable updates, of the BDR must be approved 30 business days before closing.
	No edits are permitted within five (5) business days before closing.
	Signature of authorized signatory of grantee organization at closing.
	Signature(s) of all landowners listed in the easement at closing.

N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Environmental Audit (EA) Requirements and Checklist

An Environmental Audit (EA) or Environmental Site Assessment (ESA) identifies potential or existing environmental contamination liabilities. The analysis addresses both the underlying land as well as physical improvements to the property.

An EA is a stand alone document, and some required documents included in the EA will match other submitted materials in the survey, baseline documentation report, and title work.

An EA can be conducted by USDA NRCS staff using the latest version of the NRCS Hazardous Materials Checklist and Landowner Interview, local soil and water conservation district staff using the latest version of the NRCS Hazardous Materials Checklist and Landowner Interview or equivalent, or with an environmental firm qualified to conduct Phase I Environmental Site Assessments.

For USDA NRCS Agricultural Land Easement (ALE) projects, only an EA conducted by USDA NRCS staff using the latest version of the NRCS Hazardous Materials Checklist and Landowner Interview will be accepted.

Below are the requirements for an EA for a conservation easement project with the N.C. ADFP Trust Fund (ADFPTF):

1. Map of the Conservation Area associated with the EA that includes any land improvements or special land use features.
    a. Must match the map found in the baseline documentation report.
    b. Acreage of the assessed site must match the surveyed acres of the Conservation Area.
2. Documentation of land ownership associated with the EA, such as a property tax card, land deed, etc.
    a. Must match the preliminary title policy and preliminary attorney's signed title opinion.
3. Description of current land uses.
    a. Must match the uses found in the baseline documentation report.
4. Pictures of land area defined in the EA with the location of pictures identified on a map or survey. Please submit at least one picture for each different land use or land improvement placed on the land parcel.
    a. Must match the pictures found in the baseline documentation report.
5. Any implied and prevalent easement or ingress/egress use must be defined by picture and mapped.
    a. Must match the preliminary conservation easement survey.
6. Any trash, chemical or non-natural land use must be defined by picture and mapped.
7. An environmental opinion review of the land by the agency performing the EA.

8. Date of land parcel visit and site evaluation.

9. Name, signature, and date of the land investigator/reviewer.

10. A completed, dated, and signed Hazardous Materials Checklist and Landowner Interview or equivalent. Approved formats include the latest USDA NRCS versions. Attached is an example.

If on-site or off-site reviews find recognized environmental conditions that negatively impact the property, such as the presence petroleum products or hazardous substances in the subsurface of the site, and these findings necessitate further investigation of environmental conditions with a Phase II ESA or equivalent, the Grantee is required to conduct these assessments.

HAZARDOUS MATERIALS FIELD INSPECTION CHECKLIST

A. BACKGROUND INFORMATION

Clear Form

NRCS PROGRAM	LANDOWNER NAME	
PROPERTY ADDRESS		NUMBER OF ACRES
NEST APPLICATION NUMBER	COUNTY	STATE
FIELD INSPECTOR'S NAME & TITLE		DATE INSPECTED

B. INSTRUCTIONS:

- For each question, indicate if you find any evidence of past or present hazardous materials.
- For any suspected evidence found, display the location on the parcel map and attach photographic evidence as an addendum to this document.
- If you need more room to explain your findings attach additional sheets.
- When complete, attest that a field inspection has been completed and that to the best of your knowledge the information included is accurate.

C. Field Conditions:	Onsite	Nearby	None
1. Dumps or landfills (especially with drums/containers)	☐	☐	☐
2. Other debris: household or farm waste	☐	☐	☐
3. Fills (possible cover for dumps)	☐	☐	☐
4. Unusual chemical odors	☐	☐	☐
5. Above/below ground storage tanks	☐	☐	☐
6. Buildings: chemical storage, equipment repair solvents	☐	☐	☐
7. Structures: evidence of asbestos	☐	☐	☐
8. Vegetation different from surrounding area for no apparent reason (e.g., stressed or dead, bare ground)	☐	☐	☐
9. "Sterile" or modified water bodies	☐	☐	☐
10. Oil seeps, stained ground, discolored stream banks	☐	☐	☐
11. Unnatural characteristics of water: oil slicks, unusual color, etc.	☐	☐	☐
12. Spray operation base: air strip, equipment parking area chemical staging, storage, and mixing areas	☐	☐	☐
13. Machinery repair areas	☐	☐	☐
14. Pipelines, power lines, gas lines	☐	☐	☐
15. Oiled or formerly oiled roads	☐	☐	☐
16. Mounted transformers - evidence of leakage	☐	☐	☐
17. Any mining activity or mining residue: past, present, or future	☐	☐	☐
18. Wastewater treatment equipment, septic system, sewage lagoons	☐	☐	☐

19. Treatment for vegetation or invasive species ☐ ☐ ☐

20. Spills or releases of pollution ☐ ☐ ☐

D. EVIDENCE OF PAST USE (check all that are applicable)

Manufacturing	☐	Scrap metal, auto, or battery recycling	☐
Service station	☐	Military	☐
Dry cleaning	☐	Laboratories	☐
Air Strip	☐	Wood preserving	☐
Pipeline	☐	Tanning	☐
Railroad line	☐	Monitoring wells	☐
Facilities with large electrical transformers	☐	Wells no longer providing water	☐
Petroleum production	☐	Piles of soil, rock, debris	☐
Landfills	☐	Any unnatural topographic features	☐

Other (describe) _____

E. PHYSICAL EVIDENCE OF EASEMENTS OR RIGHTS-OF-WAY (power lines, pipelines, railroads, roads)

F. NEARBY LAND USES: (describe all surrounding land uses – especially those upstream or upgradient)

G. CONTAMINATED SITES RECORD SEARCH:
List all known contaminant sites within a 1-mile radius of the site. Check with Federal or State environmental protection agencies and local authorities. Are there any known hazardous material problems on or near the site (National Priority List, State sites, etc.)? *(Attach additional sheets as necessary)*

H. INTERVIEWS: (Interviewee Name) (Title) (Interview Date)

Present Owner(s) _____

Past Owner(s) _____

County Agent _____

Other Authorities _____

I. AGRICULTURAL HISTORY:

Type, Duration and Extent of Agricultural Activity:

Surface Drains Present ☐ PRESENT ☐ NOT PRESENT

Subsurface Drains Present ☐ PRESENT ☐ NOT PRESENT

J. RECOMMENDATION:

In my professional opinion and based on my inspection of the site this project should move forward:

☐ YES ☐ NO ☐ FURTHER INVESTIGATION NEEDED

K. CERTIFICATION:

I hereby certify that on_____, 20_____I made a personal examination and inspection of the tract or parcel of land identified above, and that I am fully informed as to the boundaries, lines and corners of said tract. Based upon a careful and thorough investigation and inquiry I hereby certify that the *Hazardous Materials Field Inspection Checklist* and the attachments are true to the best of my knowledge and belief.

EXAMINER (Name and Signature)	OFFICIAL TITLE

HAZARDOUS MATERIALS LANDOWNER INTERVIEW

A. Property Information

NRCS PROGRAM	LANDOWNER NAME	
PROPERTY ADDRESS		NUMBER OF ACRES
NEST APPLICATION NUMBER	COUNTY	STATE

Interview Information

INTERVIEWER NAME	INTERVIEW DATE
INTERVIEWEE NAME	INTERVIEWEE PHONE NO.
AFFILIATION WITH PROPERTY (e.g., Owner, Operator, Caretaker, Previous Owner, Tenant, Neighbor)	TIME FRAME OF AFFILITION (YRs & MOs)

"To the Best of Your Knowledge…"

A. Property Uses

1. Do you have or know of the existence of any of the following records related to the property? *(If yes, please provide copies or make them available.)*	**Yes**	**No**	**Copy Attached**	**No Copy Available**
a. Radon, asbestos, or lead-based paint surveys				
b. Environmental compliance audit reports				
c. Environmental permits related to current or previous site activities (e.g., waste disposal permits, wastewater permits, NPDES permits)				
d. Registrations for underground and above-ground storage tanks.				
e. Hazardous materials management plans (Emergency Planning and Community Right-To-Know Act (EPCRA))				
f. Facility safety plans				
g. Preparedness and prevention plans				
h. Spill prevention, control, and countermeasure (SPCC) plans				
i. Hydrogeologic and geotechnical reports on the property or surrounding area				
j. Notices or other correspondence from any government agency relating to past or current violations of environmental laws with respect to the property				
k. Notices or other correspondence from any government agency relating to environmental liens encumbering the property				
l. Hazardous waste generator notices or reports				
m. Risk assessments				
n. Recorded deed or environmental land use restrictions				
o. Other environmental studies or investigations				

2. Has the property ever been used for an industrial or commercial use (e.g., official and unofficial shooting ranges; processing, handling, management, disposal, storage, manufacture, or transportation of hazardous substances or petroleum products, such as a gasoline station, motor repair facility, commercial printing facility, dry cleaners, photographic developing laboratory, methamphetamine laboratory, junkyard, bone yard, or landfill, or as a waste treatment, storage, disposal, processing, or recycling facility). If yes, describe the activities and provide the time frames, types, locations, and quantities of hazardous substance use and storage.
Yes □ No □ Unknown □

_____
_____

3. Has there ever been permitted or planned mining activity or oil and gas exploration or development on the property? If yes, describe the activities and provide the time frames, locations, and scope of operations.
Yes □ No □ Unknown □

_____
_____

4. Has the property ever been used for agricultural purposes, such as livestock or crops? If yes, describe the operations and indicate the locations and time frames involved. Yes □ No □ Unknown □

_____
_____

a. If yes, did the operation involve the use or storage of chemicals such as pesticides, fertilizers, and or solvents? If yes, describe and provide locations and the type, quantity, duration of use, and management practices. Yes □ No □ Unknown □

_____
_____
_____

5. Are there, or have there been, any improvements, such as buildings, water towers, smokestacks, smelters, and old building foundations on the property? If yes, describe each improvement, including construction date for each improvement; location on the property; square footage; past and current uses; dates of major renovations, additions, modifications; number of stories; type of construction; heating and cooling sources; water sources; sewage, solid and hazardous waste disposal; and removal date (if applicable).
Yes □ No □ Unknown □

_____
_____

B. Hazardous Materials and Substances

1. Do the **current** operations on the property involve the use and storage of chemicals? If yes, please describe the operations and indicate the locations, types, and quantities of materials used. Describe locations of chemical storage, mixing, and loading. Discuss any use, storage, mixing, or disposal of automotive or other batteries, pesticides (e.g., insecticides, herbicides, and fungicides), paints, solvents, or other chemicals on fence lines, rights-of-way, or other structures such as airstrips, heliports, or crop duster operations.
Yes □ No □ Unknown □

_____
_____

a) If yes, has there been a spill or release of hazardous substances, petroleum products, or other potential environmental problems on the property associated with **current** operations? If yes, describe the nature and locations of the release and the quantities and types of hazardous substances. This

includes staining or soils and floors in areas utilized for the use and storage of hazardous materials.
Yes □ No □ Unknown □

_____
_____

b) If there had been a spill or release of hazardous substances or petroleum products, did someone report the incident to the National Response Center or a local or State emergency response authority? If yes, identify the agency. Yes □ No □ N/A □ Unknown □

_____
_____

c) If a spill or release of hazardous substances or petroleum products has occurred, has the release been mitigated? If yes, describe the mitigation, identify the lead regulatory agency that oversaw the mitigation and indicate if the lead regulatory agency issued a no-further action (NFA) determination.
Yes □ No □ N/A □ Unknown □

_____
_____

d) If remediation is completed, does the property have contamination or residual contamination? If yes, are there any institutional controls or land use restrictions in place or long-term monitoring and maintenance requirements? Yes □ No □ N/A □ Unknown □

_____
_____

2. Are there any **past operations** at the property that involved the use or storage of hazardous materials and substances? If yes, describe the operations and the locations, types, and quantities of materials.
Yes □ No □ Unknown □

_____
_____

a) If yes, has there been a spill or release of hazardous substances, petroleum products, or other potential environmental problems on the property associated with **past** operations or tenants? If yes, describe the nature and locations of the release and the quantities and types of hazardous substances.
Yes □ No □ N/A □ Unknown □

_____
_____

b) If a spill or release of hazardous substances or petroleum products had occurred, was it reported to the National Response Center or a local or State emergency response authority? If yes, identify the agency. Yes □ No □ N/A □ Unknown □

_____
_____

c) If a release of hazardous substances or petroleum products had occurred, was the release mitigated? If yes, describe the mitigation, identify the regulatory agency that oversaw the mitigation and indicate if the lead regulatory agency issued a no-further action (NFA) determination.
Yes □ No □ N/A □ Unknown □

_____
_____

d) If remediation is completed, does the property now have contamination or residual contamination present? If yes, are there any institutional controls or land use restrictions in place or long-term monitoring and maintenance requirements? Yes □ No □ N/A □ Unknown □

_____

_____

3. Have there ever been any easements, rights-of-way, pipelines, utility lines, railways, entry or exit ports and associated structures, either buried or overhead, crossing the property? If yes, please describe and indicate the locations, approximate construction date, and the owner's identity. Yes □ No □ Unknown □

_____

_____

a) If yes, are you aware of any spills or releases associated with these features? If yes, please describe the spills and releases and indicate the date, type, and quantities of materials involved.
Yes □ No □ Unknown □

_____

_____

b) If a spill or release has occurred, are you aware if the release has been mitigated? If yes, who did the mitigation and what regulatory agency oversaw the mitigation? If known, indicate whether the lead regulatory agency issued a no-further action (NFA) determination. Yes □ No □ N/A □ Unknown □

_____

_____

c) If remediation is completed, are you aware if there the property still has contamination or residual contamination? If yes, are there any institutional controls or land use restrictions in place or long-term monitoring and maintenance requirements? Yes □ No □ N/A □ Unknown □

_____

_____

4. Are you aware if the property's topography has been altered or if the property has any unnatural topographic features present? If yes, please describe the topographic alterations or unnatural features. Indicate their locations on the property and, if known, when the alterations occurred and by whom.
Yes □ No □ Unknown □

_____

_____

5. Has fill material ever been brought onto the property that originated from a contaminated site or that was of an unknown origin? If yes, describe the date and quantity of material brought to the property, indicate the location where the material was placed. Yes □ No □ Unknown □

_____

_____

a) If fill material came from a contaminated site, identify the fill's origin and describe the contamination.

_____

_____

b) Is there any evidence that waste materials were dumped above grade, buried, or burned, either currently or previously, on the property? Examples include hazardous materials, petroleum products, labeled or unlabeled drums or containers, pesticide containers, household and farm debris, automotive

or industrial batteries, building demolition debris, or other waste materials. Yes □ No □ Unknown □

_____

_____

6. Are there any floor drains in the onsite structures or areas where chemicals (e.g., waste oil, antifreeze, solvents, and pesticides) were used or stored? If yes, indicate the locations of the structures and the types, quantities, and time frames related to the associated chemical use or storage. For each area or structure, also indicate the discharge location for the floor drains. Yes □ No □ Unknown □

_____

_____

7. Do the walls, floors, or ceilings of the structures used to store hazardous materials have any chemical stains? If yes, indicate the areas in each structure that has chemical staining. Yes □ No □ Unknown □

_____

_____

8. Are there or have there been any floors, drains, walls, or ceilings stained by substances other than water or that are emitting foul or unnatural odors (e.g., mold, mildew, algae)? If yes, describe the locations and the nature of the past and current site operations. Yes □ No □ Unknown □

_____

_____

9. Are there electrical transmission lines, transformers, capacitors, lighting ballast, or hydraulic equipment (e.g., elevators, presses, lifts, or doors) on the property? If yes, identify the locations and approximate age of the equipment. Yes □ No □ Unknown □

_____

_____

   a) If the site has electrical transmission lines, transformers, capacitors, lighting ballast, or hydraulic equipment, has testing been done to determine the presence of polychlorinated biphenyls (PCBs) or has any onsite equipment contained PCBs? If yes, indicate the locations, type of equipment, and dates. Yes □ No □ Unknown □

   _____

   _____

   b) If the site has or had PCBs, are you aware of any release of PCBs that have occurred? If yes, describe the release and indicate the date, locations and whether the release was mitigated. Yes □ No □ N/A □ Unknown □

   _____

   _____

10. Has there ever been any mercury-containing equipment (e.g., switches, thermostats, thermometers, manometers, or sink traps) on the property? If yes, indicate the locations and type of equipment and dates. Yes □ No □ Unknown □

_____

_____

11. Are you aware of any radon, asbestos-containing materials, or lead-based paint on the property? If yes, indicate the type, locations and dates. Yes □ No □ Unknown □

_____

_____

a) If yes, has anyone done any radon, asbestos-containing materials, or lead-based paint surveys on the property? If yes, indicate whether radon, asbestos-containing materials, or lead-based paint has been identified in any onsite buildings. Identify the dates of the surveys, the structures, the results, and condition of the materials. Yes □ No □ Unknown □

_____

_____

12. Is there current or past use of above-ground or underground storage tanks, including drums or other fuel containers, on the property? If yes, identify the tanks locations, installation dates, and the types and quantities of materials stored. If the tanks were removed, indicate the removal date and whether the lead regulatory agency issued a closure certification notice. Yes □ No □ Unknown □

_____

_____

a) If above-ground or underground storage tanks are or were used on the property, was there ever a spill or release of hazardous substances associated with the tank system? If yes, indicate the date and nature of the spill or release. Yes □ No □ Unknown □

_____

_____

b) If a spill or release has occurred related to an onsite tank system, was it mitigated to the satisfaction of the lead regulatory agency? If no, describe further actions that must be undertaken to address the spill or release. Yes □ No □ N/A □ Unknown □

_____

_____

13. Are you aware of any hazardous substance or pollutant or contaminant spill or release, or other potential environmental problems on any **adjacent or nearby properties**? If yes, please describe (if known) the locations of the release, the type and quantities of materials involved, and the approximate dates. If known, also indicate the owner of the property where the release occurred. Yes □ No □ Unknown □

_____

_____

a) If there was a release of hazardous substances, petroleum products on any **adjacent or nearby properties** are you aware if the release was mitigated? Yes □ No □ N/A □ Unknown □

_____

_____

b) Are you aware of contamination or residual contamination on **adjacent or nearby properties** that poses a threat or may pose a future threat to the property? If yes, describe the threat or potential threat. Yes □ No □ Unknown □

_____

_____

c) Are you aware of any institutional controls, land use restrictions, long-term monitoring, or maintenance requirements in place on **adjacent or nearby properties** that affect the property? If yes, please describe and identify the adjacent or nearby property and the property owner. Yes □ No □ N/A □ Unknown □

_____

_____

C. Water and Wastewater

1. Does the property currently or has it ever been supplied by an onsite drinking water supply well? If yes, provide the well locations and construction dates. Yes □ No □ Unknown □

_____

_____

   a) Have contaminants ever been identified in the onsite drinking water well or the water system that exceeded acceptable levels? If yes, describe the contamination and indicate the dates, contaminant levels and the source of the contamination, if known. Yes □ No □ N/A □ Unknown □

   _____

   _____

   b) If an onsite drinking water well is no longer used, has it been properly abandoned according to applicable regulatory requirements? If yes, indicate the date the well was abandoned.
   Yes □ No □ N/A □ Unknown □

   _____

   _____

2. Has the property ever had an onsite wastewater treatment and disposal systems (e.g., septic systems or sewage lagoons). If yes, please describe of the system, including the locations, size, date constructed, and which buildings discharge to the system. Yes □ No □ Unknown □

_____

_____

   a) If the onsite wastewater treatment and disposal system is no longer used, has it been closed? If yes, describe method of closure and date closed. Yes □ No □ N/A □ Unknown □

   _____

   _____

3. Does the property have any monitoring wells? If yes, explain the purpose of the wells and provide the locations, dates of construction, and any analytical results. Yes □ No □ Unknown □

_____

_____

   a) If the monitoring wells are no longer used, were they properly abandoned according to applicable regulatory requirements? If yes, indicate the date the well was abandoned.
   Yes □ No □ N/A □ Unknown □

   _____

   _____

4. Does the property have surface water (e.g., pits, ponds, lagoons, rivers, creeks, or oceans)? If yes, describe the locations and type of surface water. Yes □ No □ Unknown □

_____

_____

   a) If the property has surface water, are you aware of any unnatural characteristics such as color, sheens, odors, or sterility? If yes, please describe and indicate whether the situation is new or pre-existing.
   Yes □ No □ N/A □Unknown □

   _____

   _____

5. Has the property ever discharged industrial or other wastewater (excluding storm water runoff or sanitary wastewater discharges from restrooms, kitchens, or other household-type uses) onto or adjacent to the property? If yes, describe the discharge and indicate the locations and dates. Yes □ No □ Unknown □

_____

_____

D. Compliance/Permits

1. Have there been any environmental permits or licenses issued for current or past operations associated with the property (e.g., air quality, water discharge, or landfills)? If yes, describe the permitted operations, indicate the permitting agency, date the permit was issued, and whether the permit is still effective.
Yes □ No □ Unknown □

_____

_____

2. Are you aware of any environmental liens against the property that were filed or recorded under Federal, Tribal, State or local law? If yes, describe the lien and indicate the date and effect on the current and future use of the property. Yes □ No □ Unknown □

_____

_____

3. Are you aware of any activity and land use limitations that are in place on the property or that were filed or recorded under Federal, Tribal, State or local environmental laws? If yes, describe the land use restrictions, identify the party that issued the restrictions and the date. Yes □ No □ Unknown □

_____

_____

4. Are you aware of any compliance or enforcement notices relating to past or current violations of environmental laws with respect to the property or any facility on the property? If yes, describe the violations and the dates involved. Yes □ No □ Unknown □

_____

_____

5. Are you aware if any environmental site assessment, or other environmental investigations, of the property, or any other property or site records ever indicated the presence of hazardous substances, petroleum products, or other potential environmental problems on the property? If yes, describe the report and findings.
Yes □ No □ Unknown □

_____

_____

6. Are you aware of any environmental site assessment, or other environmental investigations, of the property, or any other property or site records that recommended further assessment of the property? If yes, identify the report and indicate if the further assessment was done. Yes □ No □ Unknown □

_____

_____

7. Are you aware of any past, threatened, or pending lawsuits or administrative proceedings concerning a release or threatened release of any hazardous substances or petroleum products on the real property? If yes, describe the action and identify the party that is initiating the action. Yes □ No □ Unknown □

_____

_____

E. Other

1. Are you aware any past or current occurrences of anomalous vegetation (e.g., stressed or dead) on the property? If yes, indicate the locations and approximate dates. Yes □ No □ Unknown □

_____

_____

2. Are you aware of the presence of invasive or non-native plants on the property? If yes, please indicate the locations and names (e.g., kudzu, *Phragmites*, cheatgrass), if known, and approximate area covered by the plants. Yes □ No □ Unknown □

_____

_____

   a) If yes, has there been any attempt to remove or eradicate the invasive species? If yes, explain what was attempted and if it was successful? Yes □ No □ Unknown □

   _____

   _____

   b) Have any vegetative control programs (e.g., along transmission lines, fence lines, rights-of-ways, or pipelines) been done on the property? If yes, describe the program and types of activities. Yes □ No □ Unknown □

   _____

   _____

3. If not mentioned above, is there anything else that could indicate the presence of hazardous substances, petroleum products or other environmental conditions that may affect the property? Yes □ No □ Unknown □

_____

_____

_____

INTERVIEWEE SIGNATURE:

INTERVIEWEE SIGNATURE	
INTERVIEWEE NAME	DATE

INTERVIEWER SIGNATURE:

INTERVIEWER SIGNATURE	OFFICIAL TITLE
INTERVIEWER NAME	DATE

N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Appraisal Checklist

Certified Development Rights Appraisals ("Appraisals") will only be accepted and approved by the Agricultural Development and Farmland Preservation Trust Fund (ADFPTF) if the following qualifications are met and documentation of such is provided in the appraisal.

1. The acres used to determine the easement value in the appraisal must be equal to the acres in the survey of the conservation easement area. A survey of the property must be included in the appraisal.

2. A qualified appraisal and appraiser must meet the definitions of such set forth in U.S. Public Law 109-280 (https://www.govinfo.gov/content/pkg/PLAW-109publ280/html/PLAW-109publ280.htm). In addition, the appraiser must provide documentation of completion of a valuation of conservation easements or eminent domain appraisal course and be familiar with conducting appraisals of rural and agricultural properties of the requested type.

3. The ADFPTF does not pay for property appraisals. The eligible entity (Grantee of the ADFPTF easement) must order the appraisal and be identified as the client. The landowner may not be the client but may be listed as an intended user.

4. Based on the funding partnerships, the following types of appraisals shall be used to determine the effect of the conservation easement on the subject property:
    a. ADFPTF as the sole funding source:
        i. Uniform Standards of Professional Appraisal Practice (USPAP)
        ii. Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or "Yellow Book") appraisal
    b. USDA NRCS partnership projects:
        i. Uniform Standards of Professional Appraisal Practice (USPAP)
        ii. Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or "Yellow Book") appraisal
    c. Military partnership projects:
        i. Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or "Yellow Book") appraisal

5. Final conservation easement values must be determined by a Certified Development Rights Appraisal dated within the contract period and dated less than 365 days prior to closing. Supplemental appraisals, updated opinion letters, or reaffirmation letters by the appraiser for the original appraisal are acceptable if a closing occurs 365 days after issuance of the Certified Development Rights Appraisal, provided the appraiser certifies the land value with an updated effective date of valuation.

6. For the purposes of updating the values of the conservation easements for the federal permanent conservation easement tax incentive, supplemental appraisals, updated opinion letters, or reaffirmation letters by the appraiser for the original appraisal may be submitted within 60 to 32 days before a potential closing date pending the approval of all

funding partners. All other deliverables must be approved if submitting an update. No appraisals, supplemental appraisals, updated opinion letters, or reaffirmation letters by the appraiser for the original appraisal will be accepted 30 days before a potential closing date or end of a contract. ***Please note: the N.C. Department of Agriculture and Consumer Services does not provide tax or legal advice to entities or individuals. Before considering a supplemental appraisal, updated opinion letter, or reaffirmation letter by the appraiser for the original appraisal within 60 of the potential closing, consult with your appraiser and tax or legal advisors.***

7. The appraiser must prepare two opinions of the value of the subject property: one before placement of the conservation easement and the second after placement of the conservation easement. The after condition or second value will be based upon a hypothetical condition that the conservation easement is in place and the effects on the value that may be created. The difference in the two values is the proposed conservation easement's effect on the property's value.

8. The property rights, such as mineral, water, timber, and hunting, must be owned in fee simple terms by the current landowners. Surface rights, such as structures, barns, hay sheds, fencing, orchards, or other plantings, and any irrigation water rights, including but not limited to wells, ditches, ponds, and lakes that provide irrigation on the subject property and are legally permitted, may be appraised. Crop base and allotments, including other plantings on the subject property, may be appraised and included in any valuations.

9. The highest and best use conclusion must be supported by market evidence. A noneconomic highest and best use, such as "forever wild" or "natural lands," or any use that requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to base an estimate of market value. Nearby transactions comparable to the land under appraisement and reasonably current may provide the best evidence of market value.

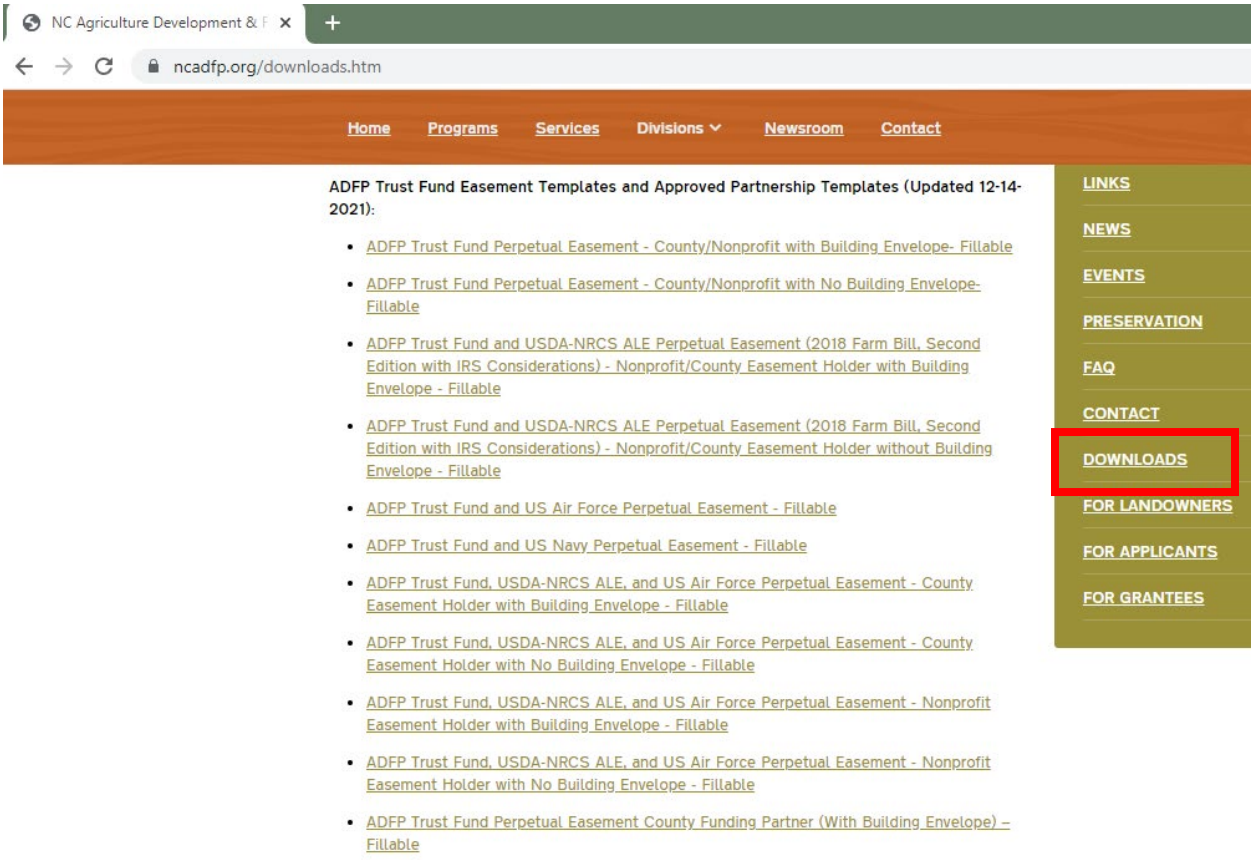
10. Every effort must be made to provide comparable conservation easement encumbered sales. A sales adjustment chart that summarizes the adjustments, shows the final adjusted sale price, and how the sales compare with the subject property is required. Market evidence and supporting narrative shall be provided for each adjustment used.

11. The contract appraiser must be aware that all appraisal reports completed for ADFPTF grants will be used by staff who will rely on the details in the report to understand the property and market characteristics. The appraisal report must include the level of detail necessary to thoroughly explain and support the property description, highest and best use analysis, market characteristics, adjustment process, and all conclusions so that all users have an adequate understanding of the statements, opinions, and conclusions offered within the report.

Conservation Easement Content

Please visit our website to view and download the current version of the appropriate conservation easement template for this project. Please ensure you use the most recent version of the appropriate template.

1. Go to www.ncadfp.org
2. Click on the Downloads tab
3. Click on the appropriate template to download the most recent version



N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Closing Agent Requirements for Easement Programs

***Grantees**: The Closing Agent **must** complete the Closing Agent Requirements for Easement Programs Form, State of North Carolina Substitute W-9 Form, and State of North Carolina Vendor Electronic Payment Form.*

*If a Grantee does not have a Closing Agent at the time of grant award contract execution, the future Closing Agent **must** complete the Closing Agent Requirements for Easement Programs Form, State of North Carolina Substitute W-9 Form, and State of North Carolina Vendor Electronic Payment Form at least **60 days** prior to a tentative conservation easement closing date.*

Due to the vendor registration requirements of the Office of State Controller, there are no exceptions to this 60-day policy.

N.C. Agricultural Development and Farmland Preservation Trust Fund (NCADFPTF) Easement Program (check only one):

☐ NCADFPTF Easement
☐ NCADFPTF and USDA-NRCS ALE Easement
☐ NCADFPTF and US Air Force Easement
☐ NCADFPTF and US Navy Easement
☐ NCADFPTF, USDA-NRCS ALE, and US Air Force Easement

- For Agricultural Conservation Easement Program Agricultural Land Easements (ACEP-ALE) transactions, these requirements and instructions are in addition to any closing instructions provided by the United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS).

The Parties to this transaction are as follows:

State of North Carolina:
N.C. Dept. of Agriculture & Consumer Services
NC ADFP Trust Fund
2 West Edenton Street
Raleigh, NC 27601

Landowner/Grantor (name & address below**):**

_____

_____

_____, _____ _____

N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Closing Agent Requirements for Easement Programs

Eligible Entity/Grantee (name & address below**):**

_____

_____

_____, _____ _____

The closing agent must:

1. Acknowledge that he or she has up-to-date knowledge of the General Statutes of North Carolina pertaining to conducting real estate transactions and obtaining title clearance.

2. Certify that he or she is an attorney duly licensed to practice law in the State of North Carolina.

3. Certify that the title insurance company issuing the title commitment and final policy of title insurance is approved by the North Carolina Insurance Commissioner.

4. Provide all Parties evidence of liability insurance coverage or indemnification in an amount equal to or greater than the easement purchase value paid from State Funds for each NCADFPTF easement. Further, closing agent agrees to provide reimbursement to NCAD&CS for any loss of State funds caused by errors, omissions, fraud, dishonest, negligence, or failure by the attorneys, agents or closing agent employees to comply with written closing instructions.
    a. The American Land Title Association (ALTA) closing protection letter revised 4/2/2014 is satisfactory to meet this condition of responsibility.

5. Certify that he or she will not close on an easement purchase for his or her spouse, children, partners, or business associates, and that he or she does not have a financial interest in the real estate to be covered by the proposed easement.

6. Upon approval of the Grantee's submission of a Request for Payment form and an Easement Closing Check Request form, the NCADFPTF will submit the required documentation to the Grants and Contracts office to transmit the NCADFPTF portion of the purchase price for the acquisition (i.e.; State funds). The Request for Payment form, Easement Closing Check Request form, and all required documents must be submitted in one complete package to the NCADFPTF no later than 30 days before the proposed closing dates. The funds will be sent by electronic fund transfer (EFT) to closing agent's escrow account.
    a. Errors in the Grantee's forms and documents, or outdated State of North Carolina Substitute W-9 Form and State of North Carolina Vendor Electronic Payment Form for the Grantee or Closing Agent may cause delays in the EFT.

7. Agree to close the easement transaction within 30 calendar days of receipt of the State funds.

8. Acknowledge that costs to clear title defects are the responsibility of the landowner.

9. Return the easement funds and any accrued interest in accordance with NCADFPTF instructions if the conservation easement is not closed within 30 calendar days of receipt of the State funds.

10. Certify that he or she will:
    a. Examine the real estate records and certify title for a period of at least sixty years.
    b. Immediately prior to closing, examine the real estate records covering the time from the effective date of the title commitment to the date of closing to determine that no new encumbrances have been recorded against the subject property, no adverse change in title has occurred and that there are not intervening matters affecting the title that might result in a new title exception on the policy. Notify NCADFPTF of any such changes or matters that are discovered, and delay the closing, the recording of the deed, and the disbursement of funds pending consultation with NCDAFPTF.
    c. Obtain the property executed conservation easement deed from the landowner and any other required signatory parties.
    d. Comply with any listed title commitment requirements.
    e. Obtain and record as instructed the properly executed curative documents for any items required to be removed, released, subordinated, waived, or otherwise handled as required by the title commitment or proforma policy and closing instructions.
    f. Secure the policy of title insurance referred to below.
    g. Ensure all taxes, homeowners' assessments, etc. are current as of the date the conservation easement deed is recorded.
    h. Record the conservation easement deed within 2 business days of execution.
    i. Complete Internal Review Service (IRS) tax reporting Form 1099 for the full easement compensation amount, as identified in the conservation easement deed.

11. Immediately following closing, issue policies of title insurance free and clear of any and all encumbrances (exceptions) to the title except those that NCADFPTF, have determined to be acceptable. ***See attached NCDAFPTF title requirements.***

12. Certify that the following package will be delivered within five (5) business days of receipt of recorded documents form the local land records office to NCADFPTF:
    a. Policy of title insurance (original and one copy) on the appropriate form.
    b. Recorder's certified copy of the recorded conservation easement deed and a recording receipt.
    c. Recorder's certified copies of any curative documents, including subordination agreements.
    d. Original and one copy of executed settlement statements.
    e. Record of disbursement of funds to the landowner.

13. Acknowledge receipt and agree to comply with the terms of these requirements by promptly signing and returning a signed copy of these closing agent requirements to NCADFPTF.

14. Provide a complete State of North Carolina Substitute W-9 Form and State of North Carolina Vendor Electronic Payment Form with this document.
    a. Per the Office of State Controller, the State of North Carolina Substitute W-9 Form and State of North Carolina Vendor Electronic Payment Form must be dated within one year prior to transmitting funds to the closing agent's escrow account. Updated forms must be submitted before requesting funds.

N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Closing Agent Requirements for Easement Programs

By signing this "Closing Agent Requirements for Easement Programs", I am certifying that I meet the requirements set forth herein, which ensure that the State funds received for the purchase of the subject easement are handled in a manner that protects the interest of the State of North Carolina.

_____ _____
Signature of Closing Agent Date

_____
Name of Closing Agent

By signing this "Closing Agent Requirements for Easement Programs", I concur with the closing agent's qualifications.

_____ _____
Signature of Grantee Representative Date

_____
Name and Title of Grantee Representative

N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Closing Agent Requirements for Easement Programs

NCADFPTF Title Insurance Requirements

Landowner:

Contract No.:

Title Company:

Title Commitment No.:

Title Commitment Date:

1. All Requirements listed in Schedule B – Part I of the title commitment must be met.

2. All taxes, homeowner assessments, etc. must be paid to the date the Agricultural Land Easement is recorded.

3. Exception 6 must be revised "Terms and conditions of those restrictions, conditions and obligations as set forth in instrument recorded in Book _____, Page _____, _____ County Registry that limit and/or restrict the rights of the Grantee."

4. All other Exceptions listed in Schedule B – Part II are acceptable.

REV 01/2019

NC Office of the State Controller
(IRS Form W-9 will not be accepted in lieu of this form)
***Denotes a Required Field**

STATE OF NORTH CAROLINA
SUBSTITUTE W-9 FORM
Request for Taxpayer Identification Number

Section 1 – Taxpayer Identification

***1.** Social Security Number (SSN), OR Employer Identification Number (EIN), OR Individual Taxpayer Identification Number (ITIN) ***2.** (PRESS THE TAB KEY TO ENTER EACH NUMBER)	Please select the appropriate Taxpayer Identification Number (EIN, SSN, or ITIN) type and enter your 9-digit ID number. The U.S. Taxpayer Identification Number is being requested per U.S. Tax Law. Failure to provide this information in a timely manner could prevent or delay payment to you or require The State of NC to withhold 24% for backup withholding tax.
***4. Legal Name** (as shown on your income tax return): **5. Business Name/DBA/Disregarded Entity Name, if different from Legal Name:**	**3. Dunn & Bradstreet Universal Numbering System (DUNS) (see instructions)** (PRESS THE TAB KEY TO ENTER EACH NUMBER)

Contact Information

***6. Legal Address** (DO NOT TYPE OR WRITE IN THIS FIELD)	**7. Remittance Address** (Location specifically used for payment that is different from Legal Address, if applicable)
***Address Line 1:**	**Address Line 1:**
Address Line 2:	**Address Line 2:**
***City** ***State** ***Zip (9 digit)**	**City** **State** **Zip (9 digit)**
***County**	**County**

***8. Contact Name:**	
***9. Phone Number:**	
10. Fax Number:	
11. Email Address:	

***12. Entity Type**	***13. Entity Classification**	**14. Exemptions (see instructions)**
Individual/Sole Proprietor/Single-member LLC C-Corporation S-Corporation Partnership Trust/Estate Other_____ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) _____ **Note:** Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.	Medical Services Legal/Attorney Services NC Local Govt Federal Govt NC State Agency Other Govt Other (specify)	Exempt payee code (if any): Exemption from FATCA reporting code (if any):

Section 2 -Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding because of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined later in general instructions), and
4. The FATCA code(s) entered on this form (if any) indicting that I am exempt from FATCA reporting is correct.

Certification instructions: Please refer to the IRS Form W-9 located on the IRS Website **(https://www.irs.gov/)**:

***Printed Name:**		***Printed Title:**	
***Authorized U.S. Signature:**		***Date:**	

Please complete the "Modification to Existing Vendor Records" section below If there have been any changes to the following: Tax Identification Number (TIN), Legal Name, Business Name, Remittance Address

Return to the NC State Agency from which you are requesting payment.

NC Office of the State Controller *Denotes a Required Field This form is to be completed by the vendor.	**STATE OF NORTH CAROLINA SUBSTITUTE W-9 FORM Modification to Existing Vendor Records**	

This form is to be completed by the vendor if one or more of the following have changed:

1. Change of remittance address.
2. Change of Social Security Number (SSN), or Employer Identification Number (EIN), or Individual Taxpayer Identification Number (ITIN).
3. Change of Vendor Name.

Please complete the applicable sections below.

Section 1:

CHANGE FROM: Remittance Address		
***Address Line 1:**		
Address Line 2:		
***City**	***State**	***Zip (9 digit)**
***County**		

CHANGE TO: Remittance Address		
***Address Line 1:**		
Address Line 2:		
***City**	***State**	***Zip (9 digit)**
***County**		

NOTE: If you would like to receive your payments electronically, please complete the Vendor Electronic Payment Form

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Section 2:

* **CHANGE FROM: SSN, or EIN, or ITIN**	* **CHANGE TO: SSN, or EIN, or ITIN**
(PRESS THE TAB KEY TO ENTER EACH NUMBER)	(PRESS THE TAB KEY TO ENTER EACH NUMBER)

Section 3:

CHANGE FROM: Vendor Name	**CHANGE TO: Vendor Name**
***Legal Name:**	***Legal Name:**
Business Name/DBA/Disregarded Entity Name, if different from Legal Name:	**Business Name/DBA/Disregarded Entity Name, if different from Legal Name:**

***Printed Name:**		***Printed Title:**	
***Authorized U.S. Signature:**			* **Date:**

General Instructions

For General Instructions, please refer to the IRS Form W-9 located on the IRS Website (https://www.irs.gov/).

Specific Instructions

Section 1 -Taxpayer Identification

1. Taxpayer Identification Type. Check the type of identification number provided in box 2.

2. Taxpayer Identification Number (TIN). Enter taxpayer's nine-digit Employer Identification Number (EIN), Social Security Number (SSN), or Individual Taxpayer Identification Number (ITIN) without dashes.

Note: If an LLC has one owner, the LLC's default tax status is "disregarded entity". If an LLC has two owners, the LLC's default tax status is "partnership". If an LLC has elected to be taxed as a corporation, it must file IRS Form 2553 (S Corporation) or IRS Form 8832 (C Corporation).

3. Dunn and Bradstreet Universal Numbering System (DUNS). Vendors are requested to enter their DUNS number, if applicable.

4. Legal Name. Enter the legal name as registered with the IRS or Social Security Administration. In general, enter the name shown on your income tax return. Do not enter a Disregarded Entity Name on this line.

5. Business Name. Business, Disregarded Entity, trade, or DBA ("doing business as") name.

Contact Information

6. Enter your **Legal Address.**

7. Enter your **Remittance Address, if applicable.** A **Remittance Address** is the location in which you or your entity receives business payments.

8. Enter the **Contact Name.**

9. Enter your **Business Phone Number.**

10. Enter your **Fax Number**, if applicable.

11. Enter your **Email Address**, if applicable.

For clarification on IRS Guidelines, see www.irs.gov.

12. Entity Type. Select the appropriate entity type.

13. Entity Classification. Select the appropriate classification type.

Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the Exemptions box, any code(s) that may apply to you. See Exempt payee code and Exemption from FATCA reporting code below.

14. Exempt payee code. Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends. Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following codes identify payees that are exempt from backup withholding:
1 - An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
2 - The United States or any of its agencies or instrumentalities
3 - A state, the District of Columbia, a possession of the United States, or any of their political subdivisions, or instrumentalities
4 - A foreign government or any of its political subdivisions, agencies, or instrumentalities
5 - A corporation
6 - A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States
7 - A futures commission merchant registered with the Commodity Futures Trading Commission
8 - A real estate investment trust
9 - An entity registered at all times during the tax year under the Investment Company Act of 1940
10- A common trust fund operated by a bank under section 584(a)
11 - A financial institution
12 - A middleman known in the investment community as a nominee or custodian
13 - A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

If the payment is for…	THEN the payment is exempt for…
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over $600 required to be reported and direct sales over $5,000[1]	Generally, exempt payees 1 through 5[2]
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

[1] See Form 1099-MISC, Miscellaneous Income, and its instructions.

[2] However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements.

A - An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)
B - The United States or any of its agencies or instrumentalities
C - A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities
D - A corporation the stock of which is regularly traded on one or more established securities markets, as described in Reg. section 1.1472- 1(c)(1)(i)
E - A corporation that is a member of the same expanded affiliated group as a corporation described in Reg. section 1.1472-1(c)(1)(i)
F - A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state
G - A real estate investment trust
H - A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940
I - A common trust fund as defined in section 584(a)
J - A bank as defined in section 581
K - A broker
L - A trust exempt from tax under section 664 or described in section 4947(a)(1)
M - A tax exempt trust under a section 403(b) plan or section 457(g) plan

Section 2 - Certification

To establish to the paying agency that your TIN is correct, you are not subject to backup withholding, or you are a U.S. person, or resident alien, sign the certification on NC Substitute Form W-9. You are being requested to sign by the State of North Carolina.

For additional information please refer to the IRS Form W-9 located on the IRS Website (https://www.irs.gov/).

Office of the State Controller
Return to: OSC Support Services Center
Address: 1410 Mail Service Center
Raleigh, NC 27699-1410
Email: osc.support.services@osc.nc.gov
Telephone: 919-707-0795

Vendor Electronic Payment Form

New Add Request
Change/Update Existing Account
Inactivate Existing Account

***Denotes a required field**

The State of North Carolina offers payees the opportunity to receive payments electronically through U.S. based banks. In addition to having the funds deposited electronically, you will also receive remittance information by e-mail.

We require you to submit a copy of a voided check, bank statement, or a bank authorization letter on bank letterhead signed by a bank representative for account verification.

***TAX ID # or SSN**

***PAYEE NAME**

***REMITTANCE ADDRESS**
(AS PRINTED ON YOUR INVOICE)

STREET | SUITE/ROOM #

CITY | STATE | ZIP CODE

***CONTACT**

NAME & TITLE | PHONE NUMBER

NEW FINANCIAL INFORMATION

***FINANCIAL INSTITUTION NAME:**	
***NAME ON ACCOUNT:**	
***NEW ROUTING NUMBER:**	
***NEW ACCOUNT NUMBER:**	
***ACCT TYPE:**	Checking Savings
***REMIT E-MAIL ADDRESS**	

New add requests MUST include contact information for the state agency with which you are doing business.

***North Carolina Agency Name:**	***North Carolina Agency Contact Name:**
***North Carolina Agency Contact Email Address:**	***North Carolina Agency Contact Phone Number:**

PRIOR FINANCIAL INFORMATION (only required for updates)

FINANCIAL INSTITUTION NAME:	
NAME ON ACCOUNT:	
ROUTING NUMBER:	
ACCOUNT NUMBER:	
ACCT TYPE:	Checking Savings
REMIT E-MAIL ADDRESS	

*	ALL BOXES BELOW MUST BE REVIEWED AND CHECKED
	I acknowledge that electronic payments to the designated account must comply with the provisions of U.S. law, and the requirements of the Office of Foreign Assets Control (OFAC). I affirm the entire amount of the payment will not be transferred to a foreign bank account.
	I authorize the Office of the State Controller to initiate ACH payments, and if necessary, adjustments for any ACH payments in error, to the financial institution and account identified on the attached certification document. This authority will remain in effect until I, the vendor, cancel it in writing or the authority is terminated by the NC Office of the State Controller.
	I have attached a copy of a **current** voided check, current bank statement, or a bank authorization letter on bank letterhead signed by a bank representative.

***PRINT NAME:**	***DATE:**
***SIGNATURE:**	***PHONE NUMBER:**

Instructions *** Denotes a required field on the form**

1. *Check the appropriate box at the top of the form:

   - New Add Request – Vendor would like to begin receiving payments via ACH.
   - Change/Update Existing Account – Vendor's account number, routing number, or remittance email address has changed.
   - Inactivate Existing Account – Vendor no longer wants to receive payments via ACH.

2. *Enter the vendor's Tax Identification Number or Social Security Number.

3. *Enter the Payee Name – The name of the person or business receiving payment.

4. *Enter the vendor's remittance address. The remittance address is the address printed on your invoice where payments should be sent.

5. *Enter the vendor's contact name, title, and phone number.

6. *Enter the vendor's financial information:

   - Financial Institution Name – Name of the financial institution.
   - Name on Account – The account owner's name.
   - Routing Number – Nine-digit number identifying the financial institution.
   - Account Number – The bank account number where the funds should be deposited.
   - Account Type – Is this a checking or savings account? Check the appropriate box.
   - Remit E-mail address - Enter the email address to which the remittance advices should be sent.

7. *For a **new add request only**, provide the following:

   - North Carolina State Agency Name – The state agency the vendor is doing business with.
   - North Carolina State Agency Contact Name – The vendor's contact person name at the state agency.
   - North Carolina State Agency Contact Email Address – The contact person's email address at the state agency.
   - North Carolina State Agency Contact Phone Number – The contact person's phone number at the state agency.

   NOTE: New add requests MUST include contact information for the state agency with which you are doing business.

8. Prior Financial Information – this is required if the vendor's bank account, routing number, or remittance email address has changed.

   - Financial Institution Name – Name of the prior financial institution.
   - Name on Account – The account owner's name.
   - Routing Number – Nine-digit number identifying the prior financial institution.
   - Account Number – The bank account number where the funds were being deposited.
   - Account Type – Is this a checking or savings account? Check the appropriate box.
   - Remit E-mail address - Enter the email address to which the remittance advices were being sent.

9. *Review all the information in the 3 attestation boxes located above the signature area. All 3 boxes must be checked – **otherwise the form will not be processed.**

10. *Print Name – Print the name of the authorized signee on the form.
    *Date – Date of signature.
    *Signature – The authorized signee's signature.
    *Phone Number – The authorized signee's phone number.

Return to: OSC Support Services Center
Address:
1410 Mail Service Center
Raleigh, NC 27699-1410
Email: osc.support.services@osc.nc.gov

Please allow up to 30 days for processing.

I. Purpose

The N.C. Agricultural Development and Farmland Preservation (ADFP) Trust Fund, administered by the Farmland Preservation Division of the N.C. Department of Agriculture & Consumer Services, provides grants for agricultural conservation easements on family farms throughout the state of North Carolina.

The ADFP Trust Fund will "hold grantees accountable for the expenditure of State funds by performing monitoring and oversight functions," in accordance with Administrative Code 09 NCAC 03M "Uniform Administration of State Grants" and Subsection .0400, pursuant to N.C.G.S. 143C-6-22 & 23. The ADFP Trust Fund will work with the grantee to ensure compliance with the terms and conditions of the easement. Monitoring is necessary to make certain the easements are maintained while ensuring a productive relationship between the funding source (ADFP Trust Fund), grantee (counties or private nonprofit conservation organizations, according to N.C.G.S. 106-744), and landowner.

II. Definition of Agricultural Conservation Easements

According to N.C.G.S. 106-744, an "agricultural conservation easement" means a negative easement in gross restricting residential, commercial, and industrial development of land for the purpose of maintaining its agricultural production capability. Agricultural conservation easements may be perpetual or term-limited in duration. The agricultural conservation easement may permit the creation of not more than three lots that meet applicable county zoning and subdivision regulations, provided it is allowed in the original recorded easement.

III. Involved Parties

The ADFP Trust Fund, administered by the Commissioner of Agriculture, is the funding source for purchasing conservation easements. The ADFP Trust Fund has full-time staff administratively located in Raleigh, North Carolina. Part-time field staff members are located remotely throughout the state. The ADFP Trust Fund Document Specialist is the monitoring program manager, unless otherwise designated by the Farmland Preservation Division Director. Field staff members will conduct on-site monitoring, unless otherwise directed by the Document Specialist.

The ADFP Trust Fund Advisory Committee is administratively located within the N.C. Department of Agriculture and Consumer Services. The Advisory Committee will advise the Commissioner on the prioritization and allocation of funds, the development of criteria for awarding funds, guidelines for monitoring easements and projects, program planning, and other areas where monies from the ADFP Trust Fund can be used to promote the growth and development of family farms in North Carolina.

Grantees are counties or private nonprofit conservation organizations. Grantees are the first point of contact for monitoring conservation easements and discussing potential violations of contracts and/or recorded easements. **Grantees are required to monitor the easement at least once a year and complete annual monitoring reports for the length of the term of the easement.**

Landowners will work with grantees to ensure compliance with the terms and conditions of conservation easements and will be notified of site visits by the grantee.

IV. ADFP Trust Fund Monitoring Roles and Responsibilities

The ADFP Trust Fund monitoring methods include but are not limited to:

- Site visit: ADFP Trust Fund staff will make every effort to coordinate site visits with the grantee's monitoring schedule. ADFP Trust Fund staff will physically visit the easement. ADFP Trust Fund staff will notify grantee and seek permission from landowner. The use of unmanned aerial vehicles (UAVs), or drones, can supplement, but not replace in-person site visits.
- In-office: ADFP Trust Fund staff will review grantee monitoring reports and verify information.

Site visit protocol for ADFP Trust Fund staff:

- Contact grantee about site visit. Site visits will be coordinated to the extent possible with the grantee's annual monitoring visit schedule.
- Review completed "Grantee Monitoring Report – Perpetual or Term Easement."
- Ensure landowner has been notified of site visit.
- Site visit can be conducted on foot or by vehicle.
- Compile documentation, including, but not limited to, photographs and data.
- Complete "ADFP Trust Fund Staff Monitoring Report – Perpetual or Term Easement."
- Complete "ADFP Trust Fund Staff Incident Report – Perpetual or Term Easement" if necessary.
- Site visit will occur every three (3) years, unless otherwise directed.

In-office monitoring protocol for ADFP Trust Fund staff:

- Review completed "Grantee Monitoring Report – Perpetual or Term Easement."
- Review the most current aerial photography data available (e.g. GIS via Multi-Hazard Threat Database (MHTD), Google Earth, etc.).
- Complete "ADFP Trust Fund Staff In-Office Monitoring Report – Perpetual or Term Easement."
- Complete "ADFP Trust Fund Staff Incident Report – Perpetual or Term Easement" if necessary.
- In-office monitoring will be completed in the years when site visits do not occur.

Incident report protocol for ADFP Trust Fund staff:

- The "ADFP Trust Fund Staff Incident Report – Perpetual or Term Easement" must be filed if a grantee reports a violation or if ADFP Trust Fund staff discovers a violation during a site visit or in-office monitoring.
- The completed "ADFP Trust Fund Staff Incident Report – Perpetual or Term Easement" will be submitted to the Program Director for review, investigation, and/or corrective action.
- If necessary, the Program Director will meet with funding partners to discuss the findings of the "ADFP Trust Fund Staff Incident Report – Perpetual or Term Easement."
- If corrective action is warranted by the grantee, a conference call or meeting will be scheduled to discuss the "ADFP Trust Fund Staff Incident Report – Perpetual or Term Easement" and results of the initial review by the Program Director.
- If a violation has occurred, the grantee shall submit a Plan of Corrective Action to the ADFP Trust Fund Staff within 30 days of the conference call or meeting. The Plan of Corrective Action must be a comprehensive plan detailing the corrective action that will be taken to remedy all violations and bring the project back in compliance. The ADFP Trust Fund staff will work with grantee for correction.
- The appropriate NCDA&CS staff will formally notify grantee in writing of violation or potential violation.
- If it is determined that a violation has occurred, a site visit will occur the subsequent year. The monitoring schedule (site visit, in-office, site visit) will be reset each time a violation occurs.

V. Grantee Monitoring Responsibilities and Expectations

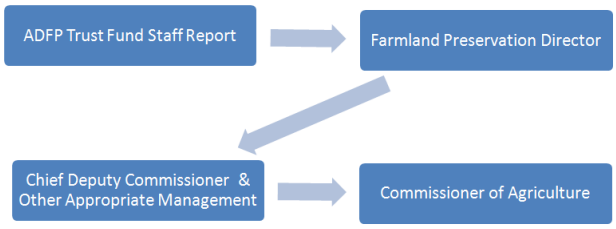
After the approval of final budget and progress reports and the closeout of the contract, Grantees will complete and submit the online "Grantee Monitoring Report – Perpetual or Term Easement" to ADFP Trust Fund office annually on or before December 31. The "Grantee Monitoring Report – Perpetual or Term Easement" is accessed through NC ADFP Trust Fund's website. Grantees should navigate to https://ncadfp.org/, then click on the "Downloads" tab. The portal is at the bottom of the "Downloads" tab and is labeled "Grantees: Click Here to Access the ADFP Trust Fund Grantee Monitoring Report Submission Portal." Grantees will be required to create a Formsite account to access the report portal. Grantees should follow the prompts in the online portal to complete and submit their report.

Failure to file annual monitoring reports on or before December 31 of each year shall constitute a violation of the easement and the grant contract.

In January, ADFP Trust Fund staff will coordinate to the extent possible with the grantee's annual monitoring visit schedule for easements due for a site visit. Grantees are encouraged to submit tentative site visit schedule to ADFP Trust Fund office ninety (90) days prior to first scheduled site visit. As subsequent site visits are scheduled throughout the year by the grantee, the ADFP Trust Fund office will be notified in a timely manner of site visits due for that calendar year.

VI. Additional Guidance and Reference – Dispute Resolutions

For issues in dispute, the ADFP Trust Fund Staff will report such differences to the Farmland Preservation Director. If the Farmland Preservation Director is unable to find a resolution, the Director will review with the appropriate NCDA&CS management for assistance and instruction, e.g. Office of the General Counsel, Chief Deputy Commissioner, and Commissioner of Agriculture. See chart below.



ADFP Trust Fund Staff are to follow appropriate approved ADFP Trust Fund Policies and Guidelines as directed by the ADFP Trust Fund Advisory Committee and the Commissioner of Agriculture, i.e. ADFP Trust Fund Grantee Eligibility Classification.

VII. Monitoring Documents

The following documents will be used for the monitoring of conservation easements:

- Grantee Monitoring Report – Perpetual or Term Easement
- ADFP Trust Fund Staff Monitoring Report – Perpetual or Term Easement
- ADFP Trust Fund Staff In-Office Monitoring Report – Perpetual or Term Easement
- ADFP Trust Fund Staff Incident Report – Perpetual or Term Easement

VIII. Document Filing, Retention, and Disposal

All completed reports, including maps from GIS and supplemental documentation from grantees, will be scanned for electronic storage and printed for paper files. The North Carolina State Property Office, Land Asset Maintenance database (http://www.ncspo.com/fis/dbLandAsset.aspx) lists all ADFP Trust Fund funded easements. Electronic copies of monitoring documents will be stored on the ADFP Trust Fund server and SharePoint page.

All monitoring documents will be filed, retained, and disposed pursuant to the ADFP Trust Fund records retention schedule.

OPTION TO PURCHASE AN AGRICULTURAL CONSERVATION EASEMENT

THIS OPTION TO PURCHASE A CONSERVATION EASEMENT ("Option") is made this __6__ day of December, 2021 by and between __Bellamy Family Farm LLC_, ("Seller"); and the Brunswick Soil and Water Conservation District_____ ("Buyer").

RECITALS

A. For the purposes of notice, the addresses of the parties to this Option are:

SELLER:	BUYER:
_____950 Pea Landing Rd NW__ ____Ash_____, _____NC_ 28420	____10 Referendum Dr. _____Building F_____ _____Bolivia _____, NC 28422

B. Property legal description as described at Register of Deeds (County Deed Book and Page) and as shown on the proposed conservation easement map on page 6 of this Option.

County	Deed Book and Page	Parcel Identification Number (PIN)
Brunswick	01510, 0864	101602581108

C. It is the intention of both the Seller and Buyer that +/- ___67.04_____ acres of the Property is preserved with conservation easements and maintained for the preservation of use as crop, horticulture or forestry as described in N.C. General Statue 106 Article 61.

D. Seller acknowledges that Buyer enters into this Option in its own right.

E. Buyer is a conservation organization having among its purposes the acquisition on behalf of the public of open space, scenic, and recreational lands.

F. Seller acknowledges that Buyer enters into this Option Agreement as an initial step in the purchase of a conservation easement on +/- ___67.04_____ acres of the Property. The value of the conservation easement shall be determined by an appraisal performed to the Uniform Standards of Professional Appraisals Practice (USPAP) with confirmation approval by the North Carolina Department of Agriculture ADFP Trust Fund and other funding partner agencies such as USDA or military.

G. By entering into this Option, Seller acknowledges that it will obtain independent tax counsel and be solely responsible for compliance with any requirement of the Code to substantiate the value of the conservation easement if claiming an IRS charitable contribution.

NOW, THEREFORE, for the reasons given and other good and valuable consideration and in consideration of their mutual covenants, terms, conditions and restrictions contained herein, the receipt and legal sufficiency of which are hereby acknowledged, the Seller hereby voluntarily grants and conveys to the Buyer, and the Buyer hereby voluntarily accepts the exclusive and irrevocable option to Purchase a Conservation Easement on +/- ___67.04____ acres on the Property.
This option is given on the following terms and conditions:

1. **OPTION PERIOD.** This option shall remain in effect through four years from the date of the signatures in this contract.

2. **EXERCISE.** All rights granted by this Option shall be exercised upon posting, by certified mail, a written notice to the Seller at the first address stated in the Recitals above. Exercise shall be deemed timely if such written notice is mailed on or before the date set forth in Paragraph 1 above.

3. **CONSERVATION EASEMENTS.** The Conservation Easement on the Property to be conveyed by Seller

to Buyer, should Buyer exercise the Option granted herein, shall be in a form similar to the form of the draft conservation easement of the **ADFP Trust Fund Model Conservation Easement** as described in this contract and at www.ncadfp.org with such additional changes or modifications requested by Seller or Buyer, and agreed to by both parties with confirmation approval by the North Carolina Department of Agriculture ADFP Trust Fund and applicable funding conservation partners.

4. **PURCHASE PRICE.** The total purchase price of the Conservation Easement +/- ____67.04_____ acres shall be payable in cash at closing. The fair market value of the Conservation Easement shall be determined by an appraisal performed to the Uniform Standards of Professional Appraisals Practice (USPAP) with confirmation approval by the North Carolina Department of Agriculture ADFP Trust Fund and applicable funding conservation partners. The Conservation Easement shall be fixed as noted on the attached land map.

5. **CLOSING.** Closing will take place at the offices of the Buyer's closing attorney or at such other place as the parties may mutually agree when the conditions for closing set out in this Option have been met.

6. **TITLE.**

(a) At closing, the Seller will convey the Conservation Easements to the Buyer. At the time of conveyance, the Property shall be free and clear of all liens, encumbrances, restrictions, rights or exceptions except for exceptions of record approved by Buyer.

(b) During the period of time between execution of this Option and the recordation of the Conservation Easements, should Buyer exercise the Option granted herein, Seller shall not encumber the Property nor shall they grant any interest in the Property to a third party without the prior written consent of Buyer.

7. **TITLE DEFECTS.** Buyer, at its expense, will have the title to the Properties examined. If for any reason the Seller cannot deliver the Conservation Easements at closing with title to the Properties in the condition required by Section 6 of this Option, Buyer may elect to: (a) accept the Conservation Easements with title to the Property as it is; (b) refuse to accept the Conservation Easements in which case the consideration paid for this Option shall be refunded; or (c) allow the Seller additional time to pursue all reasonable efforts to correct the problem, including bringing any necessary quiet title actions or other lawsuits. If Buyer elects to refuse to accept the Conservation Easements, or Seller desires to not pursue reasonable efforts to correct the problem, the rights pursuant to the Option granted herein shall be null and void and the rights of the parties hereto shall terminate, with neither party hereto having any further right or obligation one against the other pursuant to the terms hereof.

8. **DOCUMENTS FOR CLOSING.** The Seller shall execute and deliver at closing the Conservation Easements, any owner's affidavits or documents required by the Buyer's title insurance company to remove the standard title policy exceptions, and any other documents necessary to close in accordance with the terms of this Option.

9. **ACCESS.** The Buyer's obligations under this Option (if exercised) are contingent upon the Property having recorded, appurtenant, insurable legal access to a public road sufficient to allow the Buyer access to the Property to monitor the Conservation Easements.

10. **CONDITION OF PROPERTY.** During the period of time between execution of this Option and exercise of this Option, Seller shall do nothing to or with regard to the Property that shall damage or degrade the property, significantly alter its present appearance and value, or otherwise violate the terms of the proposed Conservation Easements. In the event of any adverse change in the condition of the Property, the Buyer may refuse to accept the Conservation Easements, in which case the consideration paid for this Option shall be refunded.

11. **ENCUMBRANCES.** Seller shall not during the period of time this Option remains in effect sell or contract to sell the Property or do any other act which might hinder the property's ability to enter the Conservation Easements.

15. **LIQUIDATED DAMAGES; DEFAULT; SPECIFIC PERFORMANCE.**

a. a. Default and Specific Performance. If Seller defaults under this Agreement and fails to cure the same within thirty (30) days of written notice thereof, BUYER may elect, at Buyer's sole option: (i) to terminate this Option and be released from its obligations hereunder, in which event the consideration paid shall be returned to Buyer; or, for all defaults other than failure to perform due to disagreement with the appraised value as determined in item 4 of this Option (ii) to proceed against Seller for specific performance of this Option. In either event, Buyer shall have the right to seek and recover from Seller all damages suffered by Buyer as a result of Seller's default in the performance of its obligations hereunder. Damages may include reasonable expenditures performed on behalf of Seller in good faith to fulfill the Option. These include but not limited to travel, administrative, surveying, legal and specialized service fees, appraisals, documentations and reports pertaining to conservation easement implementation associated with the Option.

b. Other remedies. In addition to any other remedy specifically set forth in this Option, for all defaults other than failure to perform due to disagreement with the appraised value as determined in item 4 of this Option Buyer has the right to enforce the provisions of this Option through an action for injunctive relief or damages or through other proceedings in law or equity. The election of any one remedy available to Buyer under this Option shall not constitute a waiver of other available remedies.

16. **BINDING EFFECT.** This Option becomes effective when signed by parties hereto and shall then apply to and bind Seller and Buyer and their respective, heirs, executors, administrators, successors, and assigns.

17. **COMPLETE AGREEMENT.** This Option constitutes the sole and complete agreement between the parties and cannot be changed except by written amendment. No representation or promise not included in this Option or any written amendment shall be binding upon the parties.

18. **NOTICE OF OPTION.** Should this Option Agreement not be recorded, the parties agree to execute a Memorandum of Option for recording purposes if requested by either of the parties hereto, to be prepared and recorded at the expense of the requesting party.

19. **MISCELLANEOUS.**

a. No waiver. No provision of the Option shall be deemed amended or waived unless such amendment or waiver is set forth in a writing signed by both parties. No act or failure to act by a party shall be deemed a waiver of its rights hereunder, and no waiver in any one circumstance or of any one provision shall be deemed a waiver in other circumstances or of other provisions.

b. Holidays. If any date set forth in this Option or computed pursuant to this Option falls on a Saturday, Sunday, or national holiday, such date shall be deemed automatically amended to be the first business day following such weekend day or holiday.

c. Attorneys' fees. In the event of any breach or default hereof by a party, the non-defaulting party shall be entitled to bring an action to recover its costs and expenses of litigation and settlement, including, without limitation, attorneys' fees and expenses, court costs, settlement costs, and experts' costs and fees.

d. Survivability. The provisions of this Option shall survive the closing of the Conservation Easement donation to Buyer.

e. Successors. This option and the contract resulting from the exercise thereof shall bind and inure to the benefit of the heirs, administrators, executors, successors and assigns of the respective parties.

IN TESTIMONY THEREOF, the parties have hereunto set their hands and seals, or if corporate have caused this instrument to be executed in their corporate names by their duly authorized representatives as of the dates indicated below.

12. **RIGHT OF ENTRY AND INSPECTION.** During the period of time this Option remains in effect, Buyer shall have the right, at its expense, to enter upon the Property at reasonable times to conduct an environmental inspection and assessment to detect hazardous or toxic substances, to have the title to the Property examined, and for other reasonable purposes related to this transaction. Buyer shall give notice in writing to Seller of any defects and objections to the title and Seller shall clear the title of defects and objections so specified within forty-five (45) days after notice thereof. In the event Seller cannot correct defects in or objections to the title so as to be able to deliver good and merchantable title free and clear of all liens, encumbrances, restrictions, and easements, Buyer may, at its election, cancel this Option, in which case the consideration paid for this Option shall be refunded. Based upon the results of the environmental inspection and assessment, the Buyer may elect to refuse to accept the conservation easement, in which case consideration paid for this Option shall be refunded.

13. **SELLER'S REPRESENTATIONS AND WARRANTIES.** The Seller hereby warrants and represents to Buyer the following matters and agrees to indemnify, defend and hold Buyer harmless from any loss or liability relating to these matters, with the intent that these representations, warranties and indemnities shall survive closing.

a. Title to the Property/Authority. Seller is the sole legal owner of the Property in fee simple. The Property is not now subject to any written option or agreement of sale. To the best of Seller's knowledge and belief, the Property is not now subject to any claim or legal proceeding except as set forth herein. Seller has the full power and authority to execute this Option and all agreements and documents referred to in this Option and to fully perform as required by this Option.

b. Condition of Property. Seller is not aware of any facts that would have adverse effect on the efficacy of the Conservation Easements in protecting the conservation values set forth in the Conservation Easements.

c. Hazardous Materials. The Property is not now nor, to the best of the knowledge and belief of the Seller, has it ever been used for the manufacture, use, storage or disposal of any hazardous or toxic substance, material or waste within the meaning of any applicable environmental statute, ordinance, or regulation. No hazardous or toxic substance, material or waste, including without limitation asbestos or material containing or producing polychlorinated biphenyls (PCBs), is presently stored or located on the Property at levels greater than natural background concentrations. The Property is not subject to any "superfund" or similar lien or any claim by any government regulatory agency or third party related to the release or threatened release of any hazardous or toxic substance, material, or waste.

d. No Condemnation. There are no condemnation proceedings pending with regard to any portion of the Property and Seller does not know of or have reason to know of any proposed condemnation proceedings with regard to any portion of the Property.

e. Non-foreign Status. To inform Buyer that withholding of tax is not required under Section 1445 of the Internal Revenue Code and under penalties of perjury, Seller hereby certifies that Seller is not a non-resident alien or a foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined for purposes of federal income tax law. Seller understands that this certification may be disclosed to the Internal Revenue Service and that any false statement made could be punished by fines, imprisonment, or both.

f. No brokers. Seller represents that they have not engaged the services of a real estate broker in the sale or purchase, respectively, of any interest in this Property, and agree to indemnify Buyer from all such claims or liabilities resulting therefrom.

14. **NOTICE.** Any notice, consent or other communication permitted or required by this Option shall be in writing, and shall be given to the applicable party, at the address set forth below, in the following manner: (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested. Each such notice shall be deemed to have been given upon receipt or refusal to accept delivery. Unless and until changed by written notice to the other party hereto, the addresses for notices given pursuant to this Option shall be the addresses listed for each party in Paragraph A of the Recitals above.

OPTION TO PURCHASE AN AGRICULTURAL CONSERVATION EASEMENT

SELLER: Milton Wade Bellamy Marsha Jane B. Benton 12-6-202

Printed Name: ARTHUR MARTIN BELLAMY Marsha Jane B. Benton

Signature: Arthur Martin Bellamy **Date:** 12-6-2021

Milton Wade Bellamy 12-6-2021

SEAL-STAMP	**NORTH CAROLINA,** Brunswick **County**
MARY E WATKINS My Comm. Expires NOTARY PUBLIC 7/31/2026 BRUNSWICK COUNTY, NC	The undersigned, a Notary Public for said County and State, does hereby certify that Bellamy Family Farm personally appeared before me this day and duly acknowledged the execution of the foregoing Option to Purchase Conservation Easement. **Witness** my hand and official stamp or seal on December 06, 2021. Mary E. Watkins Notary Public My commission expires: 7-31-2026

BUYER:

Printed Name: Brunswick Soil and Water Conservation District - Elliot Swain, Director

Signature: **Date:** 12-6-2021

SEAL-STAMP	**NORTH CAROLINA,** Brunswick **County**
MARY E WATKINS My Comm. Expires NOTARY PUBLIC 7/31/2026 BRUNSWICK COUNTY, NC	The undersigned, a Notary Public for said County and State, does hereby certify that Elliot Swain, **as** Director (official title) of Brunswick Soil + Water Conservation personally appeared before me this day and duly acknowledged the execution of the foregoing Option to Purchase Conservation Easement. **Witness** my hand and official stamp or seal on December 06, 2021. Mary E. Watkins Notary Public My commission expires: 7-31-2026

Conservation Easement Option Map:
Map to provide total estimated acres to receive to agricultural conservation easement. Any areas not the receive the agricultural conservation easement such as farmsteads must also be defined.





Request Info	
Type	Budget Amendment
Description	ADFP Grant
Justification	Board Meeting 09/06/2022 – Appropriate state revenue restricted in the amount of $379,332 awarded by the NC Department of Agriculture and Consumer Services Division of Farmland Preservation (ADFP). The purpose of the award is to encourage the preservation of qualifying farmland and to foster the growth, development, and sustainability of family farms. A conservation easement will be placed on agricultural property located at 1330 Hickman Rd NW Calabash, NC with the Brunswick Soil and Water Conservation District as the easement holder. Grant requires a match of $56,899.77 which will be met by the in-kind landowner donation. Grant term is October 1, 2022 - September 30.2024 with quarterly financial and progress reporting requirements.
Originator	CHRISTINA KENNEDY

Items

Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
230050	332000	ADFP Agriculture Developme	State Revenues - Restricted	379332	Increase	Credit
230050	419200	ADFP Agriculture Developme	Prof Ser-Legal	5600	Increase	Debit
230050	464011	ADFP Agriculture Developme	Land	358532	Increase	Debit
230050	419900	ADFP Agriculture Developme	Prof Ser-Other	15200	Increase	Debit

Total

Grand Total:	758664

COUNTY OF BRUNSWICK, NORTH CAROLINA
CAPITAL PROJECT ORDINANCE
ADFP - Agriculture Development & Farmland Preservation
(230050)

Be it ordained by the Board of County Commissioners of Brunswick County that pursuant to Section 13.2 of the General Statutes of North Carolina, the following ordinance is hereby adopted:

Section 1. The following amounts are hereby appropriated in the Brunswick County Grants Fund:

ADFP - Agriculture Development & Farmland Preservation		
Revenues:		
State Revenues - Restricted		379,332
Total Grant Fund Revenues	**$**	**379,332**
Expenditures:		
Professional Services - Legal		5,600
Land		358,532
Professional Services - Other		15,200
Total Grant Fund Expenditures	**$**	**379,332**

Section 2. This Grant Ordinance shall be entered into the minutes of the September 6, 2022 meeting of the Brunswick County Board of Commissioners.

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 18.

From:
John Nichols, P.E.

Utilities - CFPUA Interlocal Agreement Goods Received (John Nichols, PE - Director of Public Utilities)

Issue/Action Requested:
Request that the Board of Commissioners approve the attached Interlocal Agreement for the receipt of goods for used SCADA radios from CFPUA (Cape Fear Public Utility Authority).

Background/Purpose of Request:
Cape Fear Public Utility Authority has offered to donate Brunswick County Utilities 70 used GE InetII SCADA radios at an approximate value of $200 each, for a total value of $14,000. Brunswick County Public Utilities currently uses the GE InetII radio on many water and sewer sites and would benefit by having additional surplus in the growing SCADA network.
Brunswick County Public Utilities staff appreciates the consideration by CFPUA staff and recommends approval of receiving this donation of SCADA radios from CFPUA.

Fiscal Impact:
Reviewed By Director of Fiscal Operations

Approved By County Attorney:
Yes

Advisory Board Recommendation:
N/A

County Manager's Recommendation:
Recommend that the Board of Commissioners approve the attached Interlocal Agreement for the receipt of goods for used SCADA radios from CFPUA (Cape Fear Public Utility Authority).

ATTACHMENTS:

Description

- Utilities - SCADA Radio Donation ILA - Attach 1

NORTH CAROLINA
NEW HANOVER COUNTY

INTERLOCAL AGREEMENT FOR THE DISPOSITION OF AUTHORITY SURPLUS PROPERTY

THIS AGREEMENT for the disposition of Authority property (the "Agreement") is entered into and made effective as of this _____ day of _____, 2022, by and between **CAPE FEAR PUBLIC UTILITY AUTHORITY**, a public utility authority duly authorized under Article 1 of North Carolina General Statutes Chapter 162A (the "Authority") and **BRUNSWICK COUNTY** (the "Recipient Governmental Unit"), collectively hereinafter referred to as the "Parties."

WITNESSETH

WHEREAS, pursuant to N.C. Gen. Stat. §160A-274, the Authority is authorized to exchange with, lease to, lease from, sell to, or purchase from any other governmental unit any personal property of the Authority, with or without consideration.

WHEREAS, the Authority owns 70 GE/MDS iNet-II 900 – Access Point radios that have been declared as surplus property of the Authority as no longer needed for any governmental use by the Authority.

WHEREAS, Brunswick County is a regional neighbor of the Authority.

WHEREAS, the Parties wish to enter into this Agreement under the authority of N.C. Gen. Stat. §160A-274.

WHEREAS, at a regular meeting on August 10, 2022, the Cape Fear Public Utility Authority Board, by Resolution, approved the disposition of the surplus equipment set forth in Exhibit A (the "Equipment") to the Recipient Governmental Unit.

WHEREAS, the Authority has determined that it is in its best interest to convey the Equipment to Brunswick County and deems it wise to do so for no consideration.

NOW, THEREFORE, in consideration of the promises and other considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

A. DISPOSAL OF SURPLUS PROPERTY

The Authority hereby conveys the surplus Equipment to the Recipient Governmental Unit for no consideration, and the Recipient Governmental Unit accepts the Equipment and hereby agrees and affirms that the Equipment will be utilized for governmental purposes.

B. DISCLAIMER OF WARRANTIES

THE EQUIPMENT IS CONVEYED BY THE AUTHORITY "AS IS" AND THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS,

IMPLIED OR STATUTORY, WITH RESPECT TO THIS AGREEMENT OR THE EQUIPMENT. THE AUTHORITY SPECIFICALLY DISCLAIMS ALL WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE AUTHORITY DOES NOT GUARANTEE THAT THE EQUIPMENT WILL MEET THE REQUIREMENTS OR NEEDS OF THE RECIPIENT GOVERNMENTAL UNIT OR MAKE ANY REPRESENTATION AS TO THE CONDITION OF THE EQUIPMENT.

Nothing in this section will be construed to limit the Recipient Governmental Unit's ability to pursue any available warranty claims with the Equipment manufacturer.

C. LIMITATION OF LIABILITY

THE PARTIES ACKNOWLEDGE THAT THE AUTHORITY WILL CONVEY THE EQUIPMENT TO THE RECIPIENT GOVERNMENTAL UNIT WITHOUT CHARGE. ACCORDINGLY, IN NO EVENT SHALL THE AUTHORITY BE LIABLE TO THE RECIPIENT GOVERNMENTAL UNIT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF DATA, LOSS OF BUSINESS, OR LOSS OF OPPORTUNITY, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE OR ANY OTHER THEORY AND REGARDLESS OF WHETHER RECIPIENT GOVERNMENTAL UNIT HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

D. INDEMNIFICATION

To the fullest extent provided by law, the Recipient Governmental Unit shall indemnify, save, defend, and hold harmless the Authority and its officers, agents, and employees from and against any and all liabilities, liens, obligations, losses, claims, damages, actions, suits, proceedings, costs, and expenses, including without limitation attorneys' fees, imposed or incurred by or asserted against the Authority arising out of or resulting from the Equipment or the Authority's disposition of the Equipment.

E. GENERAL TERMS AND CONDITIONS

1. Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement, or condition.

2. Applicable Law. All matters relating to this Agreement shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Agreement shall be New Hanover County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Southern Division.

3. Amendment. This Agreement may not be amended except in writing executed by the Parties hereto.

4. Severability. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, that provision of this Agreement will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in full force and effect.

5. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

6. Entire Agreement. This Agreement is the complete and exclusive understanding and agreement between the parties regarding the subject matter of this Agreement and supersedes all prior agreements, understandings, and communications, oral or written, between the parties regarding the subject matter of this Agreement.

ATTEST:

BRUNSWICK COUNTY

_____
Clerk to the Board

By: _____
Chairman, Board of Commissioners

[SEAL]

STATE OF NORTH CAROLINA

COUNTY OF _____

I, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that she is the Clerk to the Board of County Commissioners of Brunswick County, and that by authority duly given and to act as Chairman of the Board of Commissioners, the foregoing instrument was signed in its name by its Chairman, sealed with its official seal and attested to by its Clerk herein above named.

WITNESS my hand and official seal, this ____ day of _____ 2022.

_____
Notary Public

My Commission Expires:_____

(SEAL)

APPROVED AS TO FORM

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

CAPE FEAR PUBLIC UTILITY AUTHORITY SEAL:

235 Government Center Drive
Wilmington, North Carolina 28403

BY: _____
Kenneth R. Waldroup
Executive Director

ATTEST: _____
Donna S. Pope
Clerk to the Board

NORTH CAROLINA
New Hanover COUNTY

I, Sara J. Eskew the undersigned Notary Public do hereby certify that Donna S. Pope personally came before me this date and acknowledged that she is the Clerk to the Board of Cape Fear Public Utility Authority, Wilmington, North Carolina, and that, by authority duly given and the act of the Board, the foregoing document was signed in its name by its Executive Director, sealed with its corporate seal, and attested by herself as its Clerk.

WITNESS my hand and official seal this the 11 day of August, 2022.

Sara J. Eskew
Notary Public

My commission expires: 5/9/2026

AUTHORITY ATTORNEY'S CERTIFICATION

This instrument has been reviewed and is approved as to ~~form~~ signature only this the 11 day of August, 2022.

Nicolette Fulton
Deputy Authority Attorney

AUTHORITY ACCOUNTANT'S CERTIFICATION

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act this the 10 day of August, 2022.

John McLean
Chief Financial Officer

SARA J. ESKEW NOTARY PUBLIC NEW HANOVER COUNTY, NC

EXHIBIT A

Description of Surplus Equipment

Brunswick County			
Description	**Number**	**Unit Cost**	**Total**
GE/MDS iNet-II 900 Access Point radio	70	$200.00	$14,000.00
Total Value			**$14,000.00**

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # V. - 19.

From:
John Nichols, P.E.

Utilities - Raw Water Agreement Compass Pointe (John Nichols, PE - Director of Public Utilities)

Issue/Action Requested:
Request that the Board of Commissioners approve the attached Raw Water Supply Agreement for Irrigation with Irrigation, LLC and authorize the Chairman and Clerk to the Board to execute the associated agreement.

Background/Purpose of Request:
Through agreements with the Compass Pointe Property Owner's Association and property owners within the subdivision, Irrigation, LLC provides untreated water for irrigation to property owner's and common areas within the Compass Pointe subdivision. Irrigation, LLC has indicated they currently do this through wells that discharge into several ponds which then use pumps to distribute the untreated water into an irrigation piping system. They would like to have an additional source of raw water for irrigation and have requested that the County provide raw water to them.

Through its agreement with the Lower Cape Fear Water & Sewer Authority, Brunswick County has available raw water capacity and a very limited raw water transmission system that can be extended to the Compass Pointe Development. The developer would be required to install the piping and metering systems to extend the raw water to their development and deed this infrastructure to the County. Payment for the service would be in accordance with the attached agreement but is reflective of the County's cost for raw water and typical drinking water base fees. The agreement term is set at fifteen years and is for non-essential use, meaning that the service may be suspended in order to fulfill any raw water needs for drinking water demands.

Staff recommends approval of the Raw Water Supply Agreement for Irrigation with Irrigation, LLC.

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

Approved By County Attorney:
Yes

Advisory Board Recommendation:
N/A

County Manager's Recommendation:
Recommend that the Board of Commissioners approve the attached Raw Water Supply Agreement for Irrigation with Irrigation, LLC and authorize the Chairman and Clerk to the Board to execute the associated agreement.

ATTACHMENTS:

Description

- Utilities - June 1, 2022, Email Request for Raw Water - Attach 1
- Utilities - Raw Water Supply Agreement for Irrigation - Attach 2

From: Greta Harrelson
To: Steve Stone
Cc: John Nichols
Subject: Raw water tap request
Date: Wednesday, June 1, 2022 5:01:09 PM

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.

Dear Mr. Stone,

I have been pointed to you as the proper person to contact in regards to obtaining raw water from Brunswick County. As such, I would like to respectfully submit a formal request for a tap to the raw water line for residential irrigation water to the Compass Pointe subdivision in times of need. We estimate the need to be approximately 10 million gallons of water per year.

We appreciate your consideration of our request and look forward to hearing from you as to the next steps in this process.

Best regards,

Greta L. Harrelson
Irrigation, LLC
Mobile: 804-314-3542
Office: 910-444-1660

RAW WATER SUPPLY AGREEMENT FOR IRRIGATION

THIS RAW WATER SUPPLY AGREEMENT FOR IRRIGATION (the "Agreement"), dated as of the _____ day of _____, 2022 by and between the COUNTY OF BRUNSWICK, a political subdivision of the State of North Carolina (the "County"), and IRRIGATION, LLC, a limited liability company organized and existing under the laws of the State of North Carolina (the "Customer") is made pursuant to North Carolina General Statutes, Article 15 of Chapter 153A, and in consideration of the promises made to one another in this Agreement, as follows:

WHEREAS, Customer desires to obtain an adequate and dependable raw water supply from County for irrigation purposes; and

WHEREAS, County owns and operates a raw water system with a capacity currently capable of serving the present customers of County's system and the estimated number of water users to be served by Customer; and

WHEREAS, Customer owns and operates residential irrigation infrastructure within the Compass Pointe subdivision in Brunswick County; and

WHEREAS, Customer acknowledges and understands that this Agreement establishes a minimum amount of raw water that Customer is obligated to pay for, and a maximum amount of raw water that County is required to deliver to Customer; and

WHEREAS, Customer acknowledges and understands that County determines the rates to be paid by Customer; and

WHEREAS, Customer is not compelled to purchase water from County and is voluntarily entering into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, County agrees to furnish water, and Customer agrees to pay for water, upon the terms and conditions and for the consideration hereinafter set forth, to wit:

SECTION 1

DEFINITION OF TERMS

1.1 Definitions. The following terms and expressions as used in this Agreement, unless the context clearly shows otherwise, shall have the following meanings:

(a) "Monthly Minimum" means the minimum amount of raw water Customer must compensate County for during the Agreement period, regardless of whether Customer actually takes such quantity of water.

(b) "Agreement Date" means the effective date of this Agreement as executed by both parties.

(c) "Customer" means Irrigation, LLC, as defined in the preamble to this Agreement.

(d) "Daily Average" means 1/365 of the Annual Minimum provided at the Point of Delivery.

(e) "Point of Delivery" means the air gap between the provision of service by County to Customer, all facilities upstream of which shall be the sole responsibility of County, and all facilities downstream of which shall be the sole responsibility of Customer.

(f) "Raw Water" means surface water or groundwater that because of bacteriological quality, chemical quality, turbidity, color, or mineral content makes it unsatisfactory as a source for a community water system without treatment.

(g) "System" means, collectively, the existing system and the future improvements and water of County included as part of the System for projects, raw water storage, transmission and supply.

SECTION 2

RAW WATER SUPPLY

2.1 Minimum Take-or-Pay Quantity. County agrees to sell to Customer and Customer agrees to purchase from County at the Point of Delivery defined herein, and Customer agrees to purchase and take at said Point of Delivery, raw water in an

amount not less than 500,000 gallons per month, provided at the Rate of Delivery and pressure stated below. Customer agrees to make the Minimum Monthly Payments calculated as set forth in Section 3 as consideration for such distribution and provision of raw water and County's operation and maintenance of its Regional Water System Facilities during the term of this Agreement. The Minimum Quantity is based upon sixty percent (60%) of Customer estimated monthly usage. The Minimum Monthly Payments represent monthly installment fees paid in a take-or-pay arrangement over the course of the Agreement period.

2.2 Quality. County agrees to furnish Customer, at the Point of Delivery defined herein, raw water, meaning that the water is not potable and has been screened, only in the manner required for raw water intakes and conduits.

2.3 Point of Delivery. The Point of Delivery for Customer shall be at a site determined by County, taking into account Customer recommendations. Customer agrees to furnish the site at the Point of Delivery and to design and construct a separate vault, or meter box, for the Point of Delivery. The vault will include an AMI / Sensus compatible meter and control valve. Isolation valves shall be in installed at the tap to County's existing transmission main and at the vault/meter box to facilitate removal of the meter. County may require Customer to bear all costs associated with such installation. Customer must submit plans for review and approval by County prior to construction. Material specifications shall be equivalent to those used for Brunswick County drinking water specifications. Once constructed, County shall own the constructed facilities from the tap to the existing County raw water main through the vault / meter box inclusive of the meter and isolation valves.

2.4. Maximum Instantaneous Demand. The maximum instantaneous demand shall not exceed either the maximum instantaneous demand capacity of the meter according to the manufacturer's meter specifications or 1,041 gpm, whichever is less.

2.5 Daily Demand. The maximum daily demand shall not exceed 500,000 gallons per day.

2.6 Water Pressure. County raw water supply system pressure is dependent on the raw water pressure supplied to County through the Lower Cape Fear Water and Sewer Authority ("LCFWSA") raw water system. Customer recognizes that water pressure may vary widely and acknowledges that County is not responsible for said variation. If Customer requires a greater pressure than that which meets the standard requirements, then Customer shall bear the cost of providing such greater pressure. Emergency failures of pressure or supply due to line breaks, power failure, flood, fire and use of water to fight fire, earthquake, hurricane, or other catastrophe shall excuse County from this provision for such reasonable period of time as may be necessary to effectuate repairs and restore service.

2.7 Metering Equipment. Customer shall furnish, design, construct, and install at its own expense at, or near, the Point of Delivery the necessary rate of flow equipment, compatible with AMI / Sensus technology of a type approved by County, for measuring properly in both low and high flow periods the quantity of raw water delivered under this Agreement, and such billing meter and other equipment so installed shall become the property of County. The reading, calibration, and adjustment of all metering equipment and appurtenances shall be accomplished only by the employees or agents of County.

2.8 Non-Exclusive Supply. Nothing herein shall be construed as requiring Customer to utilize County as the sole source of its raw water.

SECTION 3

PAYMENT AND BILLING

3.1 Usage Rate. The rate charged for usage (cost per 1,000 gallons) shall be 125% of the raw water rate charged to County by LCFWSA for minimum usage volume of 500,000 gallons per month.

3.2 Service Charge. The base service charge shall be the latest published potable water Retail Meter Base Service charge. If, due to meter size, there is not a retail meter base service charge for the meter in use, then the Wholesale Meter Base

Service charge shall be used. If LCFWSA adds a comparable base fee to what it charges County, then County may likewise adjust its base fee to Customer.

3.3 Billing. On a monthly basis, County shall bill Customer for water delivered through its master meters. The bills shall be payable within thirty (30) days of the date of the invoice.

SECTION 4

TERM, TERMINATION, AND RENEWAL OF AGREEMENT

4.1 This Raw Water Supply Agreement shall be in full force and effect for a period ending June 30, 2037.

4.2 The parties acknowledge that the water use contemplated by this Agreement is not for drinking water and, therefore, is a non-essential use that County may unilaterally suspend or terminate based on limited raw water supply. Customer agrees not to supply raw water to a third party for drinking water or as a source of raw water to make drinking water.

4.3 This Agreement may otherwise be terminated only by mutual agreement of the parties. A mutually agreeable termination of this Agreement will be on such terms as the parties may agree at the time in question. Each party hereto reserves to itself all legal rights and remedies available at law or in equity in the event of any other breach of this Agreement by the other. So long as Customer is the only customer served by the piping system installed by the developer, the cost of any needed repairs to the trenchless piping system within the railroad right-of-way shall be the responsibility of the developer. In the absence of repair payment from developer, County may isolate the portion of the raw water system supplying the developer and discontinue monthly charges for service.

4.4 This Agreement may be renewed or amended by mutual written agreement of the parties, adopted with the same formality as the original.

SECTION 5

REPRESENTATIONS AND COVENANTS

5.1 Each party to this Agreement represents to the other party each of the following as of the effective date of this Agreement, and covenants with the other party that each such representation will remain true and correct:

5.1.1 It has full power and authority to enter into this Agreement, and to enter into and carry out the transactions contemplated by this Agreement.

5.1.2 It has by proper action authorized the execution and delivery of this Agreement and is not in default under any provisions of this Agreement.

5.1.3 The execution, delivery, and performance of this Agreement does not violate or conflict with or require any consent or waiver under any of the terms or conditions in its governing documents or any material Agreement to which it is a party or by which any of its assets are bound or affected, or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it.

5.1.4 This Agreement constitutes a legal, valid and binding obligation enforceable at law and in equity in accordance with its terms and, to the extent that certain remedies under this Agreement require or may require enforcement by a court, such principles of equity as the court having jurisdiction may impose.

5.1.5 It will comply with all applicable federal, state and local laws with respect to any activities conducted under or pursuant to this Agreement.

5.1.6 No elected or appointed official or employee has any interest (financial, employment, or other) in the transactions contemplated by this Agreement.

5.1.7 It will take no act (or engage in any failure to act) that will prevent, delay, obstruct, frustrate, or otherwise impair or undermine the activities conducted under or pursuant to this Agreement, except as may be

necessary to enforce this Agreement or ensure compliance with applicable laws, regulations, and ordinances.

SECTION 6

MISCELLANEOUS PROVISIONS

6.1 Exhibits. All exhibits, if any, referenced in this Agreement are incorporated herein by reference as integral parts of this Agreement.

6.2 Amendment to Agreement. This Agreement may be modified or amended only by written amendments that are approved and signed on behalf of both parties in the same manner as original adoption.

6.3 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.

6.4 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.

6.5 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.

6.6 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.

6.7 Non-Waiver. Failure by County at any time to require the performance by Customer 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.

6.8 No Third-Party Beneficiaries. Nothing in this Agreement shall give any person other than the parties any rights to enforce any provision of this Agreement. There are no intended third-party beneficiaries of this Agreement.

6.9 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.

6.10 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.

6.11 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.

6.12 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 Customer: Irrigation, LLC
115 North Third Street, Suite 300
Wilmington, NC 28401-4086

6.13 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 § 66-58.1 *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: _____
Chairman, Board of Commissioners

[SEAL]

IRRIGATION, LLC

By: _____

Printed Name: _____

Title: _____

Date: _____

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

_____
Aaron C. Smith, Director of Fiscal Operations
Brunswick County, North Carolina
APPROVED AS TO FORM

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

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # VI. - 1.
Clerk to the Board - Emergency Preparedness Month

From:
Daralyn Spivey

Issue/Action Requested:
Request the Board of Commissioners approve and adopt the Emergency Preparedness Month Resolution.

Background/Purpose of Request:
September is Emergency Preparedness Month and is also the

Fiscal Impact:
Reviewed By Director of Fiscal Operations

Approved By County Attorney:
Yes

County Manager's Recommendation:
Recommend that the Board of Commissioners approve and adopt the Emergency Preparedness Month Resolution.

ATTACHMENTS:

Description

- Resolution Emergency Preparedness Month

County of Brunswick

Office of the County Commissioners

RESOLUTION DECLARING SEPTEMBER 2022 AS "PREPAREDNESS MONTH" IN BRUNSWICK COUNTY

WHEREAS, National Preparedness Month is an observance each September to raise awareness about the importance of preparing for disasters and emergencies that could happen at any time; and

WHEREAS, Counties throughout North Carolina have been affected by a variety of emergencies, including mudslides, wildfires, flooding, earthquakes, and the COVID-19 pandemic; and

WHEREAS, the peak period of hurricane season is historically mid-August through October, and September 10 marks the peak of hurricane season; and

WHEREAS, on Brunswick County Commissioner Frank Williams recently completed his term as President of the N.C. Association of County Commissioners, which was focused on the *100 Counties Prepared* initiative; and

WHEREAS, all five Brunswick County Commissioners and three members of the Brunswick County management team completed the inaugural *100 Counties Prepared* training, which focused on training county commissioners on how to effectively lead during emergencies, compiling resources to assist commissioners during emergency situations, and helping commissioners establish relationships with key emergency management partners; and

WHEREAS, the 2022 theme of National Preparedness Month is "A Lasting Legacy. The life you have built is worth protecting. Prepare for disasters to create a lasting legacy for you and your family"; and

WHEREAS; the Brunswick County Board of Commissioners desires that every household, property owner, and business in Brunswick County be prepared for potential emergencies.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Brunswick County hereby declares September 2022 as Preparedness Month in Brunswick County and encourages all citizens to provide for "A Lasting Legacy" to their loved ones by developing an emergency plan, building an emergency kit, and communicating their emergency plan to all members of their household and/or workplace.

Adopted this the 6th day of September, 2022.

_____

Randell Thompson, Chairman
Brunswick County Board of Commissioners

Attest:

_____

Daralyn Spivey
Clerk to the Board

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # VII. - 1.

From: Administration - American Flood Coalition
Steve Stone, County Manager

Issue/Action Requested:

Request that the Board consider membership in the American Flood Coalition (AFC).

Background/Purpose of Request:

"The American Flood Coalition is a nonpartisan group of political, military, business, and local leaders that have come together to unlock national solutions to flooding and sea level rise. We proactively address the growing cost of coastal, riverine, and flash flooding by advocating for smarter planning and investment before these disasters strike."

The mission of the American Flood Coalition is: "Protecting communities that are vulnerable to flooding and sea level rise is a national issue that must be met with national solutions—it is vitally important to our country's citizen well-being, economic strength, and security."

There is no cost of membership in the American Flood Coalition. It is a voluntary collaborative effort.

A copy of the AFC Policy Booklet is attached, as is the member welcome packet and a membership resolution for the Board's consideration.

Fiscal Impact:
Reviewed By Director of Fiscal Operations

Approved By County Attorney:
Yes

County Manager's Recommendation:

Recommend that the Board consider membership in the American Flood Coalition (AFC).

ATTACHMENTS:

Description

- AFC Resolution
- AFC Policy Booklet
- AFC Welcome Packet

County of Brunswick

Office of the County Commissioners

A RESOLUTION OF THE BRUNSWICK COUNTY BOARD OF COMMISSIONERS PROVIDING FOR MEMBERSHIP TO THE AMERICAN FLOOD COALITION

WHEREAS, proactively investing to prevent flooding is a wiser use of resources than spending on flooding recovery, as exemplified by FEMA research showing that $1 of spent on disaster prevention saves up to $7 in recovery costs, and

WHEREAS, national coordination and support are necessary for communities to fully address the challenge of flooding and sea level rise, and the American Flood Coalition provides a platform advocating for national solutions to flooding and sea level rise that invest in and protect our coastal communities, and

WHEREAS, the American Flood Coalition is a no-cost forum for best practices and source of support in developing local and state-level responses to flooding and sea level rise that will enhance the County's resilience effort, and

WHEREAS, flooding and sea level rise are important issues that our residents deserve to understand and the American Flood Coalition provides opportunities and tools to communicate with residents on flooding challenges and solutions, and

WHEREAS, joining the American Flood Coalition will aid the County's efforts to protect against flooding without requiring any financial support or dues from Brunswick County, and

WHEREAS, the Brunswick County Board of Commissioners' find that joining the American Flood Coalition will promote the welfare of County residents and ensure the prosperity of the local economy by accelerating solutions to sea level rise and flooding, and

NOW, THEREFORE, BE IT RESOLVED that the Brunswick County Board of Commissioners' recognizes the need to advance national solutions to sea level rise and flooding and will work as a member of the American Flood Coalition to safeguard the welfare of the County residents.

Adopted this the 6th day of September, 2022

_____

Randy Thompson, Chairman
Brunswick County Board of Commissioners

ATTEST:

_____

Daralyn Spivey, NCCCC
Clerk to the Board

AMERICAN FLOOD COALITION

OUR POLICIES

A NONPARTISAN COALITION ADVOCATING FOR NATIONAL SOLUTIONS TO FLOODING AND SEA LEVEL RISE

FloodCoalition.org

Who we are

The American Flood Coalition is a nonpartisan group of political, military, business, and local leaders that have come together to unlock national solutions to flooding and sea level rise. We proactively address the growing cost of coastal, riverine, and flash flooding by advocating for smarter planning and investment before these disasters strike.



Our mission

Protecting communities that are vulnerable to flooding and sea level rise is a national issue that must be met with national solutions—it is vitally important to our country's citizen well-being, economic strength, and security.

In the last 10 years, all 50 states have had presidential disaster declarations from flooding[1]

Our 4 solutions pillars

Economy
Invest in infrastructure and natural solutions that boost the economy and protect property values

Communities
Use smart planning to keep communities safe and save taxpayer dollars

Rebuilding
Build back stronger to protect communities from future flooding

Military
Ensure our military installations are ready to deploy 365 days a year

[1] FEMA, FEMA Disaster Declarations Summary - Open Government Dataset, 2018.

Economy

Invest in infrastructure and natural solutions that boost the economy and protect property values

Our national economy relies on our highways, ports, and other essential infrastructure, much of which is at risk from riverine, coastal, and flash flooding and sea level rise. The American Flood Coalition supports dedicated funding and incentives for resilience that will help prevent flood damage, ensure property values and coastal tourism remain strong, and spur innovation and job creation.

The construction of new infrastructure will create local employment opportunities that cannot be outsourced, bringing more jobs to the community. As our communities adapt to flooding and sea level rise, we'll also be able to build new businesses and innovation that we can export to others around the globe.



Investing $100M in water infrastructure creates an estimated 1500+ jobs in the local community[2]

Policies

- Support communities investing in adaptation through dedicated federal funding and incentives, such as adaptation trust funds, revolving loan funds, and tax breaks
- Increase innovation grants for research into flood mitigation technology
- Facilitate the exchange of best practices among flood-affected communities
- Broaden available financing methods for flood infrastructure projects in ways that engage the private sector, such as public-private partnerships and low-interest debt financing

[2] Value of Water Campaign. The Economic Benefits of Investing in Water Infrastructure. 2017.

Communities

Use smart planning to keep communities safe and save taxpayer dollars



$1 spent on pre-disaster mitigation saves $4-7 in disaster relief[3]

Investing in resilience can save taxpayer dollars and untold heartache for affected communities, but to plan smart our communities need accurate information and policies that empower them to act. As a first step, the Federal Emergency Management Agency (FEMA) should upgrade its flood maps, 15% of which reflect information from the 1970s and 1980s, and none of which include future sea level rise.

Once communities understand their risk, they need federal funding for smart investments. We need to dramatically increase FEMA's pre-disaster mitigation funding, which currently makes up less than 1% of its budget. Communities should also be empowered with the flexibility to invest in living shorelines and other natural infrastructure solutions by making the planning and permitting process more efficient.

Policies

- Increase pre-disaster mitigation funding across agencies
- Adopt federal minimum flood standards across all major federal programs
- Update FEMA flood maps to reflect current data and include sea level rise projections
- Support efficient planning and permitting for living shorelines, including working with the Army Corps to expand the new living shoreline permit category

[3] National Institute of Building Sciences, Natural Hazard Mitigation Saves: 2017 Interim Report. December 2017.

Rebuilding

Build back stronger to protect communities from future flooding

When disaster strikes and the national government spends billions to rebuild, we need to build back stronger so our communities can withstand future flooding instead of drawing on taxpayer dollars to rebuild again and again. By creating federal standards for rebuilding that take a clear-eyed view of future risk, we can keep our citizens safe and prevent wasteful spending.

We need to improve Department of Housing and Urban Development (HUD), FEMA, and Small Business Administration (SBA) programs so that they allow and incentivize rebuilding to higher standards.

Policies

- Create federal resilience standards for rebuilding after hurricanes and flood events
- Issue guidance from HUD on how the Community Development Block Grant program can be used to encourage adaptive rebuilding
- Have FEMA allow for and incentivize the adaptation of damaged facilities with Public Assistance funding
- Allow the SBA Disaster Loan Program to incentivize resilient construction



89% of registered voters support a requirement for all federally funded infrastructure to better withstand flooding[4]

[4] The Pew Charitable Trusts. Poll. January 2018.

Military

Ensure our military installations are ready to deploy 365 days a year



The DoD found that 931 military installations have experienced flooding[6]

When military facilities are flooded, it puts our national security at risk. At Norfolk Naval Base, the main access road floods about 10 times per year, affecting the over 90% of servicemen who live off base[5]. Some installations are already taking action to protect against flooding, but we need coordinated national action.

The Department of Defense (DoD) must prioritize adaptation plans to ensure our military is prepared for the future, and we must give base commanders the flexibility to invest in critical infrastructure on and off the base.

Policies

- Give the DoD the authority to assess the impact of flooding on our military installations
- Allow base commanders the flexibility to use mission funds to address flooding off-base by expanding programs such as Defense Access Roads
- Promote alternative funding mechanisms for our military through public-private partnerships

Our progress: We successfully advocated for the Defense Access Roads program amendment, which now allows bases to **address flooding impacts to roads leading into bases,** to be included in the Fiscal Year 2019 National Defense Authorization Act (NDAA) that was signed into law August 2018.

[5] Virginian-Pilot, Naval Station Norfolk's first 100 years: World's largest navy base anchored to community, June 2017.

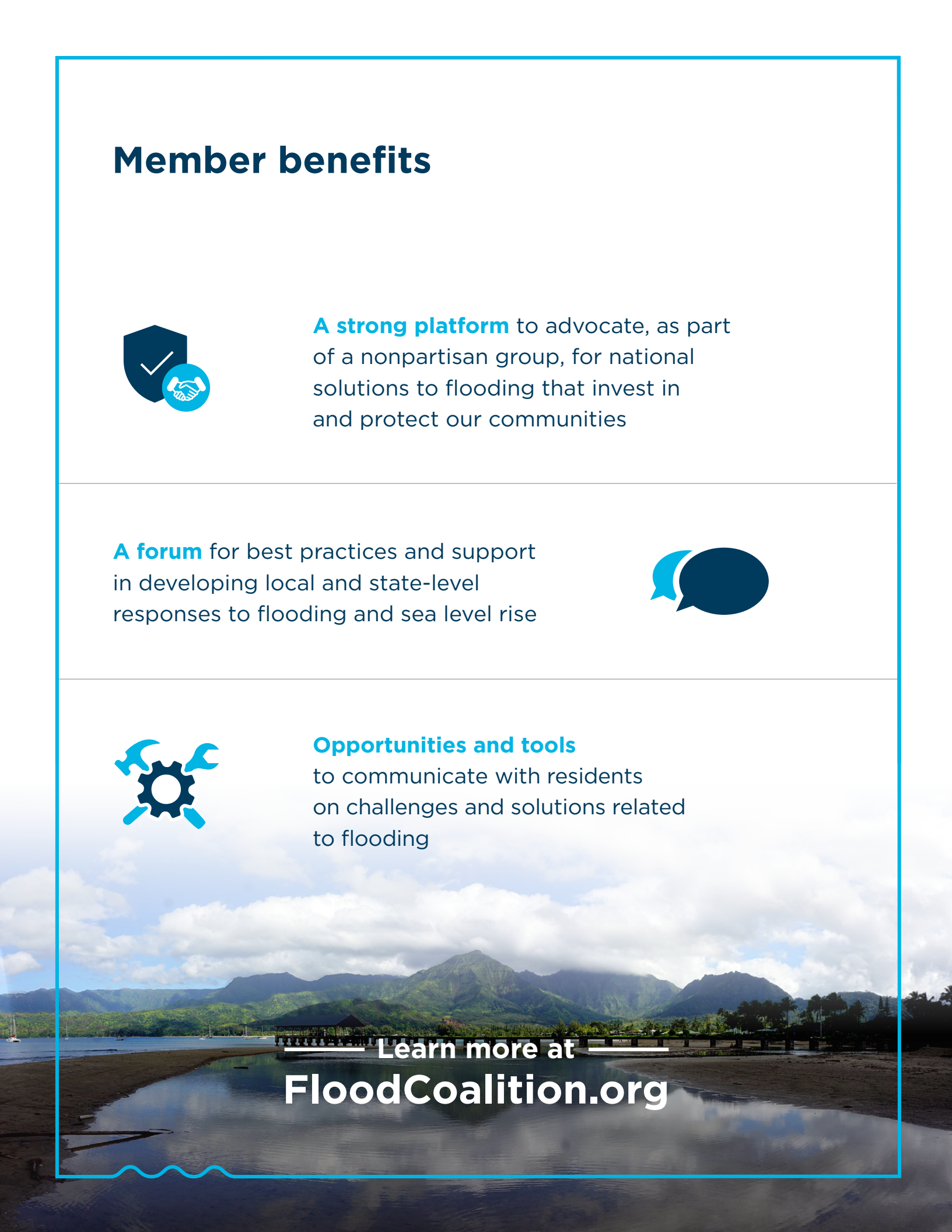
[6] Department of Defense Climate-Related Risk to DoD Infrastructure Initial Vulnerability Assessment Survey (SLVAS) Report. January 2018.

Member benefits

A strong platform to advocate, as part of a nonpartisan group, for national solutions to flooding that invest in and protect our communities

A forum for best practices and support in developing local and state-level responses to flooding and sea level rise

Opportunities and tools to communicate with residents on challenges and solutions related to flooding



Learn more at

FloodCoalition.org

AMERICAN FLOOD COALITION

Welcome

A NONPARTISAN COALITION ADVOCATING FOR NATIONAL SOLUTIONS TO SEA LEVEL RISE AND FLOODING

Member benefits

Add your voice to a powerful coalition that advocates for federal policy and funding. We're a 501(c)3 nonprofit organization and nonpartisan coalition advocating for national solutions to flooding and sea level rise. We proactively address the growing threat of higher seas, stronger storms, and more frequent floods by advocating for smarter planning and investments that protect our nation's residents, economy, and military installations.

Leverage best-in-class communications tools to engage citizens on flooding challenges and solutions. We provide talking points and messaging tips that enable local leaders to more effectively communicate to their citizens and advocate for their community.

Share best practices in a national forum that supports local and state level responses to flooding and sea level rise. Access our network of leaders, our member portal and educational resources, our monthly newsletter, and other tools.



How to use the coalition's Member Portal

Logging into your account

Access your account and create a profile by following the steps below:

1. You will receive an email from info@floodcoalition.org with instructions about accessing your account and creating a user profile.
2. Follow the link in the email to reset your password.
3. Once you have reset your password, follow the prompts on the screen to create your user profile.
   - Fill out basic information like your title and location.
   - You will have the option to fill in your expertise by writing a short bio and uploading a headshot.
4. If you check "I am willing to be contacted by other coalition members," other portal users will see your email address and phone number (if added). If you choose not to check this, your contact information will remain private.



If you have any issues accessing your account or resources, check that you are using the latest version of your internet browser.

Navigating the portal

Once you have created your profile, we encourage you to explore the portal, as described below:

1. Use the **Dashboard** as your main view of the portal. Here you will find a snapshot of the latest announcements and resources.
2. See a list of other portal users on the **Member Directory**. You can filter by member type, location, and expertise.
3. Find the latest announcements and events on the **Announcements** page. Click on specific announcements and events for more detail.
4. Access our library of educational resources on the **Resources** page.
5. Edit your profile at any time by clicking **My Profile**.
6. Find background materials about the coalition on the **Coalition Essentials** page. These include the coalition one-pager, our policy booklet, and more.

Once again, welcome to the portal! If you have any questions about this or do not receive an email with your login information, please reach out to **info@floodcoalition.org.**

Our objectives

We believe in the power of local voices, and will work with you to raise the profile of local flooding issues at a national level. Together, we look forward to advancing solutions that can support flood-affected communities, focused around these four objectives:

Economy
Invest in infrastructure and natural solutions that boost the economy and protect property values

Communities
Use proactive planning to keep communities safe and save taxpayer dollars

Rebuilding
Build back stronger to protect communities from future flooding

Military
Ensure our military installations are ready to deploy 365 days a year



Economy

Invest in infrastructure and natural solutions that boost the economy and protect property values

Our national economy relies on our highways, ports, and other essential infrastructure, much of which is at risk from riverine, coastal, and flash flooding and sea level rise. The American Flood Coalition supports dedicated funding and incentives for resilience that will help prevent flood damage, ensure property values and coastal tourism remain strong, and spur innovation and job creation.

The construction of new infrastructure will create local employment opportunities that cannot be outsourced, bringing more jobs to the community. As our communities adapt to flooding and sea level rise, we'll also be able to build new businesses and innovation that we can export to others around the globe.



Investing $100M in water infrastructure creates an estimated 1500+ jobs in the local community[2]

Policies

- Support communities investing in adaptation through dedicated federal funding and incentives, such as adaptation trust funds, revolving loan funds, and tax breaks
- Increase innovation grants for research into flood mitigation technology
- Facilitate the exchange of best practices among flood-affected communities
- Broaden available financing methods for flood infrastructure projects in ways that engage the private sector, such as public-private partnerships and low-interest debt financing

[2] Value of Water Campaign. The Economic Benefits of Investing in Water Infrastructure. 2017.

Communities

Use smart planning to keep communities safe and save taxpayer dollars



$1 spent on pre-disaster mitigation saves $4-7 in disaster relief[3]

Investing in resilience can save taxpayer dollars and untold heartache for affected communities, but to plan smart our communities need accurate information and policies that empower them to act. As a first step, the Federal Emergency Management Agency (FEMA) should upgrade its flood maps, 15% of which reflect information from the 1970s and 1980s, and none of which include future sea level rise.

Once communities understand their risk, they need federal funding for smart investments. We need to dramatically increase FEMA's pre-disaster mitigation funding, which currently makes up less than 1% of its budget. Communities should also be empowered with the flexibility to invest in living shorelines and other natural infrastructure solutions by making the planning and permitting process more efficient.

Policies

- Increase pre-disaster mitigation funding across agencies
- Adopt federal minimum flood standards across all major federal programs
- Update FEMA flood maps to reflect current data and include sea level rise projections
- Support efficient planning and permitting for living shorelines, including working with the Army Corps to expand the new living shoreline permit category

[3] National Institute of Building Sciences, Natural Hazard Mitigation Saves: 2017 Interim Report. December 2017.

Rebuilding

Build back stronger to protect communities from future flooding

When disaster strikes and the national government spends billions to rebuild, we need to build back stronger so our communities can withstand future flooding instead of drawing on taxpayer dollars to rebuild again and again. By creating federal standards for rebuilding that take a clear-eyed view of future risk, we can keep our citizens safe and prevent wasteful spending.

We need to improve Department of Housing and Urban Development (HUD), FEMA, and Small Business Administration (SBA) programs so that they allow and incentivize rebuilding to higher standards.

Policies

- Create federal resilience standards for rebuilding after hurricanes and flood events
- Issue guidance from HUD on how the Community Development Block Grant program can be used to encourage adaptive rebuilding
- Have FEMA allow for and incentivize the adaptation of damaged facilities with Public Assistance funding
- Allow the SBA Disaster Loan Program to incentivize resilient construction



89% of registered voters support a requirement for all federally funded infrastructure to better withstand flooding[4]

[4] The Pew Charitable Trusts. Poll. January 2018.

Military

Ensure our military installations are ready to deploy 365 days a year



The DoD found that 931 military installations have experienced flooding[6]

When military facilities are flooded, it puts our national security at risk. At Norfolk Naval Base, the main access road floods about 10 times per year, affecting the over 90% of servicemen who live off base[5]. Some installations are already taking action to protect against flooding, but we need coordinated national action.

The Department of Defense (DoD) must prioritize adaptation plans to ensure our military is prepared for the future, and we must give base commanders the flexibility to invest in critical infrastructure on and off the base.

Policies

- Give the DoD the authority to assess the impact of flooding on our military installations
- Allow base commanders the flexibility to use mission funds to address flooding off-base by expanding programs such as Defense Access Roads
- Promote alternative funding mechanisms for our military through public-private partnerships

[5] Virginian-Pilot, Naval Station Norfolk's first 100 years: World's largest navy base anchored to community, June 2017.

[6] Department of Defense Climate-Related Risk to DoD Infrastructure Initial Vulnerability Assessment Survey (SLVAS) Report. January 2018.

Your outreach team

Do you have questions, input or ideas about resources or activities that would benefit you and other members of the coalition as you seek to take action on the issues of flooding and sea level rise? Our Outreach Team is always interested in hearing from you. Please do not hesitate to be in touch!

Contact us



Anne Baker
Senior Outreach Director
Anne@floodcoalition.org



Brian Paro
State Programs Director
Brian@floodcoalition.org



Liz Cassin
Senior Outreach Associate
Liz@floodcoalition.org



Rolando Hernandez
Program Analyst
Rolando@floodcoalition.org

Connect with us: outreach@floodcoalition.org @floodcoalition @AmericanFloodCoalition



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # VII. - 2.
Administration - City of Boiling Spring Lakes Dam Projects Funding

From:
Steve Stone, County Manager

Issue/Action Requested:

Request that the Board consider approving the Interlocal Agreement with the City of Boiling Spring Lakes for the County to provide $3,000,000 to support the City's dam restoration projects.

Background/Purpose of Request:
On June 22nd of this year the Board approved an appropriation of $3,000,000 to the City of Boiling Springs Lakes and authorized staff to develop an Interlocal Agreement with the City to provide the funding in increments of $750,000 in each of FY 24, 25, 26 and 27. The agreement contains provisions that would delay or withhold the funding each year if the project is has not begun or is not making satisfactory progress. The attached agreement to implement the requested action has already been approved by the City and awaits approval by the Board. Also attached is a copy of the relevant June 22 agenda item.

Fiscal Impact:
Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations
Funds appropriated in the capital reserve at the June 20, 2022 board meeting

Approved By County Attorney:
Yes

ATTACHMENTS:

Description

- Approved 6-20-22 Agenda Item
- Interlocal Agreement

Brunswick County Board of Commissioners

ACTION AGENDA ITEM

June 20, 2022

Action Item # VIII. - 2.

From:
Steve Stone, County Manager

Administration - City of Boiling Spring Lakes Dam Projects Funding

Issue/Action Requested:
Request that the Board of Commissioners consider a request from the City of Boiling Spring Lakes to provide financial support of $3,000,000 for the City's projects to replace and improve several dams that were destroyed by Hurricane Florence and if approved authorize Administration and the County Attorney to develop an interlocal agreement to provide funding of $750,000 to the City in each of Fiscal Years 2024, 2025, 2026 and 2027.

Background/Purpose of Request:
The total estimated cost of the replacement of the all of damaged dams and the portion of Alton Lennon Drive that crosses over the top of the dam on Patricia Lake is currently projected at around $52,000,000. Because of required upgrades of dam structures that are not eligible for FEMA funding FEMA is providing less than half of the total project cost. The City has obtained substantial State funding for the projects, but still is about $18,000,000 or so shy of the total estimated cost. As of now, the City intends to finance around $15,000,000, which will require a substantial property tax increase. A County contribution of $3,000,000 will help keep the required property tax increase at a viable level. City officials have agreed that funding during the 4 named fiscal years will meet their project schedule needs and that the funding may be restricted for use only on the dam projects.

Fiscal Impact:
Budget Amendment Required, Reviewed By Director of Fiscal Operations
Appropriate Medicaid hold harmless and local option sales tax revenue and transfer to the reserve to provide financial support of $3,000,000 for the City of Boiling Spring Lakes Dam Project Funding.

Approved By County Attorney:
Yes

County Manager's Recommendation:
Recommend that the Board of Commissioners consider a request from the City of Boiling Spring Lakes to provide financial support of $3,000,000 for the City's projects to replace and improve several dams that were destroyed by Hurricane Florence and if approved authorize Administration and the County Attorney to develop an interlocal agreement to provide funding of $750,000 to the City in each of Fiscal Years 2024, 2025, 2026 and 2027.

ATTACHMENTS:

Description

- Budget Amendment
- Budget Amendment

NORTH CAROLINA BRUNSWICK COUNTY

INTERLOCAL AGREEMENT TO SUPPORT BOILING SPRING LAKES DAM RESTORATIONS

THIS INTERLOCAL AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as "County"), party of the first part and the City of Boiling Spring Lakes, a city organized and existing pursuant to the laws of the State of North Carolina and located in Brunswick County, (hereinafter referred to as "City" or "BSL"), party of the second part.

WITNESSETH:

WHEREAS, County and City desire to establish an inter-governmental approach to assist in the funding of projects to restore the BSL dams that were damaged by Hurricane Florence, as more fully described herein; and

WHEREAS, County and City each agree that the cooperative endeavor contemplated hereby will be beneficial to both entities; and

WHEREAS, County and City, in order to set out the provisions and conditions under which said services or resources will be provided, have entered into this Agreement as authorized by Article 20, Part 1 of Chapter 160A of the North Carolina General Statutes.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained herein, County and City do hereby agree as follows:

BACKROUND AND PURPOSE OF AGREEMENT

1. In 2018, Hurricane Florence made landfall over the City of Wilmington, North Carolina and slowly progressed across Brunswick County, leaving a staggering 30+ inches of rain over four days.

2. The deluge of rainfall resulted in the failure of five dams in the City of Boiling Spring Lakes. The dams had previously combined to impound water and create the largest freshwater lake near the ocean in North Carolina.

3. After the failure of the dams, the City of Boiling Spring Lakes flooded and experienced roads that washed way, necessitating numerous National Guard rescues.

4. Prior to Hurricane Florence, only one of the five dams had been classified as "high hazard," but after the breach of the dams, the NC Dam Safety Division of the North Carolina Department of Environmental Quality reclassified all five as high hazard. As a result of this reclassification,

the dams could no longer be engineered to be rebuilt and restored to their prior condition but had to be engineered to withstand a higher level of storm threat.

5. The reclassification to higher hazard level meant significant cost increases in the work needed to meet the new standard. Unfortunately, the City of Boiling Spring Lakes became caught in the middle of a disagreement between FEMA and NC Dam Safety as to the applicable codes and standards, with FEMA ultimately refusing to reimburse the City for the higher cost of construction that NC Dam Safety insisted the City must utilize to meet their interpretation of the Federal Dam Safety Act.

6. Current estimates for repair and reconstruction of the dams to current standards total approximately $52 million. The City of Boiling Spring Lakes only has a population of approximately 7,200 and an annual budget of approximately $5.5 million.

7. The City has explored or sought funding sources from the legislature of the State of North Carolina, Golden Leaf, FEMA, and Division of Water Infrastructure ARPA funding, among others.

8. The City has arranged funding sources for all but $18 million of the funds needed for the restoration projects. Of that $18 million, the City can obtain loans for $15 million, but seeks assistance from the County for the remaining $3 million to make the project financially viable.

TERMS OF COUNTY'S FINANCIAL CONTRIBUTION

9. In order to support the City in its project to restore the dams, the County agrees to provide funding in the amount of $3 million, payable in accordance with the terms herein.

10. The County shall pay the City the sum of $750,000.00 in four successive fiscal years beginning with fiscal year 2024.

11. The schedule of payments shall be as follows:

    July 1, 2023 - $750,000.00
    July 1, 2024 - $750,000.00
    July 1, 2025 - $750,000.00
    July 1, 2026 - $750,000.00

12. The City agrees that the funds contributed by County shall be restricted to use on the dam restoration project exclusively. The County's obligation to make the annual payments is contingent upon receipt of progress reports from the City which show satisfactory progress toward completion of the project. Any funds not used for the purposes stated shall be returned to the County. Any changes in the use of funds must be authorized in writing by the County prior to any expenditure of the funds by the City.

TERM OF AGREEMENT

13. The initial term of this Agreement begins on September 1, 2022 the ("Effective Date") and continues in effect until August 31, 2026, unless earlier terminated pursuant to any of the terms and conditions contained herein.

TERMINATION

14. County may terminate this Agreement upon thirty (30) calendar days' written notice to the City if City is in material breach of any provision herein and fails to cure the breach during the notice period.

NONAPPROPRIATION

15. If the Board of County Commissioners does not appropriate the funding needed by the County to fulfill its financial obligations under this Agreement for a given fiscal year, County will not be obligated beyond the end of the last fiscal year for which funds were appropriated. In such event, County will promptly notify City 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 County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

RELATIONSHIP OF PARTIES

16. Both County and City agree that this Agreement does not create a partnership, joint venture, other joint endeavor, joint ownership, joint operations, or personnel sharing of any kind. No joint personnel are needed by the parties in order to carry out the obligations under this Agreement.

REPRESENTATIONS

17. Each party to this Agreement represents to the other party each of the following as of the Effective Date of this Agreement and covenants with the other party that each such representation will remain true and correct:

    a. It has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

    b. No approval, authorization or consent of any other 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 Agreement;

    c. It shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses;

d. It shall not violate any agreement with any third party by entering into or performing the obligations under this Agreement; and

e. No elected or appointed official or employee has any interest (financial, employment or other) in the transactions contemplated by this Agreement.

COMPLIANCE WITH E-VERIFY PROGRAM

18. To the extent E-Verify rules apply to this Agreement, the parties agree to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

GOVERNING LAW AND VENUE

19. 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.

DISPUTE RESOLUTION

20. 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.

GOVERNMENTAL IMMUNITY

21. To the extent applicable, neither party waives 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.

NON-WAIVER

22. Failure by County at any time to require the performance by City 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.

ENTIRE AGREEMENT

23. 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.

HEADINGS

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

SEVERABILITY

25. 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.

AMENDMENTS

26. No amendments or changes to this Agreement, or additional shall be valid unless in writing and executed in the same manner as the original.

NOTICES

a. **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.

b. **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.

c. **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

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

ii. <u>For the City</u>: City Manager
City of Boiling Spring Lakes
9 East Boiling Spring Rd.
Boiling Spring Lakes, NC 28461

SIGNATURES

27. 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 § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

_____
Clerk to the Board

[SEAL]

BRUNSWICK COUNTY

By: _____
Randy Thompson
Chairman, Board of Commissioners

Date: _____

ATTEST:

_____
City Clerk

[SEAL]

CITY OF BOILING SPRING LAKES OFFICIAL SEAL NC

CITY OF BOILING SPRING LAKES

By: _____
Jeff Winecoff
Mayor

Date: 8/22/22

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

BRUNSWICK COUNTY

_____
Aaron C. Smith, Director of Fiscal Operations

APPROVED AS TO FORM

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

CITY OF BOILING SPRING LAKES

Suzanne Tungate
Suzanne Tungate, Finance Officer

APPROVED AS TO FORM

_____
City Attorney

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # VII. - 3.
Administration - NCACC FY 23 Legislative Goals

From:
Steve Stone, County Manager

Issue/Action Requested:

Request that the Board consider the draft goals below for potential inclusion on the NCACC Legislative Goal Agenda.

Background/Purpose of Request:

STATE GOALS

Seek additional State funding to support local adult (senior) day services, both in-home and facility-based.

Seek legislation to review and update flood maps more frequently in Counties experiencing high rates of population growth.

Oppose efforts to divert to the state, fees or taxes currently allocated to the counties or to erode existing county revenue streams with unfunded mandates. (Continuation of current NCACC goal)

Support increased state funding for existing and new transportation construction and maintenance needs, and support legislation to ensure that the Strategic Transportation Investments (STI) funding formula recognizes that one size does not fit all and that projects in both rural and urban areas are prioritized and funded. (Continuation of current NCACC goal)

Support legislation for hold harmless provisions and staggered payment plans to control/cap the liability to counties under the Medicaid and NCHC overpayment recoupment plan, which holds counties financially responsible for the erroneous issuance of Medicaid benefits and Medicaid claim payments resulting when the county DSS takes any action that requires payment of Medicaid claims for an ineligible individual. (Continuation of current NCACC goal)

FEDERAL GOALS

Seek legislation or policy changes to streamline and expedite the FEMA individual assistance process.

Request Congress to support an exemption for water systems from financial liability for PFAS cleanup under CERCLA (Superfund).

Goals that the Board approves will be submitted to NCACC before the September 12th deadline that the Association has set for consideration.

Fiscal Impact:
Reviewed By Director of Fiscal Operations

Approved By County Attorney:
Not Applicable

County Manager's Recommendation:

Recommend that the Board consider the draft goals below for potential inclusion on the NCACC Legislative Goal Agenda.

Brunswick County Board of Commissioners
ACTION AGENDA ITEM
September 6, 2022

Action Item # IX. - 1.

From:
Bob Shaver, County Attorney

Closed Session

Issue/Action Requested:
Request the Board to enter into closed session pursuant to G.S. § 143-318.11(a)(1) and (3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege and to approve Closed Session Minutes from June 20, 2022 and August 15, 2022.

Background/Purpose of Request:

Fiscal Impact:
Reviewed By Director of Fiscal Operations

Approved By County Attorney:
Yes

County Manager's Recommendation:
Recommend that the Board to enter into closed session pursuant to G.S. § 143-318.11(a)(1) and (3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege and to approve Closed Session Minutes from June 20, 2022 and August 15, 2022.