



# Pender County

## Agenda

**Board of County Commissioners Meeting  
 Tuesday, January 2, 2024 @ 4:00 PM  
 Pender County Public Assembly Room  
 805 S. Walker Street, Burgaw, NC**

		Presenter	Page
1.	CALL TO ORDER		
2.	INVOCATION		
3.	PLEDGE OF ALLEGIANCE		
4.	ADOPTION OF AGENDA		
5.	PUBLIC HEARING		
6.	PUBLIC INFORMATION		
7.	PUBLIC COMMENT FOR AGENDA ITEMS		
8.	CONSENT AGENDA		
8.1.	Approval to add Schedule 004 to the Master Technology Lease Agreement with Huntington Technology Financing in the Amount of \$568,237.81 for 43 months and a PO in the amount of \$79,294.02. <a href="#">Master Technology Lease Agreement - Pdf</a>	Harvey	3 - 11
8.2.	Refund/Release Requests for items meeting NC G.S 105-381 <a href="#">Refund/Release Requests - Pdf</a>	Radke	13 - 14
8.3.	Motor Vehicle Releases and Refunds <a href="#">Motor Vehicle Releases and Refunds - Pdf</a>	Radke	15 - 16
8.4.	Approval of Purchase Order and funds from General Fund for the purchase of 2023 Ford Police Interceptor Explorer in the amount of \$57,729.00. <a href="#">Approval of purchase order and funds for 2023 Ford Explorer - Pdf</a>	Cutler	17 - 19
8.5.	November 20, 2023, BOCC Meeting Minutes <a href="#">November 20, 2023, BOCC Meeting Minutes - Pdf</a>	Stanfield	21 - 33
8.6.	December 4, 2023, BOCC Meeting Minutes <a href="#">December 4, 2023, BOCC Meeting Minutes - Pdf</a>	Stanfield	35 - 48
9.	APPROVALS AND RESOLUTIONS		
9.1.	Authorization to Proceed with Closing on Purchase of Real Property and Related Budget Ordinance Amendment & Purchase Order - 795 acres +/- Off Hwy 210, Hampstead PIN-Partial of 3282-15-9252-0000 <a href="#">BOA Water Plant Site - Pdf</a>	Blue	49 - 50
9.2.	Authorization to Proceed with Closing on Purchase of Real Property and Related Budget Ordinance Amendment & Purchase Order - Several Parcels off of US Hwy 17, Hampstead for Water Plant Discharge Site	Blue	51 - 52

[BOA Water Plant Discharge - Pdf](#)

- 9.3. Approval of BOA & PO to Bordeaux Construction for Design-Build School Bond Project for \$5,003,800 for Design Phase      Blue      53 - 84

[BOA & PO Bordeaux Construction - Pdf](#)

10. DISCUSSION
11. APPOINTMENTS
12. MAPLE HILL WATER AND SEWER DISTRICT
13. ROCKY POINT WATER AND SEWER DISTRICT
14. SCOTTS HILL WATER AND SEWER DISTRICT
15. MOORES CREEK WATER AND SEWER DISTRICT
16. CENTRAL PENDER WATER AND SEWER DISTRICT
17. PENDER COUNTY BOARD OF HEALTH
18. SOCIAL SERVICES BOARD
19. PUBLIC COMMENT
20. ITEMS FROM THE COUNTY ATTORNEY, COUNTY MANAGER, ASSISTANT COUNTY MANAGERS, & COUNTY COMMISSIONERS
21. CLOSED SESSION (IF APPLICABLE).
22. ADJOURNMENT



## Pender County Request for Board Action

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**TO:** Board of County Commissioners  
**FROM:** Erik Harvey  
**DATE:** January 2, 2024  
**SUBJECT:** Approval to add Schedule 004 to the Master Technology Lease Agreement with Huntington Technology Financing in the Amount of \$568,237.81 for 43 months and a PO in the amount of \$79,294.02.

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**SUMMARY:**

The Information Technology Services Department is requesting that the Board of County Commissioners consider authorizing lease schedule 004. This will allow ITS to consolidate schedules 001R in the amount of \$11,179.09 and Schedule 002 in the amount of \$15,699.60. By doing this, the County will save \$13,663.02 per month for a term of 43 months. Schedule 004 will provide not only the support and maintenance for our core infrastructure, but also allow flexibility as new County Buildings are built.

ITS will save the County \$81,978.12 for FY 23-24 through the consolidation of schedules 001R and 002.

Schedule 001R: \$11,179.09

Schedule 002: \$15,699.60

Schedule 003: (Sheriff's Office)

Schedule 004: \$13,215.67 per mo. for 43 months (January 2024 - July 2028)

**ACTION REQUESTED:**

Approval to add Schedule 004 to the Master Technology Lease Agreement with Huntington Technology Financing in the Amount of \$568,237.81 for 43 months and a PO in the amount of \$79,294.02 for the remainder of FY 23-24. This expenditure has been budgeted in the FY 23-24 Budget Ordinance and will be taken from the following line item:

IT Equipment Lease: 445-402150

[Attorney Letterhead]

\_\_\_\_\_, 20\_\_

Huntington Technology Finance, Inc. and its Assignees  
2285 Franklin Road, Suite 100  
Bloomfield Hills, MI 48302

Re: Lease Schedule No. PCO-004 dated November 20, 2023 between Huntington Technology Finance, Inc. ("**Huntington**") and Pender County, North Carolina ("**Customer**"), which incorporates Lease Agreement No. PE052118 dated May 21, 2018, and the Acceptance Certificate made by Customer in reference thereto (collectively, the "**Documents**")

Ladies and Gentlemen:

We have acted as counsel to Customer with respect to the Documents. Capitalized terms used in this opinion without definition have the meanings provided for in the Documents. In this opinion, the term *laws* means all applicable laws, rules, regulations, orders, or governmental policies, whether constitutional, statutory, administrative, executive, or otherwise based, and terms of inclusion are without limitation. Based upon our examination of the Documents and such other investigation as we have considered appropriate and on the assumption that the Documents have been or will be duly executed by and enforceable against Huntington, it is our opinion that:

1. Customer is a public body corporate and politic duly organized and existing under the laws of the State of \_\_\_\_\_, with power and authority to enter into and perform the Documents.

2. The Documents and Customer's performance thereof have been duly authorized and the Documents have been duly authorized and executed by Customer. Those persons signing and delivering Documents on behalf of Customer hold the offices indicated below their signatures (which are their genuine signatures). Such authorization and execution have occurred pursuant to and, all in accordance with all applicable laws, including those governing open meetings, public records, public bidding and contracting, and appropriations. Customer's execution and performance of the Documents, and Customer's annual or other appropriations of moneys to pay amounts coming due thereunder, do not and will not violate any current laws, including any relating to the procurement of products from an out-of-state source. The Documents do not constitute a debt of Customer or a pledge of the taxes or general revenues of Customer. If, as a result of Customer's default under the Documents, Huntington obtains a money judgment against Customer, Customer will be obligated to pay it.

3. The funds necessary for Customer to pay the Rental Payments due and to become due during Customer's current fiscal year ending \_\_\_\_\_, 20\_\_ have been duly authorized, budgeted for, and appropriated and, if required by law, the appropriation is properly identified in the Documents.

4. The Documents are the valid, legal, and binding obligations of Customer, enforceable in accordance with their terms, except as limited by laws of general application affecting the enforcement of creditors' rights generally. Assuming the due appropriation of moneys sufficient to satisfy Customer's payment obligations under the Documents after Customer's current fiscal year, no laws inhibit Customer from performing (or Huntington from enforcing) the material provisions of the Documents, including (a) those provisions providing for Customer's payment of scheduled payments, payments for any period that products required to be returned are not returned, and payments upon a loss, casualty, default, or exercise of an option provided under the Finance Documents requiring payment upon the exercise thereof, and (b) those provisions relating to taxes, indemnities against third party Claims, and limitations on Customer's right to damages or other remedies against Huntington (including disclaimers of implied warranties).

\_\_\_\_\_ and its successors and assigns  
\_\_\_\_\_, 20\_\_\_\_  
Page 2

5. No consent of, exemption by, or registration or filing with any governmental body (other than those that have been obtained or effected) is required in connection with the execution or performance of the Documents by Customer.

6. Customer's execution and performance of the Documents, and the appropriation of funds to meet Customer's obligations under the Documents, do not and will not violate any current laws applicable to Customer, including any limitations as to the manner, form, or amount of indebtedness which may be incurred by Customer, and, to the best of our knowledge, do not and will not result in any default under any agreement or instrument binding upon Customer or its assets.

7. No current laws applicable to Huntington in contracting with Customer, that would not be applicable to Huntington were Customer a private entity, do or would, except as expressly by Huntington in writing in the Documents: (a) limit the maximum duration of the aggregate term under the Documents or the maximum duration of any individual renewal term thereof (if so agreed to therein or otherwise); (b) require an additional authorization before any renewal term is to come into effect (assuming the due appropriation of moneys sufficient to satisfy Customer's payment obligations under the Documents during the renewal term); (c) require Huntington to obtain or effect registration, license, or permission to execute or perform the Documents; (d) impose on Huntington any obligation to remove, destroy, encrypt, protect, or otherwise deal with any data or information contained in or accompanying any products on their return to Huntington; or (e) impose any obligations on Huntington to pay any particular wages to its employees or otherwise govern its internal business operations.

8. To the best of our knowledge there are no actions or proceedings pending before any governmental or other tribunal, or threatened, which will, if determined adversely to Customer, would materially adversely affect its power and authorization to enter into and perform the Documents or its appropriation of moneys to make payments thereunder.

9. The Documents, the Equipment and Huntington's interest therein, and Customer's use of the Equipment are exempt from any state sales, use, excise, and personal property taxes.

Very truly yours,

**Lease Schedule No. PCO-004 dated December 4, 2023  
to Lease Agreement No. PE052118 dated May 21, 2018**

This Lease Schedule is made pursuant to the above-referenced Lease Agreement between Lessee and Lessor (as amended by Amendment No. 1 thereto, "**Lease Agreement**"), which Lease Agreement is incorporated by reference, including as to its definitions. This Lease Schedule and the Lease Agreement as applicable hereto, excluding any Other Documents, are this "**Lease.**"

<b>Lessor:</b> Huntington Technology Finance, Inc. 2285 Franklin Road, Suite 100 Bloomfield Hills, MI 48302	<b>Lessee:</b> Pender County, North Carolina 805 South Walker Street Burgaw, NC 28425
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<b>Commencement Date:</b> As provided in the Lease Agreement.	<b>Monthly Lease Charge:</b> \$13,215.67
<b>Term of Lease from Commencement Date:</b> 43 months	<b>Original Cost:</b> \$677,114.03
	<b>Equipment:</b> The Equipment and its Location of Installation are as described on Exhibit A hereto.

1. **Rollover.** If this Lease Schedule is executed by Lessee and Lessor and the Certificate of Acceptance for all of the Equipment hereunder is executed by Lessee ("**Execution Date**"), and the Execution Date occurs by January 10, 2024 (or such later date as Lessor may approve in its sole discretion), then: (a) Lessee's obligation to pay Monthly Lease Charges under Lease Schedule No(s). 001R-REN and 002 made pursuant to the Lease Agreement ("**Terminating Schedules**") shall cease as of December 31, 2023 (the "**Scheduled Termination Date**"); and (b) if Lessee has completely fulfilled the terms and conditions of the Terminating Schedules, including paying all Monthly Lease Charges accruing through the Scheduled Termination Date, and paying and performing all other obligations accruing through the Execution Date, the Terminating Schedules shall terminate and Lessee shall have no further obligation or liability thereunder except for those obligations and liabilities relating to Lessor's rights, privileges and indemnities, to the extent that they are fairly attributable to events or conditions occurring or existing prior to the Execution Date (all of which shall specifically survive termination). The Monthly Lease Charges and Original Cost hereunder include amounts attributed to the financing of Lessee's rights and rental obligations under the Terminating Schedules.

2. **Signing; Copies; Counterparts.** At Lessor's option this and related documents will be signed and delivered electronically through Lessor's account with DocuSign under the electronic contracting process and terms thereof. Otherwise, if Lessee and Lessor have separately supplemented the Lease Agreement in writing to provide for other kinds of electronic signature and delivery, Lessee may sign and deliver this and related documents as provided therein. Printed or other tangible copies of originals or copies of this and related documents that are faxed, scanned, emailed, photocopied, stored, transmitted, and/or otherwise represented or dealt with electronically (e.g., by PDF) will suffice as originals for all evidentiary purposes. This and related documents are executable in counterparts. Except when signing electronically as contemplated above, Lessee will manually sign one (or more, if Lessor permits more than one) counterpart of this and related documents and promptly deliver all originals to Lessor.

3. **Other.** Notwithstanding anything to the contrary in the Lease Agreement or any part thereof, or in any other Lease Schedules thereto or any part thereof, or in any Certificates of Acceptance thereunder, or in any other agreements of the parties (such other Lease Schedules, Certificates of Acceptance, and agreements, "**Other Documents**"); this is the entire agreement of the Lessee and Lessor as to its subject matter; this Lease Schedule is a separate agreement, independent of the Lease Agreement and independent and exclusive of any Other Documents and their effects; and this Lease Schedule governs over the rest of this Lease and any Certificate of Acceptance(s) made hereunder in all respects. Lessee will not assert against any Assignee any claim or defense it may have against Lessor (but Lessee may nonetheless enforce a claim it has against Lessor in a separate action at law for damages). This Lease is governed by Michigan law. Consents to jurisdiction under this Lease are nonexclusive. Lessor may file financing statements giving public notice of its interest in any property subject to this Lease Schedule or the Lease Agreement (or that Lessor anticipates being so). Definitions and redefinitions of terms made within this Lease Schedule apply throughout this Lease.

Huntington Technology Finance, Inc. (" <b>Lessor</b> ")	Pender County, North Carolina (" <b>Lessee</b> ")
By: _____	By: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**Certificate of Acceptance**  
**to Lease Schedule No. PCO-004 dated December 4, 2023**  
**to Lease Agreement No. PE052118 dated May 21, 2018**

With reference to (and including the definitions of) the above-referenced Lease Schedule made pursuant to the above-referenced Lease Agreement between the undersigned Lessee and Huntington Technology Finance, Inc, and with reference to the items of Equipment identified in the Lease ("**Accepted Items**"), Lessee hereby certifies:

- 1) The Accepted Items have been received, tested, inspected, and found to be in good working order, satisfactory, and acceptable in all respects. The Acceptance Items are irrevocably accepted for purposes of the Lease, any purchase documents with their suppliers, and all related documents, with their Installation Date being the date Lessee makes this certificate (identified below).
- 2) The Original Cost of the Accepted Items is identified in the Lease.
- 3) The supplier of the Accepted Items, whom Lessor is authorized to pay therefor, is identified in the Lease.
- 4) The Location of Installation of the Accepted Items is identified in the Lease.
- 5) Lessee is in full compliance with the Lease and no Event of Default has occurred thereunder.

At Lessor's option this and related documents will be signed and delivered electronically through Lessor's account with DocuSign under the electronic contracting process and terms thereof. Otherwise, if Lessee and Lessor have separately supplemented the Lease Agreement in writing to provide for other kinds of electronic signature and delivery, Lessee may sign and deliver this and related documents as provided therein. Printed or other tangible copies of originals or copies of this and related documents that are faxed, scanned, emailed, photocopied, stored, transmitted, and/or otherwise represented or dealt with electronically (e.g., by PDF) will suffice as originals for all evidentiary purposes. Except when signing electronically as contemplated above, Lessee will manually sign this and related documents and promptly deliver all originals to Lessor.

**Pender County, North Carolina ("*Lessee*")**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Installation Date:** \_\_\_\_\_, 2023 (*Lessee must fill in if blank*)













**Pender County  
Refund/Release Requests for items  
meeting NC G.S 105-381**

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**TO:** Board of County Commissioners  
**FROM:** Melissa Radke  
**DATE:** January 2, 2024  
**SUBJECT:** Refund/Release Requests for items meeting NC G.S 105-381

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**SUMMARY:**

The attached spreadsheet shows all requested refunds/releases. All meet the statutory requirements of NC G.S. 105-381 and have back up to show proof if needed. It is the recommendation of the Tax Administrator to approve these releases/refunds as stated in the attached spreadsheet.

**ACTION REQUESTED:**

Approve the attached release/refunds as recommended by the Tax Administrator.

Property to be released	Value to be released	S to be released	Tax year to be released	Reason for release	Recommendation
MH	9,600	\$315.04	2023	Didn't own as of 1-1-23	Approve
Boat	23,082	\$234.86	2023	Sold in August 2022; Should have been deactivated in the system for 2023 as listing form was returned	Approve
Boat	44,027	\$409.45	2023	Sold in 2022	Approve
Boat	17,035	\$173.33	2023	Sold	Approve
Boat	17,035	\$168.49	2022	Sold in 2021	Approve
PUV	45,905	\$431.51	2023	Qualified for PUV; was not processed in office in time for billing; this was a timely application	Approve
PUV	31,208	\$293.36	2023	Qualified for PUV; was not processed in office in time for billing; this was a timely application	Approve



## Pender County Motor Vehicle Releases and Refunds

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**TO:** Board of County Commissioners  
**FROM:** Melissa Radke  
**DATE:** January 2, 2024  
**SUBJECT:** Motor Vehicle Releases and Refunds

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**SUMMARY:**

This list includes all motor vehicle refund and releases processed through the NCVTS system with DMV. These refunds and releases result from prorations of tax due to the return of a NC license plate to the DMV office (usually for vehicles/trailers that have been sold, totaled, gifted to new owner, wrong situs address, approved for exemption, etc). NC DMV has also approved these refunds, Board action allows Pender County to issue checks back to the owner.

The refunds and releases shown are recommended for approval by the Pender County Tax Office.

**ACTION REQUESTED:**

Approve the NC motor vehicle release and refunds shown.

**RELEASES OVER \$100**

YEAR	NAME	ACCOUNT	AMOUNT	REASON
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NONE

**REFUNDS OVER \$100**

YEAR	NAME	ACCOUNT	AMOUNT	REASON
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2023	DALTON, DONNA FARRAR	295507269	142.60	SOLD
2021	GROGAN, RYAN THOMAS	295506603	313.90	MILTRY EXEMPT
2022	GROGAN, RYAN THOMAS	295506597	220.77	MILTRY EXEMPT
2023	KAVANAGH, KYLE JEROME	295506789	330.42	MILTRY EXEMPT
2022	MILLER, CAROL THOMPSON	293610549	120.07	SOLD
2023	OTAZO, NICHOLAS PATRICK	294999501	597.61	MILTRY EXEMPT
2022	OUTLAW, JOSHUA EUGENE	295012656	112.01	SOLD
2022	PAINE, CHRISTOPHER DAVID	294200079	183.30	SOLD
2022	PAYNE, GAYLE SUZANNE	294794694	102.65	SOLD
2022	RAMOS, SAN JUANITA	294001839	100.88	DESTROYED
2022	ROBERTS, LINDA MILLER	293610582	170.66	SOLD
2022	STEPHENSON, ROBERT BRENT	394009216	130.21	SITUS
2022	SWEET, DARRELL	295347909	150.40	SOLD
2022	TEW, JODY PRESTON	295506990	428.33	SOLD
2023	WENDLER, MATTHEW R	293888244	134.59	MILTRY EXEMPT
2022	WILLIAMS, GARFIELD DAVID	295000320	222.79	OUT OF STATE
2022	WILLIAMS, TERESA ANN	295000323	210.42	OUT OF STATE

TOTAL REFUNDS OVER \$100			\$3,671.61	
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**RELEASES UNDER \$100**

YEAR	NAME	ACCOUNT	AMOUNT	REASON
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NONE

**REFUNDS UNDER \$100**

YEAR	NAME	ACCOUNT	AMOUNT	REASON
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2022	BOYCE, ROBERT STEPHEN	293611248	5.26	SOLD
2022	DREW, MELODY WHICHARD	293887602	22.74	SOLD
2021	MCARTAN, JOHN ALLEN	293887671	2.51	SOLD
2022	MESSER, NORMAN ROY JR	295347312	80.36	OUT OF STATE
2023	MONACO, VINCENT JAMES	394008988	53.55	SITUS
2022	NEIDHARDT, STEVEN FRANK	295506870	17.47	OUT OF STATE
2022	NEIDHARDT, STEVEN FRANK	295506876	34.86	SOLD
2022	PAGANO, DEANNA LYNN	294493647	17.77	DESTROYED
2022	TINNEY PAINTING INC	294493848	89.84	SOLD
2022	ZYGMUNT, LAURA SMALLEY	295506558	5.07	SOLD

TOTAL REFUNDS UNDER \$100			\$ 329.43	
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TOTAL OF ALL RELEASES			NONE	
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TOTAL OF ALL REFUNDS			\$4,001.04	
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## Pender County Request Board Approval

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**TO:** Board of County Commissioners  
**FROM:** Alan Cutler  
**DATE:** January 2, 2024  
**SUBJECT:** Approval of Purchase Order and funds from General Fund for the purchase of 2023 Ford Police Interceptor Explorer in the amount of \$57,729.00.

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**SUMMARY:**

Pender County Sheriff's Office is requesting approval of Purchase Order and requesting funds from General Fund for the purchase of 2023 Ford Police Interceptor Explorer in the amount of \$57,729.00.

This price includes the upfit of this vehicle.

These funds will come from 510-407403.

**ACTION REQUESTED:**

Approval of Purchase Order and funds from General Fund for the purchase of 2023 Ford Police Interceptor Explorer in the amount of \$57,729.00.



## Fairway Ford, Inc.

444 US Highway 117 South  
PO Box 959  
Burgaw, NC 28425

December 13, 2023

Major Collier,

The quote you requested for the 2023 Ford Police Interceptor Utility / Explorer is below.

2023 Ford Explorer AWD Police Interceptor as per NCSA specifications plus the following requested options:

- (99C) 3.0L Ecoboost
- (67U) Ultimate wiring kit
- (67V) Connector kit
- (51R) Driver Side LED Spotlight
- (55F) 4 FOB Keyless Remote Entry
- (76D) Deflector Plate
  - \$46,405.00
- Police equipment upfit (per your "SLICK TOP NO CAGE" specs) prior to delivery
  - \$11,324.00

Total including options and upfit: \$57,729.00\*\*

\*\*Quote valid based on vehicle order dated August 10, 2022 and updated to reflect upfit pricing as of 12/06/2023.

Please do not hesitate to contact me if you have any questions or need any further details.

Respectfully Submitted,

**Keith Batson**

Financial Services Manager

Fairway Ford, Inc.

Burgaw, NC

Phone: (910) 259-2371

Fax: (910) 259-9638

Pender County Budget Ordinance Amendment

Fiscal Year **FY 2023-2024**

Department **510 - SHERIFFS DEPARTMENT**

**REVENUES**

	Account # (ORG-OBJECT)	Account Description	Amount
1	695-399000	Fund Balance	57,729.00
2			
3			
4			
5			
6			
7			
8			
9			
10			

Proposed Amendment:

**EXPENDITURES**

	Account # (ORG-OBJECT)	Account Description	Amount
1	510-407403	Capital Outlay/vehicle	57,729.00
2			
3			
4			
5			
6			
7			
8			
9			
10			

**Total Revenues** 57729

**Total Expenditures** 57729

**Budget Amendment Balances when Zero.** 0

**Prepared By:** Jennie Coleman

**Email** jcoleman@pendersheriff.com





**Pender County  
November 20, 2023, BOCC Meeting  
Minutes**

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**TO:** Board of County Commissioners  
**FROM:** Lexi Stanfield  
**DATE:** January 2, 2024  
**SUBJECT:** November 20, 2023, BOCC Meeting Minutes

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**SUMMARY:**

Attached are the minutes from the November 20, 2023, BOCC meeting.

**ACTION REQUESTED:**

Approval of minutes

**ATTACHMENTS:**

Minutes



**MINUTES**  
**Board of County Commissioners Meeting**  
**Monday, November 20, 2023 4:00 PM**  
**Pender County Public Assembly Room**

**MEMBERS PRESENT:** Fred McCoy  
 Jacqueline A. Newton  
 Jerry Groves  
 Wendy Fletcher-Hardee  
 Brad George

**MEMBERS ABSENT:**

**OTHERS PRESENT:** David Andrews, County Manager  
 Trey Thurman, County Attorney  
 Patrick Buffkin, Staff Attorney  
 Lexi Stanfield, Clerk to the Board  
 Allen Vann, Assistant County Manager  
 Other Staff and Members of the Press and Public.

**1 CALL TO ORDER**

1.1 Chair Newton called the meeting to order at 4:00PM.

**2 INVOCATION**

2.1 Commissioner Groves gave the invocation.

**3 PLEDGE OF ALLEGIANCE**

3.1 Commissioner George led the Pledge of Allegiance.

**4 ADOPTION OF AGENDA**

Moved by Brad George, seconded by Wendy Fletcher-Hardee

*Motion to Adopt the Agenda*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			

Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

**5 PUBLIC INFORMATION**

5.1 Proclamation Honoring Desmond Jordan

Brandi Cobb, Communications Manager, presented Desmond Jordan with a proclamation honoring him for winning first place at the United States Powerlifting Association World Championship in Coventry, England, deadlifting over 800 pounds and his work with the youth. Mr. Jordan addressed the Board and told them how he got into powerlifting. The Board took a picture with Mr. Jordan and his family.

5.2 Communications Plan and Website Project Timeline

Brandi Cobb, Communication Manager, went over the Pender County communication plan and website project timeline. Cobb discussed the mission, goals, priorities, and developmental strategies of the communication plan. She presented ideas such as a web stylus and e-communication. Cobb broke down the timeline for the new Pender County Website. The website is estimated to be complete by June 2024.

5.3 Focus Broadband - Pender County Update

Allen Vann, Assistant County Manager, gave a brief update on the Focus Broadband County Internet. Vann acknowledged this project is ran by the USDA and not Pender County. Focus Broadband and Pender County are not able to expedite the project more than it already is. All area specific updates and questions should be directed to the Focus Broadband website: [www.getfocusbroadband.com/pendercounty](http://www.getfocusbroadband.com/pendercounty). Pender residents can also call the number (833) 981-4152. Any questions regarding unique situations that need clarification can be directed to Kris Ward at (910) 755-1697.

5.4 Park Projects Update

Zach White and Jared Cass, Parks and Recreation Director and Project Manager, updated the Board on park projects. White and Cass went over Penderlea Community Park's picnic shelter and restroom. The kickoff meeting was on August 15th, 2023. Construction fencing was installed. The estimated completion is February 2024. Central Pender

Park is in Phase 1. The kickoff meeting was on October 24, 2023. The final site design is due February 2024. The construction documents completion date is August 2024 and project completion is October 2025. White and Cass answered questions from the Board.

5.5 Status of DOT Study of Malpass Corner

Daniel Adams, Planning Director, appeared before the Board on behalf of NCDOT. NCDOT is doing a review of the intersection. There are no current updates to be given. NCDOT will be collecting one to one and a half years of data on the intersection.

5.6 Update on 421 - Water System Expansion

Anthony Colon, Public Utilities Director, gave an update on the water system expansion along highway 421. Colon has been in contact with Highfield Engineering and has received confirmation that the Malpass Corner water tank is capable of maintaining pressure and volume of water should Pender County tie in 421 into highway 11 extending up to the Sampson County. Pender County is eligible for a grant to help fund this. This grant would need to be paid back over time. Colon answered questions from the Board.

**6 PUBLIC COMMENT FOR AGENDA ITEMS**

**7 CONSENT AGENDA**

7.1 Approval of Budget Amendment for the transfer of revenue funds from insurance claims in the amount of \$24,042.42.

Moved by Fred McCoy, seconded by Wendy Fletcher-Hardee

*Motion to Approve the Consent Agenda*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

7.2 Approval of Budget Amendment for the transfer of revenue funds

- 7.3 Approval of Pender County Emergency Management Fuel Shortage Plan
- 7.4 October 16, 2023, BOCC Meeting Minutes
- 7.5 2024 Calendar Regular Meetings
- 7.6 Consent to move donations for Employee luncheon
- 7.7 Refund/Release Requests for items meeting NC G.S 105-381
- 7.8 Taxpayer Request for late application of antique airplane to be approved

**8 APPROVALS AND RESOLUTIONS**

- 8.1 Approval for Purchase Order and requesting County funds for Carolina Recording Systems, LLC in the amount of \$131,875.00.

Sheriff Cutler presented this item. It is required to have 911 transmissions recorded. Pender County Sheriff's department's 911 system needs to be refreshed. The total cost to do this is \$131,875.00. The Sheriff's office sent this quote to the 911 Board. Pender County Sheriff's Office has received it back and \$114,030.00 of the \$131,875.00 is reimbursable from the 911 Board.

Moved by Brad George, seconded by Wendy Fletcher-Hardee

*Motion to Approve Purchase Order and request for County funds for Carolina Recording Systems, LLC in the amount of \$131,875.00.*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

- 8.2 Approval of PO & BOA for road & drainage repairs within Pender Commerce Park

Jared Cass, Project Manager, presented this item. Cass stated he felt this price was fair because the company can do all aspects of the project. Staff stated they feel this work should be done regardless but by performing these repairs, Pender County will be able to hand over the

responsibility of maintaining the road to NCDOT. Cass answers questions from the Board.

Moved by Brad George, seconded by Fred McCoy

*Motion to Approve PO and BOA for Road and Drainage Repairs within Pender Commerce Park*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves		x		
Wendy Fletcher-Hardee	x			
Brad George	x			
	4	1	0	0

CARRIED.

- 8.3 Consideration of Memorandum of Agreement with North Carolina Emergency Management to implement the Hazard Mitigation Grant Program (HMGP-4465) project to elevate three homes in Pender County

Daniel Adams, Planning Director, present this item. This project is a grant program associated with Hurricane Dorian. The agreement would help alleviate three homes that have experience damage from the storm. This Memorandum of Agreement (MOA) will allow North Carolina Emergency Management to handle the implementation of this project, which includes soliciting bids from contractors, providing oversight of all contracted work, and taking on the financial responsibility of the costs associated with implementation.

Moved by Fred McCoy, seconded by Wendy Fletcher-Hardee

*Motion to approve the Consideration of Memorandum of Agreement with North Carolina Emergency Management to implement the Hazard Mitigation Grant Program (HMGP-4465) project to elevate three homes in Pender County*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			

Brad George	x			
	5	0	0	0

CARRIED.

- 8.4 Amendment to Cooperative Agreement between Pender County and the North Carolina Office of Recovery and Resiliency (NCORR) regarding the Strategic Buyout Program

Daniel Adams, NCORR and Pender County entered into a Cooperative Agreement in May of 2023 to implement their Strategic Buyout Program. Since then, NCORR has identified two more parcels eligible for the buyout program. The amendment attached to this item adds the two parcels to the agreement. The two parcels are located on NC HWY 210 near the Bladen County line and can be further identified by PINs 2245-02-6893-0000 and 2245-02-6429-0000.

Moved by Brad George, seconded by Wendy Fletcher-Hardee

*Motion to Approve the Amendment to Cooperative Agreement between Pender County and the North Carolina Office of Recovery and Resiliency (NCORR) regarding the Strategic Buyout Program*

	For	Against	Abstained	Absent
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

- 8.5 Resolution of Support for the NCDOT's application to the U.S. Department of Transportation's Bridge Investment Program for the replacement of the Cape Fear Memorial Bridge

Daniel Adams, Planning Director, presented this item. NCDOT is authorized to pursue a grant from the US DOT for the replacement of the Cape Fear Memorial Bridge. The application will be submitted under the US DOT Bridge Investment Program. This program is for large bridges that are expected to exceed \$100 million in cost. WMPO has identified this project as their top unfunded priority. Adams is asking the Board to sign a letter of support.

Moved by Fred McCoy, seconded by Wendy Fletcher-Hardee

*Motion to approve Resolution of Support for the NCDOT's application to the U.S. Department of Transportation's Bridge Investment Program for the replacement of the Cape Fear Memorial Bridge*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

**9 DISCUSSION**

9.1 WMPO 2050 Metropolitan Transportation Plan (MTP) Priority Project List

Daniel Adams, Planning Director, presented this item for discussion. The WMPO 2050 MTP is their guiding document related to transportation improvement projects. It will identify transportation needs for the region for the next 25 years. As part of this process, WMPO has done a significant amount of public outreach. Public engagement survey will close out on November 30, 2023. It is available on the WMPO website. WMPO is asking the Board give feedback for priority projects for the next year. Adams passed around a list of identified projects. Any additions to the list are due by December 1, 2023.

**10 APPOINTMENTS**

10.1 Parks and Recreation Board Appointment

Lexi Stanfield, Clerk to the Board, presented the application for the Parks and Recreation Board district four position. Stanfield briefly spoke about the applicant's qualifications. This position has been vacant and advertised for over a year. The board discussed the candidate among themselves. Raymund Rosso's term will begin November 20th, 2023, and expire on October 31, 2026.

Moved by Wendy Fletcher-Hardee, seconded by Fred McCoy

*Motion to Approve Raymund Rosso to the Parks and Recreation Board for the District Four Position.*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

10.2 Re-Appointment to the Lower Cape Fear Water and Sewer Authority.

Lexi Stanfield, Clerk to the Board, presented the Re-Appointment to the Lower Cape Fear Water and Sewer Authority (LCFWSA). Norwood Blanchard has served three (3) terms and nine (9) years on the Board. The Board discussed Mr. Norwood's qualifications and the work he has done on the LCFWSA. Commissioner McCoy made a motion to waive the 3-term/10-year policy set out at Rule 32, section C of the Board of Commissioners' Rules of Procedure. Commissioner George seconded the motion. The vote was unanimous. Motion Carried. Mr. Blanchard's new term will begin on March 1, 2024, and expire on February 28, 2027.

Moved by Fred McCoy, seconded by Jerry Groves

*Motion to Reappoint Norwood Blanchard to the Lower Cape Fear Water and Sewer Authority.*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

**11 MAPLE HILL WATER AND SEWER DISTRICT**

**12 ROCKY POINT WATER AND SEWER DISTRICT**

**13 SCOTTS HILL WATER AND SEWER DISTRICT**

**14 MOORES CREEK WATER AND SEWER DISTRICT**

**15 CENTRAL PENDER WATER AND SEWER DISTRICT**

**16 PENDER COUNTY BOARD OF HEALTH**

**17 SOCIAL SERVICES BOARD**

**18 PUBLIC COMMENT FOR NON-AGENDA ITEMS**

18.1 Debbie Walker briefly spoke to the Board about Malpass Corner intersection. Ms. Walker stated citizens are not stopping at the stop sign and voiced concerns about children's safety at the nearby school.

**19 ITEMS FROM THE COUNTY ATTORNEY, COUNTY MANAGER, ASSISTANT COUNTY MANAGER, & COUNTY COMMISSIONERS**

19.1 David Andrews, County Manager, announced Pender County Offices would be closed Wednesday through Friday for Thanksgiving holiday.

19.2 Trey Thurman, County Attorney, requested the Board go into closed session pursuant to items three (3) attorney client privilege, item four (4) economic development, and item six (6) personnel.

19.3 Vice Chair Hardee spoke about complaints she had received about traffic lights. She stated her and Commissioner George had identified twelve areas in Hampstead that needed traffic lights. She is waiting to hear back from NCDOT.

19.4 Commissioner Groves spoke about a family who had split their parcel into two and now has higher taxes. He also spoke about complaints he received about Malpass Corner.

19.5 Commissioner Brad George spoke about the girl scouts. He also addressed complaints about Carolina Water System. He informed citizens this was not something Pender County handles. Commissioner George provided steps for citizens to follow to ensure their complaints were heard. He also reminded citizens of the Hampstead Kiwanis Park Tree lighting ceremony on December 1 at 5:30.

19.6 Chair Newton spoke about the Veteran's Program at the Burgaw Baptist Church.

**20 CLOSED SESSION (IF APPLICABLE).**

**21 7PM PUBLIC HEARINGS: SPECIAL USE PERMITS/ZONING MAP**

**AMENDMENTS/ RESOLUTIONS**

21.1 REZONE 2023-55: Request to rezone two parcels totaling approximately 165 acres from the RP, Residential Performance zoning district to the O&I, Office & Institutional zoning district in the Topsail Township

Adam Moran presented the REZONE 2023-55: Request to rezone two parcels totaling approximately 165 acres from the RP, Residential Performance zoning district to the O&I, Office & Institutional zoning district in the Topsail Township. Pender County Planning and Community development are the applicants of the rezone request. These two parcels are for the school system and are located south of NC Hwy 210, across from Whispering Pines Court. There are currently no site-specific plans. The zoning has forty-one (41) uses by-right and thirteen (13) uses with a special use permit. Staff found it consistent with the Future Land Use Plan and is supported by four policies.

Durwood Potter, Pender Resident, spoke opposed to this rezone. Mr. Potter voiced concerns of traffic issues.

Moran answered questions from the Board.

Moved by Brad George, seconded by Fred McCoy

*Motion to Approve the REZONE 2023-55: Request to rezone two parcels totaling approximately 165 acres from the RP, Residential Performance zoning district to the O&I, Office & Institutional zoning district in the Topsail Township*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

21.2 Recap of Joint Meeting Between Planning Board and Board of Commissioners

Daniel Adams, Planning Director, presented the Recap of the Joint

Meeting between Planning Board and Board of Commissioners. Adams discussed the key topics and take aways from the meeting held on September 12th, 2023. Topics discussed included Overlay Districts, increased use of conditional zoning, Planned Development District approval process, and reducing the uses that are allow via special permits. Other topics mentioned included resiliency, stormwater infrastructure, and tree preservation.

21.3 Resolution Authorizing Sale of 172 Acres in Pender Commerce Park by Upset Bid Process

Patrick Buffkin, Staff Attorney, requested the Board add the Resolution Authorizing Sale of 172 Acres in Pender Commerce Park by Upset Bid Process to the agenda. Commissioner McCoy made a motion to add the item. Vice Chair Hardee seconded the motion. The vote was unanimous. Motion carried.

Moved by Brad George, seconded by Wendy Fletcher-Hardee

*Motion to Approve the Resolution Authorizing Sale of 172 Acres in Pender Commerce Park by Upset Bid Process*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

**22 ADJOURNMENT**

Moved by Jerry Groves, seconded by Fred McCoy

*Motion to Adjourn the Meeting at 8:07PM*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			

	5	0	0	0
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CARRIED.





**Pender County  
December 4, 2023, BOCC Meeting  
Minutes**

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**TO:** Board of County Commissioners  
**FROM:** Lexi Stanfield  
**DATE:** January 2, 2024  
**SUBJECT:** December 4, 2023, BOCC Meeting Minutes

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**SUMMARY:**

Attached are the minutes from the December 4, 2023, BOCC meeting.

**ACTION REQUESTED:**

Approval of Minutes

**ATTACHMENTS:**

Minutes



**MINUTES**  
**Board of County Commissioners Meeting**  
**Monday, December 4, 2023 4:00 PM**  
**Pender County Public Assembly Room**

**MEMBERS PRESENT:** Fred McCoy  
 Jacqueline A. Newton  
 Jerry Groves  
 Wendy Fletcher-Hardee  
 Brad George

**MEMBERS ABSENT:**

**OTHERS PRESENT:** David Andrews, County Manager  
 Trey Thurman, County Attorney  
 Patrick Buffkin, Staff Attorney  
 Lexi Stanfield, Clerk to the Board  
 Allen Vann, Assistant County Manager  
 Other Staff and Members of the Press and Public.

**1 CALL TO ORDER**

1.1 Chair Newton called the meeting to order at 4:00PM.

**2 INVOCATION**

2.1 Commissioner George gave the invocation.

**3 PLEDGE OF ALLEGIANCE**

3.1 Vice Chair Hardee led the Pledge of Allegiance.

**4 ADOPTION OF AGENDA**

Moved by Brad George, seconded by Wendy Fletcher-Hardee

*Motion to Adopt the Agenda.*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			

Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

**5 ADOPTION OF MINUTES**

**6 ORGANIZATIONAL MEETING IN ACCORDANCE WITH RULE 4 OF THE RULES OF PROCEDURE**

6.1 Appointment of the County Attorney to Serve as Moderator

County Attorney Trey Thurman was appointed to serve as moderator.

6.2 Nomination and Selection of the Board of Commissioners Chair

Commissioner Hardee nominated Commissioner Newton for Chair.

Commissioner McCoy nominated Commissioner George for Chair.  
Commissioner Groves seconded the nominated.

Moved by Fred McCoy, seconded by Jerry Groves

*Motion to Appoint Commissioner George as Chair.*

	For	Against	Abstained	Absent
Fred McCoy	x			
Jacqueline A. Newton		x		
Jerry Groves	x			
Wendy Fletcher-Hardee		x		
Brad George	x			
	3	2	0	0

CARRIED.

6.3 Nomination and Selection of the Board of Commissioners Vice Chair

Chair George nominated Commissioner Newton for Vice Chair.

*Motion to Appoint Commissioner Newton for Vice Chair.*

	For	Against	Abstained	Absent

Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

6.4 Appointment of the Clerk to the Board of Commissioners

Vice Chair Newton nominated County Manager David Andrews as the Clerk.

*Motion to Appoint David Andrews as Clerk to the Board of Commissioners*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

6.5 Appointment of County Attorney

Vice Chair Newton nominated Trey Thurman for County Attorney

*Motion to Appoint Trey Thurman as County Attorney.*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

**7 PUBLIC HEARING**

**8 PUBLIC INFORMATION**

8.1 Department of Labor Annual Safety Awards

Pam Brame, HR Director, introduced the Labor Commissioner Josh Dobson. Commissioner Dobson gave out the safety awards to departments. These are annual awards given to departments who have had no fatalities during the calendar year and maintained an incident rate at least 50 percent below the average for a particular group. Some of the departments that received awards included Tourism, Facility and Fleet, Utilities, Parks and Recreation, Veteran's Services, County Manger's Office, Library, etc.

8.2 NC Cooperative Extension - Pender County Expanded Foods and Nutrition Education Program Update

Mark Seitz, Cooperative Extension Director, introduced Cynthia Rivenbark. Rivenbark is an adult and youth educator. EFNEP is for low-income families. During Rivenbark's time with Expanded Foods and Nutrition Education Program (EFNEP), 650 youth have graduated. Rivenbark covered the different programs, events, and her involvement with the youth of EFNEP. Additionally, she went over the statistics of the adult programs.

8.3 Convenience Centers Update

Anthony Colon, Utilities Director, and Katie Leubner, Project Manager, gave the Board an update on the convenience centers. Some of the convenience centers are owned by Pender County whereas others are leased out by private owners. Currently, Pender County is leasing six (6) sites and some of the owners are willing to sell them. The owner of an Atkinson convenience center is willing to sell three (3) acres to Pender County. Additionally, two (2) county-owned centers need paving. Leubner presented a spreadsheet with a cost analysis breakdown of all the improvements. Colon and Leubner answered Board questions.

8.4 Update on 421 - Water System Expansion

Anthony Colon, Utilities Director, updated the Board on the 421 Water System Expansion. Colon stated there was not much to report. Utilites has been in contact with Harrells Water Corporation to set up a field meeting to identify where the end of the county water line is. They are currently reviewing the hydraulics.

8.5 Update on Merchant Services and Convenience Fee Analysis

Meg Blue, Finance Director, presented the Update on Merchant Services and Convenience Fee Analysis. Blue passed out a presentation to the Board members. Merchant fees are card processing fees. Blue covered the merchant services history for Pender County. Currently, Pender County uses Fiserv and has seventeen (17) active accounts. Pender County currently absorbs merchant fees with Utilities being the biggest cost. Finance has been made aware of a class action lawsuit beginning collections in December 2023 based on interchange fees from Visa and Mastercard payments from 2004-2019. Pender County has completed the paperwork to join the lawsuit. Blue asked the Board to think about whether they want to release an RFP for Merchant Services or use a pass-along structure, where consumers would pay the processing fee instead of the county. Blue answered questions from the Board.

**9 PUBLIC COMMENT FOR AGENDA ITEMS**

**10 CONSENT AGENDA**

10.1 Approval of a Purchase Order for Performance Auto to purchase a 2023 Ford F-150 Crew Cab truck in the amount of \$41,505.93.

Moved by Jacqueline A. Newton, seconded by Fred McCoy

*Motion to approve the consent agenda.*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

10.2 2024 Holiday Calendar

10.3 Award Contract for Scanning Services for Pender County DSS to Scanning America

10.4 Approval of Purchase order for reel mower

10.5 Approval of a Budget Amendment to Increase Health Department

Revenues and Expenditures for Fiscal Year 2023-2024: \$207,202

- 10.6 Approval of a Purchase Order to McKesson Medical-Surgical Government Solutions in the amount of \$40,000
- 10.7 A Resolution of the Pender County Board of Commissioners Accepting High Bid for Property with Respect to the Disposition by Sale of Various Specified Parcels Listed
- 10.8 Refund/Release Requests for items meeting NC G.S 105-381
- 10.9 Motor Vehicle Releases and Refunds
- 10.10 November 6, 2023 BOCC Meeting Minutes
- 10.11 Approval to Increase Purchase Order for Bluewater Plumbing in the amount of \$30,000.

**11 APPROVALS AND RESOLUTIONS**

- 11.1 Request Approval to increase Membrane Plant budget by \$1,289,990.

Anthony Colon, Utilities Director, presented the item. Pender County Utilities (PCU) is closing on their new property on December 15th for the new Membrane Plant. PCU recently provided CDM Smith with a notice to proceed for the preliminary design on the membrane plant. CDM Smith is preparing for the design phase, including updating the contract scope and fee. Originally, this project was budgeted in 2020. Since then, inflation has increased the cost by 18.17%. Colon introduced Rick Martin from CDM Smith to give an update. Martin gave a brief overview of the project named the Eastern Pender Water System Improvements Program. The program has been divided into four construction projects: Scotts Hills Elevated Tank and three (3) well sites, Surface WTP High Service Pump Expansion, New 3-mgd Membrane WTP, and Transmission Piping and Booster Station Improvements. Two of these projects are in construction and the latter two are in design. Martin went over the amendment to design to due changes in project scope and covered project costs and funding. Martin and Colon answered questions from the Board.

Moved by Jacqueline A. Newton, seconded by Fred McCoy

*Motion to Approve the Membrane Plant Budget by \$1,289,990.00.*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-	x			

Hardee				
Brad George	x			
	5	0	0	0

CARRIED.

11.2 Resolution Adopting the NC HWY 210 Resiliency Analysis

Daniel Adams, Planning Director, presented the item to the Board. Adams gave a brief backstory on the NC HWY 210 Resiliency Analysis. In 2022, Pender County was awarded a \$200,000 grant to conduct a resiliency analysis of the NC Highway 210 corridor. This grant is funded through the North Carolina Emergency Management's Transportation Infrastructure Resiliency Grant (TIRG) program. Staff worked with WSP and NCDOT to identify barriers to resiliency, analyze alternatives that can improve resiliency, and offer recommendations and cost estimates on the implementation of the resiliency measures. Staff from WSP addressed the Board to discuss the results of the analysis. WSP covered the structures impacted in different creeks, recommendations, and cost estimates. A preliminary cost estimate for this work is about \$13 million. WSP answered questions from the Board.

Moved by Jacqueline A. Newton, seconded by Wendy Fletcher-Hardee

*Motion to Approve the Resolution Adopting the NC HWY 210 Resiliency Analysis.*

	For	Against	Abstained	Absent
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

**12 DISCUSSION**

**13 APPOINTMENTS**

13.1 Reappointments to the Board of Adjustment

Lexi Stanfield, Clerk to the Board, presented two reappointments for the

Board of Adjustment. Andrew Olsen applied for the alternate position. His current term ends on January 31st, 2024. The Board voted to reappointment Mr. Olsen. His new term begins on February 1, 2024, and expires on January 31, 2027. The second applicant is Kyle Breuer for the district 2 position. Breuer's current term ends on January 31st, 2024. The Board voted to reappointment Mr. Olsen. His new term begins on February 1, 2024, and expires on January 31, 2027.

Moved by Jacqueline A. Newton, seconded by Wendy Fletcher-Hardee

*Motion to reappoint both applicants to the Board of Adjustment.*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves		x		
Wendy Fletcher-Hardee	x			
Brad George	x			
	4	1	0	0

CARRIED.

- 14 MAPLE HILL WATER AND SEWER DISTRICT**
- 15 ROCKY POINT WATER AND SEWER DISTRICT**
- 16 SCOTTS HILL WATER AND SEWER DISTRICT**
- 17 MOORES CREEK WATER AND SEWER DISTRICT**
- 18 CENTRAL PENDER WATER AND SEWER DISTRICT**
- 19 PENDER COUNTY BOARD OF HEALTH**

- 19.1 Approval to Write-Off Bad Debt for the Health Department for Calendar Year 2021: \$10,958.06

Carolyn Moser, Health and Human Services Director, presented the item. Moser is required to present this item. The health department is asking the Board to approve writing off \$10,958.06 of bad debt from 2021. This dollar amount can be broken down to \$7309.30 from the clinic, 42,758.86 from dental, and \$889.90 from mobile dental.

Moved by Jacqueline A. Newton, seconded by Wendy Fletcher-Hardee

*Motion to approve write-off of bad debt for the calendar year 2021.*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

**20 SOCIAL SERVICES BOARD**

**21 PUBLIC COMMENT**

**22 ITEMS FROM THE COUNTY ATTORNEY, COUNTY MANAGER, ASSISTANT COUNTY MANAGERS, & COUNTY COMMISSIONERS**

- 22.1 Trey Thurman, County Attorney, requested the Board go into closed session in pursuant to item three (3) Attorney Client Privilege and item five (5) Acquisition of Real Property.
- 22.2 Vice Chair Newton congratulated Chair George and thanked staff.
- 22.3 Commissioner McCoy thanked Vice Chair Newton for her time as chair.
- 22.4 Commissioner Groves thanked Vice Chair Newton for her hard work and asked the Board to think about moving public comment to the beginning of the agenda.
- 22.5 Commissioner Hardee reminded the public that the Cape Fear Memorial Bridge would be having lane closures starting on January 4th and would reopen the week of the Azaela festival.
- 22.6 Chair George thanked Vice Chair Newton for her guidance and wished everyone a Merry Christmas.

**23 CLOSED SESSION (IF APPLICABLE).**

Moved by Jacqueline A. Newton, seconded by Wendy Fletcher-Hardee

*Motion to go into closed session pursuant to item three (3) Attorney Client Privilege and item five (5) Acquisition of Real Property.*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			

Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

**24 7PM PUBLIC HEARINGS: SPECIAL USE PERMITS/ZONING MAP AMENDMENTS/ RESOLUTIONS**

**24.1 REZONE 2023-47 CZMA: Request to revise a Conditional Zoning Map Amendment for the Falls Mist Development**

Daniel Adams, Planning Director, informed the Board that the applicants requested to have this continued until the January 16th, 2024 BOCC meeting.

Moved by Jacqueline A. Newton, seconded by Wendy Fletcher-Hardee

*Motion to approve continuance.*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

**24.2 SUP 2023-44: Expansion of a Community Boating Facility in the Long Point Estates community in the Topsail Township**

Justin Brantley, Senior Planner, presented this item. The applicant, Long Point Estates HOA Inc., is requesting the approval of a special use permit (SUP) to allow the expansion of a community boating facility, which includes the addition of a new dock with five boat slips bringing the total number of boat slips on site to ten. Brantley provided maps to show the board the proposed site plan. The Future Land Use Plan zones this area as Coastal Residential. The use falls in line with the plan. Jim Corhet from Long Point Estates HOA, Inc. presented his own

slideshow to further show the Board the site plan and uses. Corhet cover the CAMA permit, traffic impacts, comprehensive plan consistency, etc. Brantley and Corhet answered questions from the Board.

Moved by Jacqueline A. Newton, seconded by Wendy Fletcher-Hardee

*Motion to Approve SUP 2023-44: Expansion of a Community Boating Facility in the Long Point Estates community in the Topsail Township*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			
	5	0	0	0

CARRIED.

- 24.3 REZONE 2023-54: Request to modify and expand an existing Conditional Zoning District (GB-CD1) across approximately 6.8 acres in the Topsail Township

Adam Moran, Planner, presented this item to the Board. The applicant, Lewis Landing LLC, is requesting a rezoning of adjacent parcels from Residential Performance to General Business Conditional District 1 to add onto the business by means of retail shop, office, restaurant, and additional dry stack boat storage facility. The subject properties are located about 0.5 miles from the intersection of Sloop Point Loop Road and Lewis Road in Topsail Township area. Moran covered the dimensional standards, landscaping and buffers, traffic impact, parking, etc. This rezone request is in line with the Pender 2.0 Comprehensive Land Use Plan and supported by staff. Chair George raised concerns with parking not being compatible with the amount slips available. Scott James from WMPO addressed the issues.

Allison Engebretson, Paramounte Engineer, spoke in favor of the rezoning. She gave a project overview and provided graphs to the Board.

Cole Porter, resident, spoke out against the rezoning. He raised concerns with traffic impacts and parking issues.

Beth Ogden, resident, spoke out against the rezoning. She appeared on behalf of sixty (60) other residents in the neighborhood who signed a petition against the rezone. She raised concerns with traffic, noise, parking, hurricane preparedness, protection plans, septic system issues, etc.

Danielle Cole, resident, spoke out against the rezone. She asked DOT and County staff to look at traffic on the weekend before allowing the expansion.

Mathew Payne, resident, spoke out against the rezone. He raised concerns of traffic impacts.

Allison Taylor, applicant, responded to concerns and questions.

Moved by Wendy Fletcher-Hardee, seconded by Jacqueline A. Newton

*Motion to Deny REZONE 2023-54: Request to modify and expand an existing Conditional Zoning District (GB-CD1) across approximately 6.8 acres in the Topsail Township.*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves		x		
Wendy Fletcher-Hardee	x			
Brad George	x			
	4	1	0	0

CARRIED.

**25 ADJOURNMENT**

Moved by Jacqueline A. Newton, seconded by Fred McCoy

*Motion to adjourn the meeting at 8:48PM.*

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Absent</b>
Fred McCoy	x			
Jacqueline A. Newton	x			
Jerry Groves	x			
Wendy Fletcher-Hardee	x			
Brad George	x			

	5	0	0	0
--	---	---	---	---

CARRIED.



**Pender County  
Authorization to Proceed with Closing  
on Purchase of Real Property and  
Related Budget Ordinance Amendment  
& Purchase Order - 795 acres +/- Off Hwy  
210, Hampstead PIN-Partial of 3282-15-  
9252-0000**

---

**TO:** Board of County Commissioners  
**FROM:** Meg Blue  
**DATE:** January 2, 2024  
**SUBJECT:** Authorization to Proceed with Closing on Purchase of Real Property and  
Related Budget Ordinance Amendment & Purchase Order - 795 acres  
+/- Off Hwy 210, Hampstead PIN-Partial of 3282-15-9252-0000

---

**SUMMARY:**

Pender County has been actively pursuing real property to fulfill the land requirements for the Pender County Utilities Water Plant Project initiated in 2019. Pender County has been under contract and completing due diligence for approximately 795 +/- acres of a 1,294 acre parcel located off of NC Hwy 210 and US Hwy 17, since April 2023.

The County has engaged an engineering firm to complete the due diligence procedures to ensure County and Utilities are aware and in agreement that this will serve the identified potential purposes. Our engineering firm has indicated that the make up of this land is uniquely ideal for the intended purpose.

We are seeking Authorization to Proceed with Closing on Purchase of Real Property and Related Budget Ordinance Amendment & Purchase Order - 795 acres +/- Off Hwy 210, Hampstead PIN-Partial of 3282-15-9252-0000, for \$5,350,000 from Water Enterprise Fund Balance in account 072-407433.

**ACTION REQUESTED:**

Authorization to Proceed with Closing on Purchase of Real Property and Related Budget Ordinance Amendment & Purchase Order - 795 acres +/- Off Hwy 210, Hampstead PIN-Partial of 3282-15-9252-0000

**Pender County Budget Ordinance Amendment**

**Fiscal Year**

FY 2023-2024

**Department**

072 - WATER OPERATIONS

Proposed Amendment:

**REVENUES**

	Account # (ORG-OBJECT)	Account Description	Amount
1	72-399000	Fund Balance Appropriated	5350000
2			
3			
4			
5			
6			
7			
8			
9			
10			

**EXPENDITURES**

	Account # (ORG-OBJECT)	Account Description	Amount
1	072-407433	Capital Outlay-Land	5350000
2			
3			
4			
5			
6			
7			
8			
9			
10			

**Total Revenues**  
5350000

**Total Expenditures**  
5350000

**Budget Amendment Balances when Zero.**  
0

**Prepared By:**  
Angela Miller

**Email**  
mblue@pendercountync.gov



**Pender County  
Authorization to Proceed with Closing  
on Purchase of Real Property and  
Related Budget Ordinance Amendment  
& Purchase Order - Several Parcels off of  
US Hwy 17, Hampstead for Water Plant  
Discharge Site**

---

**TO:** Board of County Commissioners  
**FROM:** Meg Blue  
**DATE:** January 2, 2024  
**SUBJECT:** Authorization to Proceed with Closing on Purchase of Real Property and Related Budget Ordinance Amendment & Purchase Order - Several Parcels off of US Hwy 17, Hampstead for Water Plant Discharge Site

---

**SUMMARY:**

Pender County has been actively pursuing real property to fulfill the land requirements for the Pender County Utilities Water Plant Project initiated in 2019. Pender County has been under contract and completing due diligence for these approximately 28 +/- acre parcels located off of US Hwy 17, since June 2023. The referenced PIN numbers are as follows: 3282-96-6406-0000, 3292-05-0995-0000, 3292-06-4403-0000, 3282-97-0041-0000.

The County has engaged an engineering firm to complete the due diligence procedures to ensure County and Utilities are aware and in agreement that this will serve the identified potential purposes. Our engineering firm has indicated that down the road, there may be some items to iron out with other agencies, but this should serve the intended purposes.

We are seeking Authorization to Proceed with Closing on Purchase of Real Property and Related Budget Ordinance Amendment & Purchase Order - Several Parcels off of US Hwy 17, Hampstead for Water Plant Discharge Site, for \$5,000,000 from Water Enterprise Fund Balance in account 072-407433.

**ACTION REQUESTED:**

Authorization to Proceed with Closing on Purchase of Real Property and Related Budget Ordinance Amendment & Purchase Order - Several Parcels off of US Hwy 17, Hampstead for Water Plant Discharge Site

**Pender County Budget Ordinance Amendment**

**Fiscal Year**

FY 2023-2024

**Department**

072 - WATER OPERATIONS

**Proposed Amendment:**

**REVENUES**

	Account # (ORG-OBJECT)	Account Description	Amount
1	72-399000	Fund Balance Appropriated	5000000
2			
3			
4			
5			
6			
7			
8			
9			
10			

**EXPENDITURES**

	Account # (ORG-OBJECT)	Account Description	Amount
1	072-407433	Capital Outlay-Land	5000000
2			
3			
4			
5			
6			
7			
8			
9			
10			

**Total Revenues**  
5000000

**Total Expenditures**  
5000000

**Budget Amendment Balances when Zero.**  
0

**Prepared By:**  
Angela Miller

**Email**  
mblue@pendercountync.gov



**Pender County  
Approval of Budget Ordinance  
Amendment & Purchase Order to  
Bordeaux Construction for Design-Build  
School Bond Project for \$5,003,800 for  
Design Phase**

---

**TO:** Board of County Commissioners  
**FROM:** Meg Blue  
**DATE:** January 2, 2024  
**SUBJECT:** Approval of Budget Ordinance Amendment & Purchase Order to  
Bordeaux Construction for Design-Build School Bond Project for  
\$5,003,800 for Design Phase

---

**SUMMARY:**

Pender County Board of Education has awarded the Design-Build Project and approved the Design Phase contract for Bordeaux Construction to design and eventually construct the new K-8 School. This portion of the contract is \$5,003,800 which will be initially funded from General Fund Balance and will be reimbursed as soon as bonds can be issued, which will be once bids are received.

We are seeking Approval of Budget Ordinance Amendment & Purchase Order to Bordeaux Construction for Design-Build School Bond Project for \$5,003,800 for Design Phase to be initially funded from General Fund Balance transferred to Fund 63 School Capital Project Fund. This will allow us to pay the contractor for Design work until bonds can be issued.

**ACTION REQUESTED:**

Approval of Budget Ordinance Amendment & Purchase Order to Bordeaux Construction for Design-Build School Bond Project for \$5,003,800 for Design Phase

# AIA<sup>®</sup> Document A141<sup>™</sup> - 2014

## Standard Form of Agreement Between Owner and Design-Builder

**AGREEMENT** made as of the « » day of « » in the year « »  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

« Pender County Board of Education »  
« 925 Penderlea Highway »  
« Burgaw, North Carolina 28425 »  
« »

and the Design-Builder:  
(Name, legal status, address and other information)

« Bordeaux Construction Company, Inc. »  
« 4 Copley Parkway »  
« Suite 100 »  
« Morrisville, North Carolina 27560 »

for the following Project:  
(Name, location and detailed description)

« Pender County New K-8 School »  
« »  
« »

The Owner and Design-Builder agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

**ELECTRONIC COPYING** of any portion of this AIA<sup>®</sup> Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

**TABLE OF ARTICLES**

- 1      **GENERAL PROVISIONS**
- 2      **COMPENSATION AND PROGRESS PAYMENTS**
- 3      **GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT**
- 4      **WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT**
- 5      **WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT**
- 6      **CHANGES IN THE WORK**
- 7      **OWNER'S RESPONSIBILITIES**
- 8      **TIME**
- 9      **PAYMENT APPLICATIONS AND PROJECT COMPLETION**
- 10     **PROTECTION OF PERSONS AND PROPERTY**
- 11     **UNCOVERING AND CORRECTION OF WORK**
- 12     **COPYRIGHTS AND LICENSES**
- 13     **TERMINATION OR SUSPENSION**
- 14     **CLAIMS AND DISPUTE RESOLUTION**
- 15     **MISCELLANEOUS PROVISIONS**
- 16     **SCOPE OF THE AGREEMENT**

**TABLE OF EXHIBITS**

- A      **DESIGN-BUILD AMENDMENT**
- B      **INSURANCE AND BONDS**
- C      **SUSTAINABLE PROJECTS**

**ARTICLE 1    GENERAL PROVISIONS**

**§ 1.1 Owner's Criteria**

This Agreement is based on the Owner's Criteria set forth in this Section 1.1. To the extent the Owner's Criteria includes conceptual, schematic, and/or other design documents, the Owner and the Design-Builder recognize and agree that the Owner does not warrant and hereby disclaims the sufficiency of such documents, it being understood that the Design-Builder shall be responsible solely for evaluating the suitability and constructability of any design documents furnished by the Owner and/or the Owner's consultants.

**§ 1.1.1 The Owner's program for the Project:**

The Owner does not warrant and hereby disclaims the sufficiency of any documents furnished to the Design-Builder describing the Owner's Program, it being understood that the Design-Builder shall be responsible solely for evaluating the suitability and constructability of any documents furnished by the Owner and/or the Owner's consultants.

« »

§ 1.1.2 The Owner’s design requirements for the Project and related documentation:  
*(Identify below, or in an attached exhibit, the documentation that contains the Owner’s design requirements, including any performance specifications for the Project.)*

« Design-Build Services to design and construct a new 2000 student (1200 middle, 800 elementary) K-8 school, including cafeteria, media center, gym, classrooms, bus parking lot, ball fields, and other necessary school requirements. In performing its services under the Contract, the Design-Builder shall comply with all applicable federal, state and local standards, codes, statutes, laws, regulations, ordinances and all other legal requirements, including without limitation all construction, supervision and safety requirements (collectively, “Laws”). The standard of care for Design Services provided by the Design-Builder shall be the degree of care and skill used by members of the architectural/engineering profession performing design services for projects of comparable scale and complexity in New Hanover County, North Carolina. The standard of care for Construction Services provided by the Design-Builder shall be the degree of care and skill used by members of the construction profession performing construction services for projects of comparable scale and complexity in New Hanover County, North Carolina. The Design-Builder’s obligations under this section shall survive the completion of the Design-Builder’s Design Services, the completion of the Design-Builder’s Construction Services, and the termination of this Contract. »

§ 1.1.3 The Project’s physical characteristics:  
*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

« Project Site: Pending selection and acquisition by Pender County. Design Builder will assist Pender County during due diligence where appropriate for site selection. »

§ 1.1.4 The Owner’s anticipated Sustainable Objective for the Project, if any:  
*(Identify the Owner’s Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™–2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner’s Sustainable Objective.)*

« »

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder’s services, are as follows:  
*(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)*

« »

§ 1.1.6 The Owner’s budget for the Work to be provided by the Design-Builder is set forth below:  
*(Provide total for Owner’s budget, and if known, a line item breakdown of costs.)*

« Anticipated project budget: Estimated up to \$111,000,000. Owner recognizes and acknowledges that this is an anticipated project budget based on preliminary information. Design-Builder anticipates potentially significant adjustments will be necessary once additional information is available, including, but not limited to, the geotechnical investigation and results thereof. »

§ 1.1.7 The Owner’s design and construction milestone dates:

Schematic Design	8/2/2023 – 12/1/2023
Design Development & Early Site Package	-12/4/2023- 3/29/2024
Construction Documents 50%	4/1/2024- 7/12/2024 »
Construction Documents 100%	7/12/2024-8/2/2024
Advertisement for bids	August 2024
Submit GMP	September 2024

NTP	September 2024
Substantial Completion (22 months)	June 2026
Final Completion (1 month)	July 2026

§ 1.1.8 The Design-Builder shall retain the following Architect, Consultants and Contractors at the Design-Builder's cost:  
*(List name, legal status, address and other information.)*

.1 Architect

Moseley Architects PC  
911 North West Street, Suite 205  
Raleigh, North Carolina 27603

.2 Consultants

Withers Ravenel  
137 S. Wilmington St  
Suite 200  
Raleigh, NC 27601

.3 Contractors

« »

The Design-Builder shall be responsible to the Owner for all oversight and supervision of the Design-Builder and its Architects, Consultants, Contractors, and Subcontractors. The Design-Builder shall also be responsible and liable to the Owner for all deficiencies in the performance of the Design-Builder and its Architects, Consultants, Contractors, and Subcontractors. The Design-Builder shall not change or replace any designated Architect, Consultants, Contractors, or Subcontractors without the Owner's written approval.

The Owner may direct Design Builder to remove any of Design-Builder's Architects, Consultants, Contractors, or Subcontractors, if a reasonable basis exists to issue such a directive. In the event the Owner directs the Design-Builder to remove any of Design-Builder's Architects, Consultants, Contractors, or Subcontractors, the Owner will provide written notice with the reasonable basis for the Owner's directive and Design-Builder will have three (3) business days to respond in writing. Should the Owner elect to proceed with the directive after the Design-Builder's written response, the Owner will notify the Design-Builder of its decision in writing and the Design-Builder shall proceed to remove the Architect, Consultant, Contractor, or Subcontractor from the Project promptly, at its own cost, and in no event in more than three (3) business days from receipt of the Owner's decision. A reasonable basis for the aforementioned directive shall include but not be limited to:

- .1 Not abiding or complying with manufacturer recommendations for installation,
- .2 Not abiding by general notes and specifications annotated on the plans by the Engineer and the Architect,
- .3 Unsafe practices employees conduct that are against OSHA Regulations,
- .4 After more than 1 reportable injury,
- .5 Not working in a effective and efficient manner as deemed by the owner, and
- .6 Not building sustainable or using sustainable materials, or complying with quality standards set out by the contractor.

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:  
*(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)*

« »

§ 1.1.10 The Design-Builder shall confirm and be responsible to the Owner to ensure that the information included in the Owner's Criteria and the Owner's Program complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria and/or the Owner's Program, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols directed by the Owner for the development, use, transmission, and exchange of digital data and building information modeling, including email as an acceptable form of electronic communication.

**§ 1.2 Project Team**

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:  
*(List name, address and other information.)*

« Pender County Schools »  
« 965 Penderlea Hwy »  
« Burgaw, NC 28425 »  
« »  
« »  
« »

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:  
*(List name, address and other information.)*

Dr. Brad Breedlove  
Superintendent

§ 1.2.3 The Owner will retain the following consultants and separate contractors:  
*(List discipline, scope of work, and, if known, identify by name and address.)*

« The Owner reserves the right to retain such other additional consultants and Separate Contractors as it deems appropriate. The Design-Builder agrees to cooperate with, be responsible to, and coordinate with all of the Owner's consultants and Separate Contractors. »

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:  
*(List name, address and other information.)*

« J. Blair Bordeaux, President »  
«Bordeaux Construction Company, Inc. »  
4 Copley Parkway, Suite 100  
Morrisville, North Carolina 27560 »

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

**§ 1.3 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

[  ] Arbitration pursuant to Section 14.4

[  ] Litigation in a court of competent jurisdiction

[  ] Other: *(Specify)*

Prior to any litigation, the parties are required to comply Pender County Board of Education Policy 9120 Bidding for Construction Work, Subsection G, Dispute Resolution Process.

**§ 1.4 Definitions**

**§ 1.4.1 Design-Build Documents.** The “Design-Build Documents” consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the “Agreement”); all other documentation executed or issued in connection with the Agreement, including, without limitation, the other documents listed in Article 16 of this Agreement; and Modifications issued after execution of this Agreement. A “Modification” is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive. All Modifications must be in writing and signed by the Owner or the Owner’s authorized representative. The Contract cannot be modified verbally or by conduct of the Parties. The Design-Build Documents shall be executed by the Owner and the Design-Builder in two (2) counterparts. The Owner may convert its original signed version of the Design-Build Documents to an electronic record pursuant to a North Carolina Department of Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Design-Build Documents shall be deemed for all purposes to be the original signed record version of the Contract.

**§ 1.4.2 The Contract.** The Design-Build Documents form the “Contract.” The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral, except as may be provided to the contrary in the Agreement. The Contract may be amended or modified only by a written Modification signed by an authorized representative of the Owner. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder. All prior negotiations, discussions, representations, and offers prior to the execution of the Contract are merged into the Contract.

**§ 1.4.3 The Work.** The term “Work” means the design, construction and related services required to fulfill the Design-Builder’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all of the labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill its obligations under the Contract. The Work may constitute the whole or a part of the Project.

“Site” means the lands or areas indicated in the Design-Build Documents as being furnished by the Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by the Owner which are designated for the use of the Design-Builder.

**§ 1.4.4 The Project.** The “Project” is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and/or by separate contractors.

**§ 1.4.5 Instruments of Service.** “Instruments of Service” are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

**§ 1.4.6 Submittal.** A “Submittal” is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

**§ 1.4.7 Owner.** The “Owner” is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

**§ 1.4.8 Design-Builder.** The “Design-Builder” is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

**§ 1.4.9 Consultant.** A “Consultant” is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

**§ 1.4.10 Architect.** The “Architect” is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

**§ 1.4.11 Contractor.** A “Contractor” is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

**§ 1.4.12 Confidential Information.** Confidential Information is information containing confidential or business proprietary information and trade secrets that is clearly marked as “confidential.”

**§ 1.4.13 Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

**§ 1.4.14 Day.** The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

**§ 1.4.15 Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

**§ 1.4.16 Miscellaneous Defined Terms.**

“Design-Builder’s Forces” means the Design-Builder and its agents and employees; Architect(s) and their agents and employees; Consultant(s) and their agents and employees; Contractor(s) and their agents and employees; Subcontractor(s) and their agents and employees; and all other persons or entities of any tier performing portions of the Work for, under, or on behalf of the Design-Builder, including, without limitation, all suppliers, laborers, workers, mechanics, materialmen, and furnishers of machinery (and parts thereof), equipment, power tools, and all supplies, including commissary.

“Effective Date of the Contract” means the date that the Owner signed the Agreement.

“Indemnitees” mean the Owner, any and all co-owners of the Site, and all of the respective board members, officers, members, managers, staff, agents, and employees of the Owner and all co-owners of the Site. Any of the Indemnitees referred to in the singular shall be referred to as an “Indemnitee.”

“Losses” mean claims, damages, losses, liabilities, charges, civil penalties, costs, court costs, fines, expenses, or fees (including but not limited to attorneys’ fees, engineers’ fees, architects’ fees, and other professional fees).

The foregoing definitions are not intended to be exhaustive, and the sections that follow may designate other defined terms.

**§ 1.5 Correlation and Intent of the Design-Build Documents**

**§ 1.5.1** The Owner and the Design-Builder agree that the following rules of construction (the “Rules of Construction”) shall apply to all interpretations, clarifications, constructions, and applications of the Contract regardless of the person or group responsible for interpretation, clarification, construction, or application of the Contract:

**§ 1.5.1.1** The objective of the Contract is to provide the Owner with a functionally complete Project (or part thereof) useable and operable for the Owner’s intended purposes, and constructed in accordance with the Design-Build Documents within the Contract Time and at the Contract Sum (the “Contract Objective”). All Contract Documents

and parts, provisions, phrases, and words contained in the Design-Build Documents shall be interpreted, clarified, construed, or applied to achieve the Contract Objective, and achieving the Contract Objective shall be the controlling rule and intent of all interpretations, clarifications, constructions, or applications of the Design-Build Documents. Any and every interpretation, clarification, construction, or application of the Design-Build Documents which does not promote the Contract Objective is rejected and shall have no force or effect.

§ 1.5.1.2 Every interpretation, clarification, construction, application, clause, phrase, or word that is repugnant to or irreconcilable with the Contract Objective shall have no force or effect.

§ 1.5.1.3 So long as the Contract Objective is satisfied fully, the following secondary rules of interpretation shall apply:

1. The various documents and provisions that collectively constitute the Design-Build Documents shall be interpreted, clarified, construed, or applied so that what is required by one document or provision is as binding as if required by all other documents or provisions of the Design-Build Documents.
2. Unless otherwise stated in the Design-Build Documents, if there is a discrepancy between the electronic or digital versions of the Design-Build Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall control.
3. Each and every provision of applicable Laws or any clause in any Laws required by law to be inserted in the Design-Build Documents shall be deemed to be inserted therein, and such Laws, as they are amended from time to time, shall be read and enforced as though included therein. If through mistake or otherwise, any such provision is not inserted correctly, then upon the request or application of either party, the Design-Build Documents shall forthwith be physically amended to correct such insertion. If such physical amendment does not occur, however, the correct provision or clause shall be deemed to have been inserted into the Design-Build Documents.
4. When a standard, specification, manual, code, or instruction of any technical society, organization, or association is referenced, applies to, or supplements the Design-Build Documents and imposes a higher, stronger, or more stringent standard or obligation, the higher, stronger, or more stringent standard, specification, manual, code, or instruction shall control in resolving any conflict, error, ambiguity, or discrepancy between the Design-Build Documents and such standard, specification, manual, code, or instruction.
5. When two (2) or more provisions of the Design-Build Documents address the same subject matter, do not specify design, construction, or engineering standard or practice, and all possible interpretations achieve the Contract Objective, then the provision(s) shall be interpreted, clarified, construed, and applied to be cumulative and require compliance with all aspects of all provisions.
6. Whenever two (2) or more provisions of the Design-Build Documents conflict with each other, the provision best promoting the Contract Objective controls and shall be applied.

§ 1.5.2 After using the rules stated in sections 1.5.1.1 through 1.5.1.3, above, when two (2) or more provisions of the Contract continue to be in irreconcilable conflict and competing interpretations, clarifications, or constructions equally promote the Contract Objective, the following priority controls, provisions in the Agreement shall control over all other provisions.

§ 1.5.3 Any rule, principle, canon of interpretation, or other legal principle applicable to contracts not made by North Carolina School Boards that permits modification to, relaxation of, or relief from the requirements of a written contract because of the conduct of a party or its agent shall not apply to the Design-Build Documents. In all such matters, the requirements of N.C.G.S. § 160A-16 shall control to the exclusion of such rule, principle, canon of interpretation, and other legal principle applicable to contracts not made by North Carolina School Boards. (N.C.G.S. § 160A-16 requires all Owner contracts to be in writing, and any contract made in violation of N.C.G.S. § 160A-16 shall be void and unenforceable unless it is expressly ratified by the Owner.)

§ 1.5.4. Whenever any interpretation, clarification, construction, or application of the Contract is not resolved by using the foregoing Rules of Construction, then the rules of contract interpretation recognized and enforced by the published opinions of North Carolina's state appellate courts shall be applied to achieve the Contract Objective.

§ 1.5.5 The invalidity of any provision of the Design-Build Documents shall not automatically invalidate the Design-Build Documents or their remaining provisions. If it is determined that any provision of the Design-Build Documents violates any Laws or is otherwise invalid or unenforceable, then that provision may be revised, in the discretion of the Owner, to the extent necessary to make that provision legal and enforceable. In such case the Design-Build Documents shall be construed, to the fullest extent permitted by Laws, to give effect to and achieve

the Contract Objective. If any provision of the Design-Build Documents is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under any Laws and the Owner does not revise the Design-Build Documents to make that provision legal, valid, or enforceable, such provision shall be deemed fully severable, and all other provisions of the Design-Build Documents shall remain in full force and effect, subject to the Owner's right to terminate the Contract for the Owner's convenience under section 13.2.4 below.

**ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS**

**§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment**

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

*(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)*

Schematic Design	\$1,065,600
Design Development	\$1,598,400
Construction Documents	\$1,864,800
Preconstruction	\$475,000
<b>TOTAL:</b>	<b>\$5,003,800</b>

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

« »

Individual or Position	Rate

**§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment**

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of «five » percent ( «5 » %) of the expenses incurred..

**§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment**

§ 2.1.4.1 Payments are due and payable within forty five (45) days after the Owner's receipt of each properly submitted and accurate invoice and the satisfaction of the other requirements for performance of the Work and the information to be provided as a condition of payment of progress payments as set forth in the Contract..

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

**§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment**

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment and as required by Article 9.

**ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT**

**§ 3.1 General**

**§ 3.1.1** The Design-Builder and its Architect(s), Consultant(s), Contractor(s), and Subcontractor(s) shall comply with any and all applicable licensing requirements in the jurisdiction where the Project is located.

**§ 3.1.2** The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project and who is authorized to bind the Design-Builder.

**§ 3.1.3** The Design-Builder shall perform the Work in accordance with the Design-Build Documents and the applicable standard of care. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents and the applicable standard of care by the activities, tests, inspections or approvals of the Owner.

**§ 3.1.3.1** The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear all costs attributable to correction.

**§ 3.1.3.2** Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria and/or the Owner's Program, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

**§ 3.1.4** The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's Forces.

**§ 3.1.5 General Consultation.** The Design-Builder shall schedule and conduct bi-weekly meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.6** The services of the Design-Builder's Architect (s), Consultant(s), Contractor(s), and Subcontractor(s) are performed in the interest of, and for the benefit of, the Design-Builder and the Owner. The Design-Builder's Architect(s), Consultant(s), Contractor(s), and Subcontractor(s) shall not be deemed beneficiaries of this Agreement or the Contract in any way.

**§ 3.1.7** The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

**§ 3.1.8 Progress Reports**

**§ 3.1.8.1** The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as directed by the Owner in its sole discretion, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;

- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

**§ 3.1.9 Design-Builder's Schedules**

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information and approval a schedule for the Work (the "Progress Schedule"). The Progress Schedule, including the time required for design and construction, shall show graphically, by a detailed bar chart, critical path method, or other method acceptable to and approved by the Owner, the projected progress of the Project from start to finish including, without limitation, all testing, startup, commissioning, and all other steps necessary for delivery to the Owner of all components of the Work for their intended purposes. The Progress Schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Design-Build Documents. The Progress Schedule shall comply with all requirements of the Design-Build Documents; shall be revised at appropriate intervals as required by the conditions of the Work and Project; shall provide for the coordinated, expeditious, and practicable execution of the Work and for the timely completion of the Project to achieve the Contract Objective; shall account for all Work to be performed by Design-Builder's Forces; shall provide for the proper sequencing of construction, considering various crafts, purchasing times, shop drawing approval, material delivery, equipment fabrication, and similar time-consuming factors; shall show earliest starting, earliest completion, latest starting, latest completion, and total float times for each task or item of Work; and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.9.3 The Progress Schedule shall be evaluated by the Design-Builder not less than monthly. An updated and corrected Progress Schedule shall be submitted to the Owner in triplicate and shall show any rescheduling necessary to reflect the true progress of the Work. Updated Progress Schedules shall be submitted monthly to the Owner with the Design-Builder's invoice or Application for Payment, and such submission shall be a condition precedent to the Owner's obligation to make progress payments. Notwithstanding anything to the contrary in the Design-Build Documents, the Owner shall withhold progress payments until such time as the initial Progress Schedule and any required update to the Progress Schedule is received, evaluated, and approved.

§ 3.1.9.4 All updated Progress Schedules shall comply with all requirements of the Design-Build Documents. No acceptance of any Progress Schedule or revised Progress Schedule shall affect the Contract Time or be a justification for the Design-Builder's failure to comply with the Contract Time.

§ 3.1.9.5 When the shortening of various time intervals is necessary to correct for behind-schedule conditions, the Design-Builder shall indicate the steps necessary to accomplish the Work in the shortest schedule possible. Information regarding the new time intervals and the reasons for them shall be submitted to the Owner in writing with the revised schedule.

§ 3.1.9.6 If the Design-Builder does not take the necessary action to accomplish the Work according to the Progress Schedule, the Design-Builder may be ordered by the Owner in writing to take necessary and timely action to improve its Work progress, and the Design-Builder shall take such action at its sole cost. The Owner's order may include increasing Design-Builder's Forces, providing extra equipment, working extra shifts, or taking other action as required. Should the Design-Builder refuse or neglect to take such action or fail to accomplish improvements in meeting the Progress Schedule, the Owner may take any action authorized under this Contract, including, but not limited to, withholding of payment and/or terminating the Contract.

§ 3.1.9.7 All requests for Modifications from the Design-Builder affecting the Contract Time shall include a fragment showing the specific effect of the Modification on the critical path schedule.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from its Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 **Design-Builder's Submittals**

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld unless the schedule submitted fails to comply or is at variance with the Design-Build Documents. The Design-Builder shall be responsible for ensuring that the Submittal schedule shall (1) be coordinated with the Design-Builder's Progress Schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work, and (4) at all times remains subject to the review and approval of the Owner. If the Design-Builder fails to submit a Submittal schedule containing the information required by this Agreement and the Contract, the Design-Builder shall not be entitled to any increase in the Contract Sum or extension of the Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents. Without limiting the foregoing, all Submittals shall be checked by the Design-Builder for accuracy and conformance to the Design-Build Documents before submittal of same to the Owner.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Architect and the Owner have approved the respective Submittal. The Owner's approval of Submittals shall not relieve the Design-Builder from any errors or omissions in Submittals, it being understood by the Design-Builder that it and the Design-Builder's Forces are solely responsible for the accuracy of Submittals.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 **Warranty.** The Design-Builder warrants to the Owner that materials, supplies, and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects. Work, materials, or equipment not conforming to these requirements shall be considered defective and subject to rejection by the Owner and replacement by the Design-Builder at the Design-Builder's sole cost. The Design-Builder's warranty excludes remedy for damage or defects caused by abuse,

alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance not attributable to the acts or omissions of the Design-Builder or the Design-Builder's failure to perform its obligations under the Design-Build Documents, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials, supplies, and equipment.

**§ 3.1.13 Royalties, Patents and Copyrights**

**§ 3.1.13.1** The Design-Builder shall pay all royalties and license fees.

**§ 3.1.13.2** The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder. In the event any claim alleging infringement of copyright and/or patent rights is asserted against the Owner, its Separate Contractors and consultants, and/or other of the Indemnitees, the Design-Builder agrees that the Owner may withhold from payments otherwise due or may become due to the Design-Builder a sum sufficient to protect the Owner against Losses, and to set aside the same until said claim is paid or satisfactorily adjusted. The obligations in this section 3.1.13.2 shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity established by the Design-Build Documents and shall survive completion of the Work until all applicable statutes of limitations for the making of any claim exposing the Indemnitees to Losses have expired.

**§ 3.1.14 Indemnification**

**§ 3.1.14.1** To the fullest extent permitted by law, the Design-Builder shall defend, indemnify, and hold harmless the Owner and the other Indemnitees from and against any and all Losses arising out of or resulting from the Design-Builder's performance of the Work, provided that such Losses are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, a Subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. The obligations in this section 3.1.14.1 shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity established by the Design-Build Documents and shall survive completion of the Work until all applicable statutes of limitations for the making of any claim exposing the Indemnitees to Losses have expired.

**§ 3.1.14.2** To the fullest extent permitted by law, the Design-Builder shall defend, indemnify, and hold harmless the Owner and all other Indemnitees from and against any and all Losses arising out of or resulting from any of the following: (a) failure by the Design-Builder and/or by Design-Builder's Forces to comply with any Laws; (b) the filing of claims of lien on the Project property or upon the Project funds; (c) the Design-Builder's means, methods, procedures, techniques, or sequences of execution or performance of the Work; (d) any breach by the Design-Builder of any clause, condition, or provision of the Design-Build Documents; (e) any other cause resulting from any act or failure to act by the Design-Builder and/or Design-Builder's Forces in connection with the Site, the Work, the Project, and/or the Design-Build Documents; and/or (f) the failure by the Design-Builder and/or Design-Builder's Forces to perform the Work fully and completely in accordance with the Design-Build Documents. The obligations in this section 3.1.14.2 shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity established by the Design-Build Documents and shall survive completion of the Work until all applicable statutes of limitations for the making of any claim exposing the Indemnitees to Losses have expired.

**§ 3.1.14.3** The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, a Subcontractor, or any person directly or indirectly employed by them, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.1.14.4 The purchase of insurance by the Design-Builder with respect to the Design-Builder's indemnification or other obligations set forth in this Agreement shall in no event be construed as the fulfillment or discharge of such indemnification or other obligations.

§ 3.1.14.5 The indemnification rights of the Owner and the other Indemnitees set forth in this Agreement are cumulative. None of the foregoing provisions shall deprive the Indemnitees any action, right, or remedy otherwise available to them or any of them pursuant to applicable Laws.

**§ 3.1.15 Contingent Assignment of Agreements**

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Article 13, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts in writing the assignment of an agreement, the Owner assumes the Design-Builder's rights under the agreement, and the Design-Builder's obligations under the agreement, but only to the extent such obligations arise following the date of the Owner's assumption thereof. The Design-Builder shall remain responsible for all obligations not assumed by the Owner.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than thirty (30) days, the compensation under the assigned agreement shall be equitably adjusted for actual increases in cost resulting from the suspension. Actual costs incurred may be charged against the Design-Builder if the Work was suspended due to the fault, acts, or omissions of Design-Builder's Forces, and the Design-Builder shall pay such costs to the Owner on demand.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity without the approval of the Design-Builder.

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

**ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT**

**§ 4.1 General**

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria or the Owner's Program unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria and the Owner's Program, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**§ 4.2 Evaluation of the Owner's Criteria and the Owner's Program**

§ 4.2.1 The Design-Builder shall thoroughly review and familiarize itself with the Owner's Criteria and the Owner's Program. The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria and Owner's Program as set forth in Article 1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria and Owner's Program. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria and Owner's Program. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria and Owner's Program to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:

*(List additional information, if any, to be included in the Design-Builder's written report.)*



§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria and the Owner's Program unless the Owner and Design-Builder execute a Modification.

#### § 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria and/or the Owner's Program, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;/or
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria or the Owner's Program unless the Owner and Design-Builder execute a Modification.

#### § 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires, which shall not be less than 60 days from Proposal submission date.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

## **ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT**

### **§ 5.1 Construction Documents**

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

### **§ 5.2 Construction**

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment. Within ninety (90) days of breaking ground ceremony, the Design Builder shall provide the Owner with a Hard Schedule with all activities included, failures in permitting and corrective periods. Any revisions to the Hard Schedule shall be approved by the Owner in writing.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention and in accordance with the applicable standard of care. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.2.5 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's Forces.

§ 5.2.6 The Design-Builder shall be responsible to address and correct any and all gaps, missed requirements or missed items within the Design Document at its sole cost after the DB contingency has been exhausted. Additionally, time and material tickets shall be minimal and limited throughout the project.

### **§ 5.3 Labor and Materials**

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall be responsible for prosecuting the Work efficiently and effectively and with due care as to the quality of the Work. The Design-Builder shall at all times maintain and shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Design-Builder shall comply with all applicable Laws regarding employment. Whenever the Owner notifies the Design-Builder in writing that any person on the Project is unsatisfactory to the Owner in the Owner's sole discretion, such person shall be removed immediately from the Project and shall not again be employed on it except with the prior written consent of the Owner. No adjustment shall be made in the Contract Sum or the Contract Time on the basis of the removal of any such person from the Project.

§ 5.3.4 All construction shall conform to the Contract Objective and the Construction Documents. At a minimum, all materials and workmanship, except as otherwise provided herein, shall be in accordance with the latest edition of the North Carolina Department of Transportation (“NCDOT”) “Standard Specifications for Roads and Structures” and the NCDOT “Roadway Standard Drawings,” and all addenda thereto, and the Owner’s “Standard Specifications and Details” that have been adopted as of the date of the Invitation to Bid.

§ 5.3.5 **Delivery of Equipment and Materials.** All materials and equipment delivered to the Site shall be accompanied by notarized certificates, signed by an authorized officer of the supplier, guaranteeing that the materials and equipment conform to and satisfy the Construction Documents. Such certificates shall be immediately delivered to the Owner. Materials and equipment delivered to the Site without such certificates shall be subject to rejection by the Owner. The Design-Builder shall ensure that equipment and materials to be incorporated in the Work are delivered to the Site (1) sufficiently in advance of their installation and use in order to prevent delay in the execution of the Work, and (2) as nearly as is feasible in the order required for executing the Work. The Design-Builder shall provide for continuity of supply to avoid changes of supplies or manufacturers or changes in brands of materials during the Work. The Design-Builder shall deliver packaged materials to the Site in the manufacturer’s original, unopened, labeled containers and shall not open such containers until the approximate time for the use of the contents. The Design-Builder shall provide materials of the highest standard known to the trade and that are free from defects in workmanship and product.

§ 5.3.6 **Storage and Protection of Equipment and Materials.** The Design-Builder shall protect all equipment and materials from deterioration and damage, whether title to the same has passed to the Owner or not. Any and all equipment or materials of whatever kind that may have become damaged or deteriorated from any cause whatsoever shall be removed by the Design-Builder and replaced by the Design-Builder with new and satisfactory items, at the Design-Builder’s sole expense, including expenses of labor and materials for such removal and replacement. The Design-Builder shall store all equipment and materials at the Site in accordance with the manufacturer’s recommendations, as directed by the Owner, and in conformity with all applicable Laws. Without limiting the foregoing requirements and standards, at minimum the Design-Builder: (1) shall store all cementitious and wood materials in dry, weather-tight, ventilated spaces; (2) shall store ferrous materials so as to prevent contact with the ground and to prevent rusting and damage from weather; (3) shall store masonry materials so as to prevent them from coming in contact with earth or staining materials; (4) shall cover and protect such materials against weather, moisture, neglect, and damage; (5) shall protect materials and equipment from equipment damage, weather, moisture, neglect, and construction operations; (6) shall not store unnecessary materials or equipment on the Site; and (7) shall take care to prevent any structure from being loaded with a weight that may endanger its structural integrity, security, or the safety of persons and property. If the Site is such that equipment and materials cannot be safely stored at the Site, then the Design-Builder shall be responsible for locating and providing off-Site storage areas for equipment and materials. Such off-Site storage shall comply with all applicable Laws. The Design-Builder shall timely pay all storage fees for equipment and materials stored off-Site. Storage of equipment or materials, or erection and use of sheds outside of the Site, if such areas are the property of the Owner, shall be used only with the Owner’s prior written approval. Such storage or temporary structures, even within the Site, shall be confined to the Owner’s property.

§ 5.3.7 The Design-Builder shall accept assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment identified as part of the Design-Build Documents. The Design-Builder shall be responsible for such pre-purchased items, if any, as if the Design-Builder were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with the delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty obligations and obligations with respect to the correction of Work under the Design-Build Documents shall apply to any pre-purchased items of materials and equipment unless the Design-Build Documents specifically provide otherwise.

§ 5.3.8 The Design-Builder shall provide the Owner with a detailed accounting of all purchased materials and at the conclusion of the project those purchased materials shall be the Owner’s.

#### § 5.4 Taxes

§ 5.4.1 The Design-Builder shall pay sales, consumer, use, and all other taxes for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect. For example, but not as a limitation, use tax is due on construction equipment brought into North Carolina for use in the performance of the Work (N.C.G.S. §§ 105-164.4 and 105-164.6), payment of applicable privilege licenses is required (N.C.G.S § 105-54), and payment of applicable franchise and

corporate income and withholding taxes is required (N.C.G.S. §§ 105-122, 105-123, 105-134, and 105-163.2). The absence of mention of any specific tax herein in no way relieves the Design-Builder of its obligations to pay the same as may be required by the Laws.

**§ 5.4.2** The Design-Builder shall provide to the Owner on a monthly basis, with its Application for Payment, certificates and other supporting data as required by the State of North Carolina to enable the Owner to obtain sales and use tax refunds, including, but not limited to, certificates and other data pertaining to all sales taxes, use taxes, occupational taxes, excise taxes, social security benefits, unemployment compensation taxes, or similar levies on all materials, labor, tools, and equipment furnished under the Design-Build Documents. Refunds of all North Carolina sales and use taxes paid in the purchase of building materials, supplies, fixtures, and equipment that become a part of or annexed to buildings or structures being erected, altered, or repaired under contracts with the Owner are to be made to the Owner in accordance with all applicable Laws. Accordingly, the following mandatory procedures shall be followed in order that the Owner may recover the full amount of all North Carolina sales and use taxes permitted to be refunded to it under Laws:

1. The Design-Builder shall furnish to Owner documentary evidence showing the material used and sales tax paid by the Design-Builder and each of Design-Builder's Forces.
2. With each Application for Payment submitted at the end of a calendar month, fiscal year, or at final payment, the Design-Builder shall furnish (i) a certified and notarized statement setting forth the cost of the property purchased from each vendor and the amount of sales and/or use tax paid thereon, and (ii) documentary evidence supporting the statement, including copies of invoices for which the statement is being submitted, with invoice numbers indexed to the statement.
3. The statement shall show all taxes and assessments paid to the State of North Carolina, the County of Pender, the Owner, and any other North Carolina governmental unit, including the North Carolina sales tax, and the statement shall list any payments made directly to the North Carolina Department of Revenue.
4. In the event the Design-Builder makes several purchases from the same vendor, the statement shall state the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the sales and use taxes paid thereon.
5. Such statement shall include the cost of any tangible personal property withdrawn from the Design-Builder's warehouse stock and the amount of sales or use tax paid thereon by the Design-Builder.
6. Similar certified statements by Design-Builder's Forces shall be obtained by the Design-Builder and furnished to the Owner.
7. If no tax has been paid during the pay request period, 'NONE' shall be entered on the tax form.

**§ 5.4.3** Materials used in the Project from the Design-Builder's or Design-Builder's Forces' warehouse stock shall be billed to the Owner at warehouse stock prices.

**§ 5.5 Permits, Fees, Notices and Compliance with Laws**

**§ 5.5.1** Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project. All costs of permits, fees, licenses, and inspections shall be included in Design-Builder's price under the Design-Build Amendment. Fees for permits or approvals issued by the Owner will be pre-paid by the Owner. The Design-Builder shall obtain and maintain such permits, approvals, and licenses in its own name during the performance of the Work. Upon Substantial Completion or termination of the Contract, whichever occurs first, the Design-Builder shall assign all permits, approvals, and licenses to the Owner. The following permits (where applicable to the Project) shall be obtained (this list is for informational purposes and shall not be construed to limit any other permits that may be required by applicable Laws)

**§ 5.5.2** The Design-Builder shall comply with all Laws and shall give notices, file annual reports and/or updates, and otherwise communicate with governmental agencies as required by all Laws applicable to the performance of the Work, including, without limitation, any and all communications that may be required in order for the Design-Builder to fulfill its obligations as the holder of permits, approvals, and licenses. If the Design-Builder fails to give such notices or make such reports or other communications, the Design-Builder shall be liable for any fines and penalties arising from same and shall defend, indemnify, and hold harmless the Owner and all other Indemnitees from and against any and all Losses that may be asserted against, imposed upon, or incurred by any of them as a result of such failure. The obligations in this section 3.7.2 shall not be construed to negate, abridge, or reduce other rights or obligations of

indemnity established by the Design-Build Documents and shall survive completion of the Work until all applicable statutes of limitations for the making of any claim exposing the Indemnitees to Losses have expired.

**§ 5.5.2.1** The Design-Builder shall cause all of Design-Builder's Forces to observe and comply with all applicable Laws. The Design-Builder shall indemnify, defend, and hold harmless the Owner and all other Indemnitees from and against any and all Losses arising out of or related to the violation of any Laws by any of Design-Builder's Forces. The obligations in this section 5.5.2.1 shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity established by the Design-Build Documents and shall survive completion of the Work until all applicable statutes of limitations for the making of any claim exposing the Indemnitees to Losses have expired

**§ 5.5.3 Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

**§ 5.5.3.1 Subsurface Information.** The Design-Builder acknowledges and agrees that it has interpreted the subsurface information according to its own judgment in bidding the Work and that it did not rely on the subsurface information, including Technical Data, provided to it in submitting its statement of qualifications. The Design-Builder acknowledges and agrees that it assumes all risks contingent upon the nature of the subsurface conditions actually to be encountered by the Design-Builder when performing the Work, even though such actual conditions may result in the Design-Builder performing more or less Work than the Design-Builder originally anticipated. Unless the Owner specifically agrees in writing, neither the Contract Time nor the Contract Sum shall be adjusted on the basis of the actual subsurface conditions being inconsistent with the subsurface information provided to the Design-Builder by the Owner.

**§ 5.5.3.2 Technical Data.** "Technical Data" as used in section 5.5.3.1 above and elsewhere in the Design-Build Documents means geotechnical and existing conditions data in with respect to either (1) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) and (2) Hazardous Environmental Conditions at the Site, including the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to the Design-Builder. In no event shall the Design-Builder rely upon any interpretation or opinions formed in the Technical Data as to subsurface or physical conditions at the Site, and the Design-Builder shall be solely responsible for formulating its own independent opinions as to these matters.

**§ 5.5.4** If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

#### **§ 5.6 Allowances**

**§ 5.6.1** The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may

direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

**§ 5.7 Key Personnel, Contractors and Suppliers**

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 The Design-Builder shall not substitute or add key personnel, the Architect, Contractors, Subcontractors, or suppliers without written notice to and written approval of such substitution or addition from the Owner. If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within fourteen (14) days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in this Agreement and/or in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

**§ 5.8 Documents and Submittals at the Site**

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.8.1 The Design-Builder and its Contractor(s) and Subcontractor(s) shall maintain, at a minimum, the following Project records: bid estimates, payment records, payroll records, meeting minutes, daily reports, logs, diaries, schedules, internal correspondence, notes and memoranda, and all correspondence between and among all of the parties involved in the Project, including but not limited to all lower tier subcontractors, suppliers, manufacturers, and other vendors, the Architect, and the Owner. These Project records shall be made readily available to the Owner upon

request. The failure by the Design-Builder to furnish the Architect or the Owner with accurate and detailed record documents shall be grounds for withholding payments due the Design-Builder under the Design-Build Documents until such record documents have been properly furnished.

§ 5.8.2 The Design-Builder shall maintain 'as-built' record drawings, current with the progress of the Work, available for inspection on-Site, and shall provide them to the Architect and the Owner upon the Architect's or the Owner's request.

§ 5.8.3 All records submitted to the Owner by the Design-Builder and/or any of Design-Builder's Forces shall be deemed official Project documents, upon which the Owner can rely, and which shall be maintained by the Design-Builder and as part of the Project records, whether such records are in electronic or hard-copy format.

§ 5.8.4 The Design-Builder shall retain copies of all Project-related records, correspondence, text, data, documents, drawings, information, and graphics, including but not limited to shop drawings and other submittals, for a period of six (6) years after final completion, any or all of which shall be made available for review and audit by the Owner upon the Owner's request.

#### § 5.9 Use of Site

The Design-Builder shall confine the Work, the Design-Builder's operations, and the operations of Design-Builder's Forces at the Site to areas permitted by applicable Laws and the Design-Build Documents. The Design-Builder shall not unreasonably encumber the Site with materials or equipment. The Design-Builder shall remove materials and equipment from the Site or move materials or equipment to different locations on the Site as directed by Owner.

§ 5.9.1 The Design-Builder and Design-Builder's Forces shall occupy and use the Site only for the purpose of executing the Work, and only during Regular Working Hours as provided in section 5.16 below.

§ 5.9.2 The Design-Builder shall not occupy property other than the Site, including property designated as an easement area or a right-of-way area, unless specifically permitted elsewhere in the Design-Build Documents, without the express prior written permission of the owner thereof. Such permission of owners of other properties shall not be sought by the Design-Builder without the express prior written permission of the Owner.

§ 5.9.3 The Design-Builder shall be responsible for the preservation and protection of property adjacent to the Site from damage or injury as a result of the Design-Builder's operations. Prior to commencement of Work in the vicinity of property adjacent to the Site, the Design-Builder, at its own expense, shall take such surveys as may be necessary or expedient to establish the existing conditions of such adjacent property.

§ 5.9.4 Any damage or injury occurring to any property as a result of any act, omission, or neglect on the part of the Design-Builder or Design-Builder's Forces shall be repaired so that the property is restored in a proper and satisfactory manner, or replaced by and at the expense of the Design-Builder to an equal or superior condition than previously existed. The Design-Builder shall be responsible for all costs in connection with the settlement of or defense against claims for damages or alleged damages to property as a result of Work performed under this Agreement. Before final payment under the Agreement shall be made to the Design-Builder, the Design-Builder shall furnish satisfactory evidence to the Owner that all such claims for damage have been completely and finally resolved, or that sufficient funds to cover such claims have been placed in escrow. **The Design-Builder shall indemnify, defend, and hold harmless the Owner and all other Indemnitees from and against any and all Losses arising out of or related to any act, omission, or neglect on the part of the Design-Builder or Design-Builder's Forces causing damage to adjacent property.** The obligations in this section 5.9.4 shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity established by the Design-Build Documents and shall survive completion of the Work until all applicable statutes of limitations for the making of any claim exposing the Indemnitees to Losses have expired.

#### § 5.10 Cutting and Patching

The Design-Builder shall be responsible for cutting, fitting, and patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Design-Build Documents. The Design-Builder shall not cut, patch, damage, endanger, or otherwise alter fully or partially completed construction by the Owner or a Separate Contractor except with the written consent of the Owner and of such Separate

Contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a Separate Contractor the Design-Builder's consent to cutting or otherwise altering the Work.

**§ 5.11 Cleaning Up and Other Site Requirements**

**§ 5.11.1** During construction, the Design-Builder shall regularly remove from the Site all accumulated debris and surplus materials of any kind that result from its operations. Unused equipment and tools shall be stored at the Design-Builder's yard or base of operations for the Project. When the Work involves the installation of sewers, drains, water mains, manholes, underground structures, or any other disturbance of existing features in or across streets, rights-of-way, easements, or private property, the Design-Builder shall, as the Work progresses, promptly backfill, compact, grade, and otherwise restore the disturbed area to a basic condition that will permit resumption of pedestrian traffic, vehicular traffic, and any other essential activity or function consistent with the original use of the land. Unsightly mounds of earth, large stones, boulders, and debris shall be removed as promptly as possible so that the Site maintains a neat appearance.

**§ 5.11.2** Before leaving the Site upon completion of the Work, the Design-Builder shall remove from the Site all accumulated debris and surplus materials of any kind that result from the Work or Project, including without limitation construction equipment, tools, sheds, sanitary enclosures, and the like. The completed Work and the Project shall be turned over to the Owner in a neat and orderly condition. The Site shall be rehabilitated or developed in accordance with the Design-Build Documents to achieve the Contract Objective. Except as otherwise provided in the Design-Build Documents, the Design-Builder shall completely rehabilitate the Site to a condition and appearance equal or superior to that which existed just prior to construction, except for those items whose permanent removal or relocation was required in the Design-Build Documents or so ordered by the Owner.

**§ 5.11.3** The Design-Builder's failure to clean and prepare the Site in accordance with the Design-Build Documents shall provide the Owner with grounds to withhold interim payments and/or final payment of the Contract Sum. If the cleaning and preparation of the Site has not been completed by the Design-Builder, and upon forty-eight (48) hour notice and opportunity to cure, the Owner may make arrangements for same with a Separate Contractor. The Design-Builder shall reimburse the Owner for all costs associated with such work in a deduction to the Contract Sum or by direct payment from the Design-Builder to the Owner, or a combination of both, at the option of the Owner.

**§ 5.11.4** The Design-Builder shall replace survey markers, such as property corners, right-of-way monuments, and the like that are disturbed as a result of the Work, whether or not specifically identified in the Design-Build Documents, where property corners and/or rights-of-way remain in the same location after the Work has been performed. If property corners and/or right-of-way line locations have been altered or established in connection with the Work, the Design-Builder shall cause survey markers, such as property corners, right-of-way monuments, and the like to be placed by a North Carolina Professional Land Surveyor (PLS) and provide to the Owner an up-to-date survey prepared by a PLS, regardless whether such Work is specifically identified in the Design-Build Documents. The Owner may check lines, elevations, reference marks, batter boards, and the like set by the Design-Builder. The Design-Builder shall correct any errors disclosed by such check(s) as directed by the Owner. No such check shall be deemed an approval of the Work, nor shall it relieve the Design-Builder of the responsibility for accurate construction of the Work. The Design-Builder shall furnish personnel to assist the Owner in checking lines and grades.

**§ 5.12 Access to Work**

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

**§ 5.13 Construction by Owner or by Separate Contractors**

**§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 5.13.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions according to their terms and conditions the Owner deems appropriate. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Design-Builder” in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner’s own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner’s own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

**§ 5.14 Mutual Responsibility**

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder’s construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder’s Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder’s Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner’s or separate contractor’s completed or partially completed construction is fit and proper to receive the Design-Builder’s Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder’s delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor’s delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

**§ 5.15 Owner’s Right to Clean Up**

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

**ARTICLE 6 CHANGES IN THE WORK**

**§ 6.1 General**

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.1.1 At any time the Owner may request a quotation from the Design-Builder for a proposed change in the Work. Within twenty-one (21) days after receipt of a request for a quotation for a proposed change in the Work, the Design-Builder shall submit a written and detailed proposal for an increase or decrease in the Contract Sum and/or alteration of the Contract Time with respect to the proposed change. The Owner shall have twenty-one (21) days after receipt of the detailed proposal to respond to the Design-Builder in writing. The Design-Builder’s proposal shall include an itemized estimate of all cost and time for performance that will result directly or indirectly from the proposed change in the Work. Unless otherwise directed, itemized estimates shall include the cost information

required by section 6.3.7 below in sufficient detail so as to reasonably permit an analysis by the Owner of all material, labor, equipment, subcontracts, overhead costs, and fees, and shall cover all Work involved in the change, whether such Work was deleted, added, changed, or otherwise impacted. Any amount claimed for subcontracts shall be similarly supported. Itemized schedule adjustments shall be in sufficient detail to permit an analysis of impact as required by the Design-Build Documents. Notwithstanding any request for quotation, and pending the Owner's review of same, the Design-Builder shall continue to carry out the Work and maintain the Progress Schedule.

§ 6.1.2 Any and all Change Orders shall be in writing and shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order or Change Directive.

§ 6.1.4 Except as permitted in section 6.3 below, a change in the Contract Sum or the Contract Time shall be accomplished only by written Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim for an increase in any amounts due under the Design-Build Documents or for a change in any time period provided for in the Design-Build Documents.

#### § 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.2.2 A Change Order may deal with construction-related, aspects of the Design-Build Documents as well as the non-engineering or non-technical aspects of the Design-Build Documents.

§ 6.2.3 A Change Order, when issued, shall reflect the full compensation, credit, or deduction, as applicable, for the Work included, added, omitted, or substituted, as the case may be. It shall show on its face the adjustment in time, if any, for completion of the Project as a result of the change in the Work. The adjustment in the Contract Sum and/or Contract Time stated in a Change Order shall comprise the total price and/or time adjustment due or owed to the Design-Builder for the Work or changes defined in the Change Order. Each Change Order shall include all costs related thereto, including all overhead, profit, general conditions costs, miscellaneous expenses, and incidentals. The allowances for overhead and profit ("OH&P") for all Change Orders shall be as follows:

- .1 For Work performed by the Design-Builder's own employees, the Design-Builder shall be entitled to fifteen percent (15%) for additive changes and subject to a deduct of fifteen percent (15%) for deductive changes.
- .2 For Work performed by a Contractor or a Subcontractor, the Design-Builder shall be entitled to five percent (5%) on the amount due to the Contractor for additive changes and subject to a deduct of five percent (5%) for deductive changes.
- .3 For Work performed by a Contractor, Subcontractor, or Sub-subcontractor by its own forces, said Contractor, Subcontractor, or Sub-subcontractor shall be entitled to no greater than fifteen percent (15%) for additive changes and subject to a deduct of fifteen percent (15%) for deductive changes.
- .4 For Work performed by a Subcontractor, the Contractor shall be entitled to five percent (5%) on the amount due to the Subcontractor for additive changes and subject to a deduct of five percent (5%) for deductive changes.
- .5 For Work performed by a Sub-subcontractor, the Subcontractor shall be entitled to five percent (5%) on the amount due to the Sub-subcontractor for additive changes and subject to a deduct of five percent (5%) for deductive changes.

§ 6.2.4 By executing any Change Order, the Design-Builder acknowledges and agrees that the stipulated price and/or time adjustments set forth therein include the costs and delays for all Work contained in such Change Order, including,

without limitation, costs and delays associated with the interruption of schedules, extended overheads, delay, cumulative impacts, and/or ripple effects on all other non-affected Work under the Contract.

**§ 6.2.5** The Design-Builder's execution of any Change Order constitutes: (i) full and mutual accord and satisfaction for the adjustment in the Contract Sum and Contract Time as a result of increases or decreases in costs and time of performance caused directly and indirectly from the changes defined in the Change Order, subject to the current scope of the entire Work as set forth in the Design-Build Documents; and (ii) the Design-Builder's agreement with the Owner that the Change Order represents an equitable adjustment to the Contract, and the Design-Builder's waiver of all and any rights to file any Claim or make any further request for a change to the Contract with respect to the changes defined in such Change Order.

**§ 6.3 Change Directives**

**§ 6.3.1** A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly. Design Builder initiated Change Directives are limited to (TBD) for the duration of the projects. With limited exception, the Owner will not authorize Change Directives beyond the number listed above.

**§ 6.3.2** A Change Directive may be used in the absence of total agreement on the terms of a Change Order.

**§ 6.3.3** If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

**§ 6.3.5** Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner within seven (7) days of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

**§ 6.3.6** A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 6.3.7** If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Actual costs of professional services;
- .2 Actual costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

- .3 Actual costs of materials, supplies, and equipment used in the Work, including the cost of shipping, whether incorporated or consumed;
- .4 Actual rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others, including the costs of all fuel, lubricants, insurance, and the like necessary in connection with the use of the machinery and equipment, provided that equipment rental rates shall not exceed the prorated monthly rental rates listed in the current edition of the "Compilation of Rental Rates for Construction Equipment" as published by the Associated Equipment Distributors, and provided further that hourly charges shall be determined by dividing monthly rates by 176;
- .5 Actual costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Actual costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may, in Applications for Payment, request payment for amounts not in dispute for such changes in the Work completed under the Change Directive and that in the opinion of the Owner correspond to changes in the Work that can and should be incorporated in the Work even in the absence of incorporation of the changes for which amounts are disputed. Any such Application for Payment shall be accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such costs that remains in dispute, the Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14 below.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

## **ARTICLE 7 OWNER'S RESPONSIBILITIES**

### **§ 7.1 General**

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

### **§ 7.2 Information and Services Required of the Owner**

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner may provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control. Any information furnished to the Design-Builder by the Owner is provided to the Design-Builder as a courtesy and for informational purposes only, and the Owner does not warrant and hereby disclaims the sufficiency of any such information. In the event the Design-Builder contends that any information provided pursuant to this section 7.2.2 caused the Design-Builder to suffer damages and the Design-Builder elects to seek recovery on account of such damages, the Design-Builder waives claims for such damages

against the Owner and shall seek recovery for such damages solely and exclusively against the person(s) or entity(ies) who prepared the information, recognizing that the Owner did not prepare such information.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 Except for permits, approvals, licenses, and fees that are set out specifically as the responsibility of the Owner in the Design-Build Documents, the Design-Builder shall secure and pay for necessary approvals, permits, fees, licenses, easements, assessments, and charges required for the Work and the Project, including without limitation permits for construction, use or occupancy of permanent structures, or for permanent changes in existing facilities. The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.2.11 Notwithstanding any of the rights and authority granted the Owner in the Design-Build Documents, the Owner shall not be responsible for or have control over or charge of the Design-Builder's construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, and shall not be responsible for the Design-Builder's failure to carry out the Work in accordance with the Design-Build Documents and/or the Construction Documents.

### § 7.3 Submittals

§ 7.3.1 The Owner shall review Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. In reviewing the submittals and other design and construction documents, the Owner is not responsible for any errors or omissions in those documents and is reviewing those documents solely for its own benefit. The Design-Builder shall not proceed with Work requiring submittal review until the Owner indicates in writing that its review is complete; any and all work installed by the Design-Builder in violation of this provision shall be at the Design-Builder's sole risk and cost. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable

promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3, above or any other obligations of the Design-Builder under the Design-Build Documents. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers and recognizes as not conforming with the Design-Build Documents.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

**§ 7.8 Owner's Right to Stop Work**

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

**§ 7.9 Owner's Right to Carry Out the Work**

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

**ARTICLE 8 TIME**

**§ 8.1 Progress and Completion**

§ 8.1.1 Time is of the essence of the Agreement, and the time limits stated in the Design-Build Documents and in the Progress Schedule, as approved by the Owner as to completion dates, are of the essence of the Contract and the Design-Build Documents. By executing the Design-Build Amendment, the Design-Builder confirms that the Contract Time and the time limits set forth in the approved initial Progress Schedule are a reasonable period for performing and completing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work, begin Site operations, or receive materials to the Site or elsewhere prior to the effective date of insurance and bonds required to

be furnished by the Design-Builder and the Owner by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance and bonds required under this Contract, and the date of commencement of the Work shall not be changed by the effective date(s) of such insurance and bonds.

**§ 8.1.3** The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion and final completion within the Contract Time.

**§ 8.1.4** If the progress or completion of the Work is delayed by any fault, neglect, act, or failure to act on the part of the Design-Builder or anyone acting for or on behalf of the Design-Builder, then the Design-Builder shall, in addition to all of the other obligations imposed by the Owner, work such overtime and/or require the appropriate Contract(s), Subcontractor(s), and/or other member of Design-Builder's Forces to work such overtime as may be necessary to make up for all time lost and to avoid delay in the progress and completion of the Work. The Design-Builder shall be entitled to no adjustment in the Contract Sum on account of the performance of overtime work by the Design-Builder and/or Design-Builder's Forces to maintain or recover the Progress Schedule.

**§ 8.1.5** If all lands, easements, and rights-of-way upon which improvements are to be made are not obtained as of the date of commencement of the Work, the Design-Builder shall commence the Work upon and within such lands, easements, and rights-of-way as the Owner has acquired as of the date of commencement.

**§ 8.2 Delays and Extensions of Time**

**§ 8.2.1** If the Design-Builder is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or of a consultant or Separate Contractor employed by the Owner; (2) by changes ordered in the Work by the Owner; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's reasonable control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Design-Builder asserts, and the Owner determines, in writing, may justify delay, then, if the Design-Builder makes a Claim satisfying the requirements of Article 14 below the Contract Time will be extended by Change Order for such reasonable time as the Owner may determine. The Design-Builder agrees to make no Claim against the Owner or any other of the Indemnitees that are not solely occasioned by an act or omission of the Owner or any of its representatives or of a Separate Contractor. Any Claim occasioned solely by the act or omission of the Owner or any of its Separate Contractors will be appropriately compensated for by an extension of the Contract Time to complete performance of the deemed Work so long as the Claim satisfies the requirements of Article 14 below and is in accordance with the Design-Build Documents. The Design-Builder further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay adversely affects the critical path of the Project, and is not caused, or could not have been anticipated, by the Design-Builder, could not be limited or avoided by the Design-Builder's timely notice to the Owner of the delay, and is of a duration not less than one (1) day.

**§ 8.2.2** Any Claim seeking an extension of Contract Time and/or for alleged Owner-caused delay shall be made in strict accordance with the requirements of Article 14 below. The failure to make a Claim for an extension to the Contract Time and/or for damages for alleged Owner-caused delay in strict accordance with Article 14 below shall be deemed an irrevocable waiver of the Claim.

**§ 8.2.3** Any award of damages to the Design-Builder and/or to Design-Builder's Forces for alleged Owner-caused delay shall include overhead and profit in accordance with the allowances set forth in section 6.2.3 above. Under no circumstances shall the Design-Builder or any of Design-Builder's Forces be entitled to recover from the Owner any alleged unabsorbed home office overhead under the *Eichleay* formula or any other formula, it being expressly agreed by the Design-Builder that any alleged unabsorbed home office overhead is included within the allowances set forth in section 6.2.3 above. By executing the Agreement, the Design-Builder waives (a) Claims for alleged unabsorbed home office overhead under the *Eichleay* formula or any other computation and (b) Claims for any and all other consequential damages other than unabsorbed home office overhead, including, without limitation, alleged damages for extended home office overhead; losses of financing, business, and/or reputation; lost bonding capacity; and loss of profit, except anticipated profit arising directly from the Work.

**§ 8.2.4** Adverse weather shall be taken into account for purposes of ascertaining delays, but only to the extent that actual construction operations on the Progress Schedule's critical path are delayed. "Adverse weather" for purposes of the Contract is defined as weather that is more severe than the average weather for the particular time(s) and date(s) in question as compared to the most recent five (5)-year average for the locale where the Project is located. The

“average weather” for purposes of the preceding sentence shall be determined by reference to the “Local Climatological Data” published by the National Oceanic and Atmospheric Administration (“NOAA”) for the Project locale. It shall be the responsibility of the Design-Builder to furnish all data necessary to support any Claim for an extension of the Contract Time based upon delays in construction operations on the Progress Schedule’s critical path due to adverse weather.

**§ 8.2.5** Extensions to the Contract Time shall only be granted to the extent the Architect and the Owner agree that the Design-Builder’s Claim for a time extension has substantiated delay to the Project Schedule’s critical path. Only delays to the Project’s Substantial Completion date shall warrant an increase in the Contract Time under section 8.2.1 above.

**§ 8.2.6** The Design-Builder shall not be entitled to additional compensation or any change in the Contract Sum as a result of time extensions approved by the Owner due to adverse weather conditions, it being recognized by the Design-Builder that adverse weather conditions are beyond the control of the Owner, and therefore cannot serve as grounds for compensable delay.

**§ 8.2.7** If the Design-Builder submits a schedule or progress report indicating an intention to achieve completion of the Work prior to any completion date required by the Design-Build Documents or expiration of the Contract Time, the Owner shall not be liable to the Design-Builder for any failure of the Design-Builder to so complete the Work regardless of the cause of or reason for the Design-Builder’s failure to do so.

**§ 8.4 Liquidated Damages for Delay**

**§ 8.4.1** The damages incurred by the Owner due to the Design-Builder’s failure to complete the Work within the required Contract Time, including any extensions thereof, shall be in the amount set forth in the Design-Build Amendment for each consecutive day beyond the established Contract Time (Sundays and all holidays included) for which the Design-Builder fails to complete the Work (the “Liquidated Damages”). The Design-Builder and the Owner expressly agree that the Contract contemplates the potential apportionment of Project delay, such that the finder of fact in any judicial proceeding that may be required to resolve a dispute concerning Project delay may: (a) attempt to apportion the delay between or among those entities it concludes are responsible for the delay; and (b) may award the Owner Liquidated Damages for inexcusable delay caused by the Design-Builder and/or Design-Builder’s Forces even if the Design-Builder establishes that the Owner should be apportioned some responsibility for Project delay.

**§ 8.4.2- Liquidated Damages for Delay- Substantial Completion**

For the first 10 calendar days that substantial completion exceeds the Contract Time, the Design-Builder shall be liable for \$1,500.00 per day as liquidated damages. Starting the 11th calendar day, for each calendar day that substantial completion exceeds Contract Time, the Design-Builder shall be liable for \$6,000/day as liquidated damages. Such liquidated damages are agreed to be reasonable estimate of the Owner’s damages for delayed completion of the work and shall not be considered a penalty. The Owner may deduct liquidated damages from any unpaid amounts due to the Design-Builder under this agreement.

**§ 8.4.2- Liquidated Damages for Delay- Final Completion**

For the first 10 calendar days that final completion exceeds the Contract Time, the Design-Builder shall be liable for \$1,500.00 per day as liquidated damages. Starting the 11th calendar day, for each calendar day that substantial completion exceeds Contract Time, the Design-Builder shall be liable for \$6,000/day as liquidated damages. Such liquidated damages are agreed to be reasonable estimate of the Owner’s damages for delayed completion of the work and shall not be considered a penalty. The Owner may deduct liquidated damages from any unpaid amounts due to the Design-Builder under this agreement.

**§ 8.5 Performance Bonus**

The Owner may pay a performance bonus based upon the Owner’s Evaluation of the performance criteria established for the project. The Design-Builder shall be provided a copy of the project’s performance criteria upon written request. In no event shall the performance bonus exceed one percent of the cost of the work established in the initial GMP for the project minus any allowance funds that were not used at the completion of the project. The Owner may take increases or decreases in the GMP into account in determining the maximum payable performance bonus. The Owner, in its sole discretion, may reduce the performance bonus calculated for the project in any amount

**Pender County Budget Ordinance Amendment**

**Fiscal Year**

FY 2023-2024

**Department**

VARIOUS

**Proposed Amendment:**

**REVENUES**

	Account # (ORG-OBJECT)	Account Description	Amount
1	695-399000	General Fund Bal-Approp	5003800
2	631000-399003	Trans from GF/FB	5003800
3			
4			
5			
6			
7			
8			
9			
10			

**EXPENDITURES**

	Account # (ORG-OBJECT)	Account Description	Amount
1	695-409007	Transf to Public School Cap	5003800
2	631000-404542	Contracted Services-Design	5003800
3			
4			
5			
6			
7			
8			
9			
10			

**Total Revenues**  
10007600

**Total Expenditures**  
10007600

**Budget Amendment Balances when Zero.**  
0

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