

REQUEST FOR BOARD ACTION

ITEM NO. 13.

DATE OF MEETING: May 18, 2009

REQUESTED BY: David McCole, Finance Director

SHORT TITLE: Resolution Authorizing Purchase Order for Traffic Signal Installation for the new Topsail High School Driveway and Road Improvements – Terry Spell Mechanical Services, Inc. - \$89,180

BACKGROUND: The Pender County Board of Education has requested this action in order to complete roadway and driveway improvements required by NC Department of Transportation for the new Topsail High School.

Terry Spell Mechanical Services, Inc. is the firm selected by the Board of Education to complete this project and this fee covers their services per the attached agreement. The traffic signal will be installed at the intersection of US Highway 17 and Jenkins Rd/Country Club Road.

SPECIFIC ACTION REQUESTED: The Board of Commissioner is requested to approve a Purchase Order to Terry Spell Mechanical Services, Inc., in the amount of \$89,180 for installation of a traffic signal

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

PB

Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that

A purchase order in the amount of \$89,180.00 for installation of traffic signal as required by NC Department of Transportation at the new Topsail High School is authorized for Terry Spell Mechanical Services, Inc.

63-406457

New Topsail High School
(Roadway Improvements)

The Chairman/County Manager is authorized to execute any documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Tate ___ Brown ___ Blanchard ___ Rivenbark ___ Williams ___

Jimmy T. Tate, Chairman

05/18/09

ATTEST 05/18/09

AIA DOCUMENT G702

APPLICATION AND CERTIFICATION FOR PAYMENT

TO OWNER: Pender Co. Schools PROJECT: Tapsell School Complex
 VIA ARCHITECT: Morris, Huske, & Tunstall
 FROM CONTRACTOR: Terry Spell Mechanical Services Inc.
 CONTRACTOR: Traffic Signal Installation
 APPLICATION NO: 1
 PERIOD TO: 04/01/09 - 04/30/09
 PROJECT NO: 08009

CONTRACTOR'S APPLICATION FOR PAYMENT
 Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached.
 CONTRACT DATE: _____

RECEIVED

APR 29 2009

PENDER FINANCE

1. ORIGINAL CONTRACT SUM \$ 89,180.00
2. Net change by Change Orders \$ 0.00
3. CONTRACT SUM TO DATE (Line 1 + 2) \$ 89,180.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 2,892.00

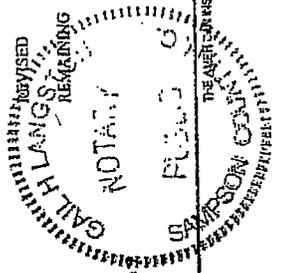
5. RETAINAGE:
 - a. $\frac{1}{4}$ of Completed Work (Column D + E + F on G703) \$
 - b. $\frac{1}{4}$ of Stored Material (Column F on G703) \$
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total) \$ 4,000.00

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)
8. CURRENT PAYMENT DUE \$ 4,000.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 Less Line 6)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS		

NET CHANGES by Change Order
 The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that correct payment shown herein is now due.

CONTRACTOR: Terry Spell Date 04/22/09
 State of North Carolina County of New Hanover
 Subscribed and sworn before this 22nd day of April 2009
 Notary Public: S. J. R. Ransom
 My Commission expires: 02/24/12



ARCHITECT'S CERTIFICATE FOR PAYMENT
 In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 2,000.00

(Attach explanation if amount certified differs from the amount applied. Initial all Application and on-site Continuation Sheet that are changed to explain with the amount certified.)

ARCHITECT: Morris, Huske, & Tunstall Date: 4-22-09

This Certificate is not negotiable. THE AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

ACCEPTED BY OWNER:
 The review and acceptance of this estimate does not attest to the correctness of the quantities shown or that the work has been performed in accordance with the contract documents.

BY: _____ TITLE: _____ DATE: _____

APPROVED BY: _____ PREPARED BY: _____

ACCOUNT # _____ AMOUNT _____

CONTRACT TIME _____

ORIGINAL (DAYS) _____

ON SCHEDULE - YES ___ NO ___

PROJECTED COMPLETION _____

CONTINUATION SHEET G-703

2 PAGE OF PAGES 2

APPLICATION NO: 1
 APPLICATION DATE: 4/22/09
 PERIOD TO: 4/30/09
 ARCHITECT'S PROJECT NO: 08009

Contractor's signed certification is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D		E WORK COMPLETED THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D.O.R.E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H BALANCE TO FINISH (C-G)	I RETAINAGE (IF VARIABLE RATE)
			WORK COMPLETED FROM PREVIOUS APPLICATION (D+E)						
1	Draw #1 Payment & Performance Bonds	2,000.00	—	2,000.00	—	2,000.00	—	—	—
GRAND TOTALS		2,000.00	—	2,000.00	—	2,000.00	—	—	—

THIS AGREEMENT is by and between PENDER COUNTY SCHOOLS ("Owner") and TERRY SPELL MECHANICAL SERVICES, INC. ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents.

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is general described as follows:

**TOPSAIL SCHOOL COMPLEX
TRAFFIC SIGNAL INSTALLATION
Pender County, North Carolina**

RECEIVED
APR 29 2009
PENDER FINANCE

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Norris, Kuske & Tunstall Consulting Engineers, Inc. of Wilmington, North Carolina, which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

A. The Work will be substantially completed within ninety (90) calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within ninety (90) calendar days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as

HERE

liquidated damages for delay (but not as a penalty), Contractor shall pay Owner Five Hundred and 00/100 Dollars (\$500.00) for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner Five Hundred and 00/100 Dollars (\$500.00) for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A below:

- A. For all Work other than Unit Price Work, a lump sum of \$89,180.00. All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment on or about the 20th day of each month during performance of the Work as provided in Paragraph 6.02 A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage of work completed and accepted but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the

remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

7.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- E. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- F. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- G. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 – CONTRACT DOCUMENTS

8.01 Contents

- A. The Contract Documents consist of the following:
 1. This Agreement (pages 1 to 5, inclusive)
 2. Performance bond
 3. Payment bond
 4. General Conditions
 5. Supplementary Conditions
 6. Specifications as listed in the table of contents of the Project Manual
 7. Drawings consisting of nine (9) sheets bearing the following general title:

US17 / NC210
at
SR 1592 (Jenkins Road) /
SR 1565 (Country Club Drive)
 8. Addenda (numbers 1 to 1, inclusive)
 9. Exhibits to this Agreement (enumerated as follows):

- a. Contractor's Bid
 - i. Note: to the extent there is a conflict between the bid and the other contract documents, the other contract documents control
 - b. Documentation submitted by Contractor prior to Notice of Award
10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
- a. Notice to Proceed
 - b. Work Change Directives
 - c. Change Orders
- B. The documents listed in Paragraph 8.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in the Article 8.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 9 – MISCELLANEOUS

9.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

9.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 *Contractor's Certifications*

Topsail School Complex -- Traffic Signal Installation, Pender County, North Carolina

- A. Contractor certified that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 9.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on 03/18/09.

Owner:

By:

Title:

Attest:

Title:

Address for giving notice:

Contractor:

Terry Spell Mechanical Services Inc.

By:

Title:

Terry Spell, Owner, Pres.
(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

Title:

Address for giving notices:

PO Box 310

Antyville NC 28318

License No: 10493-U

(Where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement)

Agent for service of process: