



REQUEST FOR BOARD ACTION

ITEM NO. 12.

DATE OF MEETING: September 8, 2009

REQUESTED BY: David McCole, Finance Director

SHORT TITLE: Resolution Authorizing a Contract with and Approving a Purchase Order to Skinner Smith Construction, Inc., in the supplemental amount of \$120,429 for Construction of a Sewer Pipe Extension for Rocky Point Primary School

BACKGROUND: Of the \$56 million school bond referendum approved by voters on May 3, 2005, \$1,929,000 was allocated for renovations to the Rocky Point Primary School. Thus far the Board has authorized allocations totaling \$164,535 to this project.

At this time, the schools are requesting approval of a proposal from Skinner Smith Construction, Inc., to construct the necessary sewer extension to connect Rocky Point Primary to the Rocky Point/Topsail sewer system. On the August 17, 2009 agenda the Board approved \$6,338.37 but staff failed to note that this was a contract and not simply an invoice. The entire sewer extension project will actually cost \$126,767 as outlined in the attached contract.

The County and Schools have entered into the appropriate agreements to permit the County to pay the bills associated with this construction in order to recapture the sales taxes paid and realize a substantial savings.

SPECIFIC ACTION REQUESTED: The Board of Commissioners is requested to authorize a contract with and purchase order to Skinner Smith Construction, Inc., in the supplemental amount of \$120,439 for construction of a sewer line extension at Rocky Point Primary School.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

PS
Initial

RESOLUTION:

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners That contracts and purchase orders are authorized as follows:

| | | |
|----------------------------------|-------------------|----------------------|
| Skinner Smith Construction, Inc. | \$ 120,429 | Sewer line Extension |
| Total | \$ 120,429 | |

63-406461 Rocky Point Primary School Renovations

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 09/08/09
DATE

ATTEST 09/08 /09
DATE

THIS AGREEMENT is by and between **PENDER COUNTY SCHOOLS** ("Owner") and **SKINNER SMITH CONSTRUCTION** ("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:

**ROCKY POINT PRIMARY SCHOOL
SEWER EXTENSION
Contract Number 71007113
Pender County, North Carolina**

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 one hundred twenty (120) 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 liquidated damages for delay (but not as a penalty), Contractor shall pay Owner One Hundred and 00/100 Dollars (\$100.00) 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 One Hundred and 00/100 Dollars (\$100.00) 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 \$126,767.32.
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 four (4) sheets bearing the following general title:
 - C1 – Site Plan : Sewer Extension
 - C2 – Details
 - PR1 – Plan and Profile
 - PR2 – Plan and Profile
 8. Addenda (numbers 1 to 2, 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 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

- 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 anything 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 01-09-09.

Owner: Albi Dlt
 By: _____
 Title: Superintendent

Contractor: SKINNER-SMITH CONSTRUCTION, INC.
Steven C. Skinner
 By: _____
 Title: President

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

Attest: _____
 Title: _____
 Address for giving notice: _____

Attest: KW
 Title: VICE PRESIDENT/SEC
 Address for giving notices: _____
3205 RANDALL PARKWAY, SUITE 203
WILMINGTON, NC 28403

License No: NC 25855
 (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: _____