

## REQUEST FOR BOARD ACTION

ITEM NO. 9.

**DATE OF MEETING:** March 1, 2010

**REQUESTED BY:** David McCole, Finance Officer

**SHORT TITLE:** Resolution Authorizing a Contract with and Purchase Order to Monteith Construction Corp., in the amount of \$3,328,000 for Construction of C. Heide Trask High School Auditorium & Auxiliary Gym Addition

**BACKGROUND:** Of the \$56 million school bond referendum approved by voters on May 3, 2005, \$2.2 million was originally allocated for the construction of a Performing Arts Center at C. Heide Trask High School. On November 2, 2009, the Board Authorized the Schools (following public meetings to obtain the communities' input) to proceed to construct a \$4,399,960 project that would be a combination school auditorium and an auxiliary gym addition to be funded as follows:

| <u>Source</u>                              | <u>Amount</u>      |
|--|--------------------|
| Existing Trask Project Bond Funds          | \$2,006,046        |
| ADM Funds                                  | \$ 642,075         |
| Lottery Funds                              | \$1,384,836        |
| Bond Project Sales Tax Reimbursement Funds | \$ 367,003         |
| <b>Total:</b>                              | <b>\$4,399,960</b> |

At this time, school architect, LS3P Associates LTD., is recommending award to Monteith Construction Corp. as the low bidder and the school requests approval of this contract and associated purchase order.

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

**SPECIFIC ACTION REQUESTED:** To consider a resolution to authorize contract with and purchase order to Monteith Construction Corporation as indicated above.

**COUNTY MANAGER'S RECOMMENDATION**

Respectfully recommend approval.

  
\_\_\_\_\_  
Initial

**RESOLUTION**

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

a contract with and purchase order to Monteith Construction Corp., is hereby authorized for construction of the auditorium and auxiliary gymnasium addition at C. Heide Trask High School in the amount of \$3,328,000. The County Manager/Chairman shall have the authority to execute any/all documents necessary to implement this resolution.

Account #: 63-406465      Heide Trask Auditorium

**AMENDMENTS:**

MOVED \_\_\_\_\_ SECONDED \_\_\_\_\_

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ UNANIMOUS

YEA VOTES: Tate \_\_\_ Blanchard \_\_\_ Brown \_\_\_ Rivenbark \_\_\_ Williams \_\_\_

\_\_\_\_\_  
Jimmy T. Tate, Chairman      03/01/2010  
Date

\_\_\_\_\_  
ATTEST      03/01/2010  
Date



**PENDER COUNTY**  
**S C H O O L S**

RECEIVED

FEB 09 2010

PENDER FINANCE

Board of Education  
Tom Roper, Chairman  
Katherine Herring, Vice-Chairman  
Karen Gonzales  
Kenneth I. Lanier, Jr.  
Karen Rouse

Allison Sholar  
Superintendent

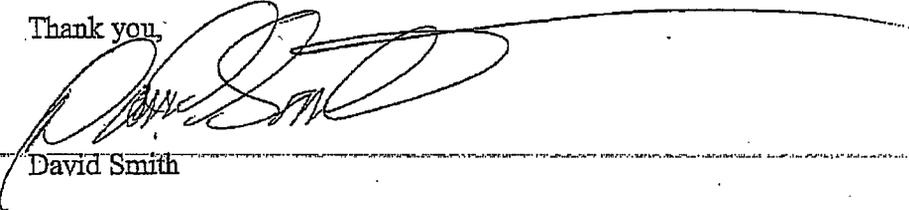
February 9, 2010

To: Pender County Commissioners

From: David Smith  
Pender County Schools

We received bids for Heide Trask High School Gym/Auditorium. The project has been reviewed and approved by the Pender County School Board. Attached are the bid tabulations. We request that a purchase order be issued to Monteith Construction Corp. with the low bid of \$3,328,000.00.

Thank you,



David Smith

DS/cw  
Attachments

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925 Penderlea Highway • Burgaw, North Carolina 28425  
Telephone (910) 259-2187 • Fax (910) 259-0133  
[www.pendercountyschools.net](http://www.pendercountyschools.net)

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*Pender County Schools . . . the future in progress*



5 February 1010

E-Mail

Mr. David Smith  
Pender County Schools  
925 Penderlea Hwy  
Burgaw, NC 28425

Re: **Recommendation of Award**  
**Certified Tabulation of Bids**  
Auditorium & Auxiliary Gymnasium Addition  
Heide Trask High School  
Pender County Schools  
LS3P ASSOCIATES No. 7201-091870-060

Dear David:

Enclosed is the Certified Tabulation of Bids received yesterday for the Heide Trask High School Auditorium & Auxiliary Gym Addition.

We are pleased to recommend award to the low bidder as follows:

|   |                     |
|---|---------------------|
| Monteith Construction Corp.<br>Wilmington, NC<br>Base Bid | \$3,328,000.        |
| Alternate No. 1A Proprietary Door Closers                 | \$No Charge         |
| Alternate No. 1B Proprietary Cylinders                    | \$No Charge         |
| Alternate No. 1C Proprietary Locks                        | \$No Charge         |
| Alternate No. 1D Proprietary Exit Devices                 | \$No Charge         |
| Alternate No. 2 Proprietary DDC Controls-Siemens          | \$No Charge         |
| <b>Total Recommended Award</b>                            | <b>\$3,328,000.</b> |

Upon Board approval, please advise and we will prepare the contracts and forward to Monteith Construction Corp. for execution and inclusion of Bonds and Insurance documents.

Sincerely,

LS3P ASSOCIATES LTD.-Wilmington

*[Signature]*  
W. Elliott O'Neal, Jr.  
Director Bidding & Contract Services  
Associate Principal  
Enclosure

cc: Mr. Andy Aretakis, AIA, LEED AP  
7201-091870-060-Recaward-Tab-ltr-020510

CHARLESTON

COLUMBIA

CHARLOTTE

RALEIGH

WILMINGTON

LS3P ASSOCIATES LTD.

ARCHITECTURE

INTERIOR ARCHITECTURE

PLANNING

2528 INDEPENDENCE BLVD. SUITE 200 WILMINGTON, NORTH CAROLINA 28412 PH 910.790.9901 FAX 910.790.3111

WWW.LS3P.COM



Charlotte Wells <charlotte\_wells@pender.k12.nc.us>

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## Certified Bid Tabulation on Heide Trask Auditorium project

1 message

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Melinda Knoerzer <knoerzermk@pender-county.com>

Mon, Feb 15, 2010 at 9:52 AM

To: Charlotte Wells <charlotte\_wells@pender.k12.nc.us>, Carlette McCoy <cmccoy@pendercountync.gov>

Charlotte – Please also include with the contract – the certified bid tabulation prepared by LS3P for this project. Thanks very much!! Melinda

---



5 February 1010

E-Mail

Mr. David Smith  
Pender County Schools  
925 Penderlea Hwy  
Burgaw, NC 28425

Re: **Recommendation of Award**  
**Certified Tabulation of Bids**  
Auditorium & Auxiliary Gymnasium Addition  
Heide Trask High School  
Pender County Schools  
LS3P ASSOCIATES No. 7201-091870-060

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Enclosed is the Certified Tabulation of Bids received yesterday for the Heide Trask High School Auditorium & Auxiliary Gym Addition.

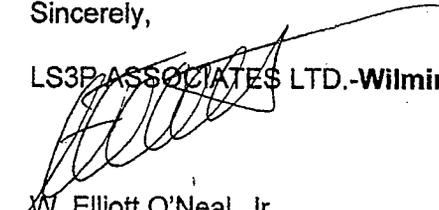
We are pleased to recommend award to the low bidder as follows:

|  |                     |
|--|---------------------|
| Monteith Construction Corp.<br>Wilmington, NC    |                     |
| Base Bid   | \$3,328,000.        |
| Alternate No. 1A Proprietary Door Closers        | \$No Charge         |
| Alternate No. 1B Proprietary Cylinders           | \$No Charge         |
| Alternate No. 1C Proprietary Locks               | \$No Charge         |
| Alternate No. 1D Proprietary Exit Devices        | \$No Charge         |
| Alternate No. 2 Proprietary DDC Controls-Siemens | <u>\$No Charge</u>  |
| <b>Total Recommended Award</b>                   | <b>\$3,328,000.</b> |

Upon Board approval, please advise and we will prepare the contracts and forward to Monteith Construction Corp. for execution and inclusion of Bonds and Insurance documents.

Sincerely,

LS3P ASSOCIATES LTD.-Wilmington

  
W. Elliott O'Neal, Jr.  
Director Bidding & Contract Services  
Associate Principal  
Enclosure  
cc: Mr. Andy Aretakis, AIA, LEED AP  
7201-091870-060-Recaward-Tab-ltr-020510

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WWW.LS3P.COM

**BID TABULATION  
Single Prime**

Project: New Auditorium & Auxiliary Gymnasium  
 Heide Trask High School - Rocky Point, NC  
 Project #: 7201-091870  
 Bid Date: Thursday, February 4, 2010 Time: 3:00 P.M.  
 Bid Location: Pender County Board of Education - Board Room  
 925 Penderlea Highway, Burgaw, NC 28425

| Contractors                              | Prime Subcontractors                   | License # | Bid Security | MBE | Addenda Received | Base Bid     | Alternate # 1<br>(Provide Proprietary Door Hardware) |                                 |                            |                              | Alternate # 2<br>(Provide Proprietary DDC Controls by Siemens) | Total<br>(Base bid + alternates) |
|--|--|-----------|--------------|-----|------------------|--------------|--|---------------------------------|----------------------------|------------------------------|--|----------------------------------|
|  |  |           |              |     |                  |              | a. door closers - LCN                                | b. cyllinders - Schlage or Best | c. locks - Schlage or Best | d. exit devices - Von Duprin |  |                                  |
| A. R. CHESSON CONSTRUCTION CO., INC.     | Keen<br>Climate Svs<br>Wachter         | 13540     | Y            | Y   | Y                | \$ 3,498,000 |  |                                 |                            |                              | \$ 113,190   | \$ 3,611,190                     |
| CONSTRUCTIVE BUILDING SOLUTIONS, LLC.    | NO BID                                 |           |              |     |                  |              |  |                                 |                            |                              |  |                                  |
| DANIELS & DANIELS CONSTRUCTION CO., INC. | APC<br>Pipkin & Provo<br>Watson        | 23697     | Y            | Y   | Y                | \$ 3,511,000 |  |                                 |                            |                              |  | \$ 3,511,000                     |
| D. A. THOMAS CONSTRUCTION CO., INC.      | NO BID                                 |           | Y            | Y   | Y                |              |  |                                 |                            |                              |  |                                  |
| D. S. SIMMONS, INC.                      | Anderson<br>Pipkin & Provo<br>Wachter  | 7651      | Y            | Y   | Y                | \$ 3,345,400 |  |                                 |                            |                              |  | \$ 3,345,400                     |
| FASCO, INC.                              | S & S<br>Harrison<br>Wachter           | 8015      | Y            | Y   | Y                | \$ 3,339,000 |  |                                 |                            |                              |  | \$ 3,339,000                     |
| GRAKA BUILDERS, INC.                     | Anderson<br>Pipkin & Provo<br>Triple R | 19457     | Y            | Y   | Y                | \$ 3,596,162 |  |                                 |                            |                              |  | \$ 3,596,162                     |
| HAMLETT ASSOCIATES, INC.                 | Baity<br>Superior<br>Elrod             | 9628      | Y            | Y   | Y                | \$ 3,588,324 |  |                                 |                            |                              |  | \$ 3,588,324                     |
| HANCO, INC.                              | Anderson<br>Pipkin & Provo<br>Scott    | 69485     | Y            | Y   | Y                | \$ 3,830,000 |  |                                 |                            |                              |  | \$ 3,830,000                     |
| HEATON CONSTRUCTION, INC.                | Keen<br>Pipkin & Provo<br>Wachter      | 47626     | Y            | Y   | Y                | \$ 3,387,000 |  |                                 |                            |                              |  | \$ 3,387,000                     |



**BID TABULATION  
Single Prime**

Project: New Auditorium & Auxiliary Gymnasium  
 Heide Trask High School - Rocky Point, NC  
 Project #: 7201-091870  
 Bid Date: Thursday, February 4, 2010 Time: 3:00 P.M.  
 Bid Location: Pender County Board of Education - Board Room  
 925 Penderlea Highway, Burgaw, NC 28425

| General Contractors         | Prime Subcontractors | License # | Bid Security | Addenda Received | Base Bid     | Alternate # 1<br>(Provide Proprietary Door Hardware) |                     |                            |                              | Alternate # 2<br>(Provide Proprietary DDC Controls by Siemens) | Total<br>(Base bid + alternates) |
|-----------------------------|----------------------|-----------|--------------|------------------|--------------|--|---------------------|----------------------------|------------------------------|--|----------------------------------|
|                             |                      |           |              |                  |              | a. door closers - LCN                                | b. cylinders - Best | c. locks - Schlage or Best | d. exit devices - Von Duprin |  |                                  |
| INTEGRITY BUILDERS, LLC.    | NO BID               |           |              |                  | \$           | \$   | \$                  | \$                         | \$                           | \$   | \$                               |
| Plumbing                    |                      |           |              |                  |              |  |                     |                            |                              |  |                                  |
| Mechanical                  |                      |           |              |                  |              |  |                     |                            |                              |  |                                  |
| Electrical                  |                      |           |              |                  |              |  |                     |                            |                              |  |                                  |
| LEE F. COWPER, INC.         | Anderson             | 34057     | Y            | Y                | \$ 3,378,000 | \$   | \$                  | \$                         | \$                           | \$   | \$ 3,378,000                     |
| Mechanical                  | Pipkin & Provo       |           |              |                  |              |  |                     |                            |                              |  |                                  |
| Electrical                  | Wachter              |           |              |                  |              |  |                     |                            |                              |  |                                  |
| MONTEITH CONSTRUCTION CORP. | Anderson             | 43319     | Y            | Y                | \$ 3,328,000 | \$   | \$                  | \$                         | \$                           | \$   | \$ 3,328,000                     |
| Mechanical                  | Pipkin & Provo       |           |              |                  |              |  |                     |                            |                              |  |                                  |
| Electrical                  | Wachter              |           |              |                  |              |  |                     |                            |                              |  |                                  |
| PARAGON BUILDING CORP.      | Anderson             | 32435     | Y            | Y                | \$ 3,367,110 | \$   | \$                  | \$                         | \$                           | \$   | \$ 3,367,110                     |
| Mechanical                  | Pipkin & Provo       |           |              |                  |              |  |                     |                            |                              |  |                                  |
| Electrical                  | Wachter              |           |              |                  |              |  |                     |                            |                              |  |                                  |
| RAYSAND BUILDING CORP.      | Anderson             | 5322      | Y            | Y                | \$ 3,575,171 | \$   | \$                  | \$                         | \$ 118,580                   | \$   | \$ 3,693,751                     |
| Mechanical                  | Climate Sys          |           |              |                  |              |  |                     |                            |                              |  |                                  |
| Electrical                  | Watson               |           |              |                  |              |  |                     |                            |                              |  |                                  |
| R. J. GRIFFIN & CO.         | Anderson             | 46735     | Y            | Y                | \$ 3,400,000 | \$   | \$                  | \$                         | \$                           | \$   | \$ 3,400,000                     |
| Mechanical                  | Pipkin & Provo       |           |              |                  |              |  |                     |                            |                              |  |                                  |
| Electrical                  | Wachter              |           |              |                  |              |  |                     |                            |                              |  |                                  |
| R. L. CASEY, INC.           | Anderson             | 10137     | Y            | Y                | \$ 3,499,000 | \$   | \$                  | \$                         | \$                           | \$   | \$ 3,499,000                     |
| Mechanical                  | Pipkin & Provo       |           |              |                  |              |  |                     |                            |                              |  |                                  |
| Electrical                  | Watson               |           |              |                  |              |  |                     |                            |                              |  |                                  |
| TALBOT CONSTRUCTION, INC.   | Butlers              | 65689     | Y            | Y                | \$ 3,529,624 | \$ 5,280   | \$                  | \$ 44,000                  | \$                           | \$ 20,498  | \$ 3,599,402                     |
| Mechanical                  | Pipkin & Provo       |           |              |                  |              |  |                     |                            |                              |  |                                  |
| Electrical                  | Wachter              |           |              |                  |              |  |                     |                            |                              |  |                                  |

These bid numbers have been checked against the Forms of Proposal received from the contractors during the job and have been found to be accurate.

*(Signature)*  
 W. Elliott O'Neal, Jr., CSI, Associate Principal



9 February 2010

E-Mail

Mr. Brian Stamp  
Vice-President  
Monteith Construction Corp.  
5521 Cannon Dr. - Suite 101  
Monroe, NC 28110

Re: **Contract Documents**  
Auditorium & Auxiliary Gymnasium Addition  
Heide Trask High School  
Pender County Schools  
LS3P ASSOCIATES No. 7201-091870-060

Dear Brian:

Congratulations!

Confirming my telephone call, the Owner has approved the award of the Heide Trask High School Auditorium & Auxiliary Gymnasium project to your firm as follows:

|  |                     |
|--|---------------------|
| Base Bid   | \$3,328,000.        |
| Alternate No. 1A Proprietary Door Closers        | \$No Charge         |
| Alternate No. 1B Proprietary Cylinders           | \$No Charge         |
| Alternate No. 1C Proprietary Locks               | \$No Charge         |
| Alternate No. 1D Proprietary Exit Devices        | \$No Charge         |
| Alternate No. 2 Proprietary DDC Controls-Siemens | \$No Charge         |
| <b>Total Contract Award</b>                      | <b>\$3,328,000.</b> |

To expedite processing, please make five (5) copies of attached Contract, sign and affix your corporate seal on page seven of the contracts and furnish us five (5) copies of the following:

1. Performance and Payment Bonds on AIA Form A-312 (*not company form*) must be executed by you and Surety. The bond date must be same as contract or subsequent. Please be sure to seal each copy. (That will be ten (10) spaces to sign and seal)
2. Attach agent's Power of Attorney from Bonding Company
3. Certificate of Insurance indicating proper coverage and limits as to public liability, property damage, and workmen's compensation, etc. In the **lower left corner** of this Certificate it indicates "Certificate Holder". This should be "Pender County Board of Education, 925 Penderlea Hwy, Burgaw, NC 28425.

Cancellation Clause language must be for thirty (30) days for all conditions. Cancellation language must be provided in accordance with the following instructions since modification to the Insurance Certificate form is no longer accepted:

The issue may be corrected in the following way:

- a) Verify that the insurance policy contract(s) include(s) the required cancellation provision.

|            |          |           |         |            |
|------------|----------|-----------|---------|------------|
| CHARLESTON | COLUMBIA | CHARLOTTE | RALEIGH | WILMINGTON |
|------------|----------|-----------|---------|------------|

|  |              |                                  |              |
|--|--------------|----------------------------------|--------------|
| LS3P ASSOCIATES LTD.   | ARCHITECTURE | INTERIOR ARCHITECTURE            | PLANNING     |
| 2528 INDEPENDENCE BLVD, SUITE 200 WILMINGTON, NORTH CAROLINA 28412 |              | PH 910.790.9901 FAX 910.790.3111 | WWW.LS3P.COM |



And

b) Provide insurance certificate(s) with language appropriately inserted in the insurance certificate block provided for Special Provisions, as follows: **"Notwithstanding the preprinted cancellation provisions on this form, coverages afforded under the policies will not be cancelled, reduced in amount nor will any coverages be eliminated until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the insured and the Owner, of such alteration or cancellation."**

This language can be continued on an attached and properly titled continuation sheet as long as the first clause ("Notwithstanding....form") is on the face of the form.

-----or if space will not allow b-----

c) Insert at a minimum in the block for Special Provisions, Cancellation and notice provisions on the attached endorsements control over language on this form." Then attach the required language provide in b) above.

4. Furnish original copy and four (4) duplicate copies or memorandum of the Builders' Risk, fire and extended coverage Policy properly made to Owner. This is all required in accordance with the Supplemental Conditions of the specifications. We must have the cancellation language for this policy.

Please refer to specifications Supplemental Conditions Pages 15 thru 18 which provide instructions for supplying supplementary data. These pages should be forwarded to your insurance/bonding company.

It is important that you forward these items to your agent, otherwise there will be details that they will leave undone or do incorrectly, which can cause project delay due to having to return the data to you for correction. This letter is more for your insurance/bonding company than for you.

Please go by these instructions entirely.

Please return all copies of the contracts and supplementary data to me as soon as possible.

**Upon receipt of the executed documents, we will check and forward to Owner for execution. Following this execution, an executed copy will be returned to you.**

Sincerely,

LS3P ASSOCIATES LTD.-Wilmington

W. Elliott O'Neal, Jr.  
Director Bidding & Contract Services  
Associate Principal

Enclosures: Contracts (5)

cc: Mr. David Smith  
Mr. Andy Aretakis, AIA, LEED AP  
Mr. Ernie Langston, CDT

7201-091870-060-contractltr-020910

CHARLESTON

COLUMBIA

CHARLOTTE

RALEIGH

WILMINGTON

LS3P ASSOCIATES LTD.

ARCHITECTURE

INTERIOR ARCHITECTURE

PLANNING

2528 INDEPENDENCE BLVD. SUITE 200 WILMINGTON, NORTH CAROLINA 28412 PH 910.790.9901 FAX 910.790.3111

WWW.LS3P.COM

 **AIA® Document A101™ – 1997**

**Standard Form of Agreement Between Owner and Contractor where the basis of payment is a STIPULATED SUM**

AGREEMENT made as of the Ninth day of February in the year 2010

*(In words, indicate day, month and year)*

BETWEEN the Owner:

*(Name, legal status, address and other information)*

Pender County Board of Education  
925 Penderlea Hwy.  
Burgaw, NC 28425

Tel: 910-259-2187  
Fax: 910-259-0133

and the Contractor:

*(Name, legal status, address and other information)*

Monteith Building Corp.  
5521 Cannon Drive, Suite 101  
Monroe, NC 28110

Tel: 704-238-1888  
Fax: 704-238-1889

The Project is:

*(Name and location)*

New Auditorium & Auxiliary Gymnasium  
Heide Trask High School  
14328 NC Hwy 210  
Rocky Point, NC 28457

Tel: 910-602-6810

The Architect is:

*(Name, legal status, address and other information)*

LS3P ASSOCIATES LTD.  
2528 Independence Blvd. – Suite 200  
Wilmington, NC 28412

Tel: 910-790-9901  
Fax: 910-790-3111

The Owner and Contractor agree as follows.

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

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

Init.

**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

**ARTICLE 1 - THE CONTRACT DOCUMENTS**

~~The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.~~

**ARTICLE 2 THE WORK OF THIS CONTRACT**

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

**Notice to Proceed to be issued**

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work ~~not later than~~            days from the date of commencement, or as follows:

Substantial Completion - Four Hundred Twenty (420) Calendar Days.

Final Completion - Four Hundred Fifty (450) Days.

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)*

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)*

**Liquidated Damages:**

**Substantial Completion: \$500/Calendar Day**

**Final Completion: \$250/Calendar Day**

InIt

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be

Three Million, Three Hundred, Twenty-Eight Thousand, and no/100 dollars (\$ 3,328,000) subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires)*

|                  |                        |              |
|------------------|------------------------|--------------|
| Base Bid         |                        | \$ 3,328,000 |
| Alternate No. 1A | Preferred Door Closers | \$ No Charge |
| Alternate No. 1B | Preferred Cylinders    | \$ No Charge |
| Alternate No. 1C | Preferred Locks        | \$ No Charge |
| Alternate No. 1D | Preferred Exit Devices | \$ No Charge |
| Alternate No. 2  | Preferred DDC Controls | \$ No Charge |
| Total Contract   |                        | \$ 3,328,000 |

§ 4.3 Unit prices, if any, are as follows:

| Description   | Units | Price (\$ 0.00) |
|---|-------|-----------------|
| No. 1 Unsuitable Soil Removal (Manual Excavation)     | cu yd | \$ 30.00 cu yd  |
| No. 2 Unsuitable Soil Removal (Mechanical Excavation) | cu yd | \$ 7.00 cu yd   |
| No. 3 Unsuitable Soil Disposal on site                | cu yd | \$ 5.00 cu yd   |
| No. 4 Unsuitable Soil Disposal off site               | cu yd | \$ 7.00 cu yd   |
| No. 5 Provide On-Site Engineered Fill                 | cu yd | \$ 5.00 cu yd   |
| No. 6 Provide Off-Site Engineered Fill                | cu yd | \$ 11.00 cu yd  |
| No. 7 Provide Off-Site # 57 Stone                     | cu yd | \$ 60.00 cu yd  |

**ARTICLE 5 PAYMENTS**

**§ 5.1 PROGRESS PAYMENTS**

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Int.

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User Notes:

(1668052815)

~~§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~

Not later than 20th day of each calendar month, the Owner will make partial payment to the Contractor on the basis of an application for payment estimate (certified by the Contractor, his authorized representative and approved by the Architect), supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require for the Work performed during the preceding month ending on the 25<sup>th</sup> calendar day. The form of Application for Payment shall be AIA Document G702-Application and Certification for Payment supported by AIA Document G703-Continuation Sheet. The Continuation Sheet shall be prepared the same as in the Schedule of Values submitted by the Contractor. To ensure the proper performance of this contract, the Owner will retain 5% of the amount of each estimate for as long as is authorized by G.S. §143-134.1. At all times during the Project, the Owner shall retain the maximum funds allowed by G. S. §143-134.1. The Owner specifically reserves the right to withhold additional funds as authorized by this Agreement of G. S. §143-134.1 The Contractor shall submit his application for payment to the Architect so that he will receive it before the first day of the month in which payment is to be made.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- 1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five ( 5% ). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;
- 2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five ( 5% );
- 3 Subtract the aggregate of previous payments made by the Owner; and
- 4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- 1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and untimely completion. (Section 9.8.5 of AIA Document A201-1997 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- 2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-1997.

init.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

#### § 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

#### ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-1997.

§ 6.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997.

#### ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

( 0 ) per annum

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

§ 7.3 The Owner's representative is:

*(Name, address and other information)*

Mr. David Smith, Director of Maintenance  
Pender County Schools  
925 Penderlea Hwy  
Burgaw, NC 28425

Tel: 910-259-2187

Tel: 910-259-0133

§ 7.4 The Contractor's representative is:

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User Notes:

(1668052815)

(Name, address and other information)

Mr. John Hawthorne, Project Manager  
Monteith Building Corp.  
32 North Front Street  
Wilmington, NC 28401

Tel: 910-791-8101  
Fax: 910-791-8260

§ 7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 7.6 Other provisions:

Allowances:

Allowance No. 1:

Included in the General Construction Work Base Bid is a \$ 350.00 Per Thousand Brick Allowance, which includes solid brick at rowlock sills.

Allowance No. 2:

Included in the General Construction Work Base Bid is an Allowance of 2,000 cu yds of Unsuitable Soil Replacement.

Allowance No. 3:

Included in the General Construction Work Base Bid is a \$ 10,000 Moisture Remediation Allowance.

Allowance No. 4:

Included in the General Construction Work Base Bid is a \$ 20,000 Building Permit Allowance.

**ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS**

§ 8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A101-1997.

§ 8.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

§ 8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated

| Document                                | Title                                   | Pages                    |
|---|---|--------------------------|
| <u>Supplementary General Conditions</u> | <u>Supplementary General Conditions</u> | <u>SGC-1 thru SGC-20</u> |

§ 8.1.4 The Specifications are those contained in the Project Manual dated as in Section 8.1.3, and are as follows: (Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications exhibit:

| Table of Contents | Pages                    |
|-------------------|--------------------------|
| <u>Section</u>    | <u>Title</u>             |
|                   | <u>Pages</u>             |
|                   | <u>TOC- 1 thru TOC-5</u> |

§ 8.1.5 The Drawings are as follows, and are dated 4, January, 2010 unless a different date is shown below: (Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Int.

Title of Drawings exhibit:

| Number | Title | Date |
|--------|-------|------|
|--------|-------|------|

Refer to Schedule of Drawings on the Cover Sheet

§ 8.1.6 The Addenda, if any, are as follows:

| Number                | Date                   | Pages                           |
|-----------------------|------------------------|---------------------------------|
| <u>Addendum No. 1</u> | <u>14 January 2010</u> | <u>2 Pages</u>                  |
| <u>Addendum No. 2</u> | <u>26 January 2010</u> | <u>3 Pages plus Attachments</u> |
| <u>Addendum No. 3</u> | <u>29 January 2010</u> | <u>2 Pages plus Attachments</u> |

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

§ 8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

Special Terms & Conditions:

Plumbing Subcontractor: Anderson Plumbing Co.

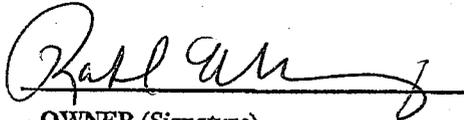
Mechanical Subcontractor: Pipkin & Provo

Electrical Subcontractor: Wachter

This Agreement is entered into as of the day and year first written above above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

Owner: Pender County Board of Education

Contractor: Monteith Building Corp.



OWNER (Signature)



CONTRACTOR (Signature)

Rachel Manning, Asst. Superintendent

(Printed name and title)

BRIAN STAMP, VICE PRESIDENT

(Printed name and title)

Int.

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User Notes:

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# THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. SL4400

AIA Document A312

## Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

Monteith Construction Corp.  
5521 Cannon Drive, Unit 101  
Monroe, NC 28110

**OWNER (Name and Address):**

Pender County Board of Education  
925 Penderlea Hwy.  
Burgaw, NC 28425

**CONSTRUCTION CONTRACT**

Date: February 9, 2010

Amount: (\$ 3,328,000.00 ) Three Million Three Hundred Twenty Eight Thousand Dollars and 00/100

Description (Name and Location): New Auditorium and Auxiliary Gymnasium Heide Trask High School, 14328 NC Hwy. 210, Rocky Point, NC 28457

**BOND**

Date (Not earlier than Construction Contract Date): February 11, 2010

Amount: (\$ 3,328,000.00 ) Three Million Three Hundred Twenty Eight Thousand Dollars and 00/100

Modifications to this Bond:

None

See Page 3

**CONTRACTOR AS PRINCIPAL**

Company:

Monteith Construction Corp.

Signature: \_\_\_\_\_

Name and Title:

(Corporate Seal)

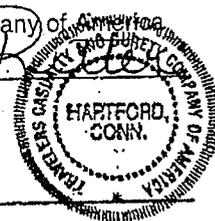
**SURETY**

Company:

Travelers Casualty and Surety Company of America

Signature: Debra S. Ritter  
Name and Title: Debra S. Ritter  
Attorney-in-Fact

(Corporate Seal)



(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY—Name, Address and Telephone)

**AGENT or BROKER:**

Thomas Rutherford, Inc.  
6230 Fairview Road, Suite 230  
Charlotte, NC 28210  
704-365-6213

**OWNER'S REPRESENTATIVE (Architect, Engineer or other party):**

LS3P Associates Ltd.  
2528 Independence Blvd. - Suite 200  
Wilmington, NC 28412

- 1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
- 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
- 3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
  - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
  - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
  - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
- 4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or
  - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
  - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or
  - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
    - .1 After investigation, determine the amount for

which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

- .2 Deny liability in whole or in part and notify the Owner citing reasons therefor.
- 5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
- 6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
  - 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
  - 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- 7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.
- 8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
- 9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

## 12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

## MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL  
Company:

(Corporate Seal)

SURETY  
Company:

(Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title:  
Address:

Signature: \_\_\_\_\_  
Name and Title:  
Address:

# THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. SL4400

AIA Document A312

## Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

Monteith Construction Corp.  
5521 Cannon Drive, Unit 101  
Monroe, NC 28110

**OWNER (Name and Address):**

Pender County Board of Education  
925 Penderlea Hwy.  
Burgaw, NC 28425

**CONSTRUCTION CONTRACT**

Date: February 9, 2010

Amount: (\$3,328,000.00 ) Three Million Three Hundred Twenty Eight Thousand Dollars and 00/100

Description (Name and Location): New Auditorium and Auxillary Gymnasium Heide Trask High School, 14328 NC Hwy. 210, Rocky Point, NC 28457

**BOND**

Date (Not earlier than Construction Contract Date): February 11, 2010

Amount: (\$ 3,328,000.00 ) Three Million Three Hundred Twenty Eight Thousand Dollars and 00/100

Modifications to this Bond:

None

See Page 6

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corporate Seal)

Monteith Construction Corp.

Signature: \_\_\_\_\_

Name and Title:

**SURETY**

Company: \_\_\_\_\_ (Corporate Seal)

Travelers Casualty and Surety Company

Signature: Debra S. Ritter

Name and Title: Debra S. Ritter  
Attorney-in-Fact



(Any additional signatures appear on page 6)

(FOR INFORMATION ONLY—Name, Address and Telephone)

**AGENT or BROKER:**

Thomas Rutherford, Inc.  
6230 Fairview Road, Suite 230  
Charlotte, NC 28210  
704-365-6213

**OWNER'S REPRESENTATIVE (Architect, Engineer or other party):**

LS3P Associates Ltd.  
2528 Independence Blvd. - Suite 200  
Wilmington, NC 28412

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

.2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this

Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the

Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

Paragraph 6 above is deleted in its entirety and the following is substituted in its place:

6. When the Claimant has satisfied the conditions of Paragraph 4, and has submitted all supporting documentation and any proof of claim requested by the Surety, the Surety shall, with reasonable promptness, notify the Claimant of the amounts that are undisputed and the basis for challenging any amounts that are disputed, including, but not limited to, the lack of substantiating documentation to support the claim as to entitlement or amount, and the Surety shall, with reasonable promptness, pay or make arrangements for payment of any undisputed amount; provided, however, that the failure of the Surety to timely discharge its obligations under this paragraph or to dispute or identify any specific defense to all or any part of a claim shall not be deemed to be an admission of liability by the Surety as to such claim or otherwise constitute a waiver of the Contractor's or Surety's defenses to, or right to dispute, such claim. Rather, the Claimant shall have the immediate right, without further notice, to bring suit against the Surety to enforce any remedy available to it under this Bond.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL  
Company:

(Corporate Seal)

SURETY  
Company:

(Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title:  
Address:

Signature: \_\_\_\_\_  
Name and Title:  
Address:



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Surety Bond No. SL4400

Principal: Monteith Construction Corp.

OR

Project Description: New Auditorium and Auxiliary Gymnasium Heide Trask High School, 14328 NC Hwy. 210, Rocky Point, NC 28457

Obligee: Pender County Board of Education

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint Debra S. Ritter of the City of Charlotte, State of NC, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this Instrument to be signed and their corporate seals to be hereto affixed, this 5th day of August, 2009.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut

City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 5th day of August, 2009, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2011.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

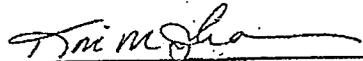
**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed the seals of said Companies this 11th day of February, 2010.

  
Kori M. Johanson, Assistant Secretary



*To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at [www.travelersbond.com](http://www.travelersbond.com). Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.*