

STATE OF NORTH CAROLINA

COUNTY OF PAMLICO

THIS CONTRACT is made and entered into this ____ day of January, 2021, by and between the TOWN OF ORIENTAL, a North Carolina municipal corporation (“Owner”) and BARNHILL CONTRACTING COMPANY, a North Carolina business corporation (“Contractor”), collectively, the “Parties.”

1. Contract Documents

1.1. The contract documents consist of this agreement, and all of the bid documents, project plans and specifications attached hereto as Exhibit A, and all change orders or modifications issued and agreed to by the Parties (“Construction Documents”). These contract documents represent the entire agreement of the Parties and supersede any prior oral or written agreement.

2. Scope of Work

2.1. The Contractor agrees to construct the project consistent with the Construction Documents.

3. Time of Completion

3.1. The commencement date of the project shall be sixty (60) days from January 29, 2021, unless the completion date is extended by a change order executed by the Parties.

3.2. Liquidated shall be Five Hundred Dollars (\$500.00) per day.

3.3. No work shall be performed after 9:00 p.m., Monday through Saturday. No work shall be performed on Sundays. Violations of this subsection shall be Two Hundred Dollars (\$200.00) per hour, or any part thereof.

4. Contract Price

4.1. The contract price shall be \$206,820.00 (“Contract Price”), subject to additions and deductions pursuant to authorized change orders and allowances based upon the unit prices provided in the Construction Documents.

4.2. Contractor shall provide all labor, equipment, and materials required to complete the project consistent with the Construction Documents.

5. Payment

5.1. Owner shall pay Contractor in full within ____ days of Contractor’s satisfactory completion of the project.

6. Duties of the Contractor

6.1. All work shall be in accordance to the provisions of the Construction Documents.

6.2. All work shall be completed in a workman-like manner, and shall comply with all state and local building codes and laws.

6.3. All work shall be performed by licensed individuals to perform their said work, as outlined by law.

6.4. Contractor shall obtain all permits necessary for the work to be completed.

6.5. Contractor shall provide a Performance Bond consistent with the provisions of the Contract Documents.

6.6. Contractor shall keep the worksite clean and orderly, and remove all debris as needed during the hours of work in order to maintain work conditions which do not cause health or safety hazards, and will make reasonable efforts to protect driveways, lawns, shrubs, and other vegetation. Contractor shall remove all construction debris upon completion of the project and leave the project in compliance with all outstanding permits.

6.7. Contractor shall comply with all work zone traffic control requirements as provided in the Construction Documents.

6.8. For a period of one year after completion of the project, Contractor shall promptly correct all work that fails to conform with the requirements of the Contract Documents, whether discovered before or after completion of the project. All corrective work shall be at Contractor's expense.

6.9. Upon satisfactory payment being made for the work performed, Contractor shall furnish a full and unconditional release from any claim or mechanics' lien.

7. Owner

7.1. Owner will not assume any liability or responsibility, nor have control over or charge of construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the project, since these are solely the Contractor's responsibility.

7.2. Owner shall have the right to inspect all work performed under this agreement. All defects and uncompleted items shall be reported immediately. All work that needs to be inspected or tested and certified by an engineer as a condition of any government departments or other state agency, or inspected and certified by the local health officer, shall be done at each necessary stage of construction and before further construction can continue. All inspection and certification will be done at Owner's expense.

8. Change Orders

8.1. A Change Order is any change to the original plans and/or specifications. All change orders must to be agreed upon in writing, including cost, additional time considerations, approximate dates when the work will begin and be completed, and signed by the Parties. Additional time needed to complete change orders shall be taken into consideration in the project completion date.

9. Insurance and Indemnification

9.1. Contractor shall furnish certificates of insurance to the Owner substantiating that Contractor has placed in force valid insurance covering its full liability under the workers' compensation laws of the State of North Carolina, and shall furnish and maintain general liability insurance, and builder's risk insurance for injury to or death of a person or persons, and for personal injury or death suffered in any construction related accident and property damage incurred in rendering services under this agreement. Proof of such insurance shall be provided to Owner upon Owner's execution of this agreement.

9.2. To the fullest extent of the law, Contractor shall indemnify and hold harmless the Owner, its agents, and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the work performed under the Contract Documents, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this section 9.2.

9.3. In claims against any person or entity indemnified under section 9.2 by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under section 9.2. shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

10. Termination of Contract

10.1. If the Owner or the Contractor shall default on the contract, the non-defaulting party may declare the contract is in default and proceed against the defaulting party for the recovery of all damages incurred as a result of said breach of contract, including a reasonable attorney's fee.

10.2. If performance of this agreement or any obligation thereunder is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, but not be limited to, acts of God, fire, explosion, vandalism, storm, casualty, illness, injury, general unavailability of materials or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages, or supplier failures. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

11. Miscellaneous

11.1. The Parties agree, notwithstanding the principles of conflicts of law, that the internal laws of the State of North Carolina shall govern and control the validity, interpretation, performance, and enforcement of this Agreement. Further, the Parties agree that any action relating to this Agreement shall be instituted and prosecuted only in the courts of the County of Pamlico, the State of North Carolina or in the United States District Court for the Eastern District of North Carolina, and each consents to the personal jurisdiction of said courts and waives any right or defense relating to such jurisdiction and venue.

11.2. Neither Party shall assign any responsibilities, obligations, or benefits hereunder without the other Party's express prior written consent.

11.3. The failure of either Party to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver by either Party of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any terms and conditions, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred. No such waiver shall be enforceable unless in writing and signed by the party to be charged therewith.

11.4. The terms of this Agreement may not be amended or modified except by a written agreement duly executed by both Parties.

11.5. If any of the terms, covenants, conditions, and agreements hereof for any reason shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the other terms, covenants, conditions, and agreements hereof, and any terms, covenants, conditions, and agreements hereof thereafter shall be construed as if such invalid, illegal, or unenforceable terms, covenants, conditions, and agreements were never contained herein.

11.6. Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set

forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

11.7. The parties will attempt to resolve any dispute arising out of or relating to this Agreement through friendly negotiations amongst the parties. If the matter is not resolved by negotiation, the parties will resolve the dispute using the below Alternative Dispute Resolution (ADR) procedure. Any controversies or disputes arising out of or relating to this Agreement will be submitted to mediation in accordance with any statutory rules of mediation. If mediation is not successful in resolving the entire dispute or is unavailable, any outstanding issues will be submitted to final and binding arbitration under the rules of the American Arbitration Association. The arbitrator's award will be final, and judgment may be entered upon it by any court having proper jurisdiction.

11.8. Each party has read and fully understands the terms of this Agreement, and each has had the opportunity to have this Agreement reviewed by its counsel. The rule of construction providing that ambiguities in an agreement shall be construed against the party drafting the same shall not apply to this Agreement.

11.9. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter herein and supersedes all prior discussions and written and oral agreements with respect thereto.

IN TESTIMONY WHEREOF, the Owner caused this instrument to be executed as its act and deed by the Mayor and attested by its Town Clerk, all by the authority of its Board of Commissioners; and Contractor has executed or caused this document to be executed by authority duly given, all as of the day and year first above written.

TOWN OF ORIENTAL

By: _____
Mayor

ATTEST:

Town Clerk

BARNHILL CONTRACTING COMPANY

By: _____
Carey M. Swann, III, Vice President

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

