

STATE OF NORTH CAROLINA

TRANSYLVANIA COUNTY

AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT, made this 2nd day of November 2023, by and between the TRANSYLVANIA COUNTY BOARD OF EDUCATION (“Owner”), on the one hand, and GEOSURFACES SOUTHEAST, INC ("Contractor"), on the other hand, for the installation of new synthetic turf on the football field at the Brevard High School campus, located at 609 N. Country Club Rd. Brevard, NC 28712 (hereinafter, “Project”).

WITNESSETH:

That the Owner and the Contractor, for the consideration herein named, agree as follows:

1. **Scope of Work:** The Contractor shall furnish all material, equipment, labor, services and supervisions necessary to complete the Project as specified in the RFP and/or bid dated July 13, 2023 and revised on September 1, 2023 any documents referenced herein, and the Project Specifications (collectively "Specifications"), which are incorporated herein and attached hereto as Exhibit A. If there are any contradictions between this Agreement and the Specifications, this Agreement shall control.

2. **Beginning Work and Substantial Completion:** The Contractor will begin work within _____ (30) calendar days after receiving a Notice to Proceed from the Owner and shall substantially complete the Project in accordance with the Specifications no later than _____ (11th day of February 2023). The Owner and/or the Owner's Design Professional shall make an inspection to determine whether the Project is substantially complete. When the Owner and/or Owner's Design Professional determines that the Project is substantially complete in accordance with the Specifications, the Contractor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion.

Contractor may be allowed delays beyond any number given for inclement weather in the specifications for sustained inclement beyond normal weather conditions in the locality wherein the Project site is determined to be unworkable for sustained periods of time by the Owner or the Owner's Design Professional. Such days will not be unreasonably withheld.

If the Contractor believes such weather condition applies, a written request shall be made within seven (7) calendar days following the beginning of the condition to the Owner and/or Owner's Designer Professional for a site meeting and a determination of the site conditions and approval of the delay. Any days granted will be incorporated into a Change Order for signature by the Owner and Contractor.

The Owner shall assess liquidated damages against the Contractor in the amount of One Hundred dollars (\$100.00) per day for every day that the Project extends beyond the contractual date of substantial completion (as may be amended). At its election, owner may also pursue any

actual damages available at law but may not assess liquidated damages and actual damages related to the same contractor delay.

3. Punch List and Final Completion. The Contractor shall diligently complete all punch list items and shall complete Final Completion no later than thirty (30) days from the date of Substantial Completion. In addition, Contractor shall execute a Final Certificate and Release as a precondition to final payment from Owner, the form of which is attached as Exhibit B.

4. Default and Termination: If the Contractor fails to complete the Project within the times specified in Sections 2 and 3 or fails to diligently perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of said work or performs the work unsuitably or shall discontinue the prosecution of the work or not carry on the work in an acceptable manner, the Owner may give written notice, sent by certified mail return receipt requested, to the Contractor of such delay, neglect or default, specifying the same, and, if the Contractor, within a period of fifteen (15) calendar days after such notice, shall not proceed in accordance therewith, the Owner may declare this Agreement in default and shall have full power and authority, without violating the Agreement or waiving any other rights at law, to take the prosecution of the work out of the hands of the Contractor, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement for the completion of this Agreement according to the terms and provisions thereof or use such other methods as in the Owner's opinion shall be required for the completion of the Agreement in an acceptable manner. All costs and charges incurred by the Owner, together with the costs of completing the work under the Agreement, including liquidated damages, if any, shall be deducted from any monies due or which may become due to the Contractor. In case the expense so incurred by the Owner, including liquidated damages, if any, shall be less than the sum which would have been payable under the Agreement, if it had been completed by the Contractor, then the Contractor shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the Agreement, then the Contractor shall be liable and shall pay to the Owner the amount of said excess.

5. Payment: The Owner shall pay to the Contractor, as specified in the Contractor's bid, the total contract sum of **Five Hundred Fifteen Thousand Two Hundred Eleven Dollars and Ten cents (\$515,211.10)** for completion of Project, unless altered as allowed herein. Payment shall be made based on the following schedule (hereinafter "Project Cost"):

- a. At the time this Agreement is signed, the Owner shall pay to the Contractor 25% deposit equal to \$128,802.77 for the necessary purchase of materials or supplies to begin work.
- b. No later than the twentieth (20th) day of each month, the Contractor shall present to the Owner, or designee, a pay application for the current month demonstrating the total percentage of work completed included work estimated to complete prior to month end. The Owner or Owner's Design Professional shall inspect the work to determine that the pay application accurately reflects the completed work. If the Owner or Owner's Professional agrees with the submitted pay application, payment for the

completed work, less five percent (5%) retainage of the amount of such request, shall be made to the Contractor no later than fifteen (15) calendar days after the pay application is submitted. If the Owner does not agree with the pay application, the pay application shall be immediately returned to the Contractor and asked that it be resubmitted with revisions. If the Owner agrees with the resubmitted pay application, payment for the completed work, less five percent (5%) retainage of the amount of such request, shall be made to the Contractor no later than ten (10) calendar days after the resubmittal. Except as permitted by law, no further retainage shall be withheld when the Project is at least fifty percent (50%) completed.

The amount of five percent (5%) retained from each approved request for payment shall be retained by the Owner until all work has been finally completed and performed strictly in accordance with this Agreement and the Specifications and until such work has been accepted by the Owner, at which time such retained sums shall be paid to the Contractor within ten (10) days after receipt of the Final Completion certificate. All payments to the Contractor, including the five percent (5%) retainage, are subject to approval by the Owner or its designee.

6. Changes in the Work / Delay: During the Project, if the Contractor encounters any additional charges resulting from unanticipated conditions or additional work requested by the Owner which may alter the total contract sum as stated in Section 5 or the contract time as stated in Section 2, prior to commencing the work, the Contractor must submit a written change order to the Owner or its designee. The written change order must specify the need for the change and the cost of the proposed change. No later than five (5) calendar days after receipt of the written change order, the Owner, or its designee, shall provide to the Contractor a written response either accepting or rejecting the change order. No additional payment shall be made for additional work completed by the Contractor unless the Contractor has submitted a written change order and received the Owner's approval. Contractor shall not be entitled to delay damages from the Owner unless said delay is caused solely by the Owner or its agent. A reasonable time for the Owner to respond to a requested change order shall not be considered an Owner's caused delay pursuant to this Section.

7. Construction Meetings: The Contractor shall meet with the Owner as specified in the Specifications and at such other construction meetings as required by the Owner or its designee.

8. Correction of Work:

- a. Before Substantial Completion. The Owner, or its designee, shall, from time to time, inspect the status of the Project. The Contractor shall promptly correct work not conforming to the Specifications and rejected by the Owner or Owner's Design Professional and may withhold payment until said work is corrected and accepted.

- b. After Substantial Completion. If, within one (1) year after the date of Substantial Completion, any of the work is found to be nonconforming to the Specifications, the Contractor shall promptly correct the nonconforming work after receipt of written notice from the Owner to do so.

9. Construction Site & Indemnity: The Contractor shall be responsible for the construction site(s) during the performance of the work and shall be responsible for any and all damages to persons and property during the performance of the work and shall further provide all necessary safety measures and shall fully comply with all federal, state and local laws, building codes, rules and regulations to prevent accidents or injury to persons or property on or about the location of the work, especially if school is in session during the performance of portions of the work. The Contractor agrees to indemnify and hold harmless the Owner for any and all losses, including all applicable costs, expenses, other claims, including attorneys' fees, which the Owner might incur due to any act or omission by Contractor, its employees or agents and subcontractors that occur in conjunction with this Agreement. The Contractor acknowledges that it will be performing work on the Project on an actively operating school site. The Contractor shall, therefore, take all precautions necessary to ensure that children will be unable to enter the construction site or an area where materials might be stored and to ensure that children will not be injured during this Project.

10. Warranty: The Contractor hereby warrants and guarantees to the Owner that materials and equipment furnished under the Agreement will be of good quality and new, unless otherwise allowed, and the work will be free from defects and will conform to the Owner's Specifications, as specified in Section 1 herein, and shall present to Owner a one (1) year warranty running from the date of Final Completion and shall provide to the Owner any pass-through manufacturers' warranties or other warranties required by the Specifications, specifically the Manufacturer's Warranty attached hereto as Exhibit C.

11. Insurance: As a condition precedent to this Agreement, the Contractor shall provide proof of insurance for the required policies and coverages: 1) Workers' Compensation (statutory coverage limits); 2) Commercial General Liability ("CGL") (one million dollar occurrence, two million dollar aggregate); and 3) Comprehensive Automotive Liability (one million dollars). The Owner shall be listed as an additional insured on the Contractor's CGL policy. The Contractor will submit to the Owner copies of Certificates of Insurance on the latest approved North Carolina Department of Insurance Acord Form 25 by an insurer authorized to do business in North Carolina by the North Carolina Department of Insurance and rated A- (minus) or better by A.M. Best Company. The certificates shall certify that the insurance policies carried by Contractor were in force before the Project commenced and certifying that these policies will not be canceled during the Contract unless the Owner has received thirty (30) days written notice via registered or certified letter from the Contractor or carrier. Certificates of Insurance containing disclaimers holding the insurer harmless for failure to notify the Owner of Contractor policy cancellations will not be acceptable and should be modified to delete such disclaimers from the Insurance Certificate forms. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of

Insurance to do business in North Carolina. The Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the contract.

12. Compliance with Laws: The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements (permits) that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and/or authority.

13. Non-Discrimination: The Contractor shall take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin, or disability.

14. Jessica Lunsford Act: Under North Carolina law, certain sex offenders are prohibited from coming onto school campuses. The Contractor agrees to conduct a check of all employees working at the Project site on the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry. As a term of this Agreement, said checks must be performed by the Contractor and reported to the Asheville City Schools' Superintendent.

15. Relationship: The Contractor shall be considered an independent contractor and not an employee of the Owner. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the Owner.

16. Situs: The place of this Agreement, its situs, forum, shall be Transylvania County, North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.

17. Governing Law: This Agreement shall be governed by the laws of the State of North Carolina.

18. Mutually Agreed Agreement: All the Parties to this Agreement have had the opportunity to be fully and completely represented by counsel of their own choosing in the making of this Agreement. Accordingly, the Parties agree that any rule of construction of contracts resolving any ambiguities against the drafting party shall be inapplicable to this Agreement. This Agreement may be amended only by written amendments duly executed by the Owner and the Contractor.

19. Entire Agreement: The Parties hereby affirm that the only consideration for executing this Agreement are the terms and conditions herein and no other promises or agreements of any kind have been made by any person or entity to cause the Parties to execute this Agreement. Further, the Parties agree that if any provisions herein are declared invalid by a court of competent

jurisdiction, such invalidation shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

20. Authority: The Parties hereby represent and warrant that they have taken all actions and obtained all authorizations, consents and approvals as are conditions precedent to their authority to execute this Agreement.

21. Iran Divestment and E-Verify: The Contractor shall comply with the requirements of G.S. Chapter 64, Article 2 (the “E-Verify Requirements”). The Contractor certifies that it is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. § 147-86.58, the Iran Divestment Act of 2015 (S.L. 2015-118). In the event that the Contractor utilizes a subcontractor to perform the Work of this Contract, the Contractor shall require any such subcontractor to comply with the E-Verify Requirements and the Iran Divestment Act.

22. Dispute Resolution: Prior to litigation concerning a dispute, the parties must do the following:

- a. Submit the dispute for review by the Superintendent or designee; and
- b. Participate in mediation if the matter cannot be resolved by the parties. The cost of the dispute resolution process will be divided between the parties to the dispute. If the Board of Education is a party to the dispute, the Board of Education will pay at least one-third of the cost.

23. MBE/HUB: If the Project Cost of this Agreement is \$100,000 or more and if the Owner has received appropriations or grant funds from the State of North Carolina for the construction of the Project, then the Contractor shall comply with the MBE and HUB pre-bid and post-award requirements. If the Project Cost of this Agreement is \$300,000 or more, regardless of the source of funds for construction of the Project, the Contractor shall comply with the MBE and HUB pre-bid and post-award requirements contained in the Specifications.

24. Assignment: This Agreement shall be not assigned without the prior, written consent of the Owner which shall not be unreasonably withheld.

25. Bonds: If the Project cost of this Agreement is \$300,000 or more, regardless of the source of funds for construction of the Project, the Contractor shall provide performance and payment bonds as required by law on forms set forth in Exhibit D.

26. Availability of Funds: As a condition subsequent, any and all payments to the Contractor are dependent upon and subject to the availability of funds to the Owner for the purpose set forth in this agreement.

IN WITNESS WHEREOF, the Contractor and the Owner have executed this Agreement the day and year first above written.

CONTRACTOR:

GEOSURFACES SOUTHEAST, INC.



Authorized Signature

Print: Lance Rosenberger

TITLE: SVP of Construction Services

OWNER:

TRANSYLVANIA COUNTY BOARD OF EDUCATION

Authorized Signature

Print: Tawny McCoy

TITLE: Chair, Transylvania County Board of Education

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

Finance Officer