

**TRANSYLVANIA COUNTY SCHOOLS
CONSTRUCTION CONTRACT
(Less than \$500,000)**

THIS AGREEMENT is made this 17th day of June, 2024, by and between the **TRANSYLVANIA COUNTY BOARD OF EDUCATION** (“Owner”), the **TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS** (“County”), and **Superior Mechanical Services, Inc.** (“Contractor”), on the other hand, for the Pisgah Forest Elementary School Boiler Replacements (2) (“Project”).

WITNESSETH:

That the Owner, County, 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 Contractor’s Proposal which is incorporated herein and attached hereto as Exhibit A. If there are any contradictions between this Agreement and the Proposal, this Agreement shall control.

2. Beginning Work and Substantial Completion: The Contractor will begin work within a reasonable time after execution of this Agreement and shall substantially complete the Project in accordance with the Proposal no later than 150 calendar days from the date of the Notice to Proceed. The Owner shall make an inspection to determine whether the Project is substantially complete. When the Owner determines that the Project is substantially complete in accordance with the Proposal, the Contractor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion.

Dates for the furnishing of services and/or delivery or shipment of goods are approximate only and are subject to change, Contractor shall not be liable, directly or indirectly, for any delay in or failure to perform to the extent caused by carriers or suppliers; provided, however, Contractor shall use commercially reasonable efforts to meet dates for the furnishing of services and/or delivery or shipment of goods despite such factors.

3. Punch List and Final Completion. The Contractor shall diligently complete all punch list items and shall complete Final Completion no later than 30 days from the date of Substantial Completion.

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 shall declare this Agreement in default and shall have full power

and authority, without violating the Agreement, 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 for work actual completed. 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 had the work been completed, then the Contractor shall be entitled to receive the difference not to exceed the cost of work actually completed. 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.

If Owner suspends or delays Contractor's performance for four (4) consecutive months, then Contractor may terminate the Contract and be entitled to compensation for work actually performed, whether fully completed or not.

5. Payment: The Owner, by and through the County, shall pay to the Contractor, as specified in the Contractor's bid, the total contract sum of \$118,470.00 for completion of Project, unless altered as allowed herein. Payment shall be made based on the following schedule:

- a. No later than the fifth day of each month, the Contractor shall present to the Owner and County, or designee, a pay application for the preceding month demonstrating the total percentage of work completed for that preceding month. The Owner shall inspect the work to determine that the pay application accurately reflects the completed work. If the Owner 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 by the County 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 by the County no later than ten (10) calendar days after the resubmittal. 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 and County until all work has been finally completed and performed strictly in accordance with 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 and County.

6. Changes in the Work: 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, 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. Change Orders are subject to approval by the County with regards to funding.

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 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: 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, it being expressly understood by the Contractor that school will be in session during the performance of portions of the work and that pupils, teachers other employees and the public will be on, about and near the construction site. 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 Parties agree and acknowledge that Contractor's indemnity obligations shall only exist to the extent of its own negligent acts, errors or omissions. In no event shall Contractor be obligated to indemnify or defend any entity for that entity's own negligent acts, errors or omissions. In the event that claims are asserted against Contractor and any indemnified party alleging joint negligence or fault, Contractor's indemnification and defense obligations shall only arise and exist to the extent and in the proportionate share Contractor is found to be at fault.

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 and shall provide to the Owner any pass-through manufacturers' warranties or other warranties required by the Specifications.

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 other than by an endorsement added to the policies and certificates reading substantially as follows: "The policies herein referred to are not cancelable or subject to reduction of coverage by the Insurer unless the Owner has received thirty (30) days written notice via registered or certified letter." 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.

12. 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.

13. Relationship: The Contractor shall be considered an independent contractor and not an employee of the Owner.

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

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

16. 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.

17. 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.

18. 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.

19. 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.


20. Dispute Resolution: Prior to litigation concerning a dispute in which the amount in controversy is at least fifteen thousand dollars (\$15,000.00), parties to the dispute 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.

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

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

SUPERIOR MECHANICAL SERVICE INC.


Signature
Print: JAMES B. FIERCOS
TITLE: PRESIDENT

TRANSYLVANIA COUNTY BOARD OF EDUCATION

Signature
Mr. Richard (Kimsey) Jackson
Chair

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

Finance Officer

TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS

Signature
Print: _____
TITLE: _____

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

Finance Officer