

## CONTRACT FORM

## NORTH CAROLINA WAKE COUNTY

THIS CONTRACT is made and executed into this 3<sup>rd</sup> day of June 2024 by and between TOWN OF KNIGHTDALE, NORTH CAROLINA, a municipal corporation hereinafter designated as the "TOWN" or the "OWNER" and BARNHILL CONTRACTING COMPANY hereinafter designated as the "CONTRACTOR":

## WITNESSETH:

That pursuant to the provisions of Chapter 143-128 et seq., as amended, of the General Statutes of North Carolina, proposals were invited by advertisement for the construction of the improvements hereinafter referred to. All proposals having been duly opened and recorded as provided by law.

NOW, THEREFORE, in consideration of the mutual consideration and promises set forth herein, constituting good and valuable consideration that each party acknowledges and agrees is sufficient, the Town and the Contractor agree as follows:

## I. DESCRIPTION OF WORK

(1) The Contractor, at his (its) own proper cost and expense and with skill and diligence, shall furnish all labor, tools, materials and equipment and do all things necessary for the proper construction and completion ready for use of the following improvements:

- A. Resurfacing of paved surfaces as detailed in Schedule of Road Sections.
- B. Repairs to specific manhole access covers as detailed in Schedule of Road Sections

(2) Contractor agrees to perform the tasks and obligations agreed to herein at all times in strict accordance and compliance with the specifications, schedules, drawings and other documents as shown on the following documents or materials incorporated herein by reference:

NCDOT Standards and Specifications for Roads and Structures {Latest Edition}, NCDOT Standard Drawings, City of Raleigh Public Utilities Handbook and AC Specifications.

The originals of such specifications, schedules, drawings and other documents are on file in the office of the Engineering & Public Works Director of the Town of Knightdale. The Contractor shall further perform in accordance with the directions (not inconsistent therewith) given from time to time during the construction by the Engineering & Public Works Director or such other official, employee, or other agent of the Town as the Town may designate.

## II. GENERAL OBLIGATIONS OF THE CONTRACTOR

The Contractor will accept the prices specified in this contract and in the proposal in full compensation and satisfaction for the performance of this contract and as consideration of this contract. The Contractor shall be responsible for all loss and damages of every kind and nature which may arise out of or on account of the performance of the work required by this contract, and for all risks of every description connected with the said work; and the Contractor shall be responsible for well and faithfully

completing the whole work according to the plans and specifications and the terms and conditions of this contract.

### III. TIME OF COMMENCEMENT AND COMPLETION

The work required by this contract shall be commenced by the Contractor no later than 30 business days after the issued Notice to Proceed and the entire work shall be completed within 45 calendar days of the issuance of the Notice to Proceed. Failure to complete the work by within the designated performance period will result in damages due to public inconvenience, obstruction and delay to traffic, safety, and other considerations. For each consecutive calendar day in excess of the contract time specified the contractor will be assessed liquidated damages at the rate established in the contract.

### IV. QUALITY AND WORKMANSHIP

All work under this Contract shall be performed and completed to the satisfaction of the Public Works Director of the Town of Knightdale, or of such other official, employee, or agent of the Town of Knightdale as may be designated by the Town, and such official, employee or agent designated by the Town shall in all cases of dispute determine the quantity, quality, acceptability and fitness of the work and materials and of several portions thereof which are to be paid for under this Contract and shall decide and determine all questions which may arise as to the measurements, lines, levels and dimensions of the work and all questions respecting the true construction, interpretation or meaning of the plans and specifications. In case of dispute between the Contractor and the said official, employee, or agent of the Town, the decision and determination of the latter shall be taken and shall be final and conclusive.

### V. COMPENSATION

In consideration of the performance of this contract and the full completion of the work required of the Contractor by the terms and conditions of the contract, the Town agrees to pay to the Contractor the unit prices bid by the Contractor in his proposal payable as follows: Partial payments will be made to the Contractor by the Town every thirty days after work is commenced to the extent of ninety-five percent of the work then completed as estimated by the Public Works Director of the Town of Knightdale and other officials or other representatives designated by the Town. Final estimate of the amount due to the Contractor will be made within thirty days after the certified completion and final acceptance of all the work required by the contract. Payment to the Contractor by the Town of the amounts so determined to be due, in accordance with this Contract, shall relieve the Town from all claims for work done and materials and equipment furnished under this Contract.

It is further mutually agreed between the parties that no estimate or partial payment made under this Contract shall be conclusive evidence of the performance of this Contract, either wholly or in part, and that no such payment shall be construed to be an acceptance of defective work or improper materials.

### VI. SURETY BONDS

The Contractor has furnished and attached hereto a Performance Bond in the penal sum of dollars, and a Payment Bond in the penal sum of \$719,381.44 (total bid amount) dollars covering the faithful performance of this Contract and the payment of all obligations arising hereunder, in such form and content as the Town may prescribe and with surety approved by the Town. Should any surety upon

the bond for the performance of this Contract become unacceptable to the Town, the Contractor must promptly furnish additional security as may be required from time to time by the Town to protect the interests of the Town and of persons, firms and corporations supplying labor or materials in the performance of the work contemplated by the Contract.

#### V. CONTRACTOR'S WARRANTIES

The Contractor, in executing this Contract, warrants that he will be responsible for the maintenance or correction of any work completed under this Contract that may become defective due to faulty workmanship or materials for a period of one year after final acceptance of the work performed.

It is understood and agreed by the parties hereto that work done under this Contract shall be subject to all ordinances of the Town of Knightdale relating to work done in the public streets or other public property of the Town.

The Contractor has provided and attached hereto a Certificate of Insurance indicating compliance with the insurance requirements set forth in the Knightdale Town Code and applicable hereto.

#### VI. AMENDMENTS AND MODIFICATIONS

The following additional provisions and/or changes in the foregoing provisions of the Contract have been made in this Contract prior to its execution:

(Indicate changes, if any)

#### VII. CONTROLLING LAW

All matters relating to this contract shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this agreement shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina.

#### VIII. NON-DISCRIMINATION ASSURANCES

In consideration of the signing of this contract, the parties hereto for themselves, their agents, officials, employees, and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this contract, no matter how remote. This provision is hereby incorporated into this contract for the benefit of the Town of Knightdale and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as by law provided. This agreement shall be binding on the successors and assigns of the parties with reference to the subject matter of this contract.

#### IX. NOTICE TO CONTRACTOR REGARDING INTRUSIONS BEYOND PROJECT LIMITS

The Contractor and Owner (Town) hereby acknowledge that the Owner has acquired permanent and temporary easements on private property for the construction of the Project, and that such easements, together with public street rights-of-way (and previously acquired easements or other property interests) comprise the sole areas where the Contractor is allowed to work on the Project, or to use for mobilization, access, staging, storage, and other purposes associated with the Project.

ANY OCCUPANCY OF OR INTRUSIONS ONTO PRIVATE PROPERTY OUTSIDE SUCH EASEMENTS OR RIGHTS-OF-WAY OWNED OR CONTROLLED BY THE TOWN WILL CONSTITUTE A TRESPASS UPON PRIVATE

PROPERTY, AND WILL LIKELY INVOLVE SERIOUS LEGAL CONSEQUENCES FOR THE TOWN OF KNIGHTDALE. Accordingly, the Contractor will be solely responsible for such actions, and hereby agrees to hold harmless and indemnify the Town from all actions, claims, liabilities, and costs, including the payment of attorney's fees, arising from such actions. The Contractor further acknowledges that the Town may deduct or set-off from payments otherwise due the Contractor under the Contract sums reasonably estimated to represent the Town's liabilities or costs resulting from such trespass, occupancy or intrusions onto private property.

The only exception to the above stated limitations on the Contractor's work area will be in those instances where the Contractor has independently negotiated and secured agreements for temporary work and/or access privileges from Property Owners. Such agreements must be in writing, and a copy of any such agreement shall be provided to the Town in advance of any use or occupancy of private property pursuant to the agreement. The terms of these agreements should clearly express to the Property Owner that the Contractor is seeking such use, occupancy, or access independently from the Town of Knightdale, and its Contract with the Town of Knightdale, and that the Contractor will be solely responsible for activities carried out on such areas.

X. INSURANCE

(a) Contractor shall maintain insurance policies at all times with minimum limits as follows:

Coverage	Minimum Limits
Commercial General Liability	\$5,000,000 per occurrence (\$5,000,000 aggregate)
Automobile Liability	\$1,000,000
Professional Liability (E & O)	\$1,000,000 per occurrence (\$2,000,000 aggregate)
Workers' Compensation and Employer's Liability	Statutory Limits and must include \$1,000,000 Each Accident, \$1,000,000 Disease (Each Employee, \$1M Disease-Policy Limit)

Upon acceptance of the contract by the Town the contractor shall provide the Town with a **Certificate of Insurance** for review prior to the issuance of any contract or Purchase Order. All Certificates of Insurance will require thirty (30) days written notice by the insurer or contractor's agent in the event of cancellation, reduction or other modifications of coverage. In addition to the notice requirement above, the Contractor shall provide the Town with immediate written notice of cancellation, reduction, or other modification of coverage of insurance. Upon failure of the Contractor to provide such notice, the Contractor assumes sole responsibility for all losses incurred by the Town for which insurance would have provided coverage.

The Town shall be named as an **additional insured** under the general liability and automobile liability policies required hereunder and the statement should read "Town of Knightdale is to be added as an additional insured as evidenced by an endorsement attached to this

certificate.” In the event the contractor fails to maintain and keep in force the insurance herein required, the Town reserves the right to cancel and terminate the contract without notice.

#### XI. INDEMNIFICATION

To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless the Town of Knightdale, its agents, officers, and employees, from and against all Charges that arise in any manner from, in connection with, or out of: (a) this contract or the Work, to the extent proximately caused by the negligent acts, errors or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them; or (b) the failure of the Contractor, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. In performing its duties under this section, the Contractor shall at its sole expense defend the Town of Knightdale, its agents, officers, and employees with legal counsel reasonably acceptable to the Town. As used in this subsection – “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, expenses, interest, reasonable attorney’s fees, and amounts for alleged violations of North Carolina law or federal law, including but not limited to, sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders. Nothing in this section shall affect any warranties in favor of the Town that are otherwise provided in or arise out of this contract. Nothing in this section shall require the Contractor to defend the Town of Knightdale if the Contractor is a “design professional” as defined in N.C.G.S. § 22B-1(f)(4), or if this Contract includes “design professional services” as defined in N.C.G.S. § 22B-1(f)(6). This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

#### XII. TERMINATION

- (a) The Town may terminate this contract in whole or, from time to time, in part, for the Town’s convenience or because of failure of the Contractor to fulfill the Contract obligations. The Town shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall –
  - (1) Immediately discontinue all services affected (unless the notice directs otherwise);
- (b) If the termination is for the convenience of the Town, the Town shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.
- (c) If, after termination for failure to fulfill contract obligations, it is determined that the Contractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Town.
- (d) The rights and remedies of the Town provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

XIII. E-VERIFY

Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Contractor utilizes a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statues.

XIV. INCORPORATION OF DOCUMENTS

All documents and other items physically attached to this CONTRACT and all other documents incorporated hereinto by reference are to be considered fully a part of the CONTRACT, such items including the following, as indicated:

- (X ) Advertisement for Proposals
- (X ) Contractor's Proposal
- (X ) Procedure for NC Sales Tax Reporting
- (X ) Additional Bidder’s Certification
- (X ) Instructions to Contractors
- (X ) Performance Bond (w/Power-of-Attorney)
- (X ) Payment Bond (w/Power-of-Attorney)
- (X ) Certificate of Insurance (inserted behind Page\_\_\_\_\_)
- (X ) Schedule of Road Sections
- (X ) General Conditions
- (X ) Standard General Provisions
- (X ) Project Special Provisions

THE CONTRACTOR

Barnhill Contracting Company

BY:

\_\_\_\_\_

(Subscribe and indicate capacity)

(IF CORPORATE)

ATTEST: \_\_\_\_\_

By: \_\_\_\_\_

Corporate Secretary

THE OWNER

Town of Knightdale

BY:

\_\_\_\_\_

William Summers, Town Manager

ATTEST: \_\_\_\_\_

Town Clerk

(AFFIX TOWN SEAL)

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

\_\_\_\_\_

Town Finance Officer

\_\_\_\_\_

Date

CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

This is to certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, with whom I am personally acquainted, who, being by me duly sworn, says that (s)he is the President and \_\_\_\_\_ is the Secretary of \_\_\_\_\_ Incorporated, the corporation described in and which executed the foregoing instrument; that (s)he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said Secretary and the said corporate seal was affixed, all by order of the Board of Directors of said corporation, and that the said instrument is the act and deed of said corporation.

Witness my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

My Commission Expires:

Notary Public

(SEAL)

TOWN ACKNOWLEDGMENT

STATE OF NORTH CAROLINA

COUNTY OF WAKE

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally came Heather Smith, with whom I am personally acquainted, who, being by me duly sworn, says that she is the Town Clerk and Treasurer and Bill Summers, is the Town Manager of the Town of Knightdale, the municipal corporation described in and which executed the foregoing; that she knows the corporate seal of said municipal corporation; that the seal affixed to the foregoing instrument is said corporate seal, and the name of the municipal corporation was subscribed thereto by the said Town Clerk and Treasurer and that the said corporate seal was affixed, all by order of the governing body of said municipal corporation, and that the said instrument is the act and deed of said municipal corporation.

Witness my hand and official seal this.

My Commission Expires: \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public

(SEAL)