

North Carolina

Wake County

**TOWN OF KNIGHTDALE CONTRACT FORM
COMMUNITY POOL RESTROOM RENOVATIONS**

CONTRACT FOR: Community Pool Restroom Renovations (hereinafter "Project"), as defined and set forth in detail in the "Invitation for Bids", included as a part of the "Contract Documents". The "Contract Documents" are further defined in Paragraph 14 herein. The Invitation for Bids is incorporated herein by reference and the description of the work is made a part of this Contract.

This Contract is made and entered into as of the 19th day of November, 2025, by the Town of Knightdale (hereinafter "Town") and Ten Penny Construction Inc (hereinafter "Contractor"), (X) a corporation, () a professional corporation, () a professional association, () a limited partnership, () a sole proprietorship, or () a general partnership; organized and existing under the laws of the State of North Carolina.

- Sec. 1. Work.** Contractor agrees to procure and furnish the labor, materials, equipment, and services necessary to complete the construction of the Project in accordance with the Contract Documents (as defined below). In this contract, "Work" means all construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.
- Sec. 2. Standards for Work.** Contractor and its personnel will perform the Work and exercise best efforts to cause the Project to be completed in an efficient, professional, orderly, and economical manner in accordance with generally accepted industry standards and without violating applicable law or any term or condition set forth in this Agreement. Contractor understands time is of the essence in this Project. All of Contractor's Work will conform to the plans and specifications and description of materials set forth in the Contract Documents, and to all applicable building codes.
- Sec. 3. Contract Times.** The Work will commence no later than fifteen (15) calendar days from the Notice to Proceed. The day Work Commences will be noted by the Contractor and the Town. Contractor agrees to achieve Substantial Completion (as defined herein) on or before May 15, 2026. Final Completion (as defined herein) will be achieved as expeditiously as reasonably practicable after Substantial Completion. As used herein: (a) "Substantial Completion" means the date on which the Work is sufficiently complete in accordance with the Contract Documents so that the Town can occupy and use the Work for its intended purposes; provided, however, that Substantial Completion will be deemed achieved no later than the date a temporary certificate of occupancy is obtained from the applicable governmental authority; and (b) "Final Completion" is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any punch list work.
- Sec. 4. Contract Price.** The price to be paid by the Town to the Contractor for the construction provided in this contract is \$496,321.08. Contractor guarantees the price will not exceed this amount, subject to additions and deductions by work change orders as provided in the Contract

Documents. Contractor will be responsible for paying all costs of completing the Work which exceed the foregoing amount, as adjusted in accordance with the Contract Documents.

As used herein, "Cost of Work" mean the actual and documented costs necessarily incurred by the Contractor in the proper performance of the Work, including, without limitation: (i) labor costs, including wages of construction workers directly employed by Contractor to perform the construction of the Work; (ii) billing rates of Contractor's supervisory and administrative personnel engaged in the performance of the Work as set forth in the Proposal; (iii) subcontractor costs, being payments made by Contractor to subcontractors in accordance with the written requirements of any subcontracts; (iv) costs of materials, supplies and equipment, including rental equipment, incorporated or used in the Work; (v) building permits, tap fees, facility and capacity depletion fees; and (vi) costs due to emergencies incurred and actions taken to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

Sec. 5. Payment Terms. By the 20th day of each month during performance of the Work, Contractor will submit to the Town's project manager an application for progress payments based on the Work performed as of the date of such application. The Town's project manager prior to submitting the application to the Finance Department will verify the charges for quantities of work completed or services performed. If the Contractor's fee is a fixed amount, the amount of such fee to be included in the application will be proportional to the percentage of the Work completed, less payments previously made on account of such fee. For each progress payment made prior to Substantial Completion of the Work, the Town may withhold five percent (5%) as retainage. Upon Substantial Completion, Contractor will submit to the Town's project manager an application for final payment, which application will include an accounting of any retainage and any deposit balance. Each application will be accompanied by all documentation required by the Contract Documents or otherwise requested by the Town.

Sec. 6. Subcontractors. Those portions of the Work that Contractor does not customarily perform with Contractor's own personnel will be performed under subcontracts. Contractor will be responsible for the management of the subcontractors in the performance of their portion of the Work. Contractor will promptly pay all bills for labor performed and materials provided by its subcontractors and by its suppliers in the construction of the improvements. CONTRACTOR WILL PROVIDE TOWN WITH CERTIFICATES OF PAYMENT TO ALL SUBCONTRACTORS BEFORE FINAL PAYMENT TO CONTRACTOR.

Sec. 7. Changes in the Work. The Town may request changes in the Work, provided any additions, deletions, alterations, or other modifications to the Work are generally within the scope of the Contract Documents. Such changes will only be made pursuant to a written change order signed by the Town and Contractor stating their agreement on the change and any adjustments in the date of Substantial Completion and the price to be paid by the Town to Contractor for the Work. The Town reserves the right to refuse payment for any work outside that authorized herein or pursuant to a duly approved amendment or change order. Construction change directives to unit priced contracts will be paid at the unit price and non-unit priced contracts will be paid at the contractor's cost plus the reasonable allowance for overhead and profit which shall be agreed to between the contractor and Town.

Sec. 8. Project Completion. Contractor will notify the Town when it believes Substantial Completion has been achieved. Within five (5) days of the Town’s receipt of such notice, the Town and Contractor will jointly inspect the Project to verify Substantial Completion and to specify on a punch list any items that have not been completed or which are defective. Contractor agrees to promptly complete or correct all items on the punch list and shall inform the Town when the punch list work is finished. Contractor understands that if Substantial Completion is not attained by the date provided in Sec. 3, the Town will suffer damages which are difficult to ascertain and quantify. Contractor agrees that if Substantial Completion is not attained by ten (10) days after the date provided in Sec. 3, Contractor will pay the Town five hundred dollars (\$500.00) as liquidated damages for each calendar day that Substantial Completion extends beyond such ten (10)-day period.

Sec. 9. Insurance; Bonds.

(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)
Builder’s Risk	Full cost of the completed project

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. For any claims related to the Contract Documents, Contractor’s insurance coverage will be primary and non-contributory to any insurance maintained by the Town.

(b) Contractor will provide the following performance bond and/or payment bond or other performance security:

Performance Bond:	<u>\$496,321.08</u>
Payment Bond:	<u>\$496,321.08</u>
Other Performance Security:	<u>N/A</u>

Sec. 10. Records. Contractor agrees to keep and maintain true, complete, and accurate books and records for the Work, including originals of all invoices and all other financial records, notices, requests, communications, or documents that Contractor receives in connection with the Work. Upon the Town's request at any time during the term of the contract and the twelve (12)-month period thereafter, Contractor promptly will make available to the Town all such books and records for examination. Contractor shall provide a Contractor Sales Tax Report when applicable or requested.

Sec. 11. Warranty. Contractor warrants that: (a) the materials furnished under this contract will be new and of good quality; and (b) the Work will conform to the plans and specifications therefor and will be free from defects in material and workmanship for a period of twelve (12) months from Final Completion. In the event of a non-conformity or defect in breach of the foregoing warranty, Contractor will make all necessary repairs and corrections to the Work. Repairs and corrections performed under warranty are also warranted for an additional twelve (12)-month period from the date of repair. The foregoing warranty is not exclusive and all other warranties and conditions, whether written, oral, express, implied or statutory (including without limitation any warranty of merchantability and/or fitness for particular purpose) apply to the Work. Manufacturer or vendor warranties or guarantees if any, on materials, fixtures, appliances, and components, to the extent assignable, are deemed assigned by Contractor to the Town. Contractor agrees to: (i) deliver to the Town all information and forms in its possession for such warranties or guarantees; (ii) take such steps as may be reasonably necessary to effectively pass through to the Town such warranties or guarantees.

Sec. 12. Performance of Work by Town. If the Contractor fails to perform the Work in accordance with the schedule referred to in Sec. 3 above, the Town may, in its discretion, in order to bring the project closer to schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the Town's rights and remedies. Before doing so, the Town shall give the Contractor reasonable notice of its intention. The Contractor shall reimburse the Town for all costs incurred by the Town in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 13. 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.

Sec. 14. Contract Documents. The "Contract Documents" are comprised of the following and are included and incorporated herein by reference as if set out here in full:

- (a) This contract;
- (b) Advertisement for Bids;
- (c) Contractor's Proposal dated 11/03/2025;
- (d) Construction Drawings
- (e) Project Manual Specifications
- (f) General Conditions; and
- (g) Any written modifications, amendments, and change orders related to the above documents that are issued in accordance with the terms of this contract.

The Contract Documents constitute the entire agreement and understanding of the parties in respect of the subject matter hereof and supersede all prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Contract.

Sec. 15. Notice.

- (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, electronic delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the Town:

Attn: Phillip Bunton
 Town of Knightdale
 950 Steeple Square Ct
 Knightdale, NC 27545
 Phone Number: 919-217-2250
 Email: Phillip.Bunton@knightdalenc.gov

To the Contractor:

Attn: Edmund J Gontram III
 Ten Penny Construction Inc
 5100 Unicon Dr Ste 103
 Wake Forest, NC 27587
 Phone Number: 919-876-5331 ext. 22
 Email: eddie@10dconstruction.com

- (b) Change of Address, Date Notice Deemed Given: A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice

or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by US Mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the US Postal Service or upon actual delivery, whichever first occurs.

Sec. 16. 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 Contract under this contract.

Sec. 17. Miscellaneous.

- (a) **Choice of Law and Forum.** This contract shall be deemed made in Wake County, North Carolina. This contract shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the appropriate division of the North Carolina General Court of Justice, in Wake County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.
- (b) **Waiver.** No action or failure to act by the Town shall constitute a waiver of any of its rights or remedies that arise out this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
- (c) **Performance of Government Functions:** Nothing contained in this contract shall be deemed or construed so as to in any way stop, limit, or impair the Town from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.
- (d) **Severability.** If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

- (e) **Assignment, Successors and Assigns.** Without the Town's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out this contract. Unless the Town otherwise agrees in writing, the Contractor and all assigns shall be subject to all of the Town's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the Town's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.
- (f) **Compliance with Law.** In performing all of the Work or services contained herein, the Contractor and Contractors Employees shall comply with all applicable laws and regulations of the State of North Carolina pertaining to such Work or Services including Occupational Safety & Health laws. Contractor represents and warrants to the Town that it is duly licensed by the State of North Carolina and is authorized by such license to perform the Work and it has and will maintain all necessary licenses, certifications and registrations required in order to perform the Work.
- (g) **Town Policy.** THE TOWN OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER TOWN CONTRACTS.
- (h) **EEO Provisions.** During the performance of this Contract the Contractor agrees as follows:
1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions.
 2. The Contractor in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
- (i) **Drug-Free Workplace.** The Principal Officer of the Contractor's firm shall, upon request of the Town, provide a statement of proof indicating that a Drug-Free Workplace Program is in place and that where required by law, company drivers meet the DOT/CDL licensing requirements.
- (j) **No Third Party Right Created.** This contract is intended for the benefit of the Town and the Contractor and not any other person.
- (j) **Principles of Interpretation.** In this contract, unless the context requires otherwise the singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and any other legal entities.
- (k) **Modifications.** A modification, or construction change directive of this Contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Any document which materially alters the terms and conditions contained herein, must be reviewed pursuant to the Town's Contract Review Procedure.

Sec. 18. 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 Statutes.

Sec. 19. Attorney's Fees. Should either party deem it necessary to retain an attorney or other counsel to defend and/or pursue the enforcement of this Contract, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

IN WITNESS WHEREOF, the Town of Knightdale and the Contractor have caused this Contract to be executed under seal by their respective duly authorized agents or officers.

TOWN OF KNIGHTDALE:

CONTRACTOR:

By: _____
Authorized Town Official

By: _____
Authorized Company Official

ATTEST BY:

ATTEST BY (if corporate):

Town Clerk

N/A

Corporate Secretary

SEAL:

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 NC

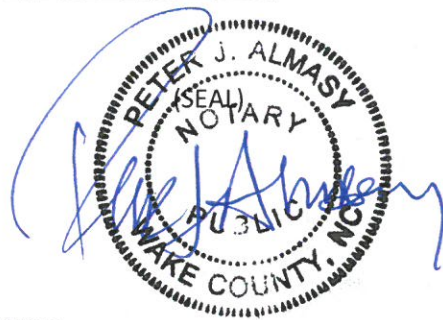
COUNTY OF WAKE

This is to certify that on the 10TH day of NOVEMBER, 2025, before me personally came EDMUND GONTRAM, 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 10TH day of NOVEMBER, 2025,

My Commission Expires: JULY 27, 2027

Notary Public PETER J ALMASY



INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

I, _____ a Notary Public do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

This the _____ day of _____, 20__.

My Commission Expires:

Notary Public

(SEAL)

PARTNERSHIP ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

I, _____ Notary Public do hereby certify that

_____ General Partner of _____,

personally appeared before me this day and acknowledged the execution, with proper authorization, of the foregoing instrument, all in accordance with partnership instruments recorded in Book _____, Page _____, in the _____ County Registry, and that the instrument is the act and deed of the partnership.

This the _____ day of _____, 20__.

My Commission Expires:

Notary Public

(SEAL)

LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

I, _____ a Notary Public for said State and County, do hereby certify

that _____ Manager of _____

personally appeared before me this day and acknowledged the execution of the foregoing instrument, with proper authorization, on behalf of the company.

This the _____ day of _____, 20__.

My Commission Expires:

Notary Public

(SEAL)