

**WARREN COUNTY BOARD OF EDUCATION  
CONTRACT FOR FACILITY ASSESSMENT, STRATEGIC PLANNING, AND PROJECT  
MANAGEMENT SERVICES**

This contract for Facility Assessment, Strategic Planning, and Project Management services (the “Contract”) is made and entered into this 1<sup>st</sup> day of July 2022, between the Warren County Board of Education (the “School System”), 109 Cousin Lucy’s Lane, Warrenton NC 27589, and NEMA Management, LLC (the “Provider”), 1020 Southhill Drive, Suite 180, Cary, NC 27513.

WHEREAS, previous engagement was modified from Project Managing a formal facilities assessment report and was redirected to focus on strategic planning to evaluate renovations or new construction of a consolidated elementary, middle or high school.

WHEREAS, this strategic planning considered the master plan, general condition of the existing facilities, available land and School System goals to determine strategic next steps.

WHEREAS, the scope also evolved to focus on assisting the School System with the application process for the Needs Based Grant through the NC Department of Public Instruction that resulted in the School System being awarded a grant totaling \$30,000,000 for a new elementary school.

WHEREAS, the School System desires to plan, design and construct a building converting the existing New Tech School structure into a new consolidated elementary school that is centralized on a single campus alongside the existing middle and high schools (“Project”);

WHEREAS, the Project will require renovations to the existing 22,000 SF structure and the addition of approximately 85,937 SF of new structure consisting of classrooms, administration and cafeteria;

WHEREAS, the total building at completion is estimated to be 107,937 SF; and

WHEREAS, the Project is being funded by the NC Department of Public Instruction Needs Based Public School Capital Fund 2021 Grant.

For and in consideration of the mutual promises set forth in the Contract the parties do mutually agree as follows:

1. Obligations of Provider. Provider hereby agrees to provide services to the School System as follows (the parties acknowledge that only a portion of the identified services will be provided during the initial term of this Contract):
  - 1.1. Provider will provide Project Management services on School System’s facilities to identify additional capital project needs and assist the School System in strategic planning for future use of and changes to existing facilities and construction of new facilities. Project Management shall include but not be limited to: oversee the engagement of design and other consultants on behalf of the school system to assess designated School-System facilities, to include any required interviews with administrators and facilities staff designated by the School System and tour of facility to consider facility conditions and current use; conduct meetings and consultation with stakeholders designated by the School System; collection and review of relevant documents, including building plans, facility and building system reports, renovation histories, etc.; and preparation of reports summarizing conditions, current deferred maintenance, and capital renewal projections. In a Project Management roll, the Provider will oversee the preparation of a written Facilities Assessment Report, to include the following components:

- a. Specification of facilities reviewed (as designated by School System);
- b. Assessment of facility conditions and needs;
- c. Recommendations for how to stabilize, renovate, expand, or re-purpose facilities;
- d. Recommendations on new construction;
- e. Prioritization of needs and proposals for immediate, five, and ten-year improvement plans for facilities and new construction;
- f. Identification of timelines and schedules for completion of recommended work (including high level overview, bar charts, timeline outline planning, designs, construction durations and sequences); and
- g. Cost estimates, per square foot and in order of magnitude, for any and all recommended changes to existing facilities or construction projects.

1.2. New Tech School Project. Provider will:

- provide project management/owner representation services for the School System; and
- engage with the Project team to manage and drive the planning, entitlements, preconstruction and construction on behalf of the School System.

1.2.1. Initial Planning Phase: Provider will:

- coordinate with the School System to assist with any due diligence on the property;
- coordinate with and engage utility providers;
- coordinate and establish process with local jurisdictions;
- establish a Project timeline;
- assist in further developing the Project budget;
- lead Project team meetings;
- identify potential consultants including, architect, land planning, civil engineer, interior design, audio visual and any specialized sub consultants;
- assist with procuring and finalizing design partners including negotiating fees and contract terms; and
- review and approve any invoices from consultants.

1.2.2. Pre-Construction Phase: Provider will:

- conduct Regular meetings with the School System to review owner items and current issues;
- update overall Project timeline with key deliverables;
- engage general contractor(s) to assist with the Project budget;
- update Project budget/estimates;
- lead Project team meetings to manage designers and contractors to drive program and scope alignment with the Project budget and schedule;

- manage general contractor/construction manager procurement and contract negotiation;
- work with the School System regarding negotiation of contractor/CM at Risk contract terms;
- work with design team and construction manager to achieve acceptable guaranteed maximum price at appropriate stage of design, if CM at Risk is used for the Project;
- assist general contractor/construction manager with local utilities (including power, lighting, gas, phone and internet);
  
- work with design team and general contractor/construction manager to perform value analysis;
- solicit and manage owner consultants as needed (water intrusion, special inspection, AV, security, low voltage FF&E and IT);
- review and approve monthly invoices from consultants and general contractor; and
- support permit expediting.

1.2.3. Construction Phase: Provider will:

- conduct regular meetings with the School System to review owner items and prioritize design / construction items;
- conduct regular jobsite visits;
- provide a monthly standard Project Progress Update Report;
- attend weekly OAC team meetings;
- review and comment on OAC minutes;
- schedule review, look ahead review and comments;
- coordinate mockups;
- review RFI and submittal progress;
- review change order pricing;
- review contractor/construction manager pay applications;
- coordinate with contractor/construction manager and design team to make sure parties are working together and help resolve conflicts when arise;
- assist in punch list management and closeout; and
- coordinate and oversee the School System's vendors.

1.3. Provider shall not have control over, charge of, or responsibility for the construction schedule, means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work of the Project, nor shall Provider be responsible for the general contractor's/construction manager's (or any other contractors') failure to perform such work in accordance with the requirements of the contract documents to include the Project construction schedule. Provider shall not have control over or charge of, and shall

not be responsible for, acts or omissions of the general contractor/construction manager or of any other persons or entities performing portions of the work of the Project.

- 1.4. Limitation to Services. The parties agree that Provider is not acting as an architect, engineer, or other design professional through provision of these services. Provider is not providing any design services with regard to this Project. As to any obligation Provider might have for design assistance, coordination or review, the standard to which Provider shall be held as to such work shall be that of an owner's agent/project management consultant providing services in Warren County, North Carolina. School System acknowledges that Provider is not acting as an architect, engineer or other design professional and that by providing design assistance, coordination or review Provider is not providing any architectural, engineering or other design professional services.
- 1.5. Notwithstanding Section 1.3 and 1.4 above, Provider shall be responsible for performing all of its duties and obligations in this Contract and shall take reasonable steps to protect the School System's interest on the Project. The Provider shall notify the Owner, contractor/construction manager and design team of any concerns or deficiencies observed by Provider with the schedule or quality of the work on the Project. The Provider shall provide a written summary to the Owner of how any observed issues are resolved.
- 1.6. Provider shall be allowed to include Provider's name and logo on Project documentation and signage.
- 1.7. Provider's work will be completed in a timely manner acceptable to the School System in full compliance with the terms and conditions of this Contract.
- 1.8. Records Maintenance. Provider shall maintain written documentation of the general services provided, including any required documentation meeting the requirements of applicable federal, state and local laws and regulations.
- 1.9. NEMA warrants that it will perform the Services in a good and workmanlike manner.
2. Term. The services described in the Contract will be provided from July 1, 2022 through June 30, 2023, unless sooner terminated as herein provided. The parties acknowledge that the full scope of services above will extend beyond the initial term of the Contract, and the agreement will need to be extended over multiple years in order for all of the services to be completed. It is the intention of the School System that the Contract will be extended yearly to allow for the completion of the entire scope of services if funding is available and the School System is satisfied with Provider's services.
3. Compensation. The School System hereby agrees to compensate Provider in the amount of \$3,570 per week for Project Management services outlined in this Contract, with total expenditures not to exceed \$185,640.00. The parties acknowledge that this fee is based upon Provider providing approximately 16 hours of services per week on average. Provider shall provide periodic description of the services provided in a manner and format acceptable to the Owner. Provider expressly agrees that weekly compensation shall not exceed \$3,570 per week, plus reimbursable out of pocket expenses at cost with a 10% markup, up to and not to exceed the above-referenced total compensation of \$185,640.00 . Under no circumstances shall the Board be responsible for payment of any amount in excess of a total of \$185,640.00. Provider may be entitled to additional compensation only as mutually agreed in writing in advance. Provider shall provide School System with monthly invoice(s), itemized by the time period service provided, the date(s) that services were provided, a copy of the relevant periodic updates for the services included in the invoice, and the amount owed. All travel mileage, including to and from Project, shall be billed without markup at current IRS allowable rate.

4. Terms and Methods of Payment. Provider shall submit to the School System monthly invoices in advance of payment. Such invoices shall be submitted within thirty (30) days of the rendering of services. The School System shall process payments to Provider within thirty (30) days of submission of such invoices. Invoices that are unpaid beyond 45 days will accrue interest at 8% per year, effective after execution of this Contract, unless the Owner has a good faith reason to withhold payment. Invoices should be emailed to [efinance@warrenk12nc.org](mailto:efinance@warrenk12nc.org) or mailed to P.O. Box 110, 109 Cousin Lucy's Lane, Warrenton, NC 27589, for review and approval.
5. Termination for Convenience. The School System may terminate this Contract at any time at its complete discretion upon thirty (30) calendar days' notice in writing from the School System to Provider prior to the date of termination. The School System agrees to pay the Provider a termination fee equal to one month's current retainer fee amount. In addition, all finished or unfinished documents and other materials produced by Provider pursuant to this Contract shall, at the request of the School System be turned over to it and become its property. If the Contract is terminated by the School System in accordance with this section, the School System will pay Provider at the rate set out in Section 3 for all services performed as of the date of termination.
6. Termination for Default. At any time, the School System may terminate this Contract with ten (10) days written notice if Provider is in default. The Provider may use the notice period to cure the default.
7. NEMA shall facilitate, assist, engage with, and coordinate with the School System regarding compliance with applicable public procurement processes and Board policies for all construction, purchases and related activities handled by NEMA.
8. Neither the School System nor NEMA intends by any provision of this Contract to confer any right, remedy or benefit upon any third party, and no third party shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of any provision of this Contract.
9. EXCLUSION OF SPECIFIED DAMAGES: In no event shall NEMA be liable to the School System for any liquidated, punitive, exemplary, lost profits and loss of use damages, whatsoever, arising out of or related to this Contract, arising from or related to duties or obligations set forth in this Contract.
10. The School System agrees to indemnify, defend and hold NEMA, and its members, managers, employees and their successors and assigns harmless from and against any and all claims, losses, liabilities, costs, damages, causes of action, demands, and proceedings whatsoever to the extent arising out of the presence of hazardous substances, mold, pathogens, or other such materials at the Property, unless NEMA is responsible for the presence of the hazardous substance being on the Property. This indemnity shall include, but is not limited to, attorneys' and legal assistants' fees and costs. The foregoing shall not preclude any cause of action by the School System for NEMA's breach of the requirements of this Contract. The School System shall indemnify and hold harmless NEMA from and against all claims, damages, losses and expenses, including claims attributable to bodily injury, sickness, disease or death, or to injury to or destruction of personal property, arising solely out of or resulting from the School System's performance or failure to perform its obligations under this Agreement.
11. Insurance. Provider agrees to maintain Commercial General Liability in amount of \$1,000,000 each occurrence, with \$2,000,000 General Aggregate, and \$2,000,000 Products/Completed Operations Aggregate. Provider shall maintain \$1,000,000 in automobile liability, and other appropriate insurance, as well as Workers Compensation in the required statutory amount for all employees participating in the provision of services under this Contract. The Board of Education shall be named by endorsement as an additional insured on the General and Automobile Liability policies. Certificates of such insurance shall be furnished by Provider to the School System and

shall contain an endorsement to provide the School System at least 10 days' written notice of any intent to cancel or terminate by either Provider or the insuring company. Failure to furnish insurance certificates or maintain such insurance shall be a default under this contract and shall be grounds for immediate termination of this Contract.

12. Taxes. Provider shall pay all federal, state, and FICA taxes for all employees participating in the provision of services under this Contract.
13. Monitoring and Auditing. Provider shall cooperate with the School System, or with any other person or agency as directed by the School System, in monitoring, auditing, or investigating activities related to this Contract. Provider shall permit the School System to evaluate all activities conducted under this contract as dictated by the School System. Provider shall provide auditors retained by the School System with access to any records and files related to the provision of services under this Contract. The School System agrees that its auditors will maintain the confidentiality of any identified and actual trade secrets of Provider accessed during an audit conducted under this Contract.
14. Confidentiality of Student Information. Provider does not anticipate requesting or accessing student records or personally identifiable information contained in student records in the course of providing services to the School System under this contract. To the extent it does access any such records or information, Provider shall be subject to the confidentiality and disclosure provisions of applicable federal and state statutes and regulations as well as the School System's policies. All student records shall be kept in a secure location preventing access by unauthorized individuals. Provider will maintain an access log delineating date, time, agency, and identity of individual accessing student records who is not in the direct employ of Provider. Provider shall not forward to any person other than parent or the School System any student record or personally identifiable information obtained from a student record (including, but not limited to, the student's identity) without the written consent of the School System. Upon termination of this Contract, Provider shall turn over to the School System all student records or personally identifiable information about students obtained by Provider while providing services under this Contract. Nothing in this Contract gives Provider any right to access any student records or personally identifiable information.
15. Lunsford Act. Provider also acknowledges that G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. Provider shall conduct or arrange to have conducted, at its own expense, sexual offender registry checks on each of its owners, employees, agents and subcontractors ("contractual personnel") who will engage in any service on or delivery of goods to School System property or at a School System sponsored event, except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at: (1) the administrative office or loading dock of a school; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites. The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the Registries"). For Provider's convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>. Provider shall provide certification on the Sexual Offender Registry Check Certification Form (Exhibit A) that the registry checks were conducted on each of its contractual personnel providing services or delivering goods under this Contract prior to the commencement of such services or the delivery of such goods. Provider shall conduct a current initial check of the registries. The sex offender registry checks shall be conducted within 30 days of Provider's execution of the Contract and prior to performing any services on School System

property. In addition, Provider agrees to conduct the registry checks and provide a supplemental certification form before any additional contractual personnel are used to deliver goods or provide services pursuant to this Contract. Provider further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Contract. Provider shall not assign any individual to deliver goods or provide services pursuant to this Contract if said individual appears on any of the listed registries. Provider agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents to the School System upon request. Provider specifically acknowledges that the School System retains the right to audit these records to ensure compliance with this section at any time in the School System's sole discretion. Failure to comply with the terms of this provision shall be deemed a material breach of the Contract. If requested by the School System, the Provider shall provide sufficient background information regarding any or all contractual personnel who may deliver goods or perform services under this contract in order to allow the School System to perform a criminal background check on each individual at the School System's expense. Provider further agrees that it has an ongoing obligation to provide the School System with the name of any new contractual personnel who may deliver goods or provide services under the Contract. The School System reserves the right to prohibit any contractual personnel of Provider from delivering goods or providing services under this Contract if the School System determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others, or if such contractual personnel may otherwise pose a risk to the School System's operations. Failure to comply with the terms of this provision shall be deemed a material breach of the Contract.

16. Indemnification. Notwithstanding any other provision in this Contract, Provider shall indemnify and hold harmless the School System and its agents and employees from and against all claims, actions, demands, costs, damages, losses, and/or expenses of any kind whatsoever resulting solely from the omission or commission of any act, lawful or unlawful, by Provider or its agents and/or employees, including but not limited to court costs and attorney's fees, incurred in connection with the defense of said matters. The parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N. C. Gen. Stat. § 6-21.2.
17. Relationship of Parties. Provider shall be an independent contractor of the School System, and nothing herein shall be construed as creating a partnership or joint venture; nor shall any employee of Provider be construed as an employee, agent, or principal of the School System. No person or entity that is not a party to this Contract is intended to be a third-party beneficiary of this Contract.
18. Compliance with Applicable Laws. Provider shall comply with all applicable laws and regulations in providing services under this Contract. In particular, Provider shall not employ any individuals to provide services to the School System who are not authorized by federal law to work in the United States. Provider represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times while providing services pursuant to this Contract. Provider shall also ensure that any of its subcontractors (of any tier) will remain in compliance with these laws at all times while providing subcontracted services in connection with this Contract. Provider is responsible for providing affordable health care coverage to all of its full-time employees providing services to the School System. The definitions of "affordable coverage" and "full-time employee" are governed by the Affordable Care Act and accompanying IRS and Treasury Department regulations.

19. Restricted Companies List. Provider represents that as of the date of this Contract, Provider is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Provider also represents that as of the date of this Contract, Provider is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.
20. Anti-Nepotism. Unless disclosed to the School System in writing prior to the Board's approval and execution of the Contract, Provider warrants that, to the best of its knowledge and in the exercise of due diligence, none of its corporate officers, directors, or trustees and none of its employees who will directly provide services under this Contract are immediate family members of any member of the Warren County Board of Education or of any principal or central office staff administrator employed by the School System. For purposes of this provision, "immediate family" means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law relationships. Should Provider become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Contract, Provider shall immediately disclose the family relationship in writing to the Superintendent of Schools. Unless disclosed prior to the execution of the Contract or formally waived by the School System, the existence of a family relationship covered by this Contract is grounds for immediate termination by School System without further financial liability to Provider.
21. Applicable School Board of Education Policies. Provider acknowledges that the Warren County Board of Education has adopted policies governing conduct on School System property and agrees to abide by any and all relevant Board policies while on School System property. The Provider acknowledges that Board's policies are available on the School System's website.
22. Assignment. Provider shall not assign, subcontract, or otherwise transfer any interest in this contract without the prior written approval of the School System.
23. Third-Party Beneficiary. Neither the School System nor Provider intends by any provision of the Proposal to confer any right, remedy or benefit upon any third party, and no third party shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of any provision of this Contract.
24. Contract Modifications. This contract may be amended only by written amendments duly executed by and between the School System and Provider.
25. North Carolina Law. North Carolina law will govern the interpretation and construction of the Contract.
26. Order of Precedence. The Parties do hereby agree that in the event of conflict between the terms and conditions of this Contract and the terms and conditions in an agreement entered into between the parties at the same time as or prior to this Contract, the terms and conditions of this Contract shall prevail.
27. Entire Agreement. This Contract, including the purchase order, if any, used in connection herewith and any other document(s) expressly incorporated by reference as a part of this Contract, constitutes and expresses the entire agreement and understanding between the parties concerning its subject matter. This Contract supersedes all prior and contemporaneous discussions, promises, representations, agreements and understandings relative to the subject matter of this contract. To the extent there may be any conflict between the four corners of this Contract and other documents incorporated by reference herein, the terms of this Contract will control.
28. Attached Exhibits: The following documents, if any, are attached as Exhibits to this Contract and incorporated by reference herein:

Exhibit A: Sexual Registry Check Certification Form



- 29. Severability. If any provision of this Contract shall be declared invalid or unenforceable, the remainder of the Contract shall continue in full force and effect.
- 30. Counterparts and Execution. This Contract may be executed in any number of counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. The Parties agree that computer scanned and/or faxed signatures or copies of this Contract will have the same validity and force as an "original."
- 31. Authority to Enter Contract. The person(s) executing this Contract on behalf of Provider have authority to do so as an official, binding act of Provider.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first indicated above.

**WARREN COUNTY BOARD OF EDUCATION**                      **NEMA MANAGEMENT, LLC**

\_\_\_\_\_  
Board Chair

\_\_\_\_\_  
Member

ATTEST:

\_\_\_\_\_  
Superintendent

North Carolina

\_\_\_\_\_ County

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_ County, North Carolina, do hereby certify that \_\_\_\_\_, a member of NEMA Management, LLC, personally appeared before me this day and acknowledged that he as a member, being authorized to do so, executed the foregoing instrument on behalf of the company.

Date: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

*(Official Seal)*

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

\_\_\_\_\_  
School System Finance Officer                                      Date

**Exhibit A**

**Sexual Offender Registry Check Certification Form**

***PLEASE SUBMIT THIS FORM TO YOUR SCHOOL SYSTEM'S REPRESENTATIVE***

Project Name: \_\_\_\_\_ Contract: \_\_\_\_\_

Check the appropriate box to indicate the type of check:

Initial  Supplemental  Annual

I, \_\_\_\_\_ (insert name), \_\_\_\_\_ (insert title) of \_\_\_\_\_ (insert company name) hereby certify that I have performed all of the required sexual offender registry checks required under this Contract for all contractual personnel (employees, agents, ownership personnel, or contractors ) who may be used to deliver goods or provide services under this Contract, including the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry (**Note: all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>**). I further certify that none of the individuals listed below appears on any of the above-named registries and that I will not assign any individual to deliver goods or perform services under this Contract if said individual appears on any of the sex offender registries. I agree to maintain all records and documents associated with these registry checks, and that I will provide such records and documents to the school system upon request. I specifically acknowledge that the school system retains the right to audit these records to ensure compliance with this section at any time in the school system's sole discretion. I acknowledge that I am required to perform these checks and provide this certification form before any work is performed under the Contract (initial check), any time additional contractual personnel may perform work under the Contract (supplemental check), and at each anniversary date of the Contract (annual check).

**Contractual Personnel Names**

**Job Title**

- |    |       |       |
|----|-------|-------|
| 1. | _____ | _____ |
| 2. | _____ | _____ |
| 3. | _____ | _____ |
| 4. | _____ | _____ |
| 5. | _____ | _____ |
| 6. | _____ | _____ |

I attest that the forgoing information is true and accurate to the best of my knowledge.

\_\_\_\_\_ (print name)

\_\_\_\_\_ (signature / date)