

Date September 10, 2013

AREA Facilities and Technology Committee

AGENDA ITEM(S) Lawn Care Contract

CONTACT PERSON(S) John T. Bonardi, Jr.

Agenda Report

On August 27, 2013, the Facilities and Technology Committee reviewed the existing lawn care contract with M & W Lawn Maintenance, LLC which ends October 31, 2013. As a result, the committee recommends extending the contract with M & W Lawn Maintenance, LLC for three years in the amount of \$216,884 per year.

Suggested Motion-For Board Approval.

**NORTH CAROLINA
LEE COUNTY**

THIS AGREEMENT is made and entered into this 10th day of September, 2013, by and between Lee County Board of Education ("LCBOE") and M & W Lawn Maintenance, LLC, a North Carolina Limited Liability Company, ("M & W");

WITNESSETH:

That whereas, on the 9th day of March, 2010, the parties entered into an agreement, a copy of which is hereto attached and incorporated by reference;

And whereas, the parties have each agreed to modify certain terms of said contract.

Now, therefore, it is mutually agreed, that in consideration of the covenants hereinafter contained said March 9, 2010, agreement is modified and amended as follows:

- | | |
|---------------|---|
| Paragraph 1.2 | "Commencement Date" means April 1, 2014. |
| Paragraph 2 | Term. The term of this Agreement is as follows:
April 1, 2014-october 31, 2014;
April 1, 2015-October 31, 2015;
April 1, 2016-October 31, 2016;
April 1, 2017-October 31, 2017. |
| Paragraph 4 | Service Fees. The LCBOE shall pay M & W monthly for work completed according to the schedule of fees set out in Attachment A, dated September 10, 2013, hereto attached and incorporated by reference. |
| Paragraph 13 | Notices. The name of "Dr. Andy Bryan, Superintendent," shall be inserted in lieu of "Dr. Jeff Moss." |

Except as herein modified and amended, the said March 9, 2010, original agreement shall continue in full force and effect unchanged.

IN TESTIMONY WHEREOF, the parties hereto have executed this agreement in duplicate originals, one of which is retained by each of the parties, the day and year first above written.

ATTEST:

Secretary

LEE COUNTY BOARD OF EDUCATION

By: _____
Chairman

M & W LAWN MAINTENANCE, LLC.

By: _____
Randall Lee McNeill

By: _____
Kevin Blue Womack

**NORTH CAROLINA
LEE COUNTY**

THIS AGREEMENT is made and entered into this 9th day of March, 2010, by and between Lee County Board of Education ("LCBOE") and M & W Lawn Maintenance, LLC, a North Carolina Limited Liability Company, ("M & W");

WITNESSETH:

That for and in consideration of the covenants and agreements by each of the parties to this Agreement, the parties agree as follows:

1. **Definitions.** For the purpose of this Agreement, the following terms shall have the meanings set forth below:
 - 1.1 "Agreement" means this Agreement between M & W and the LCBOE, which may be amended or restated from time to time.
 - 1.2 "Commencement Date" means April 1, 2010.
 - 1.3 "Effective Date" means the date first above written.
2. **Term.** The term of this Agreement is as follows:
April 1, 2010 – October 31, 2010; April 1, 2011 – October 31, 2011;
April 1, 2012 – October 31, 2012; April 1, 2013 – October 31, 2013
3. **Services.**
 - 3.1 M & W will provide mowing, trimming, edging, fertilizing and weed control of lawns and grass areas at the locations and on a service frequency noted in Attachment A.
 - 3.2 M & W will provide maintenance of flower beds, borders and ornamental trees and shrubs to include pruning, fertilizing, and mulching on a service frequency noted in Attachment A hereto.
 - 3.3 M & W agrees to furnish all labor, equipment, herbicides, chemicals, fertilizers and supervision necessary for the services specified below and will be responsible for paying all fees, insurance premiums, licenses and permits required by law before and during the servicing of this Agreement.
 - 3.4 M & W understands that the LCBOE may adjust their work schedule for student testing and other school activities. Adequate notice is defined as the LCBOE giving 24 hours notice by telephone, e-mail, or letter to M & W noted in paragraph #13.

4. **Service Fees.** The LCBOE shall pay M & W monthly for work completed according to the schedule of fees set out in Attachment A, hereto. It is further understood and agreed that the frequency of the services at the various locations listed may be changed by the Director of Facilities & Maintenance of LCBOE by giving 24 hours notice as hereinabove provided.
5. **Termination.**
 - 5.1 M & W may terminate this Agreement upon any breach or default of this Agreement by the LCBOE that is not cured pursuant to Section 6 hereof, or the LCBOE failure to timely pay service fees or other fees hereunder.
 - 5.2 The LCBOE may terminate this Agreement upon any breach or default of this Agreement by M & W that is not cured pursuant to Section 6 hereof.
6. **Breach; Obligation to Cure.** A breach of this Agreement shall mean a material failure to comply with any of the material provisions of this Agreement. Each party shall in the case of a breach of its obligations under this Agreement either (i) cure the breach within 10 days of receipt of written notice from the non-breaching party, or (ii) continuously demonstrate within such cure period that it is actively and continuously pursuing a course of action which reasonable can be expected for so long as the breaching party is actively and continuously pursuing such a course.
7. **Remedies.**
 - 7.1 In the event of a default under this Agreement, the non-defaulting party shall, upon 5 days prior written notice to the defaulting party, have the right, but not the obligations or duty, to cure such default. The defaulting party shall compensate the non-defaulting party for any and all costs and expenses associated with curing the default. The non-defaulting party shall use its best efforts to employ an economically reasonable method of curing any such default.
 - 7.2 In the event a default occurs and is not cured in the manner allowed in this Agreement, then the non-defaulting party shall have the right to take whatever action at law or in equity that it deems necessary or desirable to collect any amounts then due or thereafter to become due under this Agreement or to enforce performance of any covenant or obligation of the defaulting party under this Agreement; and terminate this Agreement.

- 7.3 The LCBOE and M & W agree that neither party may elect to terminate this Agreement upon a default by the other party until the party seeking termination has first sent 10 days prior written notice of termination to the defaulting party. Such notice of termination shall be subsequent to earlier notice of breach and failure to cure (or take steps to cure) the subject breach. If the event of default is cured within 10 days of such notice of termination, the notice of termination shall then be of no effect and this Agreement shall remain in full force and effect.
- 7.4 Subject to the terms and conditions of this Section, all rights and remedies under this Section are cumulative and the exercise of any one remedy does not preclude the exercise of one or more of any other available remedies, including any remedies not specified herein.

8. **Representations and Warranties of the LCBOE.** The LCBOE represents and warrants to M & W as follows:

- 8.1 The LCBOE has full legal right, power and authority to enter into and to fully and timely perform its obligations under this Agreement.
- 8.2 The LCBOE duly authorizes, executes and delivers this Agreement, and acknowledges that this Agreement constitutes a valid and legally binding obligation of the LCBOE.

9. **Representations and Warranties of M & W.** M & W represents and warrants to the LCBOE as follows:

- 9.1 M & W has full legal right, power and authority to enter into and to fully and timely perform its obligations under this Agreement.
- 9.2 M & W duly authorizes, executes and delivers this Agreement, and M & W acknowledges that this Agreement constitutes a valid and legally binding obligation of M & W.
- 9.3 M & W will comply with all applicable federal, state, and local regulations.
- 9.4 M & W has obtained all necessary licenses and permits to perform the obligations under this Agreement.
- 9.5 M & W certifies it has the necessary personnel and equipment to perform the services of Agreement.

10. **Indemnification.**

10.1 The LCBOE agrees to indemnify and hold harmless M & W, their officers, agents and employees (collectively "M & W") from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorney's fees "Indemnified Costs"), caused by or resulting from any negligent or willful act or omission of the LCBOE, its agents or employees in connection with this Agreement or resulting from a breach by the LCBOE of any of the agreements, representations, or warranties of the LCBOE contained in this Agreement. The indemnity obligation of the LCBOE under this Section shall survive the expiration or termination of this Agreement subject to any applicable statute of limitation.

10.2 M & W agrees to indemnify and hold harmless the LCBOE, its officers, agents and employees (collectively "LCBOE") from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including "Indemnified Costs"), caused by or resulting from any negligent or willful act or omission of M & W, its agents or employees in connection with this Agreement or resulting from a breach by M & W of any of the agreements, representations, or warranties of M & W contained in this Agreement. The indemnity obligation of the M & W under this Section shall survive the expiration or termination of this Agreement subject to any applicable statute of limitation.

11. **Insurance.** M & W shall provide and maintain at all times during the term of this Agreement the following types of insurance coverage.

	<u>Coverage</u>	<u>Minimum Limits</u>
11.1	Workers' Compensation	N/A
11.2	Comprehensive General Liability (bodily injury and property damage)	\$1,000,000.00
11.3	Automotive Liability owned and non-owned; (bodily injury and property damage)	\$1,000,000.00

M & W agrees to furnish certificates of insurance substantiating compliance with this provision. Certificates of insurance must be signed by an authorized representative of the insurance carrier and must state that no material damage or cancellation of insurance will be effected without thirty

(30) days advance written notice given to the LCBOE. The LCBOE also shall be named as an additional insurance on all policies of insurance specified above.

12. **Amendment and Modification.** Subject to applicable law, this Agreement may be amended, modified and supplemented by written agreement of the respective parties officers duly authorized with respect to any of the terms contained herein
13. **Notices.** All notices or other communications to be given hereunder shall be in writing and shall be mailed by certified or registered mail (return receipt requested). Communications shall be addressed as follows:

To:	Dr. Jeff Moss Superintendent Lee County Schools PO Box 1010 Sanford, NC 27331 (919) 774-6226	Mr. Jerry Pittman Director of Facilities & Maintenance Lee County Schools 2009 Nash Street Sanford, NC 27330 (919) 776-4013
To:	Mr. Randall Lee McNeill Organizer M & W Lawn Maintenance, LLC 1409 Cool Springs Road Lillington, NC 27546 (910) 890-3928	Mr. Kevin Blue Womack Registered Agent M & W Lawn Maintenance, LLC 1409 Cool Springs Road Lillington, NC 27546 (910) 890-5972

Change of address by either party shall be given to the other in the same manner as above specified. Any notice or other communications under this Agreement shall be deemed given upon actual delivery as shown by the return receipt.

14. **Governing Law.** This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of North Carolina.
15. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
16. **Entire Agreement.** This Agreement sets forth the entire Agreement and understanding of the parties hereto with respect to the subject matter of this Agreement and supersedes all arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of either party hereto. There are no restrictions,

representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein.

17. **No Third Party Beneficiaries.** Nothing herein expressed or implied is intended to confer upon any person, other than the parties hereto, their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.
18. **Binding Nature of Agreement: Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party.
19. **No Waivers.** No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted the waiver.
20. **Provisions Severable.** The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any provision may be invalid or unenforceable in whole or in part. Further, it is the intention of the parties hereto that in lieu of any provision that it is held to be invalid or unenforceable, there shall be added by mutual agreement, as a part of this Agreement, a provision as similar in terms to such invalid or unenforceable provision as may be possible and enforceable.

IN WITNESS WHEREOF, the parties execute this Agreement as of the day and year first above written.

ATTEST:

By: 

Secretary

LEE COUNTY BOARD OF EDUCATION

By: 

Chairman

M & W LAWN MAINTENANCE, LLC

By: 

Randall Lee McNeill

By: 

Kevin Blue Womack

Attachment A:

APRIL 1, 2010

Lee County Schools and School Facilities Service Locations

Locations	Mowing (7 day rotation)	Herbicide Treatment (2 per year or as directed)	Ornamentals (Overall / Maintenance)	
			Trimming Shrubs	Mulch
Benjamin T. Bullock Elem.	\$ 252.00		\$640.00	\$3,200.00
Bragg Street Academy	\$ 168.00		\$640.00	\$ 800.00
Broadway Elementary	\$ 252.00	All Herbicide Treatment	\$640.00	\$1,600.00
East Lee Middle	\$ 420.00	Is included in mowing.	\$640.00	\$1,600.00
Greenwood Elementary	\$ 336.00		\$640.00	\$1,600.00
J. R. Ingram Jr. Elementary	\$ 336.00		\$640.00	\$1,600.00
Deep River Elementary	\$ 420.00		\$640.00	\$2,400.00
Floyd L. Knight	\$ 168.00		\$640.00	\$ 800.00
J. Glenn Edwards	\$ 504.00		\$640.00	\$1,600.00
Lee County High	\$ 336.00		\$640.00	\$1,600.00
Tramway Elementary	\$ 336.00		\$640.00	\$1,600.00
Warren Williams	\$ 168.00		\$640.00	\$1,600.00
West Lee Middle	\$ 336.00		\$640.00	\$ 800.00
SanLee Middle School	\$ 252.00		\$640.00	\$ 800.00 -
Southern Lee High	\$ 420.00		\$640.00	\$3,200.00
Bus Garage	\$ 168.00		No Shrubs	
Heins Building	\$ 168.00		\$640.00	\$ 800.00 -
TOTAL	\$5040 x 31 = \$156,240.00		\$10,240.00	\$25,600.00

- The total yearly contract price for the above services shall not exceed \$192,080.00.
- Also included are the courtyards at J. Glenn Edwards, J. R. Ingram and West Lee and two play grounds at J. R. Ingram; and fenced areas at Greenwood, Deep River and Lee County High School.
- No heavy mowers or other equipment will be employed when mowing the filter bed at Greenwood Elementary.
- No athletic fields are included in this contract.

Lee County Schools and School Facilities Service Locations

Locations	Mowing (7 day rotation)	Herbicide Treatment (2 per year or as directed)	Ornamentals (Overall / Maintenance)	
			Trimming Shrubs	Mulch
Benjamin T. Bullock Elem.	\$ 277.00		\$ 640.00	\$ 3,200.00
Bragg Street Academy	\$ 185.00		\$ 640.00	\$ 800.00
Broadway Elementary	\$ 277.00	All Herbicide Treatment	\$ 640.00	\$ 1,600.00
East Lee Middle	\$ 462.00	Is included in mowing.	\$ 640.00	\$ 1,600.00
Greenwood Elementary	\$ 462.00		\$ 640.00	\$ 1,600.00
J. R. Ingram Jr. Elementary	\$ 370.00		\$ 640.00	\$ 1,600.00
Deep River Elementary	\$ 462.00		\$ 640.00	\$ 2,400.00
Floyd L. Knight	\$ 185.00		\$ 640.00	\$ 800.00
J. Glenn Edwards	\$ 555.00		\$ 640.00	\$ 1,600.00
Lee County High	\$ 555.00		\$ 640.00	\$ 2,100.00
Tramway Elementary	\$ 370.00		\$ 640.00	\$ 1,600.00
Warren Williams	\$ 185.00		\$ 640.00	\$ 1,600.00
West Lee Middle	\$ 370.00		\$ 640.00	\$ 800.00
SanLee Middle School	\$ 277.00		\$ 640.00	\$ 800.00
Southern Lee High	\$ 462.00		\$ 640.00	\$ 3,200.00
Bus Garage	\$ 185.00		No Shrubs	
Heins Building	\$ 185.00		\$ 640.00	\$ 800.00
TOTAL	\$5,824 x 31 = \$180,544.00		\$10,240.00	\$26,100.00

- The total yearly contract price for the above services shall not exceed \$216,884.00
- Also included are the courtyards at J. Glenn Edwards, J. R. Ingram and West Lee and two play grounds at J. R. Ingram; and fenced areas at Greenwood, Deep River and Lee County High School.
- No heavy mowers or other equipment will be employed when mowing the filter bed at Greenwood Elementary.
- No athletic fields are included in this contract.