

YADKIN COUNTY
NORTH CAROLINA

AGREEMENT FOR SERVICES
(Munis Contract Number) _____

This Agreement is made and entered into this 25 day of NOVEMBER, 20 16 ("Effective Date") between Yadkin County, North Carolina ("County") and HOFFMAN AND HOFFMAN ("Provider").

WHEREAS, the County and the Provider wish to enter into a contract under which the Provider will provide certain specified services and/or materials to the County in exchange for payment. NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, conditions, and agreements herein, the County and the Provider agree as follows:

1. **Services To Be Performed.** The Provider agrees to perform the services and to provide the materials (all collectively called the "Services") for the County as authorized by the County Manager. Provider acknowledges that this Agreement does not guarantee that the County will assign the Provider any work; however, that the County from time to time may request the Provider to perform services for Yadkin County.

The Provider warrants that all materials it provides shall be of good quality and shall meet industry standards and the County's expectations and approval, and the Provider warrants that it shall perform all Services in a good and workmanlike manner, in accordance with industry standards and the County's expectations, and to the County's full satisfaction.

See "Exhibit A" attached hereto and incorporated as if fully setout herein. "Exhibit A" lists in detail the scope of services to be provided under this contract. Any changes to "Exhibit A" must be approved by the County Manager, in writing, prior to the service being provided.

2. **Term of the Agreement.** (Check the one provision that applies.)

- This Agreement shall end on _____, 20 ____.
- This Agreement shall continue until the Provider has completed the Services to the County's satisfaction.
- This Agreement shall continue until terminated in accordance with Section 8 of the Agreement.

3. Payment to the Provider.

The County shall pay the Provider \$ _____ every _____.

The County shall pay the Provider a total not to exceed the amount of \$ 2,435.00 for all Services performed under this Agreement. The Provider will invoice the County for Services as they are performed, but no more frequently than monthly.

In accordance with Item 3, Payment to the Provider, the County agrees to pay the Provider for Services satisfactorily performed in accordance with this Agreement. The County shall pay each properly submitted invoice within thirty (30) days of its submission. Each invoice shall document, to the County's satisfaction, the work performed and the basis for the amount of payment sought. If the Provider fails to perform in accordance with this Agreement, the County may, without penalty, withhold any payment(s) associated with Services not properly performed until and unless the Provider completes or corrects its performance, as applicable. The County's remedies under this Agreement are not exclusive and are in addition to all other rights and remedies provided by law.

4. E-Verify. North Carolina General Statutes prohibit counties from entering into contracts with contractors and subcontractors under the formal bid process and/or proposals who have not complied with the requirement of Article 2 of Chapter 64 of the NC General Statutes. Said Article 2 of Chapter 64 states *The prohibition applies to all contracts subject to G.S. 143-129, which are purchase contracts with an estimated cost of \$90,000 or more, and construction or repair contracts with an estimated cost of \$500,000 or more. GS 143-129 applies to virtually all public entities, including cities, counties, local school boards, water and sewer authorities, and other special purpose local government districts and authorities.* The Contractor must submit the E-Verify Affidavit with bid proposals and/or contracts as required by NC General Statutes.

5. Non-waiver. If the County at any time does not require the Provider to satisfy any of the Provider's obligations under this Agreement, or if the County fails at any time to exercise any right or privilege granted to it by this Agreement, that shall not waive or limit the County's ability to require the Provider to satisfy those obligations in the future or the County's ability to enforce its rights or privileges in the future. If the County waives any breach of this Agreement by the Provider that shall not be deemed a waiver of any later breach by the Provider, nor shall it be deemed a waiver of this section of the Agreement.

6. Independent Contractor. For purposes of this Agreement, the Provider at all times shall be considered an independent contractor, and the County shall not be deemed the employer of the Provider or of any of the Provider's agents or employees, nor shall the County be responsible for the actions or omissions of the Provider or its agents and employees. For purposes of this Agreement, the Provider and its agents and employees shall not be deemed an employee of the County for any purpose, including (by example only and not for purposes of limitation) federal or state income taxation, unemployment benefits, or worker's compensation benefits.

7. **Insurance.** During this Agreement's term, the Provider shall maintain at its sole expense all insurances as set out in this section. All insurance policies shall be issued by a company authorized to issue insurance in the State of North Carolina. Before beginning to perform under this Agreement, the Provider shall provide the County with a certificate of insurance showing that all insurance required by this Agreement is in effect, and the Provider shall keep that certificate current by submitting to the County updated certificates as the Provider's insurance policies are renewed or otherwise modified. The Provider shall notify the County immediately if any insurance required by this Agreement will be or has been cancelled or not renewed or if the amount of coverage of any such insurance will be or has been reduced.

The Provider shall maintain worker's compensation insurance as required by North Carolina law to cover all of the Provider's employees engaged in any work under the Agreement.

The Provider shall also maintain the following insurance to cover its performance under this Agreement during the Agreement's term:

- General commercial liability in the amount of \$1,000,000 per occurrence/\$2,000,000 aggregate.
- Workers' Compensation in the amount of \$500,000 employer's liability.
- Automobile liability covering all owned, hired, and non-owned vehicles used in connection with this Agreement. The minimum combined single limit shall be \$1,000,000 for bodily injury and property damage; and \$1,000,000 uninsured/underinsured motorist coverage.

8. **Indemnity.** The Provider agrees that it shall defend, indemnify, and hold harmless the County and its officials, employees, and agents from and against any and all losses, liabilities, claims, demands, suits, costs, damages, or expenses (including reasonable attorneys' fees) arising from or related to this Agreement and/or the Services, including (by example only and not for purposes of limitation) those for bodily injury, death, or property damage. The Provider's obligations under this section shall survive termination of this Agreement.

9. **Termination.** Notwithstanding any other provision of this Agreement, this Agreement may be terminated at any time by mutual written agreement of the County and the Provider, or it may be terminated by the County upon ten (10) days' written notice to the Provider. Ten days' written notice for termination by the County is not required if the County is terminating because the Provider has breached the Agreement.

10. **Entire Agreement.** This Agreement (including any attached Exhibits) constitute the complete and entire Agreement between the County and the Provider concerning the subject matter of the Agreement and supersedes any and all prior agreements, discussions, understandings, promises, or representations concerning that subject matter. This Agreement may be modified only by a writing signed by both the County and the Provider.

11. **Governing Law and Forum for Disputes.** This Agreement shall be governed by the laws of the State of North Carolina without regard to North Carolina's choice of law provisions. Any lawsuit or other legal proceeding concerning this Agreement and/or the Services must be filed in Yadkin County, North Carolina, unless it is properly filed in Federal Court, in which case it must be filed in the Federal District Court for the Middle District of North Carolina.

12. **Severance Clause.** If any part of this Agreement is deemed unenforceable by a court of competent jurisdiction, then that part shall be enforced to the greatest extent legally possible, and the rest of this Agreement will remain in full force and effect.

13. **Compliance With Laws.** The Provider acknowledges and agrees that it will perform all Services and will satisfy all of its obligations under this Agreement in full compliance with all applicable federal, state, and local laws and regulations.

14. **Repair of Damages.** The Provider shall promptly and fully repair any damages that it or its employees or agents cause to the County's property. Alternatively, the County may choose in its discretion to require the Provider to fully compensate the County for any such damages rather than have the Provider repair them.

15. **Titles and Headings.** Titles and headings used in this Agreement are for convenience only and do not limit or modify the language within each section of this Agreement.

16. **Non-Assignment.** The Provider may not assign its rights or obligations under this Agreement, nor may it sub-contract any part of this Agreement, without written approval from the County.

17. **Notices.** Any notice or communication to the County or the Provider for purposes of this Agreement shall be delivered or shall be deposited in the United States Mail, first class, addressed to the addressee below:

THE COUNTY

YADKIN COUNTY/DWAYNE STANLEY
PO BOX 220
YADKINVILLE NC 27055

THE PROVIDER

HOFFMAN AND HOFFMAN
3816 PATTERSON STREET
GREENSBORO NC 27407

18. **Number and gender.** This Agreement's use of singular, plural, masculine, feminine, and neuter pronouns shall include the others as the context may require.

19. Exhibits. To the extent of a conflict between the above language of this Agreement and any attachments, the above language of this Agreement will control.

IN WITNESS WHEREOF, the County and the Provider have caused this Agreement to be executed as of the Effective Date.

THE COUNTY

BY: 

Name: Lisa Hughes

Title: County Manager

THE PROVIDER: * HOFFMAN BUILDING TECHNOLOGIES

BY: 

Name: Jim Bingham

Title: EVP

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

Yadkin County Finance Officer

**Gary
Groce**


Digitally signed by Gary Groce
DN: cn=Gary Groce, o=Yadkin
County, ou=Finance,
email=GGroce@yadkincountync.
gov, c=US
Date: 2015.12.03 11:45:44 -05'00'

* Hoffman Building Technologies ("HBT"), a division of Hoffman & Hoffman, Inc., accepts this agreement only in accordance with, and conditioned upon, the HBT standard "Terms and Conditions" (attached), which are incorporated in this contract by reference. In the event the HBT Terms and Conditions conflict with the terms of this or any other contract documents, the HBT Terms and Conditions shall govern. Any terms that expand HBT's duties beyond its Terms and Conditions are rejected.

"Hoffman" shall mean Hoffman & Hoffman, Inc. and its divisions Hoffman Building Technologies and Hoffman Mechanical Solutions. "Customer" shall mean the owner, contractor, or other party entering into this agreement with Hoffman to purchase services and/or goods.

1. Controlling Terms & Conditions: This Agreement, upon Customer's acceptance, is made solely on the terms and conditions stated herein, despite any additional or conflicting terms and conditions which may be contained in any purchase order, contract document between Customer, an owner, or other contractor, or any other form of Customer, all of which additional or conflicting terms are hereby rejected by Hoffman. No waiver of, or modification to, these terms and conditions shall be valid unless made in writing and signed by an authorized representative of Hoffman. The terms of any written proposal made by Hoffman and these Terms and Conditions shall constitute the entire agreement of the parties.

2. Acceptance: Any Hoffman proposal / quote is submitted for acceptance within 30 days from the date of proposal. Prices of goods are firm after acceptance provided the Customer releases the order within 60 days of placing the order. Typographical and clerical errors in quotations, orders and acknowledgments are subject to correction. Customer is deemed to have accepted any Hoffman proposal when Customer either (a) receives and retains an acknowledgement from Hoffman without written objection for 10 days, (b) accepts delivery of all or any part of any goods ordered, (c) provides to Hoffman delivery / performance dates, shipping instructions, or other start-up instructions, (d) engages or directs Hoffman to begin performance of any services acquired, or (e) otherwise executes or assents to any Hoffman proposal or these terms and conditions.

3. Additional Services / Materials: As work progresses, there may be a need for additional services or goods, which could not be anticipated at the time this agreement was entered. Hoffman shall notify Customer of the description and price for such additional work or material, and if Customer authorizes Hoffman to proceed with the additional work or materials, the contract price shall be adjusted accordingly.

4. Terms of Payment: Payment is due net thirty (30) days from date of Hoffman's invoice to Customer. Interest at the rate of 1 1/2% per month (or the highest interest rate allowed by applicable law, if lower) may be charged after the 30-day period until payment is received. Customer shall pay all costs of collection incurred by Hoffman including, but not limited to, reasonable attorneys' fees, collection fees, and court costs. Hoffman may suspend all further services and transactions (regardless of their status) without liability if Customer's account is more than 30 days past due or if Customer's credit, in the sole judgment of Hoffman, is impaired at any time. Partial invoices may be submitted for any portion of completed work and/or delivered materials. While risk of loss passes to Customer, title to all goods (including any accessories and substitutions) shall remain with Hoffman until Hoffman receives full payment of amounts owed. Customer is responsible to pay in full for the services and/or goods provided by Hoffman regardless of whether such goods or services are funded for Customer pursuant to any extraneous contract and/or by an applicable project owner or contractor. Notwithstanding any Customer form or document to the contrary, Hoffman shall not release any rights to make a lien and/or bond claim or other claim for damages in connection with its work or anticipated work (including the sale of goods and/or services) until it has obtained payment in full for such work or damages.

5. Taxes / Shipments: Unless otherwise agreed by Hoffman in writing, Customer shall pay to Hoffman, in addition to the contract price, all sales, use, excise, privilege or other taxes imposed by any local, state or federal taxing authority payable by Hoffman in connection with the services or materials furnished hereunder. Any shipment of goods are at Customer's risk, f.o.b. factory or, if shipped from another location, f.o.b. point of shipment with charges either allowed, added to invoice, or collect as noted.

6. Warranties: Upon condition that Hoffman receives payment in full for all amounts it is owed, Hoffman (a) extends to Customer the manufacturer's warranty (a copy of which is available upon request) on any goods ordered in lieu of any warranties contained in any applicable project contracts, conditions, plans, or specifications, and (b) warrants that the labor it provides will be performed in a workmanlike manner in accordance with industry standards. No claim for defective workmanship under this warranty may be brought unless Customer provides Hoffman with written notice of such defect within ninety (90) days from the date such services are performed. Hoffman MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. Limitation of Remedy and Liability: HOFFMAN'S MAXIMUM LIABILITY BASED ON ANY CLAIM OR CAUSE OF ACTION SHALL NOT EXCEED THE PRICE ALLOCABLE IN THIS AGREEMENT TO ANY GOOD OR SERVICE FURNISHED, WHICH IS THE CAUSE OF ANY LOSS OR DAMAGE TO CUSTOMER. HOFFMAN SHALL HAVE NO LIABILITY TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFITS, OR LOSS OF USE OF ANY EQUIPMENT OR FACILITIES. Hoffman shall have no responsibility for misuse of any system or goods by the Customer or third-parties, for the negligence of Customer or third-parties, for the design of the system, or for obsolescence, failure of, or damage to, equipment caused by power interruptions, low voltage, burned out fuses, single phasing, phase reversal, low water pressure, vandalism or other deficiencies or causes beyond Hoffman's control. Buyer acknowledges that Hoffman is not responsible for the design of goods or services purchased and did not participate in any project planning or design in connection with such goods or services.

8. Indemnification / Insurance: To the fullest extent permitted by law and except as provided in this Paragraph, Customer shall indemnify, hold harmless and defend Hoffman and its directors, officers, employees and agents from and against all claims, demands, liabilities, suits, judgments, awards, or expenses of any kind (including reasonable attorneys' fees and costs incurred defending such claims or demands regardless of whether they result in legal action or are prosecuted to final judgment or award), which result from any alleged damage, loss of and/or injury to property or injury to and/or death of any person, arising from Customer's purchase or use of goods sold or services provided by Hoffman. Customer shall indemnify Hoffman against, without limitation, liability arising from any acts or omissions whether deemed negligent, accidental or intentional, which are caused, in part, by the active or passive negligence or other fault of Hoffman. To the fullest extent permitted by law, the obligations of defense and indemnification set forth herein shall be binding upon Customer no matter what the nature of the claim asserted may be (whether it be for negligence, warranty, strict liability, or otherwise) and shall be binding even if Hoffman is alleged or proven to have acted negligently; provided, however, that Customer shall have no obligation to provide indemnification to Hoffman if the claim asserted arises in negligence and is finally adjudicated to have arisen solely from the negligence of Hoffman. Customer shall also indemnify and hold harmless Hoffman from all liability for taxes owing in connection with its purchase of goods. The obligations and rights to indemnify herein shall not negate, abridge or reduce other such rights or obligations under law. Hoffman shall only be required to name Customer as an additional insured to the coverage types listed on Hoffman's standard Certificate of Insurance (attached as Exhibit A or available upon request).

9. Claims Resolution: All claims and disputes between Customer and Hoffman arising out of or relating to performance and/or breach of this agreement shall be decided by binding arbitration in accordance with the Construction Industry Arbitration rules of the American Arbitration Association (AAA) then existing. Notice of Demand for Arbitration shall be filed in writing by either party to this agreement with the other and with the regional office of the AAA in Charlotte, North Carolina. The procedural and substantive law of the State of North Carolina shall apply in and to all such arbitration proceedings and Greensboro, North Carolina shall be designated as the locale for any such proceedings. Both parties will have the right to conduct discovery in accordance with the Federal Rules of Civil Procedure and within reasonable time limitations to be imposed by the AAA or the arbitrators. Any award arising from such proceedings shall be final and binding upon the parties and enforceable in accordance with the Federal Arbitration Act.

10. Delays / Penalties: Hoffman shall not be liable for failure or delay in making delivery of goods or performing services hereunder when such failure or delay results from an act of God or the public enemy, accident, explosion, fire, storm, earthquake, flood, drought, perils of the sea, strikes, lock-outs, labor troubles, riots, sabotage, embargo, wars (whether or not declared and whether or not the United States is involved), federal, state or municipal law, ordinance, rule, or regulation, failure or delay of transportation, shortage of or inability to obtain supplies, equipment, fuel or labor or any other circumstances of a similar or different nature beyond the reasonable control of Hoffman. No penalty clause or liquidated damages of any kind (for delays or otherwise) apply to Hoffman unless pre-approved in writing by a Hoffman officer.

11. Customer Responsibility: Customer shall provide Hoffman's personnel with a safe work environment in which to perform their services under this agreement and provide Hoffman personnel with required utilities (water, electricity, compressed air, etc.) and reasonable access to Customer's facilities (elevators, receiving dock, etc.). Customer shall provide adequate service access space and shall remove any stock, fixtures, partitions, etc. necessary to perform the service. Customer shall promptly notify Hoffman of any unusual operating conditions.

12. Refrigerant: Customer shall be responsible for any expense in connection with the modification, removal, replacement or disposal of any refrigerant, as required by law.

13. For Periodic Maintenance Contracts ("PMC's) (Section 13 only applies to PMCs):

a. Price: Any PMC price may be adjusted by Hoffman at the end of each contract year upon at least 45 days prior written notice. The PMC price is also predicated on Hoffman providing service during regular working hours on regular working days unless otherwise specified in writing by Hoffman. If Customer requests that work be performed other than during such regular working hours or days, Customer shall pay Hoffman any additional charges that arise, including the costs of premium / overtime pay.

b. Termination: Unless otherwise required in writing by Hoffman, any PMC may be terminated by either party as of the beginning of the next contract year upon at least thirty (30) days' prior written notice to the other.

14. Termination: Hoffman may terminate any of its obligations under this agreement upon written notice to the Customer, if Customer fails to pay amounts owing to Hoffman when due. Either party may terminate this agreement upon material breach, if such breach is not cured within ten business days after receipt of written notice from the non-breaching party.

15. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

EXHIBIT A

TO AGREEMENT TO SERVICES

Below is a detailed listing of the scope of services to be provided under this contract. Any changes to "Exhibit A" must be approved by the County Manager, in writing, prior to the service being provided. (The detailed listing of the scope of services may also be described on one or more sheets attached hereto and incorporated herein, but each must be signed by the Provider and the County.)

HOFFMAN TO MEET WITH BRADY TRANE AND WORK ON CONTROLS FOR HUMIDIFIER TO THE OPERATING ROOM. NO CONTROL VOLTAGE TELLING THE HUMIDIFIER TO OPERATE.