

**BRUNSWICK COUNTY PUBLIC UTILITIES**  
OPERATIONS CENTER

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January 31, 2024

**Request for Qualification Statements  
Progressive Design-Build Services for  
Southeast Area Improvements - St. James Water Infrastructure Project**

Pursuant to N.C.G.S. 143-128.1A, 2 C.F.R. 200.320(b)(2), and S.L. 2021-189 enacted by the North Carolina General Assembly in December 2021, Brunswick County is inviting qualified Design-Builders to submit qualifications statements for the design and construction of essential water infrastructure enhancements in the Town of St. James area of Brunswick County as more fully set forth herein.

**Project Funding and Requirements**

Brunswick County and the Town of St. James have each received an allocation of funds from the Coronavirus State and Local Fiscal Recovery Funds (the “Fiscal Recovery Funds”) established pursuant to Sections 602 and 603 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021 (“ARPA”). This project is being jointly funded using Fiscal Recovery Funds from both Brunswick County and the Town of St. James.

In using such Fiscal Recovery Funds, the Town of St. James and Brunswick County must comply with the terms of ARPA, regulations issued by the U.S. Department of the Treasury (“Treasury”) governing the expenditure of monies distributed from the Fiscal Recovery Funds (including, without limitation, the Interim Final Rule (86 Fed. Reg. 26,786 (May 17, 2021) and Final Rule (87 Fed. Reg. 4,338 (January 27, 2022)), the Award Terms and Conditions applicable to the Fiscal Recovery Funds, and such other guidance as Treasury has issued or may issue governing the expenditure of monies distributed from the Fiscal Recovery Funds (collectively, the “Regulatory Requirements”); and

Pursuant to the Regulatory Requirements, the Town of St. James and Brunswick County must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, which includes, without limitation, applicable provisions described in Appendix II to 2 C.F.R. Part 200, each of which is contained in this Request for Qualifications or in the Progressive Design-Build Agreement in substantially the form attached hereto, and as may be amended from time to time as required by Treasury.

## **Background**

The County finalized a Preliminary Engineering Report (PER) that provides recommendations for addressing the project's objective of alleviating reduced pressure concerns in the Town of St. James and surrounding areas during peak demand periods. This project shall follow the recommendations in the PER, as the basis for this project. The recommendations include the design and construction of the following:

- St. James 211 Gap Water Line – Approximately 5,920 LF of 16-inch water main, beginning 6,800 feet east E.F. Middleton Boulevard and running to the east to a point approximately 600 feet west of St. James Drive.
- 16-inch Check Valve – Check valve vault, by-pass line and associated piping and valves. Insert into the existing 16-inch water line on E.F. Middleton Boulevard at its intersection with Highway 211.
- E.F. Middleton Boulevard Transmission Main Extension – Approximately 4,850 LF of 16-inch water line southward along E.F. Middleton Boulevard from Seafield Drive. Then, approximately 1900 LF of 12-inch (nominal I.D. via trenchless installation) water line eastward to Holly Harbor Drive.
- Design and Construction of Small Interconnections:
  - Somerdale Court to Oceanic Drive – approximately 275 l.f. of 4” water line
  - Worthington Place to Westland Lane – approximately 550 l.f. of 4” water line
  - Medina Court to Member’s Club Boulevard – approximately 350 l.f. of 4” water line

A more detailed Scope of Work is attached hereto. Any amendments to the Scope of Work will be made in the form of an addendum to this Request for Qualifications. Any addendum will be provided to all known interested design-builders and posted to the County website. Notwithstanding the foregoing, design-builders will be responsible for ensuring that they have all addenda. The County will not be responsible for notifying any parties. Design-Builders submitting qualification statements should use the attached Scope of Work as a guide but may recommend changes in the scope based upon their experiences on similar projects. The County will negotiate and refine the final Scope of Work with the selected Design-Builder.

The selected Design-Builder will form a team with Brunswick County and execute preliminary and final comprehensive agreements for design and construction of the Southeast Area Improvement Project for a total project cost not exceeding the approved budget amount. The Total Estimated Project Budget is \$3,830,000.00.

Design-Builders interested in being considered for this work should submit their qualifications to:

Post Office Delivery

Bob Tweedy  
Brunswick County Public Utilities  
P. O. Box 249  
Bolivia, NC 28422

Hand Delivery or Alternate Shipping Service

Bob Tweedy  
Utilities Operations Center  
250 Grey Water Road NE  
Supply, NC 28462

For consideration, five (5) hard copies and one (1) electronic copy on a USB drive of the response to this Request for Qualifications must be received by Bob Tweedy by close of business (4:30 p.m. ET) on **February 15, 2024**. Brunswick County will not be responsible for the failure of any mail or delivery service to deliver responses prior to the stated date and time. Regardless of the manner

of submission, any response received after the stated date and time will not be considered. Incomplete responses or responses inconsistent with the required format will be disqualified from consideration.

The Design-Builder is required to have insurance as outlined in the Minimum Insurance Requirements attached hereto as Attachment 1 and incorporated herein by reference. The Design-Builder will be required to provide a Certificate of Insurance with its response as evidence that it meets the minimum requirements.

The Design-Builder must also have an active registration in the federal System for Award Management (SAM.gov). The Design-Builder must provide proof of such registration with its response. In addition, the Design-Builder will be required to ensure that all members of the Design-Build team have active registrations in SAM.gov, if required by Treasury, and will provide proof of same to Brunswick County when requested.

The Design-Builder is also required to have proper license(s) under the laws of the State of North Carolina governing their respective trades. Proof of licensure will be required with the response.

All written questions or comments shall be submitted to [bob.tweedy@brunswickcountync.gov](mailto:bob.tweedy@brunswickcountync.gov) by close of business (4:30 p.m. ET) on **February 13, 2024**. A copy of all questions, further clarifications, and responses will be made in the form of an addendum to this Request for Qualifications and will be provided to all known interested Design-Builders. Any addendum will also be posted to the County website. Notwithstanding the foregoing, Design-Builders will be responsible for ensuring that they have all addenda. The County will not be responsible for notifying interested parties.

Sections shall be **divided by tabs** that indicate the title of each section. At a minimum, the qualifications statement should include the following information:

- 1) The company's full legal name, primary office location, office location of project personnel, years of experience, and a contact person.
- 2) List of all applicable NC Licenses for construction, engineering and/or other trade/professional pertinent to the project.
- 3) An explanation of the project team selection in accordance with N.C.G.S. 143-128.1A(b)(8).
- 4) Qualifications of the employees who will be assigned to the project: The project manager and other key team members should be clearly identified. If subcontractors are to be used for any portion of the work, they should be identified, and their qualifications included. County reserves the right to reject any subcontractor in its sole and absolute discretion.
  - a) The qualifications statement shall clearly indicate who will oversee the project as well as the roles that each individual shall perform.
  - b) Special emphasis shall be provided on the individuals' backgrounds, qualifications, certifications, and experience on related and or similar projects and experience of the team working together and experience of the team working together. .
  - c) Each design-builder must certify, in its response to this Request for Qualifications, that each design professional that is a member of the Design-Build team, including all

subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by N.C.G.S. 143-64.31.

- d) After the award of the contract, the Design-Builder may not substitute any key personnel without obtaining written approval from Brunswick County.
- 5) Experience on similar projects: The qualifications statement should include a description and contact person for at least three (3) projects that were similar in size and scope to this project.
  - a) For each project experience listed, list the role played by each of the proposed team members.
- 6) A project schedule including key milestones should be included. The project schedule should start from the Notice to Proceed and include two-week review times for County staff reviews. The anticipated project schedule is as below:

<b>Event</b>	<b>Deadline</b>
Advertise Design-Build RFQ (re-advertise)	<i>January 31, 2024</i>
Receive Statements of Qualifications (SOQ)	<i>February 15, 2024</i>
Design-Builder Selection and Notification (2 weeks from SOQ)	<i>February 29, 2024</i>
Execute Design-Build Agreement & Notice to Proceed (NTP) (up to 2 months from Selection – including BOC approval)	<i>April 1, 2024</i>
60% Design Complete with GMP (180 days from NTP)	<i>October 1, 2024</i>
Construction Complete (365 days from 60% design completion)	<i>October 1, 2025</i>

The County reserves the right to refine the Project schedule with the selected design-builder at any time after contract award.

- 7) A brief description of the project approach to be used by the Design-Builder should be included.
  - a) In the design-builder’s own words, 1) describe the understanding of the project, 2) the requirements of the project, 3) the challenges associated with the project, 4) the approach to handling the project challenges, and 5) the anticipated outcome of the project.
  - b) Describe the methodology & approach to design, permitting and construction services.
  - c) Type and Amount of self-performed work that is anticipated.
  - d) List all assumptions made in preparing the project approach.
  - e) Discuss any additions, deletions, or changes to the Scope of Work which may improve the project

In addition to the foregoing, the selected Design-Builder will be required to provide performance and payment bonds for 100% of the contract amount.

Brunswick County reserves the right to request financial information for any Design-Builder in order to support the viability of the Design-Builder.

The Design-Builder's final contract shall be based on a lump sum amount, inclusive of permit application fees and other expenses (printing, mileage, per diem, etc.). No additional compensation shall be made for reimbursable items.

### **Qualifications Selection Criteria**

Statements of Qualifications will be evaluated based on the following criteria:

#### **1) CRITERIA 1: General Information & Relevant Firm Experience**

##### **General Information**

- a) Description of firm/team
- b) Legal company organization; organization chart with names. The organizational chart shall also include major subcontractors.
- c) Identify the Project Manager for the Design Build firm who will be assigned to this project with explanation of the project team selection in accordance with N.C.G.S. 143-128.1A(b)(8).
- d) List of applicable North Carolina licenses for construction, engineering, or other trades/professions pertinent to the project requirements.

##### **Relevant Firm Experience**

- a) Applicant's, service capabilities and quality as it relates to this project.
- b) List and briefly describe at least three (3) comparable projects completed by your firm or currently in progress; include your firm's role, and discuss contract amendment history, if applicable. For each project, include contract value and construction value (original value plus contract amendments, if applicable), project owner, project location, contact name and title, address, current and accurate telephone number, fax number, and email address (if available).
- c) A minimum of three (3) referrals and references from other agencies and owners. If possible, references should be from the projects listed above.
- d) Type and amount of self-performed work that is anticipated.
- e) Experience with water related services with Brunswick County.

#### **2) CRITERIA 2: Team Experience and Qualifications**

- a) Describe each team member's position within the firm. Provide resumes of each proposed team member in the Appendix.
- b) Briefly describe each team member's role on this project.
- c) Provide "team" experience working together on similar projects.
- d) Explain your understanding of, and experience with, the Design-Build delivery method.
- e) Provide information regarding teaming history and working relationship between the Design-Build contractor and the Design-Build consulting engineering firm. A history of successful working relationship with the County will have an increased weighting in the evaluation.

#### **3) CRITERIA 3: Project Understanding and Approach**

- a) Describe your understanding of the project.
- b) Identify and discuss any potential problems during design and construction.
- c) Identify and discuss methods to mitigate those problems.
- d) Describe the work you anticipate self-performing, and the work you anticipate being performed by sub-consultants/subcontractors.

- e) Describe your planning, scheduling, estimating, and construction management tools.
- f) Describe your quality control plan during design and construction.

**4) CRITERIA 4: Other Factors**

- a) Describe approach to safety management. Provide current safety ratings, practices, and firm approach to safety. Note, proposers are directed not to submit full safety plans, however, the County may request a copy of safety plans if deemed necessary for the selection process or project implementation.
- b) Current workload and ability to proceed promptly.
- c) Willingness to abide by Brunswick County's and Treasury's standard forms and agreements and all Regulatory Requirements set forth herein or that Treasury or the Federal government may mandate in the future.
- d) Provide a statement of assurance that as the selected Design-Build firm, you will comply with the Brunswick County American Rescue Plan Act of 2021 Conflict of Interest Policy.
- e) Relevant factors impacting the quality and value of work.

**5) CRITERIA 5: Financial & Legal**

- a) The selected Design-Build firm will be required to provide a Performance and Payment Bond in the full amount of the contract within ten (10) days of receipt of "Notice of Award". For this submittal, the Design-Builder must affirm their adherence to this requirement.
- b) Provide a Certificate of Insurance as evidence that your firm meets the Minimum Insurance Requirements set forth herein.
- c) Provide evidence that your firm as an active SAM.gov registration.
- d) List and describe any litigation; arbitration; claims filed by your firm against any project owner as a result of a contract dispute; any claim filed against your firm; termination from a project.

**6) CRITERIA 6: Price**

This project will be funded, in whole or in part, with Federal grant funds, namely the Fiscal Recovery Funds more particularly set forth above. The total estimated project budget is \$3,830,000.00. In December 2021, the North Carolina General Assembly enacted S.L. 2021-189 to provide a temporary option for a unit of local government to utilize the Design-Build method of delivery for projects funded with Federal grant funds, including Fiscal Recovery Funds. Pursuant to such legislation, specifically Section 5.17, a unit of local government may consider price as one factor when issuing a request for qualifications for Design-Build services, which is typically prohibited. The unit of local government may instead utilize the "competitive proposals" method permitted in 2 C.F.R. 200.320(b)(2) and thus make a "best value" award for a Design-Build project.

In accordance with the foregoing, provide detailed project pricing, including, without limitation, unit prices, hourly rates, Design-Builder fees, design services fees, permit and/or application fees, printing, mileage, per diem, and a total anticipated project amount.

### **Qualifications Selection Criteria Weighting**

<b>Qualifications Selection Criteria</b>	<b>Max Points</b>
1. General Information & Relevant Firm Experience	20
2. Team Experience and Qualifications	25
3. Project Understanding and Approach	25
4. Other Factors	5
5. Financial & Legal	100
6. Price	25
<b>Total Points</b>	<b>200</b>

An evaluation panel will review and score all responses individually. The panel will then meet to discuss and compare their individual criteria weighting to rank respondents and determine the highest scoring firm based on the aforementioned criteria and weighting. Brunswick County will then commence negotiations with the highest scoring Design-Builder.

Brunswick County will not be responsible for any costs or expenses incurred by any Design-Builder in submitting a response. Brunswick County reserves the right to cancel the work described herein prior to the issuance and acceptance of any contractual agreement even if the Board of Commissioners has formally accepted the recommendation.

In addition to the terms and conditions contained in this Request for Qualifications, by submitting a response, if selected, the Design-Builder agrees to enter into and be bound by the provisions of a Progressive Design-Build Agreement in substantially the form attached hereto and incorporated herein by reference. To the extent that any of the terms of this Request for Qualifications and the terms of the Progressive Design-Build Agreement conflict, the terms of the Progressive Design-Build Agreement shall prevail. No work shall commence until an agreement has been fully executed by the parties.

### **Compliance with Federal Laws, Regulations, and Executive Orders**

Design-Builders submitting a qualification statement hereby acknowledge that Federal financial assistance will be used to fund all or a portion of this procurement. As such, Design-Builders shall comply with all applicable Federal laws, regulations, executive orders, Federal government policies, procedures, directives, and the terms and conditions of the funding award. Design-Builders further acknowledge that funding is contingent upon compliance with the foregoing.

### **Disclaimer of Federal Government Obligations or Liability**

Design-Builders submitting a qualifications statement, and any subcontractors, acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of a contract in connection with this Request for Qualifications, absent the express written consent by the Federal Government, the Federal Government is not a party to this procurement or any subsequent agreement and shall not be subject to any obligations or liabilities to the Design-Builders, or any other party pertaining to any matter resulting from the Request for Qualifications or subsequent agreement. It is further agreed that this clause shall be included in each subcontract and shall not be modified, except to identify the subcontractor who will be subject to its provision.

## **Federal Uniform Guidance**

As funding for this procurement is from a Federal source, the following provisions also apply (as applicable):

- Equal Employment Opportunity (41 C.F.R. Part 60)
- Davis-Bacon Act (40 U.S.C. 3141-3148)
- Copeland “Anti-Kickback” Act (40 U.S.C. 3145)
- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)
- Clean Air Act (42 U.S.C. 7401-7671q)
- Federal Water Pollution Control Act (33 U.S.C. 1251-1387)
- Debarment and Suspension (Executive Orders 12549 and 12689)
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
- Domestic Preference for Procurements (2 C.F.R. § 200.322)
- Procurement of Recovered Materials (2 C.F.R. § 200.323)
- Record Retention Requirements (2 C.F.R. § 200.334)
- Prohibition on Contracting for Covered Telecommunications Equipment or Services (2 C.F.R. § 200.216)
- Title VI of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975

## **Minority Business Enterprises**

If subcontracts are to be let, Design-Builders are required to take all “affirmative steps” identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women’s business enterprises, and labor surplus area Design-Builders are used when possible. Design-Builders shall: (1) place qualified small and minority businesses and women’s business enterprises on its solicitation lists; (2) assure that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources; (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises; (4) establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women’s business enterprises; (5) use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the North Carolina Office for Historically Underutilized Businesses.

For the purposes of this section, an entity shall qualify (1) as a “minority business” or “women’s business enterprise” if it is currently certified as a North Carolina “historically underutilized business” under Chapter 143, Section 128.4(a) of the North Carolina General Statutes, and (2) as a “small business” if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

## **Utilization of Small Business Concerns**

48 C.F.R. § 52.219-8 states:

- “(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for



subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran- owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

- (b) The firm hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The firm further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the firm's compliance with this clause.
- (c) *Definitions.* As used herein –

*HUBZone small business concern* means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

*Service-disabled veteran-owned small business concern* –

- (1) Means a small business concern –
- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
  - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

*Small business concern* means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

*Small disadvantaged business concern* means a small business concern that represents, as part of its offer that—

- (1)
- (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;
  - (ii) No material change in disadvantaged ownership and control has occurred since its certification;
  - (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

- (iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or
- (2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

*Veteran-owned small business concern* means a small business concern –

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

*Women-owned small business concern* means a small business concern –

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

(d)

- (1) Firms acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.
- (2) The firm shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include –
  - (i) HUBZone small business database search application Web page at [http://dsbs.sba.gov/dsbs/search/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm) or <http://www.sba.gov/hubzone>;
  - (ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or
  - (iii) The SBA HUBZone Help Desk at [hubzone@sba.gov](mailto:hubzone@sba.gov).”

### **Energy Conservation Requirements**

Pursuant to 42 U.S.C. 6321 et seq., Design-Builders agree to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### **American with Disabilities Act (ADA)**

Design-Builders agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; Section 504 of the

Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements of the federal government. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this proposal.

### **Privacy Act**

Design-Builders agree to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Design-builders agree to obtain the express consent of the federal government before the Design-Builders, or its employees operate a system of records on behalf of the federal government. Design-Builders understand that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

Design-Builders also agree to include these requirements in each subcontract to administer any system of records on behalf of the federal government financed, in whole or in part, with federal assistance.

### **Drug Free Workplace**

Design-Builders shall adhere to the Federal Drug Free Workplace requirements as outlined in 2 C.F.R. § 182. Design-Builders shall make good faith efforts to maintain a drug-free workplace, publish a workplace statement and establish drug-free awareness programs for employees. Design-Builders should take action concerning employees who are convicted of violating drug statutes in the workplace. Design-Builders shall contact Brunswick County if it cannot adhere to the requirements of the federal regulations noted above. Failure to comply with said provisions shall be considered a breach of contract.

### **Certification**

The Design-Builder submitting a qualifications statement hereby certifies that it has carefully examined this Request for Qualifications and all attachments hereto, that it understands and accepts all terms and conditions contained or referenced herein, and that it has knowledge and expertise to complete the project. By submitting a response, the Design-Builder certifies that its response is in all respects fair and without collusion or fraud.

If you have any questions, please call us at (910) 253-2994.

Sincerely,

Robert C. "Bob" Tweedy, PE  
Project Manager

# **SCOPE OF WORK**

## **Progressive Design-Build Services for Southeast Area Improvement - St. James Water Infrastructure Project**

### **Scope of Work**

The project's objective is to alleviate reduced pressure concerns in the Town of St. James and surrounding areas during peak demand periods. This project shall follow the recommendations in the PER, as the basis for this project. This project shall include design and construction of the following:

- St. James 211 Gap Water Line – Approximately 5,920 LF of 16-inch water main, beginning 6,800 feet east E.F. Middleton Boulevard and running to the east to a point approximately 600 feet west of St. James Drive.
- 16-inch Check Valve – Check valve, vault, by-pass line and associated piping and valves. Insert into existing 16-inch waterline on E.F. Middleton Boulevard at its intersection with Highway 211.
- E.F. Middleton Boulevard Transmission Main Extension – Approximately 4,850 LF of 16-inch waterline southward along E.F. Middleton Boulevard from Seafield Drive. Then approximately 1900 LF of 12-inch (nominal I.D. via trenchless installation) water line eastward to Holly Harbor Drive.
- Design and Construction of Small Interconnection:
  - Somerdale Court to Oceanic Drive – approximately 275 l.f. of 4" water line
  - Worthington Place to Westland Lane – approximately 550 l.f. of 4" water line
  - Medina Court to Member's Club Blvd. – approximately 350 l.f. of 4" water line

It is the selected Design-Builder's responsibility to provide resources needed to carry out the project to its completion, which may include, but not be limited to:

#### 1. SURVEY

The Design-Builder shall provide base mapping of the routes inclusive of all aboveground and underground features. All aboveground features shall be surveyed, including breaks in elevation (centerline and top of ditch, etc.). An adequate number of elevation points shall be surveyed to develop contours of the area. The Design-Builder shall clearly indicate all utilities, indicating size, type, and owner information. Survey data shall be supplemented by existing maps, as-builts, and utility locates. As appropriate, base mapping will indicate both edges of pavement and existing utilities on both sides of the roadway. Additionally, edges of wetlands, geotechnical boring sites, and Subsurface Utility Engineering Quality Level A locates (potholing) shall be surveyed and clearly shown on the base mapping. Adjacent properties shall be identified by the owner and parcel ID number.

#### 2. WETLANDS DELINEATION

The Design-Builder shall perform wetlands delineation sufficient for receipt of all Army Corps and DEQ permitting. Wetland areas that are sufficiently dry shall be evaluated for pipe installation using open trench techniques.

3. GEOTECHNICAL INVESTIGATION

The Design-Builder shall perform geotechnical evaluation at any likely directional drill locations. And if determined prudent, provide geotechnical evaluations at bore and jack locations and for structures having significant foundations or significant embedment into the existing ground. Geotechnical borings shall be advanced to refusal or 5' below the maximum depth of the directional drill, whichever is encountered first. Geotechnical recommendations and soil boring logs shall be incorporated into the contract documents. No additional compensation will be provided for geotechnical borings.

4. PRELIMINARY DESIGN

The Design-Builder shall prepare design drawings, details, and technical specifications adequate to apply for and receive all necessary permits and encroachments. The Design-Builder will provide resources needed to provide any additional design information (i.e. testing, site visits, analyses, etc.). Brunswick County desires to work with the Design-Builder to develop and refine a project scope that incorporates creativity and innovation relative to costs, schedule, and reliability.

5. PERMITTING

Upon approval of the Preliminary Drawings, the Design-Builder shall prepare and submit permits and permit fees to regulatory agencies. At a minimum, these shall include:

- NCDOT Encroachment Agreements
- US Army Corps Permits and/or Notifications (401/404 Permits)
- NCDEQ Division of Water Quality Wetlands Permits
- NCDEQ Division of Land Resources Erosion and Sediment Control Permit
- NCDEQ Division of Water Quality Stormwater Permit
- Brunswick County Stormwater Permit
- Brunswick County Zoning and Planning Approval inclusive of all required Departmental Approvals (Engineering, Fire Marshal, etc.)
- Other Permits as required by all Federal, State and Local authorities

The Design-Builder shall perform field work, furnish plans and specifications, document preparation, regulatory meetings, responses, evaluate alternatives, and provide recommendations concerning wetland permitting.

6. DETAILED DESIGN

The Design-Builder shall provide the resources and expertise to complete the design of a reliable water transmission and distribution system that satisfies the stated scope of work. This system will be designed in accordance with Brunswick County design standards, and to meet or surpass all regulatory requirements, operational standards, and maintenance goals set for the project.

7. EASEMENT MAPS

Upon receipt of the NCDOT Encroachment Agreement or notice by County, the Design-Builder shall prepare easement maps. Mapping shall comply with the

requirements of the local zoning officer and the Brunswick County Planning Department. Design-Builder shall obtain all signatures from Zoning Compliance Officers and Planning Department personnel necessary for recording of the maps. The Design-Builder shall also help identify and provide maps as necessary to secure permanent access to the proposed lines.

8. CONSTRUCTION SERVICES

Design-Builder shall provide sufficient construction expertise, management, and resources to complete the project safely, on schedule, and within budget. This shall include scheduling of inspections with the County Inspector, providing necessary documentation and certification based on the construction phase, and conducting on-site construction meetings and walkthroughs. No section of the newly constructed water line shall be placed into service until it has been certified by the design engineer and approved by Public Water Supply Section (PWSS.)

9. POST-CONSTRUCTION PHASE

Following the completion of construction, the Design-Builder shall effectively carry out the terms and associated activities of any warranty. The Design-Builder holds the responsibility for performing on-site inspections post construction to identify any observable defects in the project, facilitate dialogues with the County, and rectify or substitute faulty work as deemed necessary.

10. PROJECT MANAGEMENT AND ADMINISTRATION

The Design-Builder shall provide the resources and expertise necessary to administer and manage the project to its completion. This includes, but is not limited to, Risk Management, Quality Control, Document Control, Authority Approvals and Compliance, Value Engineering, and Stakeholder Engagement and Communication.

11. FUNDING COMPLIANCE

The Design-Builder will strictly adhere to all Regulatory Requirements set forth herein, as may be amended or supplemented from time to time by the Federal government, including Treasury. The foregoing may include, without limitation, review and/or completion of documentation to ensure ongoing compliance with the Regulatory Requirements.



## ATTACHMENT 1

### **BRUNSWICK COUNTY MINIMUM INSURANCE COVERAGE REQUIREMENTS**

At Design-Builder's expense, Design-Builder shall procure and maintain the following recommended lines of insurance according to the scope of work. The County may choose to elect higher or lower coverages according to the work performed. Design-Builders must be insured by a licensed agent in North Carolina and rated A-VII or better by A.M. Best.

**A. COMMERCIAL GENERAL LIABILITY**

Covering all operations involved in this Agreement.

\$2,000,000 General Aggregate

\$2,000,000 Products/Completed Operations Aggregate

\$1,000,000 Each Occurrence

\$1,000,000 Personal and Advertising Injury Limit

\$ 5,000 Medical Expense Limit

**B. WORKERS' COMPENSATION**

Statutory limits covering all employees, including Employer's Liability with limits of:

\$500,000 Each Accident

\$500,000 Disease - Each Employee

\$500,000 Disease - Policy Limit

**C. COMMERCIAL AUTOMOBILE LIABILITY**

\$1,000,000 Combined Single Limit – Any Auto

**D. PROFESSIONAL LIABILITY**

\$1,000,000 Per Occurrence

**E. POLLUTION LIABILITY INSURANCE**

\$1,000,000 Per Occurrence

When a Design-Builder is required to bind pollution/environmental coverage, the Design-Builder must provide evidence of continuation or renewal of liability insurance for a period of three (3) years following termination of the agreement.

### **ADDITIONAL INSURANCE AND INDEMNIFICATION REQUIREMENTS**

- A. Design-Builder agrees to defend, indemnify, and hold harmless Brunswick County, its officers, employees, and agents from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Design-Builder, its employees or agents. Design-Builder further agrees to investigate, handle, respond to, defend and dispose of same at its sole expense and agrees to bear all other costs and expenses related thereto.

The Design-Builder's General Liability policy shall be endorsed, specifically or generally, to include the following as Additional Insured:

BRUNSWICK COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS ADDITIONAL INSURED UNDER DESIGN-BUILDER'S GENERAL LIABILITY INSURANCE.

- B. Before commencement of any work or event, the Design-Builder shall provide a Certificate of Insurance in satisfactory form as evidence of the insurances required above.
- C. Design-Builder shall have no right of recovery or subrogation against Brunswick County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.
- D. Brunswick County shall have no liability with respect to Design-Builder's personal property whether insured or not insured. Any deductible or self-insured retention is the sole responsibility of Design-Builder.
- E. All certificates of insurance must provide that the policy or policies shall not be changed or cancelled without at least thirty (30) days prior written notice.
- F. The Certificate of Insurance should note in the Description of Operations the following:  
Department: Utilities  
Contract: # \_\_\_\_\_
- G. Insurance procured by Design-Builder shall not reduce nor limit Design-Builder's contractual obligation to indemnify, hold harmless and defend Brunswick County for claims made or suits brought which result from or are in connection with the performance of this Agreement.
- H. In the event Design-Builder receives Notice of Cancellation of Insurance required pursuant to this Agreement, Design-Builder shall immediately cease performance of all services and shall provide Notice to Brunswick County's Legal/Risk Management personnel within twenty-four (24) hours.
- I. Certificate Holder shall be listed as follows:  
ATTENTION:  
Brunswick County Risk Manager  
30 Government Center Dr. NE  
P.O. Box 249  
Bolivia, NC 28422
- J. If Design-Builder is authorized to assign or subcontract any of its rights or duties hereunder and in fact does so, Design-Builder shall ensure that the assignee or subcontractor satisfies all requirements of this Agreement, including, but not limited to, maintenance of the required insurances coverage and provision of certificate(s) of insurance and additional insured endorsement(s), in proper form prior to commencement of services.



**STATE OF NORTH CAROLINA**  
**COUNTY OF BRUNSWICK**

**PROGRESSIVE DESIGN-BUILD AGREEMENT**  
**(ARPA FUNDING)**

**THIS PROGRESSIVE DESIGN-BUILD AGREEMENT** (the “Agreement” or “Contract”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_, by and between the following parties, for services in connection with the Project identified below:

**OWNER:**

Brunswick County, a body politic and corporate of the State of North Carolina  
30 Government Center Drive NE  
P. O. Box 249  
Bolivia, NC 28422

**DESIGN-BUILDER:**

*(Name and address)*

**PROJECT:**

*(Include Project name and location as it will appear in the Contract Documents)*

**FUNDING NOTICE AND REQUIREMENTS:**

Owner has received an allocation of funds from the Coronavirus State and Local Fiscal Recovery Funds (the “Fiscal Recovery Funds”) established pursuant to Sections 602 and 603 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021 (“ARPA”). This Agreement is being funded, in whole or in part, using Fiscal Recovery Funds.

In using such Fiscal Recovery Funds, Owner must comply with the terms of ARPA, regulations issued by the U.S. Department of the Treasury (“Treasury”) governing the expenditure of monies distributed from the Fiscal Recovery Funds (including, without limitation, the Interim Final Rule (86 Fed. Reg. 26,786 (May 17, 2021) and Final Rule (87 Fed. Reg. 4,338 (January 27, 2022))), the Award Terms and Conditions applicable to the Fiscal Recovery Funds, and such other guidance as Treasury has issued or may issue governing the expenditure of monies distributed from the Fiscal Recovery Funds (collectively, the “Regulatory Requirements”).

Pursuant to the Regulatory Requirements, Owner must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, which includes, without limitation, applicable provisions described in Appendix II to 2 C.F.R. Part 200.

Further, pursuant to 2 C.F.R. § 200.327, Owner must include within this Agreement applicable provisions described in Appendix II to 2 C.F.R. Part 200, each of which is contained herein, and Design-Builder must agree to adhere to each term and condition contained herein. Owner's distribution of funds to Design-Builder under this Agreement is contingent upon such adherence.

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

This Agreement shall be subject to and further governed by the applicable provisions of the Standard Form of General Conditions of Contract Between Owner and Design-Builder (DBIA Contract Document #535), as may be amended herein, which are incorporated by reference and as more fully set forth in Article 2 below, and any Supplementary General Conditions of Contract, as applicable, which shall be attached hereto as Exhibit D and incorporated herein by reference. In the event any provision between or among this Agreement conflicts with the provisions of the General Conditions of Contract and/or the Supplementary General Conditions of Contract, the order of precedence set forth in Article 2 below shall apply. Any capitalized terms not defined herein shall have the meanings ascribed to them in the General Conditions of Contract or Supplementary General Conditions of Contract.

## **Article 1**

### **Design-Builder's Services and Responsibilities**

#### **1.1 General Services.**

1.1.1 Owner shall provide Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project as set forth in Exhibit A. Owner's Project Criteria shall include Owner's use, space, price, time, site, performance and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications and other technical materials and requirements prepared by or for Owner.

1.1.2 If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner's Project Criteria. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.

#### **1.2 Phased Services.**

1.2.1 Phase 1 Services. Design-Builder shall perform the services of design, pricing and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 1.1 hereof, as set forth in Exhibit B, Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder

and Owner to establish the Contract Price for Phase 2, as set forth in Section 1.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an “open-book” basis. Design-Builder’s Compensation for Phase 1 Services is set forth in Section 6.0 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Scope of Services (either as a percentage of design completion or by defined deliverables).

1.2.2 Phase 2 Services. Design-Builder’s Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing and commissioning of the Project, and the provision of warranty services, all as further described in the Contract Price Amendment. Upon receipt of Design-Builder’s proposed Contract Price for Phase 2, Owner may proceed as set forth in Article 1.3.

1.3 Proposal. Upon completion of the Phase 1 Services and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the “Proposal”) for the completion of the design and construction for the Project for the Contract Price, which may be based on Lump Sum.

1.3.1 The Proposal shall include the following unless the parties mutually agree otherwise:

1.3.1.1 The Contract Price that shall be based on a Lump Sum inclusive of Cost of the Work as defined in Section 6.5.

1.3.1.2 The Basis of Design Documents, which may include, by way of example, Owner’s Project Criteria, which are set forth in detail and are attached to the Proposal;

1.3.1.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

1.3.1.4 The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

1.3.1.5 INTENTIONALLY DELETED;

1.3.1.6 If applicable, a schedule of alternate prices;

1.3.1.7 If applicable, a schedule of unit prices;

1.3.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the Proposal, and which, if performed, shall be the basis for an increase in the Contract Price and/or Contract Time(s);

- 1.3.1.9 If applicable, a Savings provision;
- 1.3.1.10 If applicable, Performance Incentives;
- 1.3.1.11 The time limit for acceptance of the Proposal; and
- 1.3.1.12 An Owner's permit list, a list detailing the permits and governmental approvals that Owner will bear responsibility to obtain.

1.3.2 Review and Adjustment to Proposal.

1.3.2.1 After submission of the Proposal, Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Proposal.

1.3.2.2 Acceptance of Proposal. If Owner accepts the Proposal, the Contract Price and its basis shall be set forth in an amendment to this Agreement, when mutually agreed between the parties (Contract Price Amendment). Once the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services, all as further described in the Contract Price Amendment, as it may be revised.

1.3.2.3 Failure to Accept the Proposal. If Owner rejects the Proposal, or fails to notify Design-Builder in writing on or before the date specified in the Proposal that it accepts the Proposal, the Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

- i Owner may suggest modifications to the Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 1.3.2.2 above; or
- ii Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or
- iii Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (a) continue with the Work as if Owner had elected to proceed in accordance with Section 1.3.2.3 ii. above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work; (b) suspend performance of Work in

accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof; or (c) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 1.3.2.3 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed. If Owner terminates the relationship with Design-Builder under Section 1.3.2.3iii, or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further liability or obligations to Owner under this Agreement.

## **Article 2**

### **Contract Documents**

2.1 The Contract Documents include, by order of precedence:

2.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Agreement Between Owner and Design-Builder* (2022 Edition) ("General Conditions of Contract");

2.1.2 The Contract Price Amendment referenced in Section 1.3.2.2 herein or the Proposal accepted by Owner in accordance with Section 1.3 herein;

2.1.3 This Agreement, including all exhibits (list for example, performance standard requirements, performance incentive arrangements, markup exhibits, unit prices or exhibit detailing offsite reimbursable personnel) but excluding, if applicable, the Contract Price Amendment;

2.1.4 Supplementary General Conditions of Contract;

2.1.5 The General Conditions of Contract, as amended herein;

2.1.6 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;

2.1.7 Exhibit B, Scope of Services; and

2.1.8 The following other documents, if any:  
*(List all additional documents or N/A)*

## **Article 3**

### **Interpretation and Intent**

3.1 Design-Builder and Owner, at the time of acceptance of the Proposal by Owner in accordance with Section 1.3 hereof, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities.

Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or if applicable, prior to Owner's acceptance of the Proposal.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts or ambiguities between or among the Contract Documents are discovered after Owner's acceptance of the Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. (Note, the parties are strongly encouraged to establish in the Contract Price Amendment or Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications; and (b) Design-Builder shall be entitled to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## **Article 4**

### **Ownership of Work Product**

4.1 All work product created by Provider pursuant to this Agreement, including, without limitation, design drawings, construction documents, photographs and models and any derivative works and compilations, and whether or not such work product is considered a "work made for hire" or an employment to invent (hereinafter referred to collectively as "Work Product") shall be the exclusive property of County. County and Provider agree that such original works of authorship are "works made for hire" of which County is the author within the meaning of the United States Copyright Act. To the extent that County is not the owner of the intellectual property rights in and to such Work Product, Provider hereby irrevocably assigns to County any and all of its rights, title and interest in and to all original Work Product created pursuant to this Agreement, whether arising from copyright, patent, trademark, trade secret or any other state or federal intellectual property law or doctrine. Upon County's request, Provider shall execute such further documents and instruments or obtain such documents from third parties, including consultants and subcontractors, if applicable, necessary to fully vest such rights in County. Provider forever waives any and all

rights relating to original Work Product created pursuant to this Agreement, including without limitation, any and all rights arising under 17 U.S.C. § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

4.2 In the event the use of any of Provider’s intellectual property, including any derivative work created with the use of third-party intellectual property, is necessary for the use of any Work Product, Provider hereby grants to County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the intellectual property for the purposes set forth in this Agreement and will ensure that any third-party grants the same.

4.3 County may use Work Product for any other purpose and on any other project without additional compensation to Provider. Notwithstanding the foregoing, the use of Work Product by County for any purpose other than as set forth in this Agreement shall be at County’s risk.

## **Article 5**

### **Contract Time**

5.1 Date of Commencement. The Phase 1 Services shall commence within five (5) days of Design-Builder’s receipt of Owner’s Notice to Proceed unless the parties mutually agree otherwise in writing. The Work shall commence within five (5) days of Design-Builder’s receipt of Owner’s Notice to Proceed for Phase 2 Services (“Date of Commencement”) if the Proposal is accepted and the Contract Price Amendment is amended to this Agreement unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than \_\_\_\_\_ (\_\_\_\_\_) calendar days after the Date of Commencement (“Scheduled Substantial Completion Date”).

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows: (Insert any interim milestones (“Scheduled Interim Milestone Dates”) for portions of the Work with different scheduled dates for Substantial Completion.)

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.8 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (“Contract Time(s)”) shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by (\_\_\_\_\_) days after the Scheduled Substantial Completion Date (the “LD Date”), Design-Builder shall pay Owner \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

Design-Builder understands that if Final Completion is not achieved within \_\_\_\_ days of Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within \_\_\_\_\_ (\_\_\_\_) days of Substantial Completion, Design-Builder shall pay to Owner \_\_\_\_\_ Dollars (\$\_\_\_\_\_), as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any) or Final Completion.

5.6 Owner’s Review Time. The parties have established the following maximum and minimum amount of time for Owner to review Design Submissions and the Project Schedule or any updates thereto unless the parties agree in writing otherwise.

5.6.1 Owner shall have a minimum of fourteen (14) days of receipt by Owner to review all Design Submissions, the Project Schedule, and any updates thereto.

5.6.2 Owner shall review and (if applicable) provide a response to Design-Builder on all Design Submissions, the Project Schedule and any updates thereto within fourteen (14) days of receipt by Owner.

## **Article 6**

### **Contract Price**

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the Phase 1 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.2 For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price (“Contract Price”) equal to the Lump Sum in the Contract Price Amendment.



6.1.3 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: *(This is an optional section intended to provide the parties with flexibility to identify and price limited services.)*

6.2 Lump Sum. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (“Contract Price”) for the Work for Phase 2 Services, as negotiated pursuant to Section 1.3, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.3 INTENTIONALLY DELETED.

6.4 INTENTIONALLY DELETED.

6.5 Cost of the Work.

6.5.1 The term Cost of the Work shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include the following:

6.5.1.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner’s agreement, at locations off the Site, provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

6.5.1.2 Wages or salaries of Design-Builder’s supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

6.5.1.3 Wages or salaries of Design-Builder’s personnel stationed at Design-Builder’s principal or branch offices, but only to the extent said personnel are identified in Exhibit \_\_\_ and performing the function set forth in said Exhibit.

Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.5.1.1 through 6.5.1.3 hereof.

6.5.1.4 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder’s personnel necessarily and directly incurred in connection with the performance of the Work.

6.5.1.5 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

6.5.1.6 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

6.5.1.7 Costs, including transportation, inspection, testing, storage and handling of materials, equipment and supplies incorporated or reasonably used in completing the Work.

6.5.1.8 Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

6.5.1.9 Costs of removal of debris and waste from the Site.

6.5.1.10 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

6.5.1.11 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

6.5.1.12 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

6.5.1.13 All fuel and utility costs incurred in the performance of the Work.

6.5.1.14 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

6.5.1.15 Legal costs, court costs and costs of mediation reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.

6.5.1.16 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

6.5.1.17 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

6.5.1.18 Deposits which are lost, except to the extent caused by Design-Builder's negligence.

6.5.1.19 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

6.5.1.20 Accounting and data processing costs related to the Work.

6.5.1.21 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

6.6 INTENTIONALLY DELETED.

6.7 INTENTIONALLY DELETED.

## **Article 7**

### **Procedure for Payment**

7.1 Payment for Preliminary Services. Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder: *(Insert terms.)*

7.2 Contract Price Progress Payments.

7.2.1 Design-Builder shall submit to Owner on the 1st day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.2.2 Owner shall make payment within thirty (30) after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2.3 If Design-Builder's Fee under Section 6.4 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.3 Retainage on Progress Payments.

7.3.1 Owner will retain five percent (5%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Work completed early in the Project.

7.3.2 Within thirty (30) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.4 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.5 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of one percent (1%) per month, or the maximum amount permitted by law, whichever is less, until paid.

7.6 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. Any lump sum agreed to by Owner and Design-Builder as part of this Agreement is not subject to audit.

## **Article 8**

### **Termination for Convenience**

8.1 If Design-Builder is terminated for convenience pursuant to Section 11.6 of the General Conditions, Owner shall pay Design-Builder the amounts set forth in Section 11.6.1 of the General Conditions.

*[The following Article 9 should only be used if Owner and Design-Builder agree to establish their respective representatives at the time the Agreement is executed rather than during the performance of the Project.]*

## **Article 9**

### **Representatives of the Parties**

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers.)*

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers.)*

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers.)*

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers.)*

## **Article 10**

### **Bonds and Insurance**

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security prior to Phase 2:

A Performance Bond is required.

A Payment Bond is required.

Other Performance Security.

*[Check one box only. If no box is checked, then no other performance security is required. If the “Required” box is checked, identify below the specific performance security that is being required and all salient commercial terms associated with that security.]*

Required

Not Required

## **Article 11**

### **Federal Funding Compliance**

11.1 Definitions. Capitalized terms used in this Article 11 shall have the meanings ascribed to them below:

11.1.1 “Administering Agency” shall have the meaning specified in 41 C.F.R. § 60-1.3.

11.1.2 “Applicant” shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: (“An applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an Administering Agency. The term also includes such persons after they become recipients of such Federal assistance.”).

11.1.3 “Backhaul” shall mean intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

11.1.4 “Construction Work” shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: (“[T]he construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.”).

11.1.5 “Covered Foreign Country” shall mean the People’s Republic of China.

11.1.6 “Covered Telecommunications Equipment or Services” shall mean (a) telecommunications equipment produced by Huawei Technologies Company or ZTE

Corporation (or any subsidiary or affiliate of such entities); (b) for the purpose of public safety, security of Federal Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (c) telecommunications or video surveillance services provided by such entities or using such equipment; or (d) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a Covered Foreign Country.

11.1.7 “Critical Technology” shall mean (1) defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations; (2) items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations and controlled (a) pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology, or (b) for reasons relating to regional stability or surreptitious listening; (3) specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities); (4) nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material); (5) select agents and toxins covered by part 331 of title 7, Code of Federal Regulations; part 121 of title 9 of such Code; or part 73 of title 42 of such Code; or (6) emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. § 4817).

11.1.8 “Federally Assisted Construction Contract” shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: (“[A]ny agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the government of the United States of America for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.”).

11.1.9 “Interconnection Arrangements” shall mean arrangements governing the physical connection of two or more networks to allow the use of another’s network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

11.1.10 “Laborer” or “Mechanic” shall have the meaning specified in 29 C.F.R. § 5.2(m), which is provided here for ease of reference: (“The term *laborer* or *mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer* or *mechanic* includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of [Title 40 of the United States Code] are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of [Title 40 of the United States Code], are laborers and mechanics for the time so spent.”).

11.1.11 “Roaming” shall mean cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

11.1.12 “Subcontract” shall mean any agreement entered into by a Subcontractor to furnish supplies or services for the performance of this Agreement or a Subcontract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders.

11.1.13 “Subcontractor” shall mean an entity that receives a Subcontract.

11.1.14 “Substantial or Essential Component” shall mean any component necessary for the proper function or performance of a piece of equipment, system, or service.

11.1.15 “Telecommunications Equipment or Services” shall mean telecommunications or video surveillance equipment or services, such as, but not limited to, mobile phones, land lines, internet, video surveillance, and cloud services.

11.1.16 “Tier” shall have the meaning indicated in 2 C.F.R. Part 180 and illustrated in 2 C.F.R. Part 180, Appendix II.

11.2 Compliance with Federal Laws, Regulations, and Executive Orders. This is an acknowledgment that Federal financial assistance may be used to fund all or a portion of the Agreement. Design-Builder will comply with all applicable federal laws, regulations, executive orders, policies, procedures, and directives.

11.3 Term of Agreement; Period of Performance. Pursuant to Sections 602(c)(1) and 603(c)(1) of ARPA, all Fiscal Recovery Funds must be obligated or costs incurred for the use of such funds between March 3, 2021, and December 31, 2024, and all Fiscal Recovery Funds must be fully expended by December 31, 2026 (hereinafter referred to as the “Period of Performance”). A cost shall be considered to have been incurred if a contract, agreement, or obligation with respect to such cost has been entered into by December 31, 2024. In accordance with the foregoing, in no event may the term of this Agreement or the Project Time(s) extend beyond the expiration of the Period of Performance.



#### 11.4 Byrd Anti-Lobbying Amendment.

11.4.1 Design-Builder certifies to Owner, and Design-Builder shall cause each Tier below it to certify to the Tier directly above such Tier, that it has not used and will not use Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Design-Builder shall, and shall cause each Tier below it, to disclose any lobbying with non-Federally appropriated funds that takes place in connection with obtaining any Federal award. Such disclosures (to be set forth on Standard Form-LLL, contained in 31 C.F.R. Part 21, Appendix B) shall be forwarded from Tier to Tier up to Owner, which will, in turn, forward the certification(s) to Treasury. Design-Builder shall cause the language of this Section 11.4 to be included in all Subcontracts. This certification is a material representation of fact upon which Owner has relied when entering into this Agreement, and all liability arising from an erroneous representation shall be borne solely by Design-Builder.

11.4.2 Design-Builder also must file the required certification with Owner.

11.4.3 Design-Builder also shall cause any Subcontractor with a Subcontract (at any Tier) exceeding \$100,000 to file with the Tier above it the required certification.

#### 11.5 Procurement of Recovered Materials.

11.5.1 The provisions of this Section shall apply if: (1) this Agreement involves the purchase of an item designated by the Environmental Protection Agency (“EPA”) in 40 C.F.R. Part 247 that exceeds \$10,000, or (2) the total value of such designated items acquired during Owner’s preceding fiscal year exceeded \$10,000.

11.5.2 In the performance of this Agreement, Design-Builder shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –

11.5.2.1 Competitively within a timeframe providing for compliance with the Agreement performance schedule;

11.5.2.2 Meeting Agreement performance requirements; or

11.5.2.3 At a reasonable price.

11.5.3 Information about this requirement, along with the list of EPA-designated items, is available on EPA’s website.

11.5.4 Design-Builder also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

11.6 Prohibition on Contracting for Covered Telecommunications Equipment or Services.

11.6.1 *Prohibitions.*

11.6.1.1 Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

11.6.1.2 Unless an exception in Section 11.6.2 applies, Design-Builder and its Subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds (including, without limitation, Fiscal Recovery Funds) received from a Federal government to:

11.6.1.2.1 Procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system, or as Critical Technology of any system;

11.6.1.2.2 Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system, or as Critical Technology of any system;

11.6.1.2.3 Enter into, extend, or renew contracts with entities that use Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system, or as Critical Technology as part of any system; or

11.6.1.2.4 Provide, as part of its performance of this Agreement, Subcontract, or other contractual instrument, any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system, or as Critical Technology as part of any system.

11.6.2 *Exceptions.*

11.6.2.1 This clause does not prohibit Design-Builder from providing:

11.6.2.1.1 A service that connects to the facilities of a third-party, such as Backhaul, Roaming, or Interconnection Arrangements; or

11.6.2.1.2 Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

11.6.2.2 By necessary implication and regulation, the prohibitions also do not apply to:

11.6.2.2.1 Covered Telecommunications Equipment or Services that:

- i Are *not used* as a Substantial or Essential Component of any system;  
*and*
- ii Are *not used* as Critical Technology of any system.

11.6.2.3 Other telecommunications equipment or services that are not considered Covered Telecommunications Equipment or Services.

### 11.6.3 *Reporting Requirement.*

11.6.3.1 In the event Design-Builder identifies Covered Telecommunications Equipment or Services used as a Substantial or Essential Component of any system, or as Critical Technology as part of any system, during its performance under this Agreement, or Design-Builder is notified of such by a Subcontractor at any Tier or by any other source, Design-Builder shall report the information to Owner, unless procedures for reporting the information are established elsewhere in this Agreement.

11.6.3.2 Design-Builder shall report the following information:

11.6.3.2.1 Within one (1) business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

11.6.3.2.2 Within ten (10) business days of submitting the information: Any further available information about mitigation actions undertaken or recommended. In addition, Design-Builder shall describe the efforts it undertook to prevent use or submission of Covered Telecommunications Equipment or Services, and any additional efforts that will be incorporated to prevent future use or submission of Covered Telecommunications Equipment or Services.

11.6.4 *Subcontracts.* Design-Builder shall insert the substance of this Section 11.6, including this clause, in all Subcontracts and other contractual instruments.

11.7 Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, Design-Builder should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products.

Design-Builder shall further cause any Subcontractor to include the requirements of this Section 11.7 in any Subcontracts.

For purposes of this Section 11.7:

“Produced in the United States” shall mean for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; and

“Manufactured Products” shall mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

#### 11.8 Access to Records.

11.8.1 Design-Builder agrees to provide Owner, the Department of the Treasury, the Treasury Office of Inspector General, the Government Accountability Office, and the Comptroller General of the United States, or any other authorized representatives of these entities, access to any books, documents, papers, and records (electronic or otherwise) of Design-Builder which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, transcriptions, or other investigations.

11.8.2 Design-Builder agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

11.8.3 Design-Builder agrees to retain all records covered by this Section 11.8 through December 31, 2031, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving this Agreement.

11.8.4 Design-Builder agrees to provide authorized representatives of the Federal Government access to construction or other work sites pertaining to the work being completed under this Agreement.

11.8.5 In compliance with Section 1225 of the Disaster Recovery Act of 2018, Owner and Design-Builder acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by authorized representatives of the Federal Government.

#### 11.9 Conflicts of Interest; Gifts and Favors.

11.9.1 Design-Builder understands that: (1) Owner will use Fiscal Recovery Funds to pay for the cost of this Agreement, in whole or in part, and (2) the expenditure of Fiscal Recovery Funds is governed by Owner’s Conflict of Interest Policy, Regulatory Requirements (including, without limitation, 2 C.F.R. § 200.318(c)(1)), and North Carolina law (including, without limitation, G.S. 14-234(a)(1) and -234.3(a)).

11.9.2 Design-Builder certifies to Owner that as of the date hereof, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of Owner involved in

the selection, award, or administration of this Agreement (each a “Covered Individual”); no member of a Covered Individual’s immediate family; no partner of a Covered Individual; and no organization (including Design-Builder) which employs or is about to employ a Covered Individual has a financial or other interest in, or has received a tangible personal benefit from, Design-Builder. Should Design-Builder obtain knowledge of any such interest or any tangible personal benefit described in the preceding sentence after the date hereof, Design-Builder shall promptly disclose the same to Owner in writing.

11.9.3 Design-Builder certifies to Owner that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of Owner. Should Design-Builder obtain knowledge of the provision, or offer of any provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described in the preceding sentence after the date hereof, Design-Builder shall promptly disclose the same to Owner in writing.

11.10 Assurances of Compliance with Title VI of the Civil Rights Act of 1964. Design-Builder and any Subcontractor, or the successor, transferee, or assignee of Design-Builder or any Subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of Federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d *et seq.*), as implemented by the Department of the Treasury’s Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also provides protection to persons with “Limited English Proficiency” in any program or activity receiving Federal financial assistance, 42 U.S.C. §§ 2000d *et seq.*, as implemented by Treasury’s Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Agreement.

11.11 Other Non-Discrimination Statutes. Design-Builder acknowledges that Owner is bound by and agrees, to the extent applicable to Design-Builder, to abide by the provisions contained in the Federal statutes enumerated below and any other Federal statutes and regulations that may be applicable to the expenditure of Fiscal Recovery Funds:

11.11.1 The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

11.11.2 Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving Federal financial assistance;

11.11.3 The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance; and

11.11.4 Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*), which prohibits discrimination on the basis of disability in programs,

activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

#### 11.12 Suspension and Debarment.

11.12.1 Due to its receipt of Fiscal Recovery Funds, Owner is a participant in a nonprocurement transaction (defined at 2 C.F.R. § 180.970) that is a covered transaction pursuant to 2 C.F.R. § 180.210 and 31 C.F.R. § 19.210. Therefore, this Agreement is a lower-Tier covered transaction for purposes of 2 C.F.R. Part 180 and 31 C.F.R. Part 19 if: (1) the amount of this Agreement is greater than or equal to \$25,000 (2 C.F.R. § 180.220(b)(1); 31 C.F.R. § 19.220(b)(1)); (2) the Agreement requires the consent of an official of the Department of the Treasury (2 C.F.R. § 180.220(b)(2); 31 C.F.R. § 19.220(b)(2)); or (3) this Agreement is for Federally required audit services (2 C.F.R. § 180.220(b)(3); 31 C.F.R. § 19.220(b)(3)).

11.12.2 If this Agreement is a covered transaction as set forth above, Design-Builder hereby certifies as of the date hereof that Design-Builder, its principals (defined at 2 C.F.R. § 180.995), and the affiliates (defined at 2 C.F.R. § 180.905) of both Design-Builder and its principals are not excluded (defined at 2 C.F.R. § 180.935) and are not disqualified (defined at 2 C.F.R. § 180.935). If any of the foregoing persons are excluded or disqualified and the Secretary of the Treasury has not granted an exception pursuant to 31 C.F.R. § 19.120(a), (1) this Agreement shall be void, (2) Owner shall not make any payments of Federal financial assistance to Design-Builder, and (3) Owner shall have no obligations to Design-Builder under this Agreement.

11.12.3 Design-Builder must comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19 and must include a requirement to comply with these regulations in any lower-Tier covered transaction into which it enters. This certification is a material representation of fact relied upon by Owner, and all liability arising from an erroneous representation shall be borne solely by Design-Builder.

11.12.4 If it is later determined that Design-Builder did not comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19, in addition to remedies available to Owner, the Federal government may pursue available remedies, including but not limited to suspension and/or debarment.

11.13 Program Fraud and False or Fraudulent Statements or Related Acts. Design-Builder acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Design-Builder actions pertaining to this Agreement.

11.14 No Obligation By Federal Government. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, Design Builder, or any other party pertaining to any matter resulting from the Agreement.

#### 11.15 Minority Business Enterprises.

11.15.1 If Design-Builder intends to let any Subcontracts, Design-Builder shall: (1) place qualified small and minority businesses and women's business enterprises on its

solicitation lists; (2) assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources; (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises; (4) establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises; (5) use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the North Carolina Office for Historically Underutilized Businesses.

11.15.2 For the purposes of this Section 11.15, an entity shall qualify (1) as a "minority business" or "women's business enterprise" if it is currently certified as a North Carolina "historically underutilized business" under Chapter 143, Section 128.4(a) of the North Carolina General Statutes, and (2) as a "small business" if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

#### 11.16 Equal Opportunity Employer.

During the performance of this Agreement, Design-Builder agrees as follows:

11.16.1 Design-Builder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Design-Builder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

11.16.2 Design-Builder will, in all solicitations or advertisements for employees placed by or on behalf of Design-Builder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

11.16.3 Design-Builder will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation

conducted by the employer, or is consistent with Design-Builder's legal duty to furnish information.

11.16.4 Design-Builder will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Design-Builder's commitments under this Section 11.16 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

11.16.5 Design-Builder will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

11.16.6 Design-Builder will furnish to the Administering Agency, as defined in 41 C.F.R. § 60-1.3, and the Secretary of Labor all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Administering Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

11.16.7 In the event of Design-Builder's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Design-Builder may be declared ineligible for further Federal government contracts or Construction Work in accordance with procedures authorized in Executive Order 11246 of September 24, 1965. Such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

11.16.8 Design-Builder will include the portion of the sentence immediately preceding Section 11.16.1 and the provisions of Sections 11.16.1 through 11.16.8 in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. Design-Builder will take such action with respect to any Subcontract or purchase order as the Administering Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

*Provided*, however, that in the event a Design-Builder becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Administering Agency, Design-Builder may request the United States to enter into such litigation to protect the interests of the United States.

Owner further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in Federally assisted Construction Work; *provided*, that if Owner so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or



subdivision of such government which does not participate in work on or under this Agreement.

Owner agrees that it will assist and cooperate actively with the Administering Agency and the Secretary of Labor in obtaining the compliance of contractors and Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Administering Agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Administering Agency in the discharge of the agency's primary responsibility for securing compliance.

Owner further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Federal Government contracts and Construction Work pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and Subcontractors by the Administering Agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Owner agrees that if it fails or refuses to comply with these undertakings, the Administering Agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to Owner under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from Owner; and refer the case to the Department of Justice for appropriate legal proceedings.

11.17 Compliance with the Copeland "Anti-Kickback" Act.

11.17.1 Design-Builder and any Subcontractor performing work under this Agreement shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3, as may be applicable, which are incorporated by reference into this Agreement. Owner shall report all suspected or reported violations to Treasury.

11.17.2 Design-Builder or Subcontractor shall insert in any Subcontracts the clause above and such other clauses as Treasury may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower Tier Subcontracts. The prime contractor shall be responsible for the compliance by any Subcontractor or lower Tier Subcontractor with all of these contract clauses.

11.17.3 A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

11.18 Compliance with the Contract Work Hours and Safety Standards Act.

11.18.1 *Overtime requirements.* Design-Builder and no Subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40)

hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

11.18.2 *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in Section 11.18.1, Design-Builder and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Design-Builder and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual Laborer or Mechanic, including watchmen and guards, employed in violation of the clause set forth in Section 11.18.1, in the sum of \$31, or the amount set by law as may be amended from time to time, for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in Section 11.18.1.

11.18.3 *Withholding for unpaid wages and liquidated damages.* Owner shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by Design-Builder or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Design-Builder or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Section 11.18.2.

11.18.4 *Subcontracts.* Design-Builder or Subcontractor shall insert in any Subcontracts the clauses set forth in Sections 11.18.1 through 11.18.4 and also a clause requiring the Subcontractors to include these clauses in any lower Tier Subcontracts. The prime contractor shall be responsible for compliance by any Subcontractor or lower Tier Subcontractor with the clauses set forth in Sections 11.18.1 through 11.18.4.

11.18.5 *Payroll and Records.* Design-Builder or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Agreement for all Laborers and Mechanics, including guards and watchmen, working on this Agreement. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Records to be maintained under this provision shall be made available by Design-Builder or Subcontractor for inspection, copying, or transcription by authorized representatives of the Department of the Treasury and the Department of Labor, and Design-Builder or Subcontractor will permit such representatives to interview employees during working hours on the job.

11.18.6 *Exceptions.* None of the requirements of this Section 11.18 shall apply if this Agreement is an agreement: (1) for transportation by land, air, or water; (2) for the transmission of intelligence; (3) for the purchase of supplies, materials, or articles

ordinarily available in the open market; or (4) in an amount that is equal to or less than \$100,000.

11.19 Rights to Inventions. Notwithstanding anything to the contrary contained herein, including, without limitation, Article 4, or in the General Conditions of Contract, the following provisions apply to this Agreement:

11.19.1 The Federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Government purposes,” any subject data or copyright described below. “Government purposes” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the government may not extend its Federal license to any other party.

11.19.1.1 Any subject data developed under this Agreement, whether or not a copyright has been obtained, and

11.19.1.2 Any rights of copyright purchased by Design-Builder using Federal assistance funded in whole or in part by the Department of the Treasury.

11.19.2 Unless Treasury determines otherwise, a Design-Builder or other contractor performing experimental, developmental, or research work required as part of this Agreement agrees to permit Treasury to make available to the public either (1) Treasury’s license in the copyright to any subject data developed in the course of the Agreement, or (2) a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, developmental, or research work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under the Agreement shall become subject data as defined herein and shall be delivered as the Federal government may direct.

11.19.3 Unless prohibited by North Carolina law, upon request by the Federal government, Design-Builder agrees to indemnify, save, and hold harmless the Federal government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Design-Builder of proprietary rights, copyrights, or right of privacy arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Agreement. Design-Builder shall be required to indemnify the Federal government for any such liability arising out of the wrongful act of any employee, official, or agent of Design-Builder.

11.19.4 Nothing contained in this clause shall imply a license to the Federal government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal government under any patent.

11.19.5 Data developed by Design-Builder and financed entirely without using Federal assistance provided by the Federal government that has been incorporated into work required by the underlying Agreement is exempt from the requirements herein, provided that Design-Builder identifies that data in writing at the time of delivery of the work.

Design-Builder agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

11.19.6 For the purposes of this Section 11.19, “subject data” means “recorded information, whether or not copyrighted, . . . that is delivered or specified to be delivered as required by the contract.” Examples of “subject data” include, but are not limited to, “computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses or other similar information used for performance or administration of the contract.”

#### 11.20 Clean Air Act.

11.20.1 Design-Builder agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*

11.20.2 Design-Builder agrees to report each violation to Owner and understands and agrees that Owner will, in turn, report each violation as required to Treasury and the appropriate Environmental Protection Agency Regional Office.

11.20.3 Design-Builder agrees to include these requirements in each Subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by Treasury.

#### 11.21 Federal Water Pollution Control Act.

11.21.1 Design-Builder agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*

11.21.2 Design-Builder agrees to report each violation to Owner and understands and agrees that Owner will, in turn, report each violation as required to Treasury and the appropriate Environmental Protection Agency Regional Office.

11.21.3 Design-Builder agrees to include these requirements in each Subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by Treasury.

#### 11.22 Miscellaneous.

11.22.1 *Increasing Seat Belt Use in the United States.* Pursuant to Executive Order 13043, 62 Fed. Reg. 19,216 (Apr. 18, 1997), Owner encourages Design-Builder to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.

11.22.2 *Reducing Text Messaging While Driving.* Pursuant to Executive Order 13513, 74 Fed. Reg. 51,225 (Oct. 6, 2009), Owner encourages Design-Builder to adopt and enforce policies that ban text messaging while driving

## **Article 12**

### **Other Provisions**

12.1 Other provisions, if any, are as follows:

12.2 **Governing Law and Venue.** This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

12.3 **Dispute Resolution.** The parties hereto expressly agree that Section 10.3 of the General Conditions of Contract and any and all other references to arbitration shall be deleted in their entirety. In lieu thereof, should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

12.4 **Governmental Immunity.** Owner, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

12.5 **Non-Appropriation.** In addition to the termination provisions set forth in Article 11 of the General Conditions of Contract and notwithstanding anything to the contrary contained herein or in the General Conditions of Contract, if the Board of County Commissioners of Owner does not appropriate the funding needed by Owner to make payments under this Agreement for a given fiscal year, Owner will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, Owner will promptly notify the Design-Builder of the non-appropriation, and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by Owner which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

12.6 **Independent Contractor.** Owner and Design-Builder agree that Design-Builder shall act as an independent contractor and shall not represent itself as an agent or employee of Owner for any purpose in the performance of its duties under this Agreement. Owner shall be responsible for payment of all federal, state and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. Design-Builder shall not be entitled to participate in any plans, arrangements or distributions by Owner pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to Owner's employees.

12.7 Divestment from Companies that Boycott Israel. Design-Builder hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

12.8 Debarment. Design-Builder hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any governmental department or agency. Design-Builder must notify Owner within thirty (30) days if debarred by any governmental entity during this Agreement.

12.9 Non-discrimination in Employment. Design-Builder shall not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state or local law or other unlawful form of discrimination. Design-Builder shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Design-Builder is determined by the final order of an appropriate agency or court of competent jurisdiction to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be cancelled, terminated or suspended in whole or in part by Owner, and Design-Builder may be declared ineligible for further agreements with Owner.

12.10 Minority Business Enterprises. Design-Builder will make a good faith effort to utilize Minority Business Enterprises (MBEs) per N.C.G.S. § 143-128 in the performance of this Agreement.

12.11 Compliance with E-Verify Program. Pursuant to N.C.G.S. § 143-133.3, Design-Builder understands that it is a requirement of this Agreement that Design-Builder and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Design-Builder agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and it shall require its subcontractors to do the same. Upon request, Design-Builder agrees to provide Owner with an affidavit of compliance or exemption.

12.12 Confidential Information. In addition to the provisions set forth in Section 13.1 of the General Conditions of Contract, the parties agree that the restrictions regarding the use and disclosure of Confidential Information do not apply to information that is: (i) in the public domain through no fault of the receiving party; (ii) within the legitimate possession of the receiving party, with no confidentiality obligations to a third party; (iii) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure; (iv) independently developed by the receiving party without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information; (v) disclosed with the prior written consent of the disclosing party; or (vi) required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event the receiving party receives such a

request, it shall notify the disclosing party, and the disclosing party shall have the opportunity to defend against production of such records at the disclosing party's sole expense.

12.13 Design-Builder Representations and Warranties. Notwithstanding anything to the contrary contained herein or in the General Conditions of Contract, Design-Builder represents and warrants that:

12.13.1 Design-Builder is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;

12.13.2 Design-Builder has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

12.13.3 No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Design-Builder to enter into and perform its obligations under this Agreement;

12.13.4 Design-Builder shall not violate any agreement with any third party by entering into or performing the services under this Agreement;

12.13.5 The services provided by Design-Builder under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including, without limitation, non-compete agreements);

12.13.6 Design-Builder shall ensure that whenever its employees or agents are on Owner's property, they will strictly abide by all instructions and directions issued by the Owner with respect to rules, regulations, policies and security procedures applicable to work on Owner's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

12.14 Listing of Exhibits and documents incorporated herein:

Exhibit A – Owner's Project Criteria

Exhibit B – Scope of Services

Exhibit C – Minimum Insurance Requirements (as may be amended from time to time by Owner)

Exhibit D – Supplementary General Conditions of Contract

Exhibit E – Designer's Rate Sheet

DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition) ("General Conditions of Contract"), as amended herein

Contract Price Amendment, if any.

## **Article 13**

### **Limitation of Liability**

13.1 Limitation. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design-Builder, its Design Consultants, and Subcontractors, surety (if any) and their respective officers, directors, employees and agents, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, liabilities, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any cause, including but not limited to the negligence, indemnity, professional errors or omissions, strict liability, breach of contract or warranty (express or implied), shall not exceed \_\_\_\_\_ percent (\_\_\_%) of the Contract Price. The parties agree that specific consideration has been given by Design-Builder for this limitation and that it is deemed adequate.

## **Article 14**

### **Execution**

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

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**BRUNSWICK COUNTY**

**[DESIGN-BUILDER]**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Printed Name)*

Chairman, Board of Commissioners  
*(Title)*

\_\_\_\_\_  
*(Title)*

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

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

ATTEST:

\_\_\_\_\_  
Clerk to the Board

[SEAL]

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

\_\_\_\_\_  
Aaron C. Smith, Director of Fiscal Operations  
Brunswick County, North Carolina

APPROVED AS TO FORM

\_\_\_\_\_  
Robert V. Shaver, Jr., County Attorney /  
Bryan W. Batton, Assistant County Attorney