

NORTH CAROLINA

CONTRACT

RANDOLPH COUNTY

THIS CONTRACT, made and entered into this ____ day of _____, 2019 by and between Randolph County, a political subdivision of the State of North Carolina, hereinafter referred to as the "County" and _____, a _____ hereinafter referred to as "Contractor";

WITNESSETH

That Contractor, for the consideration hereinafter fully set out, hereby agrees with the County as follows:

1. Scope of Services. Contractor shall provide all labor, tools, equipment, maintenance and other items necessary to _____ in accordance with and as more fully described in Exhibit "A," entitled "Scope of Services," attached hereto and incorporated herein by reference.
2. Time of Performance. Contractor shall commence services on Notice to Proceed with all work being completed by midnight on _____.
3. Payment. County hereby agrees to pay for the cost of the contract not to exceed _____ (\$_____) Dollars. Payment is contingent upon a final County inspection and acceptance of work.
4. Extra Work. County and Contractor shall negotiate and agree upon the value of any extra work prior to the issuance of a Change Order authorizing said extra work. Such Change Order shall set forth the corresponding adjustment, if any, to the Contract Price and Contract Time.
5. Indemnity. Contractor shall indemnify and hold County, its agents and employees, harmless against any and all claims, demands, causes of action, or other liability, including attorney fees, on account of

contract or personal injuries or death or on account of property damages arising out of or relating to the work to be performed by Contractor hereunder, resulting from the negligence of or the willful act or omission of Contractor, its agents, employees and subcontractors. The indemnification responsibilities set forth in this paragraph apply whenever fault on the part of the Contractor, its agents, employees and subcontractors, whether through action or omission, is the proximate cause of damages to the County or any other third party.

6. Insurance. Before commencing any work, Contractor shall procure insurance in the Contractor's name and maintain all insurance policies for the duration of the contract of the types and in the amounts listed in this contract. The insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from operations or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors, whether such operations by itself or anyone directly or indirectly employed by it.

- a) Commercial General Liability—Contractor shall maintain Commercial General Liability (CGL) insurance and, if necessary, Commercial Umbrella Liability insurance with a total limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury and property damage. If the CGL policy contains an aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit. The CGL policy shall cover the liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The County, its officers, officials, agents and employees are to be covered as additional insureds with respect to liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor, premises owned, leased, or used by Contractor, and under the Commercial Umbrella, if any. The coverage shall contain no special limitations in the scope of protection afforded to the County, its officers, officials, agents and employees. There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, employment-related practices, or damage to the named insured's work. Contractor's CGL shall be primary as respects the County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the County, its

officers, officials, and employees shall be excess of and not contribute with Contractor's insurance. Contractor shall maintain CGL and, if necessary, Umbrella Liability insurance, applicable to liability arising out of Contractor's completed operations under this contract for at least three (3) years following substantial completion of work hereunder.

- b) Workers' Compensation and Employer's Liability—Contractor shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than One Hundred Thousand Dollars (\$100,000.00) each accident for bodily injury by accident, One Hundred Thousand Dollars (\$100,000.00) each employee for bodily injury by disease, and Five Hundred Thousand Dollars (\$500,000.00) policy limit. The insurer shall agree to waive all rights of subrogation against the County, its officers, officials, agents and employees for losses arising from work performed by Contractor for County.
- c) Business Auto Liability—Contractor shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than Two Million Dollars (\$2,000,000.00) each accident. This coverage shall cover liability arising out of any auto, including owned, hired and non-owned autos. Contractor's Business Auto Liability insurance shall be primary as to County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the County, its officers, officials and employees shall be excess of and not contribute with Contractor's insurance.
- d) Deductibles and Self-Insured Retentions—Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, agents or employees; or Contractor shall procure a bond guaranteeing payment of deductibles or self-insured retentions. Contractor shall be solely responsible for the payment of all deductibles to which such policies are subject, regardless of whether County is an insured under the policy.
- e) Miscellaneous Insurance Provisions—The insurance policies required by this contract shall contain, or be endorsed to contain, the following provisions:
 - i. Any failure to comply with reporting provisions listed in

this contract shall not affect coverage provided to the County, its officers, officials, agents and employees.

- ii. Each insurance policy required by this contract shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days prior written notice to the County at the notice address specified in paragraph 20 below.
 - iii. If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.
- f) Acceptability of Insurers—Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless County has granted specific approval.
- g) Evidence of Insurance—Contractor shall furnish the County with a certificate(s) of insurance, executed by a duly-authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete. Evidence of additional insured status shall be noted on the certificate of insurance as required in this contract. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to the County with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.
- h) Subcontractors—Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements herein. Commercial General Liability coverage shall include independent contractors' coverage, and Contractor shall be responsible for assuring that all subcontractors are properly insured.
- i) Conditions—The following conditions apply to all insurance required by this contract:
- i. The insurance required for this contract must be on forms acceptable to the County.

- ii. Contractor shall provide that the insurance contributing to satisfaction of insurance requirements in this contract shall not be canceled, terminated, or modified by Contractor without the prior written approval of the County.
 - iii. Contractor shall promptly notify the County of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
 - iv. County reserves the right to obtain complete, certified copies of all required insurance policies at any time.
 - v. Failure of the County to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the County to identify a deficiency in evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
 - vi. By requiring insurance herein, the County does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation of Contractor's liability under the indemnities granted to the County in this contract.
 - vii. If Contractor fails to maintain the insurance as set forth herein, the County shall have the right, but not the obligation, to purchase said insurance at the Contractor's expense.
 - viii. Contractor or his engineer may apply to the County for approval of higher deductibles based on the financial capacity and quality of the carrier affording coverage.
 - ix. County shall have the right, but not the obligation, to prohibit Contractor or any subcontractor from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the County.
7. Independent Contractor. The parties hereto mutually agree that Contractor is an independent contractor and not an agent of the County, and as such, Contractor shall not be entitled to any County employment benefits, such as, but not limited to, vacation, sick leave, insurance, workmen's compensation, or pension and retirement

benefits.

8. Warranty. Contractor warrants to the County that any and all labor furnished to progress the work under this contract will be competent to perform the tasks undertaken, in a workmanlike manner, so as to meet the standards of workmanlike quality prevailing in North Carolina at the time of construction, that any and all materials furnished will be of good quality and that the work will be of good quality, free from faults and defects and in strict conformance with this contract. All work not conforming to these requirements may be considered defective. All work shall conform to applicable Federal, State and local laws and regulations. Contractor shall be responsible for all costs, damages, and expenses including but not limited to, penalties, fines and fees that County may incur because of Contractor's failure to perform under this contract.
9. Default and Termination. If Contractor fails to prosecute the work with such diligence as will insure its completion within the contract time, or if Contractor breaches any of the terms or conditions contained in this contract and fails to cure said breach within two (2) days of the County's mailing a Notice of Default, or otherwise fails to perform the work hereunder to the County's reasonable satisfaction, the County may terminate this contract forthwith. Upon termination, the County may, without prejudice to an action for damages or other remedy, take the prosecution of the work out of the hands of Contractor. The County may enter into another contract for the completion of the contract, or use such other methods as may be required for the completion of the contract. County may deduct all costs of completing the contract from any monies due or which may become due to the Contractor. In the event his project is terminated prior to completion of the services by the Contractor, Contractor shall be paid for services performed to the date of termination. In no event will the amount due Contractor in the event of termination exceed the amount set forth in this contract. Nothing contained herein shall prevent the County from pursuing any other remedy which it might have against the Contractor, including claims for damages.
10. Termination for Convenience. County may terminate this contract for convenience at any time and without cause. Upon receipt of notice, Contractor shall immediately discontinue the service and placing of orders for any materials, facilities, and supplies in connection with the performance of this contract.
11. E-Verify Clause. Contractor hereby attests that it currently complies with and shall continue to comply with, for the duration of this Agreement, Article 2 of Chapter 64 of the North Carolina General Statutes (commonly referred to as "E-Verify") and further attests that it ensures and continues to ensure that any

subcontractors utilized by Contractor also comply with said Article.

12. Non-waiver of Rights. The parties mutually agree that either party's failure to insist upon the strict performance of any provision of this contract or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this contract.
13. Conflict of Interest. No paid employee of the County shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this contract.
14. Subcontracts. Contractor shall utilize no subcontractors for carrying out the services to be performed under this contract without the written approval of the County.
15. Entire Agreement. This agreement constitutes the entire understanding of the parties.
16. Binding Effect. This contract shall be binding upon the parties hereto, and their heirs, successors, executors, administrators and assigns.
17. Further Actions. The parties will make and execute all further instruments and documents required to carry out the purposes and intents of this contract.
18. Inclusive Terms. Use of the masculine herein shall include the feminine and neuter, and the singular shall include the plural.
19. No Construction Against Drafter. This contract has been negotiated and drafted by both parties, so if an ambiguity or a question of intent or interpretation arises, this contract is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of the contract.
20. Governing Law. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina.
21. Notices. All notices required hereunder to be sent to either party shall be sent to the following designated addresses, or to such other address or addresses as may hereafter be designated by either party by mailing of written notice of such change of address, by Certified Mail, Return Receipt Requested:

**To the County:
Randolph County**

Attention: Paxton Arthurs
725 McDowell Road
Asheboro, NC 27205

To Contractor:

Attention: _____

- 22. Assignability. The parties hereto agree that this contract is not transferable and shall not be assigned by either party without the written consent of the other party to this contract.
- 23. Contract Under Seal. The parties hereto expressly agree to create a contract under seal.

IN WITNESS WHEREOF, the parties have hereunto affixed their hands and seals the day and year first above written and by authority duly given.

RANDOLPH COUNTY

[SEAL]

Hal Johnson, Randolph County Manager

ATTEST:

Dana Crisco, Clerk to the Board

CONTRACTOR

[SEAL]

President

Secretary

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

Approved as to form:

County Finance Director

County Attorney

NORTH CAROLINA

RANDOLPH COUNTY

I, _____, a Notary Public of the State and County aforesaid, certify that Dana Crisco acknowledged that she is Clerk to the Board of Commissioners of Randolph County, and that by authority duly given and as the act of the Board, the foregoing instrument was signed in its name by Hal Johnson, its Manager, sealed with its corporate seal and attested by herself as its Clerk.

WITNESS my hand and official seal, this ___ day of _____, 2019.

Notary Public

My commission expires: _____.

NORTH CAROLINA

RANDOLPH COUNTY

I, _____, a Notary Public in and for the State and County aforesaid, certify that _____, personally came before me this day and acknowledged that (s)he is Secretary of _____, a _____, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President.

WITNESS my hand and official seal, this ___ day of _____, 2019.

Notary Public

My commission expires: _____.

